



ENVIRONMENTAL DEMOCRACY: MYTH OR REALITY IN BELARUS?

Review of the practice of the Aarhus Convention
implementation in the Republic of Belarus

BELARUS, 2017

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1.



INTRODUCTION



1. Introduction

In line with paragraph 33 of the Law of the Republic of Belarus "On International Treaties of the Republic of Belarus", legal norms contained in international treaties endorsed by the Republic of Belarus form part of legislation effective in the territory of the Republic of Belarus, are to be directly implemented and have the force of a legal act expressing the consent of the Republic of Belarus to be bound by the respective international treaty.

However, due to the particular nature of the national law enforcement practice, implementation of the norms of the Aarhus Convention as directly applicable laws poses a challenge, therefore articulating and enshrining its provisions in the national legislation that sets out the way the norms of the Convention are to be implemented is deemed appropriate for successful implementation of the Aarhus Convention in our country.

During the last four years Belarus has introduced significant changes to the legislation in order to implement the provisions of the Aarhus Convention and comply with Decision V/9c of the Meeting of the Parties:

- The Law "On Environmental Protection" was supplemented by article 152 "Public hearings on drafts of environmentally significant decisions, environmental impact assessment reports, environmental reports on strategic environmental assessment";
- To implement this article of the Law, the "Regulation on the procedure for organizing and holding public hearings for drafts of environmentally significant decisions, environmental impact assessment reports, and accounting for environmentally significant decisions" has been adopted. Subsequently, the name of the document was changed: "Regulation on organization and conduct of public hearings for drafts of environmentally significant decisions, environmental reports on strategic environmental assessment, environmental impact assessment reports, accounting for environmentally significant decisions";
- The new Law "On State Environmental Expert Review, Strategic Environmental Assessment and Environmental Impact Assessment" was adopted;

- Amendments were made to the "Regulation on the procedure for conducting public environmental expert review";
- Amendments were made to the Law "On Information, Informatization and Information Protection" related to regulation of access to environmental information;
- The new edition of the "Regulation on the procedures for conducting public hearings in the field of architectural, town-planning and construction activities" was submitted for public hearings.

In addition to further implementation of provisions and principles of the Aarhus Convention in the legislation of the Republic of Belarus, law enforcement practice also needs development, as it does not keep up with the pace of legislation improvement.

2.



**EXERCISING
THE RIGHT
TO ACCESS
TO ENVIRONMENTAL
INFORMATION**



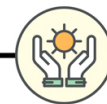
2.1. Changes in legislation for the reporting period

- Since July 1, 2016, the list of information pertaining to environmental information has ceased to be effective in Belarus. It had been codified by the Resolution of the Ministry of Natural Resources and Environmental Protection of the Republic of Belarus No. 22 dated May 29, 2003. It is difficult to give straightforward assessment to the abolition of this list, since the latter was considered very specific, and the norm, enshrined in the Law on Environmental Protection, gives a rather vague definition of what should be attributed to environmental information, which creates difficulties for law enforcement. On the other hand, although the list was not exhaustive, there were numerous cases of refusal to provide environmental information on the grounds that the information had not been mentioned in the list. In this case, formalizing only the definition and general framework for attributing to environmental information can be justified.
- Changes were made to Article 2 of the Law "On Information, Informatization and Protection of Information". At the moment this regulation provides that "the legislation of the Republic of Belarus may establish the features of legal regulation of information relations related to information constituting state secrets, with personal data, advertising, protecting children from information that is harmful to their health and development, scientific and technical, statistical, legal, environmental and other information". This norm directly indicates that access to environmental information can be regulated by the norms of environmental legislation, rather than by the general norms of the Law "On Information, Informatization and Information Protection". This change took effect on July 1, 2017, and it is not yet possible to assess whether this rule will allow to avoid cases of refusal to provide environmental information in view of its relation to information of limited distribution in accordance with the Law "On Information, Informatization and Protection of Information".

- The Law "On Information, Informatization and Protection of Information" was supplemented with Article 181 "Official Information for Restricted Distribution". Previously, the procedure for handling such information had been regulated by the "Regulation on treatment of official information of restricted distribution", approved by Resolution of the Council of Ministers of the Republic of Belarus No. 237 dated February 15, 1999. The Resolution of the Council of Ministers itself also referred to official information of restricted distribution, had a stamp "For official use" and was not published anywhere. Thus, it was impossible even to learn about the procedure for attributing information to official information of restricted distribution, and find out who was authorized to make such decisions. This regulation is important for the provision of environmental information, because general public is often faced with refusals to provide information, since the latter has the stamp "For official use". However, the amendment to the Law "On Information, Informatization and Protection of Information" and the adoption of a bylaw - a Resolution of the Council of Ministers No. 783 dated August 12, 2014 - did not resolve the main question: what is the procedure for familiarization with such information for citizens and legal entities that are not state bodies.

This Resolution has the following shortcoming: it contains an unclosed list of data falling into the category of official information of restricted distribution and allows local authorities to draw up their own lists, which in practice can lead to restrictions on access to environmental information in the case of referring to the information and documents of limited distribution.

2.2. Gaps and lack of proper regulation at the legislative level



Definition of environmental information

Article 74 of the Law on Environmental Protection distributes environmental information into two groups:

- 1) Environmental information provided and distributed in line with the Law on Environmental Protection;
- 2) Environmental information provided and distributed in line with other legal acts.

To ensure public access to environmental information falling into the second group, norms under existing branches of law need to be environmentalized. At the moment the degree of environmentalization of legislation covering the financial and monetary system, information and informatization, architectural, town-planning and construction activity, as well as some other branches, is rather low.

At the same time, in most cases state authorities and other holders of environmental information tend to take a restrictive approach to interpreting the definition of environmental information and give an outright denial to provide it if they have doubts whether the requested information can be attributed to environmental.

2.3. Law enforcement practice in the area of access to environmental information in 2014-2017 in Belarus

Information provided

Despite the fact that the procedure for accessing environmental information is regulated by law, there are certain difficulties. First of all, they are conditioned by the sense of justice of state bodies and other holders of environmental information, which interpret the norms of legislation restrictively. It is often the case that the state body asks to justify the applicant's interest in the requested information,

and, in practice, it cannot determine what information it or other entity holds is environmental. There are controversial cases of providing information not in the requested form, without justification, why the holder of information is not able to provide it in the form requested by the public. Supposedly, in such situations it would be necessary to adhere to the norms of the Convention stating that the form requested by the applicant is of priority, and provision in different form is possible only in cases when information does not exist in the requested form.

Also, often the holder of environmental information does not want to take on additional work and extract the requested environmental information from the information available to him (for example, extracting environmental information from detailed planning projects and master plans of settlements by separating the sub-base with underground communications, etc.).

In spite of the fact that the legislation specifies the legal basis for public access to environmental information, responses to citizens' and legal entities' appeals are often of a formal nature, and the amount and composition of the information provided may not match the request.

Timeframe for provision of information

Holders of environmental information are often not familiar with the norms of the Law on Environmental Protection and apply general provisions on the timeline for responding to citizens' appeals, thus the applicant receives environmental information or a response about the refusal to provide it in not within 10 days.

According to Article 17 of the Law "On Appeals of Citizens and Legal Entities", appeals requiring further examination and verification must be considered within not more than one month, unless a different period is established by legislative acts. In practice, uncertainty in the wording "appeals that require additional study and verification" leads to the fact that any request to the information holder can be considered requiring verification.



At the same time, the norms of the Law "On Appeals of Citizens and Legal Entities" regarding the timeframe for responses to appeals should not be applied to requests for environmental information, since the Law "On Environmental Protection" establishes a different procedure for filing a request and consideration thereof.

Refusal to provide environmental information

Cases of unreasonable refusal to provide information or refusal on unlawful grounds are not uncommon, and they can be roughly distributed into four categories:

- 1) refusals to provide environmental information with reference to the Law "On Commercial Secrets", despite the fact that the regime of commercial secrets required by law was not established (there had been no corresponding order or provision) with respect to the requested information;
- 2) refusals to provide environmental information on the grounds that the holder of such information simply does not recognize it as environmental without proper justification and reasoning¹;
- 3) Prior to the abolition in 2016 of the List of Information Pertaining to Environmental Information (Decree of the Ministry of Natural Resources No. 22 of May 29, 2003), refusals occurred on the grounds that the requested information was not on this list, although it was without any doubt of environmental nature;
- 4) refusals to provide information and documentation due to attribution of this information to information of restricted distribution in accordance with the Law "On Information, Informatization and Protection of Information".

Non-provision of environmental information is especially relevant in respect of construction of the Belarusian APP despite the fact that this case

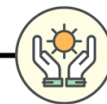
¹ REPUBLICAN CENTER FOR PUBLIC ENVIRONMENTAL EXPERTISE OF THE MINISTRY OF NATURAL RESOURCES REFUSED TO GRANT THE STATE EXAMINATION OF URBAN DEVELOPMENT PROJECTS OF DETAILED PLANNING OF FEZ "MINSK" (SECTION 3 "RADIAN"), ARGUING THAT IT DOES NOT REFER TO ANY KIND OF ENVIRONMENTAL INFORMATION.

formed ground for the Meeting of the Parties to the Aarhus Convention in 2014 (ECE/MP.PP/2014/2/Add.1). Thus, in the following cases information was either not provided to the public, or access to the information on public request was denied:

- when the reactor vessel was damaged through falling from height. Representatives of the public (represented by the "Ecohome" NGO and the Belarusian Green Party) requested a video of the incident, as well as detailed information on the damage confirmed by instrumental research, and access to the site for independent experts to inspect the reactor vessel;
- when the second reactor vessel hit a railway post. Representatives of the public (represented by the "Ecohome" NGO and the Belarusian Green Party) requested information on the results of the instrumental research, as well as photo and video documentation of the incident, and access to the site for independent experts to inspect the reactor vessel;
- during incidents involving the death of workers during 2016. Representatives of the public (represented by the "Ecohome" NGO and the Belarusian Green Party) requested information about the incidents;
- based on the results of GosAtomNadzor's (Federal Inspectorate for Nuclear and Radiation Safety Authority) inspections, representatives of the public (represented by the "Ecohome" NGO and the Belarusian Green Party) requested reports/materials of comprehensive audits in 2014-2016;
- a group of European Parliament deputies participated by Rebecca Harms was denied access to the site of the Ostrovets nuclear power plant in 2017.

Issues with access to official information of restricted distribution

During the reporting period, there were frequent cases of refusal to provide environmental information, as well as documentation for conducting public environmental expert reviews due to attribution of such information and documentation to information of restricted distribution by state authorities in accordance with the Law "On Information, Informatization and Protection of Information". The law "On Environmental Protection" does not envisage such a basis for refusing to provide



environmental information.

The provisions of the Aarhus Convention in part two of paragraph 4 of Article 4 provide for restrictive interpretation of any grounds for refusing to provide environmental information to the public concerned. The grounds for refusal should always be interpreted in the light of public interest in disclosing this information and with account of the fact whether the information requested relates to emissions to the environment.

On July 1, 2017, amendments to part two of Article 2 of the Law of the Republic of Belarus No. 362-3 dated May 11, 2016 entered into force. From that moment on, it is allowed by legislation of the Republic of Belarus to establish peculiarities of legal regulation of information relations with respect to environmental information. In itself, this norm does not solve problems associated with refusal to provide environmental information contained in documents classified as sensitive information of restricted distribution. However, it has now become possible to regulate these relations by adopting (supplementing) any other legislative acts. Numerous cases of refusal to provide environmental information contained in documents classified as official information of limited distribution can be overcome from July 1, 2017 without amending the legislative acts.

We consider it necessary to clarify the norm of the fourth paragraph of part two of Article 742 of the Law "On Environmental Protection" and the norm of part three of Article 742 of the same Law. In the first case, it is necessary to clarify whether the term "documents that relate to internal document management of the holder of environmental information" means official information of restricted distribution. In the second case, it is necessary to establish the procedure for identifying the possibility of separating environmental information, as well as at whose expense the separation of environmental information is carried out. In addition, at present it seems logically consistent and legally justified to exclude the mentioning of legislative acts on information and informatization from part three of Article 74 of the Law on Environmental Protection. To ensure the possibility of unhindered conduct of public environmental expert review, we propose to

amend the relevant Regulation (approved by Resolution of the Council of Ministers of the Republic of Belarus No. 1592 of October 29, 2010) regarding clarification of the procedure for submitting environmental information to the initiator of public environmental expert review contained in documents classified as official information.

Dissemination of environmental information


- There are cases of failure by local executive authorities to disseminate environmental information. For example, in accordance with the Water Code, local executive bodies are required to post information about the boundaries of water protection zones and coastal strips on their websites, but most local executive bodies do not place such information;
- Environmental monitoring is carried out by various state bodies and organizations; this information is filed in several databases and registers that are not connected. With a view to facilitating access to environmental monitoring data, the Aarhus Center of the Republic of Belarus made the first attempt to combine monitoring information in one source and created on its website a subsection in which 13 types of such monitoring were collected with links to sources (information is available at <http://aarhusbel.com/eco-help/43>);
- Primary statistical environmental information is neither disseminated nor provided to the public without the consent of the entity that collected this information;
- Access to legal information in an up-to-date state is possible online via the Reference Database of Legal Information of the Republic of Belarus. Access is provided for a fee, which is a significant obstacle, even in spite of the low cost - the very need for payment and knowledge of online or SMS payment methods limits the public's opportunity to obtain up-to-date legal information;

² OVER THE PAST YEAR, THE COMMITTEE OF ARCHITECTURE AND URBAN PLANNING OF MINSK CITY EXECUTIVE COMMITTEE DENIED THE NGO "ECOHOME" IN THE PROVISION OF DOCUMENTS FOR PUBLIC ENVIRONMENTAL REVIEW OF THREE URBAN DETAILED PLANNING PROJECTS IN MINSK.



- We consider poorly efficient public outreach activities on development of draft normative legal acts. On the first page of the official site of the Ministry of Natural Resources and some other state bodies there are special sections where drafts of the national legal acts are published. In general, information on the development of draft normative legal acts is not brought to the attention of the public. If information on the development of draft normative legal acts is disclosed, then the drafts of normative legal acts cannot always be found through the main page of the official website of state bodies; also, there is no indication of the deadline for hearings, the status of the project, or where comments on the project can be sent; finally, there is no respective information in the news section. For those reasons, concerned public does not always receive the necessary information.

3.

A large group of people, including men, women, and children, are seated in a hall or auditorium. They are looking towards the front of the room, suggesting they are attending a public meeting or consultation. The room has a high ceiling with several large, round, white pendant lights. The walls are light-colored, and there are some framed pictures or notices on the wall. The overall atmosphere appears to be a formal public gathering.

**EXERCISING
THE RIGHT OF
GENERAL PUBLIC
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DECISION-MAKING**



3.1. Changes in legislation for the reporting period

- The Law "On Environmental Protection" was supplemented by Article 152 "Public hearings for drafts of environmentally significant decisions, environmental impact assessment reports, environmental reports on strategic environmental assessment". In addition to reports on environmental impact assessment and decisions on issuance of permits for removal/transplantation of flora objects in settlements, the following documents became subject to public hearings: concepts, programs, plans, schemes, the implementation of which has an impact on environment and (or) is associated with the use of natural resources. Also, draft regulatory legal acts of the Republic of Belarus became subject to public hearings, however, only in parts regarding provisions aimed at regulating relations pertaining to the conduct of economic and other activities classified as environmentally hazardous according to criteria determined by the President of the Republic of Belarus or his authorized state body (Presidential Decree No. 349 of June 24, 2008), which severely limits the scope of public participation in the discussion of regulatory legal acts. For example, in this situation, it is not necessary to discuss with the public the drafts of the Forest Code, the Law on Wildlife, the Law on Specially Protected Natural Areas etc.

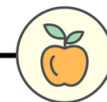
Public organizations, such as APB Birdlife Belarus, "Bahna" and other organizations have a negative experience of interaction with the Ministry of Forestry on drafting normative legal acts related to conservation, protection and use of forests, hunting, with the Ministry of Agriculture and Food - on development of draft regulations on fisheries. The Ministry of Forestry refuses to include representatives of concerned environmental community having significant expert potential in the working groups for the preparation of draft legal acts; as a result, the developed draft documents reflect the interests of representatives of the hunting community (the Belarusian Society of Hunters and Fishers, whose representatives are

included in the composition of such working groups) solely, which does not comply with the principles of conservation and sustainable use of biological diversity.

- The Law "On State Environmental Expert Review, Strategic Environmental Assessment and Environmental Impact Assessment" was adopted (an expanded version of the earlier Law "On State Environmental Impact Assessment"). It introduced the concept of strategic environmental assessment and environmental report. Article 15 of the Law establishes that findings of the state environmental expert review are recognized as the final decision on the planned economic and other activities with regard to the permissible impact of such activities on environment and the use of natural resources for the purposes of the Convention on Environmental Impact Assessment in a Transboundary Context, signed in Espoo on February 25, 1991. However, this kind of instruction raises even more concerns: in this case, how should one understand the decision under Article 6 of the Aarhus Convention? Also, Part 3 of this Law states that "the implementation of design decisions without a positive opinion of the state environmental expert review is prohibited **unless otherwise established by the President of the Republic of Belarus.**" Thus, the conclusion of a state environmental review may not be final.

Besides, it is the first time that the law recognizes general public as a subject of legal relations in the area of state environmental expert review and enshrines the rights of citizens and legal entities, including the right to challenge a report on environmental impact assessment, a report on strategic environmental assessment or findings of a state environmental expert review in court.

- The Regulation on the procedure for organizing and conducting public hearings of drafts of environmentally significant decisions, environmental impact assessment reports, environmental reports on strategic environmental assessment has been adopted.



The document includes all the procedures of public discussions, except for public discussions in the field of architectural, urban planning and construction activities. Other changes in the Regulation are aimed at improving efficiency of outreach activities and timeliness thereof: all information on public hearings, including announcements, information on the approved projects and documentation on projects submitted for public hearings, should be posted on the main pages of the sites of the executive committees in a special section called "Public Hearings". Preliminary informing has been introduced for public hearings for draft plans, programs and regulations prior to project development.

In January 2017 its title was changed: Regulation on the procedure for organizing and holding public hearings for drafts of environmentally significant decisions, environmental impact assessment reports, and environmental reports on strategic environmental assessment. This Regulation includes all procedures of public hearings, except for public hearings in the field of architectural, town-planning and construction activities.

In fact, a new type of public hearings has appeared in Belarus, the subjects of which are environmental reports on strategic environmental assessment. A regulatory framework has been adopted that determines the procedure for the preparation of environmental reports on strategic environmental assessment. The short period of effectiveness of the new legislation did not allow for developing a practice by the time of preparation of this review.

Unfortunately, the new procedure was not without deviations from the principles of the Aarhus Convention. So, Article 36 of the Regulation narrows the circle of persons who have the right to declare the need for holding a meeting to discuss the environmental report on SEA, to citizens and legal entities of the relevant administrative territorial unit. Such a norm goes against the definition of "interested public" from paragraph 2, Article 5, of the Aarhus Convention. Logic of the introduced restriction, i.e. for what purpose it was introduced, is unclear. Whether the national public associations will be referred to the number of

"legal entities of the corresponding administrative territorial unit" is also unknown.

It should be noted that the normative basis for the new procedure for public hearings (Decrees of the Council of Ministers Nos. 24³) was adopted in 2017 without public hearings.

- In May 2017, on an initiative and with participation of the representative of the deputy corps, public hearings were held over the new edition of the "Regulation on the procedure for holding public hearings in the field of architectural, town-planning and construction activities". In the proposed version of the Regulation, there is a tendency to converge and unify procedures for public hearings in the field of architectural and town planning activities and public hearings on environmentally significant decisions and EIA reports. All information on the public hearings on urban development projects will also be posted on the websites of the executive committees in the special section called "Public Hearings". The new version also envisages introduction of preliminary information on the planned changes in town planning projects even before the project is developed, at the "zero stage".

- The Law "On Flora" was supplemented with article 331."Landscaped territories", which stipulates that draft design of landscaped territories of general use are subject to public hearings. However, there are no practice of holding discussions schemes projects yet.

3.2 Law enforcement practice with reference to public participation in environmental decision-making in Belarus in 2014-2017

³ BELARUSIAN CABINET OF MINISTERS DECREE N 24 DATED 13.01.2017 "ON AMENDMENTS TO THE COUNCIL OF MINISTERS OF THE REPUBLIC OF BELARUS OF JUNE 1, 2011 NUMBER 687 AND ON JUNE 14, 2016 N 458".



Reasonable timeframe

The public faces obstacles in receiving information about the launch of public hearings in a timely manner. Notifications are published in various newspapers and on websites of individual executive committees, of which there are more than 100 in Belarus. There is no single informing mechanism. Also, the stipulated deadline for filing an application for holding a meeting within the framework of the EIA procedure or public environmental expert review is not reasonable. For these reasons, the public often does not have time to submit an application, and sometimes does not know about the ongoing public hearings. The interested community of local residents complains about the inability to receive timely information about the launch of public hearings, pointing to the unpopularity of the local printed press and the technical difficulties related to obtaining information through the websites of local authorities. Part of the local residents considers informing residents by sticking ads on the entrances of houses and information boards an efficient solution. However, there is generally no consensus among the public on this issue. In our opinion, a specialized website or website of the Aarhus Center⁴ could become a resource where all information on all types of public hearings would be accumulated. As it is difficult to consolidate such a mechanism, at present the creation of special "Public Hearings" sections on the websites of local executive and administrative bodies is the best solution. In the future, it will be possible to make interactive links from the website of the Aarhus Center of the Republic of Belarus to all such sections.

Public involvement at early stages

One of the most pressing issues is involvement of the public not "at the earliest stage, when all possibilities for considering various options are open and when effective public participation can be ensured", but much later, when significant financial resources have already been invested in the project,

⁴ [HTTP://WWW.AARHUSBEL.COM/](http://www.aarhusbel.com/)

certain agreements have been passed, and sometimes an investment contract has already been concluded. Generally, in this case the "zero option" and alternatives are not discussed, and the public's objections to feasibility of the decision are parried by the argument about large losses in case of refusal to implement the project. As a result, public participation is reduced to merely being informed about the pre-selected only version of the project. At present, the stage of preliminary informing is envisaged only in the framework of public hearings over concepts, programs, plans and schemes, implementation of which impacts the environment and (or) is associated with the use of natural resources, and draft regulatory legal acts.

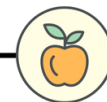
Account of public opinion

Despite the mechanism for taking into account comments and proposals received from the public envisaged by law, when summing up the hearings, the reasons for accepting or rejecting certain proposals are not always explained. The state authority refuses to take into account proposals of the public "because of their lack of argumentation and validity" and requires that comments and suggestions of public hearings participants "comply with the requirements of regulatory legal acts, including technical regulatory legal acts⁵," otherwise they cannot form grounds for introducing amendments and (or) additions to the project. As a result, public opinion has little effect on the decision, and public hearings often boil down to mere informing.

However, there were also isolated cases when after the hearings the project was sent for revision⁶, when the commission for holding public hearings "taking into account the disagreement of the citizens resolved to consider it

⁵ [HTTP://OKT.MINSK.GOV.BY/DOCS/STROITELSTVO/OBSHCHEST-OBSUZHDENIE-PROTOKOL-MOSKOVSKAYA.PDF](http://OKT.MINSK.GOV.BY/DOCS/STROITELSTVO/OBSHCHEST-OBSUZHDENIE-PROTOKOL-MOSKOVSKAYA.PDF)

⁶ [HTTP://SOV.MINSK.GOV.BY/DOCS/OBSHCHESTVENNOE-OBSUZHDENIE/OBSH-OBSUZHDENIE-36ZHM-PROTOKOL.JPG](http://SOV.MINSK.GOV.BY/DOCS/OBSHCHESTVENNOE-OBSUZHDENIE/OBSH-OBSUZHDENIE-36ZHM-PROTOKOL.JPG);
[HTTPS://REALTY.TUT.BY/NEWS/OFFTOP-REALTY/551676.HTML](https://REALTY.TUT.BY/NEWS/OFFTOP-REALTY/551676.HTML)



unreasonable to recommend a project for implementation" or completely stopped public hearings⁷. However, the executive body, approving the draft by its decision, may not take into account the outcomes of public hearings, and the recommendations of the commission on the conduct of these hearings.

Only in the procedure for discussing issues related to removal and transplantation of flora objects public opinion is decisive, and a vote is conducted to identify it.

It should also be noted that the findings of public environmental review are of purely advisory nature.

Decision-making processes associated with the construction of the Belarusian nuclear power plant is not sufficiently transparent and open.

So the opinion of the public was not taken into account when making decisions in the following cases related to creating high risks for environmental safety and public health not only for citizens of Belarus, but also for neighboring countries (Lithuania):

- making a decision on the use of the reactor vessel damaged by hitting a railway lamppost. Representatives of the public (represented by the "Ecohome" NGO and the Belarusian Green Party) did not receive an official response to their proposal;
- the decision to establish a commission to investigate incidents and violations at the Belarusian NPP, including incidents with the reactor vessel and personnel deaths in 2016. Representatives of the public (represented by "Ecohome" NGO and the Belarusian Green Party) did not receive an official response to their proposals for establishment of such a commission with inclusion of independent experts following the accident with the fall of the reactor vessel and the impact of hitting the railroad post. The commission was not established.

⁷ [HTTPS://REAL.ONLINER.BY/2015/08/20/OFIGIALNO](https://real.onliner.by/2015/08/20/oficialno)

Information on decisions made

The lack of access to final decisions following their approval, even of those discussed with participation of public, poses a serious challenge for the latter. Final decisions in the field of architectural and town planning activities taken as a result of public hearings are often stamped "for official use" and become inaccessible to the public. Thus, public does not get a chance to learn what remarks and proposals have been taken into account, and also what final decision was made following public hearings. It is also possible to make significant changes to the decision taken later, without involving the public.

The Regulation on the procedure for organizing and holding public hearings over projects of environmentally significant decisions, environmental reports on strategic environmental assessment, environmental impact assessment reports and taking into account environmentally relevant decisions, envisages provision of information on the outcomes of public hearings on websites of executive bodies (minutes of meetings, minutes of public hearings, decisions taken). Prior to the adoption of this provision there have been several cases of failure to provide information on the results of public discussion of the EIA report⁸.

The Belarusian legislation lacks the notion of the "final decision" for most types of activity, as well as the procedures for making such decisions.

Breaches of the stipulated procedure for public hearings

From *the public hearings organizers' side*, the following breaches occur most frequently:

- failure to comply with the deadlines for posting information on public hearings on the Internet on the official website of the organizer and (or) in the printed media;

⁸ BVAUKAVYSK AND UZDA DISTRICT EXECUTIVE COMMITTEE REFUSED TO PROVIDE PROCEEDINGS OF PUBLIC DISCUSSION OF THE EIA REPORT CONSIDERING THAT THEY DO NOT RELATE TO ENVIRONMENTAL INFORMATION.



- non-compliance with the completeness of information on public hearings on the Internet on the official website of the organizer and (or) in the printed media;
- lack of information on public hearings in the printed media or on the Internet on the official website of the organizer;
- amending (adding) information on the public hearings on the Internet on the official website of the organizer, with no indication of the date of amending (adding) information, the so-called “retroactive” amending (adding) of information;
- failure to meet the deadlines for setting a public meeting to discuss the EIA report;
- failure to meet the deadlines for holding a public meeting to discuss the EIA report;
- postponement of the public meeting to discuss the EIA report to a different date (time) without posting updated information on holding the meeting at the location of the initial information on the meeting;
- lack of maintenance of the minutes of the meeting and, as a result, no due account of questions and comments received from participants of the meeting;
- failure to comply with the deadline for posting minutes of the public hearings on the Internet on the official website of the organizer;
- the lack of a summary of responses to some questions and comments sent to the developer of the EIA report, the customer or organizer of public hearings.

On the side of the customer and the EIA report developer, the following breaches occur most frequently:

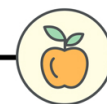
- providing incomplete (distorted) information to the organizer of public hearings;
- placing an EIA report of inadequate quality or at an early stage of readiness for public hearings;

- failure of representatives of the customer or developer of the EIA report to attend the public meeting to discuss the EIA report;
- refusal to consider received proposals and comments of the public on the merits;
- poor (unreasonable) answers to received questions.

On the side of participants of the public hearings, the following breaches occur most frequently:

- violation of the set deadlines for filing applications for a public meeting to discuss the EIA report, as well as the timing for submission of questions, comments and suggestions;
- submission of questions, comments and suggestions that are not related to the object under consideration.

In case violations by participants of public hearings are revealed, most often the organizer does not take into account the questions, comments and suggestions submitted not in a timely manner or not in substance. For all of the above violations on the side of the organizer of public hearings, the customer and the developer of the EIA report, if they are identified, legal uncertainty arises as to the legal consequences that are to follow. To date, there has been a negative law enforcement practice, in which the organizer of public hearings “does not notice” the violations committed. Even in the presence of written (electronic) appeals from citizens and legal entities with a list of violations, the organizer considers public hearings conducted in accordance with the law and sends the documentation for further examination and approval procedures. The cases of return of project documentation and materials of public hearings for a repeated procedure of public hearings, according to our observations, are single and exclusive. Usually those were initiated by the territorial bodies of the Ministry of Natural Resources and Environmental Protection.



In our opinion, such a formal approach does not support effective participation of citizens and legal persons in environmental decision-making, reduces the importance of public hearings in the public eye and calls into question the feasibility of existence of this legal institution.

It is necessary to improve the legislation in the field of public hearings in terms of determining the legal consequences of violations of public participation procedures. First, it is necessary to establish what violations of the procedure for holding public hearings should be considered fundamental, in which case public hearings are recognized as invalid, who has the right to establish this fact, in what order and to what consequences this will lead.

One example of not holding public hearings and the EIA procedure directly relating to implementation of the Convention is the example of the Belarusian NPP,

despite the fact that this activity is listed in Annex 1 to the Convention and the case of the Belarusian NPP formed the basis for a decision of the Meeting of the Parties to the Aarhus Convention in 2014 (ECE / MP.PP / 2014/2 / Add.1).

Thus, there was no discussion with the public, and, accordingly, the opinion of the public was not taken into account when making the following environmentally significant decisions:

- adoption of the strategy on radioactive waste management at the Belarusian NPP, June 2015;
- drafting proposals for design solutions for the processing of radioactive wastes of the Belarusian NPP, their temporary storage in the territory of nuclear power plants with subsequent burial, as well as options for the location of storage and disposal of radioactive waste and associated technology.

Lack of public control of compliance with the procedure for holding public hearings by the organizers

At present, state control over compliance by the organizers (local executive and administrative

bodies) with legislation in the field of public hearings is largely absent. This is manifested in the absence of response to the revealed violations, in redirection of appeals of citizens and legal entities with the listed violations to other state bodies, and in other forms.

In practice, there are cases of direct refusals by higher-level executive and administrative bodies to monitor compliance of lower-level authorities with legislation in the area in question, since this control is not within the competence of the higher authority (see, for example, the Minsk Regional Executive Committee's response to a complaint regarding violations during public hearings of the EIA Report in Myadel district in 2017).

In most cases complaints regarding violations of legislation by the organizer of public hearings sent to the prosecutor's office are redirected to the executive and administrative bodies of the same level, i.e. to the address of those persons whose actions (omissions) are challenged.

The legal situation, in which the local executive and administrative bodies act only as executors of actions enumerated in the legislative acts on the procedure for conducting public hearings, is obviously perceived by other state bodies as attribution of this activity (and, accordingly, consideration of complaints about violations committed during its implementation) to the exclusive competence of the relevant executive and administrative bodies (paragraph 6 of Article 10 of the Law "On Appeals of Citizens and Legal Entities"). This means actual separation of activities for organizing public hearings from all other activities of the executive and administrative body, which is not based on existing legal norms.



At the same time, organizations, which are responsible for conducting state environmental expert review, are not state authorities and administrations, and, consequently, they cannot issue binding instructions to the organizers of public hearings to eliminate violations.

In our opinion, the lack of norms in the current legislation regarding the mandate and bodies for controlling compliance with established procedures for conducting public hearings negatively affects the completeness of observance of legislation in the area under review by organizers of public hearings.

4.

**EXERCISING
THE RIGHT TO ACCESS
TO JUSTICE FOR
ENVIRONMENT-RELATED
MATTERS**





4.1. Law enforcement practice in the area of access to justice for environment-related matters in Belarus in 2014-2017

The use of justice instruments in resolving issues regarding exercising rights under the Aarhus Convention was still not widespread in the reporting period. In 2014-2017, 18 cases involving application of the Aarhus Convention were submitted to courts of the Republic of Belarus; in most cases they involved litigation (14), proceedings on cases arising from administrative and legal relations (3 complaints) and one complaint under criminal process legislation.

This is comparable with the previous period (2010-2014), when 20 cases were filed to courts.

Of the 18 cases in the reporting period, nine cases pertain to access to environmental information and public participation in environmental decision-making.

By the spheres of activity: construction issues in 13 cases (detailed planning projects, master plan, construction of concrete buildings, religious buildings), production - three cases (pig complexes, utilization of fluorescent lamps and processing of lead ash) and two cases - handling of flora (removal in a residential area and in a specially protected natural area).

The geographic scope of legal proceedings in the reporting period looks as follows: one case in Brest Oblast, one - in Grodno Oblast, two cases in Minsk Oblast, six cases in Vitebsk Oblast and eight cases in the city of Minsk.

All 18 cases were filed either by non-governmental environmental organizations or activists with the assistance and support of those NGOs.

The country does not maintain separate statistics on environmental proceedings of public interest, so it is possible that some public appeals to the courts remained beyond the scope of this review. At the same time, the protection of public interests tends to be in the spotlight, and based on that we assume that most of such cases are known to the public. Of the 18 cases, six were considered on the merits, two were left without motion, one was under consideration, and in nine cases initiation of proceedings was either refused or it was discontinued at the review stage, that is, the case was not considered on the merits by the court. The reason for the refusal to proceed was that the court did not have jurisdiction over the case to the court of general jurisdiction or that the dispute was not subject to court jurisdiction.

Of the six cases considered, in two cases the claims were dismissed, in two cases the claims were met by the respondent in the course of proceedings, in one case amicable agreement was reached and in one case the court satisfied the claim by cancelling the resolution of the internal affairs authorities.

Analysis of appeals for judicial protection on implementation of environmental rights of the public indicates an increase in the share of construction and land issues in the total number of disputes, and the issue of construction in residential areas is still acute and urgent, including the construction of religious buildings. For them, as a rule, large land plots are allocated, often in territories of public gardens and parks, which causes negative public reaction. The second most sensitive issue is access to environmental information in urban planning - master plans for residential areas, detailed planning projects, architectural designs for specific facilities. Local executive authorities are very reluctant to provide public access to such documents, and even resorting to court does not always help in implementing the rights of the public.



Efficiency of legal protection measures: administrative measures, court, measures of public prosecution response

During the reporting period, the public widely used a full range of legal protection measures for its procedural rights - the right to access environmental information and to participate environmental decision-making.

- As practice has shown, in most cases **administrative means** of appealing against decisions of public authorities seem ineffective, when a complaint is filed regarding actions of a higher authority. In particular, the mistakes of subordinate executive committees at various levels are never corrected. At the same time, in the sectoral bodies there are cases of restoration of the violated rights of the applicant when applying to a higher authority - in particular, in the system of the Ministry of Natural Resources. However, this method of protection of rights seems to be ineffective, although most accessible, as it does not require legal preparation, payment of fees or spending time on review of the complaint.
- The use of a wide range of measures of **prosecutor's response**, in turn, requires deeper legal preparation of the applicant, developed argumentation of his position and readiness to prove it in correspondence with several instances of the prosecutor's office, as not always a positive decision can be obtained in the court of first instance. The situation is complicated by the fact that the prosecutor's office, due to the workload it handles, often redirects applications and complaints to other state bodies, including those whose actions/lack of action are appealed.

In general, appeal to the prosecutor's office can be compared to winning a lottery - if the complaint is considered, then at least it will be given a competent, well-reasoned answer, and if it is not, there is hope for success at a higher level. The prosecutor's office more often reacts to violations of the law by its acts - orders, warnings, etc., but only if the appeal is still pending, and has not been forwarded to another body. Work with the prosecutor's office is very cost effective in terms of finance - in most cases, payment of state duty is not required, however, consideration takes a lot of time.

From the theoretical point of view, court appeals can be deemed most efficient means of legal protection of environmental rights of the public, but the law enforcement practice in Belarus is not that optimistic.

As can be seen from the aforementioned review of court appeals in the reporting period, in more than 50% of cases courts did not consider the merits of the case. The main prerequisites for this were **immunity from jurisdiction** - when the court of general jurisdiction refuses to accept the case for proceedings, referring to the subject composition of the dispute participants and proposes to apply to the economic court (as a rule, if the applicant /plaintiff is an NGO, and the respondent is a state agency or another legal entity, despite the fact that the dispute does not concern economic or commercial legal relations, only due to the composition of the participants in the dispute the court directs them to the economic court), as well as the **lack of jurisdiction** of the court over the dispute - when the law provides for a different procedure for resolving the dispute, the court may refuse to accept a case for proceedings and instruct the parties to which body they should apply. Not even once have the courts, in refusing to take a case to the proceedings or stopping it on the basis of lack of jurisdiction, specified the body to which the parties should apply, but they have always stated with certainty that the case is not subject to review in court because of its lack of jurisdiction.

4.2. Gaps in legislation and issues with access to justice. Recommendations for improving the situation

The main issues with access to justice with regard to environmental agenda are the absence of an independent court in Belarus and bottlenecks in implementation of the principle of the rule of law



enshrined in Article 110 of the Constitution of the Republic of Belarus. The practice of searching for reasons to refuse to accept cases for proceedings in order to avoid having to pass an inconvenient verdict is very widely spread: for instance, that was the case in an argument between the public and the city executive committee. Consequently, it is easier for the court to escape consideration of such a case.

The lack of qualification of judicial staff with regard to cases of this category poses a critical issue. On the one hand, it can be justified by the lack of practical use of such skills: 18 cases in four years do not promote interest to that sphere, on the other hand, the lack of knowledge and qualification, inter alia, becomes a background for non-acceptance of such cases for proceedings.

Another problem is the lack of qualified staff in civil society organizations, as practically all disputes related to the right to a favorable environment require not only sound knowledge of the legal aspects, but also specialized knowledge in various spheres, including ecology, industry, construction, geology and others.

Financial matters in terms of legal fees do not pose an issue with respect to access to justice.

At the same time, conduct of expert reviews is costly, and it is required due to the very need to involve specialists from different fields of knowledge.

With the adoption of the Law "On State Environmental Expert Review, Strategic Environmental Assessment and Environmental Impact Assessment" (an expanded version of the Law "On State Environmental Expert Review" that used to be applied before) the legal right of public to challenge EIA reports, environmental reports on strategic environmental assessment, and reports on state environmental expert reviews received legal confirmation. Undoubtedly, this norm is a step forward in certain terms.

When it comes to gaps in legislation, elimination of which would promote access to justice in environmental matters, at present the acceptance of cases for proceedings by courts is the most pressing issue. A clear closed list of cases of lack of jurisdiction of courts with indication of other ways of resolving disputes and referring disputes with participation of NGOs, related to their

activity, to the competence of general courts would eliminate issues with access to justice as such. Of course, there would still be issues pertaining to quality and fairness of that kind of justice, but accessibility would no longer be an issue.

On top of that, **to improve the quality of justice on environmentally significant issues, it is necessary to:**

- improve the professional level of law enforcement authorities (judges, prosecutors, attorneys, lawyers of NGOs);
- strengthen the general legal awareness in the society;
- broaden legal practice and publish overviews thereof for the general public (the review of legal practice with regard to cases related to implementation of the Aarhus Convention prepared by Green Network in 2014 can serve as an example⁹).

⁹ [HTTP://GREENBELARUS.INFO/FILES/DOWNLOADS/COURT_REVIEW_WEB_02.2015.PDF](http://greenbelarus.info/files/downloads/court_review_web_02.2015.pdf).

5.

**AN OVERVIEW OF
IMPLEMENTATION OF
RECOMMENDATIONS
AND FINDINGS UNDER
DECISION V/9C**





During the intersessional period, Belarus has taken a number of steps for the implementation of the provisions of decision V / 9c of the fifth Meeting of the Parties to the Aarhus Convention. In particular, in 2015-2016 two normative legal acts (laws and regulations), on public participation in environmental decision-making have been adopted. Changing the Belarusian legislation indicate the progress made by Belarus in the performance of a number of paragraphs of decision V / 9c, at the same time, many things, including key provisions of decision V / 9c remain unfulfilled or partially fulfilled. Moreover, some of the points made in the past two years, the legal acts, as well as the obvious gaps pointed to the Compliance Committee of the Aarhus Convention, in its report on compliance for the 6th Meeting of the Parties, create barriers to the public for their realization of the rights under the Aarhus Convention.

On the other hand, law enforcement practice in Belarus, suggests rather the failure of the Convention. Cases of successful legal are very few and did not become widespread.

The main obstacle for a radical change in law enforcement practice in Belarus is that the only body that feels responsible and takes sufficient steps to implement the Aarhus Convention is the Ministry of Natural Resources, while other ministries and local authorities do not consider that the provisions of the Aarhus Convention cover their sphere of activity.

It should be noted that the report of the Compliance Committee for the 6th meeting of the parties most completely and detailed reveals all the problems, including the key (such as lack of clarity what is the ultimate solution, limited public participation procedures of the EIA and others). The Committee also took into account the information and conclusions of observer organizations involved in compiling this report, received during the intersessional period. There are, however, some additions to the report.

In our opinion, despite the fact that the Compliance Committee of the Aarhus Convention recognizes the claim 6.A. Solutions fulfilled, it has not been fully implemented. So, point 6.A. says, that Party shall ensure that in the general law on access to information, reference was made to the Law on protection of the environment, specifically on access to environmental information, in the presence of a general requirement concerning the indication of interest is applied not to be; Belarus amended Art. 2 of the Law "On information, informatization and information protection". [2] Now, this rule provides that "legislation of the Republic of Belarus may establish peculiarities of legal regulation of information relations associated with the information constituting state secrets, personal data, advertising, protection of children from information harmful to their health and development, science and technology, statistics , legal, environmental and other information." This provision indicates that access to environmental information is governed by environmental legislation, rather than the general rules of the law "On information, informatization and protection of information." However, it does not contain a direct reference to the Law "On Environmental Protection", obliging enforcer be guided by the law "On Environmental Protection".

With regard to recommendation 6 e. Decision ordering Belarus clearly make provision in its law for the possibility of their comments directly to the public authority responsible for making the decision, subject to

[1] "REGULATION ON THE PROCEDURE FOR ORGANIZING AND HOLDING PUBLIC HEARINGS FOR DRAFTS OF ENVIRONMENTALLY SIGNIFICANT DECISIONS, ENVIRONMENTAL IMPACT ASSESSMENT REPORTS, AND ACCOUNTING FOR ENVIRONMENTALLY SIGNIFICANT DECISIONS", ADOPTED BY RESOLUTION OF THE COUNCIL OF MINISTERS OF THE REPUBLIC OF BELARUS NO. 458 DATED JUNE 14, 2016 (AS REVISED ON JANUARY 19, 2017);

[2] LAW OF THE REPUBLIC OF BELARUS "ON INFORMATION, INFORMATIZATION AND INFORMATION PROTECTION" NO. 455-3 DATED NOVEMBER 11, 2008 (AS REVISED ON MAY 11, 2016);

[3] LAW OF THE REPUBLIC OF BELARUS "ON STATE ENVIRONMENTAL EXPERT REVIEW, STRATEGIC ENVIRONMENTAL ASSESSMENT AND ENVIRONMENTAL IMPACT ASSESSMENT" NO. 399-3 DATED JULY 18, 2016



Article 6, at the conclusion of the Compliance Committee, as reflected in Article 54. The report it should be added that in response to this recommendation there is a problem of uncertainty in the law regarding the final decision authorizing the activities subject to EIA. In other words, it is not clear which body is responsible for the final decision and to whom the public can directly submit their comments. Often in practice the decisions are made not by the body that conducts public discussion.



**IMPLEMENTATION
OF OBLIGATIONS
OF BELARUS UNDER
PARAGRAPH 8 OF ARTICLE 3
OF THE CONVENTION**



In 2014 the “Ecohome” filed an Appeal¹⁰ to the Aarhus Convention Compliance Committee, which spoke about non-compliance by the Republic of Belarus to its obligations under paragraph 8 of Article 3, stating that: «Each party shall ensure that persons exercising their rights in conformity with the provisions of this Convention shall not be penalized, persecuted or harassed in any way for their involvement”. The appellants state that from 2009-2012 cases of oppression and persecution against anti-nuclear activists took place in the course of implementation of the Aarhus Convention. Oppression materialized in detentions, arrests, travel bans, searches of property and seizure of information materials. In their attempt to implement their rights under the Convention, the anti-nuclear activists did not commit any legal offences. However, Belarusian authorities put pressure on executive authorities to hold the activists accountable under made-up cases. Persecution of activists continued after filing of the appeal.

According to reports in the period from 2009 to 2012 persecution was expressed in the following:

- On October 9, 2009 in Ostrovets during public hearings on the EIA report for the Belarusian NPP project, Andrei Ozharovsky, an independent Russian expert in the field of nuclear energy, was arrested for 7 days;
- July 18, 2012 during the visit to Minsk, Russian Prime Minister Dmitry Medvedev in order to sign a general contract for the construction of the Belarusian nuclear power plant the arrest of Andrey Ozharovskiy (10 days) occurred. It followed by his expulsion from Belarus with a ban on entry into the country for 10 years. Belarusian anti-nuclear campaign coordinator Tatiana Novikova was arrested for 5 days, human rights activist Mikhail Matskevich - 3 days, as well as the detention and a fine of Chairman of the Board of NGO "Ecohome" Irina Suhiy. Activists tried to personally deliver a public appeal to the Russian Embassy.

On June 18, 2017, the Aarhus Convention Compliance Committee prepared its conclusion and

findings¹¹ on the case regarding prosecution of anti-nuclear activists in Belarus, the text of the draft decision will be submitted and approved by the Meeting of the Parties to the Aarhus Convention in September 2017.

In the course of consideration of this case, the Aarhus Convention Compliance Committee established the fact of non-compliance by Belarus to its obligations under article 3, paragraph 8 of the Convention.

Furthermore, it recommended Belarus to take the following steps:

- Take the necessary legislative, regulatory, administrative, institutional, practical or other measures to ensure that members of the public exercising their rights in conformity with the provisions of the Convention are not penalized, persecuted or harassed for their involvement;
- Disseminate the Committee’s findings and recommendations on communication ACCC / C / 2014/102 to senior officials in the police, security forces, judiciary and to other relevant authorities, for their information and action, together with a request for them to disseminate the findings to all relevant officials in order to raise awareness of their obligation to ensure compliance with article 3, paragraph 8 of the Convention;
- Deliver appropriate training and information programs on human rights law relevant to article 3, paragraph 8 of the Convention for the police, security forces and judiciary to ensure that members of police and security forces do not exercise their powers in a manner, and identity checks and arrests for alleged public order violations are not utilized in a way, that would restrict members of the public to legitimately exercise their rights to participate in decision-making as recognized in article 1 of the Convention;

¹⁰ THE MESSAGE TEXT IS AVAILABLY HERE: [HTTPS://WWW.UNECE.ORG/FILEADMIN/DAM/ENV/PP/COMPLIANCE/C2014-102/COMMUNICATION/COMMUNICATION_BELARUS_ECOHOME_22.04.2014_REDACTED.PDF](https://www.unece.org/fileadmin/dam/env/pp/compliance/c2014-102/communication/communication_belarus_ecohome_22.04.2014_redacted.pdf)

¹¹ THE CONCLUSIONS AND RECOMMENDATIONS OF THE COMPLIANCE COMMITTEE ON COMMUNICATIONS ACCC / C / 2014/102 WITH REGARD TO COMPLIANCE BY BELARUS CAN BE FOUND HERE: [HTTP://WWW.UNECE.ORG/FILEADMIN/DAM/ENV/PP/COMPLIANCE/CC-58/ECE.MP.PPC.1.2017.19.E.PDF](http://www.unece.org/fileadmin/dam/env/pp/compliance/cc-58/ece.mp.ppc.1.2017.19.e.pdf)



- Report to the Committee on an annual basis on all measures taken to fulfill the measures above.

activist for their environmental activity, not mentioned in this Decision¹².

The authors of the message support the draft decision of the Compliance Committee under communication C102, however, consider it extremely important to reflect the need for positive obligations for Belarus in terms of resolving the non-compliance issue.

That is why applicants deem taking the following measures necessary:

- Establish a specialized body to quickly respond to the prosecution of environmental activists (for example, the appointment of a Special Rapporteur on these issues, who could quickly respond to information on the prosecution of environmental activists);
- Adopt necessary measures of individual nature for Belarus to protect the rights of persons mentioned in the case, in particular:
 - Revise the decision on deportation (entry ban) in respect of A. Ozharovsky;
 - Review, within the framework of a proper court process, the enacted judgments on bringing to justice those persons who are involved in the present case and recognized as persecuted as a result of abuse of the law by the executive authorities (militia);
 - Take the necessary rehabilitation measures for the victims of persecution;
 - Compensate victims of persecution for their costs, including legal costs.
- Publish the decision of the Committee and ensure its wide dissemination in Belarusian and Russian in Belarus.

We also regret to note that in Belarus there is a different practice for persecution and oppression against

¹² PUBLIC STATEMENT OF THE ENVIRONMENTAL COMMUNITY IN CONNECTION WITH THE CRACKDOWN OF THE ACTION "CRITICAL MASS" OF 29 APRIL IN MINSK AND THE DETENTION OF ITS MEMBERS [HTTP://GREENBELARUS.INFO/ARTICLES/06-05-2016/ZAYAVLENIE-EKOLOGICHESKOY-OBSHCHESTVENNOSTI-V-SVYAZI-S-RAZGONOM- AKCII](http://GREENBELARUS.INFO/ARTICLES/06-05-2016/ZAYAVLENIE-EKOLOGICHESKOY-OBSHCHESTVENNOSTI-V-SVYAZI-S-RAZGONOM- AKCII 7 DAYS OF ARREST FOR PARTICIPATION IN A PROTEST AGAINST THE CONSTRUCTION OF PIG FARMS: HTTP://SPRING96.ORG/RU/NEWS/83083)

7 DAYS OF ARREST FOR PARTICIPATION IN A PROTEST AGAINST THE CONSTRUCTION OF PIG FARMS: [HTTP://SPRING96.ORG/RU/NEWS/83083](http://SPRING96.ORG/RU/NEWS/83083)



**FINDINGS
AND RECOMMENDATIONS
ON IMPROVING
THE QUALITY OF
CONVENTION
IMPLEMENTATION IN
THE REPUBLIC OF BELARUS**



Trends of the inter-sessional period in Belarus were characterized by the development of environmental legislation and its improvement, taking into account both the Recommendations of the Aarhus Convention Compliance Committee and the analysis of national law enforcement practice. Institutions of public participation in the adoption of environmentally significant decisions, regulation of issues of access to environmental information in terms of securing mechanisms for the implementation of the rights of the public have developed.

At the same time, the practice itself leaves much to be desired: often state bodies treat the public formally and disdainfully; when making decisions they do not take into account the public opinion on implementing this or that economic activity, which subsequently leads to conflicts. Conflict resolution still remains at a fairly low level; the parties generally do not want to come to a compromise, remaining each in their opinion.

The development of the legal framework, coupled with educational activities, gives hope for formation of positive trends in implementation of environmental rights of the public in the future.

In order to implement certain recommendations, we consider it necessary to revise the Regulation with regard to the procedure for conducting public hearings in the field of architectural, town-planning and construction activities, approved by Resolution of the Council of Ministers of the Republic of Belarus of June 1, 2011 No. 687, in particular:

- ensure the storage of documents for public hearings, including a summary of comments and proposals made by the public and motivated responses to these comments, and providing them to the public upon request;
- provide for sending a summary of comments and proposals by the public with motivated answers to them to government agencies and decision-makers;
- ensure public access to materials that are under public hearings and public hearings materials, since almost always town-planning documentation receives the stamp "For official use" and the public does not have access to it.

It is also necessary to improve the legislation in the field of public hearings in determining the legal consequences of violations of public participation procedures. First of all, it is necessary to establish what violations of the procedure for holding a public hearing should be considered essential, in which case public hearings are recognized as invalid, who has the right to establish this fact, in what order and what consequences this will have. The absence of norms regarding the powers and bodies controlling observance of established procedures for conducting public hearings in the current legislation negatively affects the completeness of the organizers' observance of public hearings on legislation in the area under review.

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We are grateful for the reporting of information to the NGO "Bahna", Aarhus Center in the Republic of Belarus and Laevskaya Elena. And also thank to the Ministry of Natural Resources and Environmental Protection for the steps taken in the implementation of the Aarhus Issues Convention in the Republic of Belarus.



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TRANSITION
Ministry of Foreign Affairs of the Czech Republic



**GREEN
NETWORK** 

This review was published thanks to the financial support of the Program promoting the development of the Czech Ministry of Foreign Affairs as an input to the second Meeting of the Parties to the Aarhus Convention.

Annex 1

Assessment of steps implemented by the Republic of Belarus toward implementation of Decision V/9c:

1. By introducing the latest amendments to legislation the Republic of Belarus **has implemented** the following clauses of Decision V/9c of the Fifth session of the Meeting of the Parties to the Aarhus Convention:

- **Article 6.c. There are clear requirements regarding the form and content of the public notice, as required under article 6, paragraph 2, of the Convention;** requirements regarding the form of the notice are outlined in the Regulation adopted by the of the Council of Ministers No. 456 [1];
- **Article 6.d. There are reasonable minimum time frames for submitting comments during the public participation procedure for all decisions under article 6 of the Convention, including those that may not be subject to EIA decision procedure, taking into account the stage of decision-making, as well as the nature, size and complexity of proposed activities;** a timeframe of 30 days has been set under EIA, clause 5 of the Regulation [1].
- **Article 6.f. There are clear provisions imposing obligations on relevant public authorities to ensure such opportunities for public participation as are required under the Convention, including for making available the relevant information and for collecting the comments through written submission and/or the public hearings;** the obligations of public authorities and other organizations to ensure such opportunities are envisaged by the Regulation [1].
- **Article 6.h.i There are clear provisions imposing obligations on the relevant public authorities to promptly inform the public of the decision taken by them and their accessibility;** the Regulation [1] envisages an obligation for the organizers of public hearings to place the outcomes of public hearings (minutes of meetings, minutes of public hearings, an aggregated document (table) of submitted comments and suggestions reflecting the results of review thereof), notices of withdrawal of drafts of environmentally significant decisions from the development procedure, the decisions made, and information on cancellation of decisions taken, on their websites on the Internet in a special section called "Public hearings" that can be accessed from the main page of the website.
- **Article 6.h.ii There are clear provisions imposing obligations on the relevant public authorities to maintain and make accessible to the public copies of such decisions along with the other information relevant to the decision-making, including the evidence of fulfilling the obligations regarding informing the public and providing it with possibilities to submit comments;** article 6 of the Regulation [1] stipulates that information and documents obtained in the course of conducting public hearings for drafts of environmentally significant decisions and EIA reports remain deposited with the organizers of public hearings for drafts of environmentally significant decisions and EIA reports in hard and (or) soft copies. The same clause imposes an obligation on organizers of public hearings to ensure free access to information and documents, including the evidence of fulfilling the obligations regarding informing the public and providing it with possibilities to submit comments and (or) suggestions, and provide them to citizens or legal entities upon request.
- **Article 6.h.iii There are clear provisions imposing obligations on the relevant public authorities to establish relevant publicly accessible lists or registers of all decisions subject to article 6 held by them;** chapter 5 of the Regulation [1] imposes an obligation on public authorities and other organizations to keep track of environmentally significant decisions taken and decisions taken as a result of conducting EIA.
- **Article 7.b. The full contents of all comments made by the public (whether claimed to be accommodated by the developer or those which are not accepted) is submitted to the authorities responsible for taking the decision (including those responsible for the expertiza conclusion)** article 6 of the Regulation [1] states that the organizers of public hearings shall submit materials of public hearings to public authorities (organizations) responsible for environmental decision-making, including those responsible for drafting the the expertiza conclusion in full, regardless of agreement of the ordering customer for the activity to them.

Annexes

2. The following articles of Decision V/9c of the Fifth session of the Meeting of the Parties to the Aarhus Convention **were partially fulfilled**:

- **Article 6.a. The general law on access to information refers to the 1992 Law on Environmental Protection that specifically regulates access to environmental information, in which case the general requirement of stating an interest does not apply**; The Law "On Information, Informatization and Protection of Information". [2] has been amended. At the moment this norm stipulates that "the legislation of the Republic of Belarus **can identify the special features of legal regulation of information relations** pertaining to information that constitutes state secrets, with personal details, advertising, protection of children from information that can damage their health and development, research and technical, statistical, legal, **environmental** and other **information**". This norm points to the fact that access to environmental information can be regulated by norms of environmental legislation, and not the general norms of the Law "On Information, Informatization and Protection of Information", however, it has no direct reference to the Law on Environmental Protection.

- **Article 6.b. There is a clear requirement for the public to be informed of decision-making processes that are subject to article 6 in an adequate, timely and effective manner**; the article of the Convention on involving public at the earliest stage, when all opportunities are open, still lacks implementation.

- **Article 6.e. There is a clear possibility for the public to submit comments directly to the relevant authorities(i.e. the authorities competent to take the decision subject to article 6 of the Convention)**; due to the fact that the Belarusian legislation does not identify what shall be considered a final decision, it is not clear, which body or bodies are responsible for making decisions authorizing activity. It creates certain bottlenecks in directing comments from the public to the decision-maker.

- **Article 6.g. There are clear provisions imposing obligations on the relevant public authorities to take due account of the outcome of public participation, and to provide evidence of this in the publicly available statement of reasons and considerations on which the decision is based**; responsibilities of the public authorities are reflected in the Regulation [1]. At the same time, the Regulation [1] stipulates that comments from the public regarding draft plans, programs and normative legal acts should receive responses, and not motivated (substantiated) responses, which can lead to formal consideration of public comments and suggestions in the future.

- **Article 7.c. Appropriate practical and other provisions are made for the public to participate during preparation of plans and programs relating to the environment**; due to the fact that the adopted normative legal acts that bind public authorities to holding public hearings for programs and plans regarding the environment entered into force in 2017, and the main five-year programs had been adopted in 2016, no practical measures for ensuring public participation in development of plans and programs regarding the environment have been taken, except for individual initiative projects prepared under international technical assistance (in particular, the green economy plan).

3. The following articles Decision V/9c of the Fifth session of the Meeting of the Parties to the Aarhus Convention **have not yet been fulfilled** by Belarus and, in our opinion, it does not take sufficient measures to do so:

- **Article 6.i. Statutory provisions regarding situations where provisions on public participation do not apply cannot be interpreted to allow for much broader exemptions than allowed under article 6, paragraph 1 of the Convention**; the recommendation has not been implemented in legislation as such.

- **Article 7.a. The amended legal framework clearly designates which decision to be the final decision permitting the activity and that this decision is made public, as required under article 6, paragraph 9, of the Convention**; At present the decision to be considered final is identified only in clause 4 of article 6 of the Law of the Republic of Belarus "On State Environmental Expert Review, Strategic Environmental Assessment and Environmental Impact Assessment"[3] for the purpose of the Espoo Convention, "The conclusion of state environmental expert review is recognized for the purposes of the Convention on Environmental Impact Assessment in a Transboundary Context, signed in Espoo on February 25, 1991, as the final decision on the proposed economic and other activities in terms of the permissible impact of such activity on the environment and the use of natural resources for implementation of such project solutions". At the same time, part 3 of this Law stipulates that "implementation of project solutions without a positive conclusion of the state environmental expert review is prohibited, *if not stipulated otherwise by the President of the Republic of Belarus*". Thus, the conclusion of the state environmental expert review may not be final. For other cases the legislation still lacks definition of the final decision and says nothing of making such a decision public.