

To:

Compliance Committee
of the UN ECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters

through the Secretariat of the Convention

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COMMUNICATION**CONCERNING NON-COMPLIANCE BY BELARUS WITH THE UN ECE CONVENTION
ON ACCESS TO INFORMATION, PUBLIC PARTICIPATION IN DECISION-MAKING
AND ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS**

1. This communication is filed in relation to the Republic of Belarus and alleges its non-compliance with Article 3 (paragraphs 1 and 8), Article 4 (paragraph 1), Article 6 (paragraph 2, 4, 6 and 7), Article 7 and Article 8 of the Aarhus Convention.
2. This communication alleges that the Government of Belarus failed to comply with its obligations under the Aarhus Convention in the course of planning and authorizing nuclear power plant construction in Belarus.
3. This communication is not confidential.

I SUMMARY OF THE COMMUNICATION

4. This communication is filed by European ECO Forum Legal Focal Points and alleges to non-compliance by the Republic of Belarus with its obligations under Aarhus Convention in the course of planning and authorizing construction of a nuclear power plant (hereinafter NPP).
5. This communication incorporates, but is not limited to, all facts and allegations made in relation to NPP by **Amicus Curiae Memorandum** filed by European ECO Forum Legal Focal Point within communication Ref: ACCC/C/2009/37, as well as additional facts referred to in the **Amicus Curiae Joinder Motion** sent by two organizations from Belarus.
6. The communication alleges that the public was aware of and had no possibility to participate or express its views on policy decision to introduce nuclear energy and planning decisions to start construction of a nuclear power plant in Belarus (Article 7).
7. The communication alleges that the public had not adequate access to information about planning and decision making process, as well as public participation procedures in relation to NPP construction (Article 4.1).
8. The communication alleges violation of procedures of public participation in specific decision-making, in particular under the framework of environmental impact assessment of NPP (Article 6.2, 6.2, 6.6, and 6.7).
9. The communication alleges that no steps were taken to provide for public participation when Belarus was adopting generally applicable rules on public participation in the field of nuclear energy (Article 8).
10. The communication alleges that specific national legislation on public participation in nuclear energy field is not in compliance with the Aarhus Convention (Article 3.1).
11. The communication alleges that the Government of Belarus was putting pressure on activists amounting to their persecution in the meaning of the Aarhus Convention (Article 3.8).
12. This communication is not confidential.

II INFORMATION ABOUT THE COMMUNICANT

13. This communication is filed by European ECO Forum Legal Focal Points represented by:

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III BELARUS– THE STATE CONCERNED BY THIS COMMUNICATION

15. The Republic of Belarus is the state party concerned by this communication (hereinafter referred as Belarus).

16. Belarus signed the Convention on Dec 16, 1998; a decision to approve the Convention was taken on Dec 14, 1999 (Decree of the President of the Republic of Belarus No.726). The notification was filed with the depositary on Mar 9, 2000. No declaration or reservation was made upon notification of approval.

17. The Convention entered into force for Belarus on October 30, 2001 (Convention’s entry into force date).

IV THE FACTS

4.1 Decision to introduce nuclear energy

18. Belarus has already taken a policy decision to construct a nuclear power plant (NPP) by 2016.

19. The key policy and planning decisions taken in Belarus to construct nuclear power plant were:

- **June 14, 2007:** Directive No.3 of the President of Belarus “Economy and Saving – Key Factors for Economic Security of the State”

Paragraph 1.3.1 Directive obliges the Cabinet of Ministers and National Academy of Sciences to speed up works to construct nuclear power plant.

- **November 12, 2007:** Decree of the President of Belarus No.565 “On Some Measures to Construct Nuclear Power Plant”

This Decree has established several state bodies responsible for the construction of the nuclear power plant, including main developer (Directorate for the Construction of the Nuclear Power Plant), newly created nuclear safety authority (within the Ministry of Emergency Situations), etc.

- **January 15, 2008:** a decision by the Security Council to construct a nuclear power plant

National Security Council had a discussion on this issue at its meeting on January 15, 2008. The meeting was chaired by the President of Belarus. The meeting took a formal decision to construct a nuclear power plant. The decision itself was further drafted and signed at the end of the month by the President of Belarus.

- **January 31, 2008:** President of Belarus signed the Decision of the Security Council No.1 “On the Development of Nuclear Energy in the Republic of Belarus”.

The decision stipulates that the Government of Belarus plans to construct two nuclear reactors, 1,000 Mwt each, commissioning years 2016 (first reactor) and 2018 (second reactor).

20. In addition, Belarus has adopted the *Energy Security Strategy* in 2007, which includes a task to develop nuclear power plant in the country.

21. These are the decisions which are known to be taken from official sources. There must have been other decisions taken of which the public is not aware (such as choice of technology, see below).

4.2 Access to information about NPP

22. Since the adoption of Energy Security Strategy in 2007 the public was making efforts to get information about future plans and developments in implementation of the nuclear energy component of the Strategy. These efforts were usually made in the form of written requests for information sent by citizens and NGOs which participated in the informal campaign against nuclear energy in Belarus. Some examples of the relevant correspondence are presented below. All copies of correspondence attached to this communication were provided by Ms. Tatsiana Novikava.

2007

23. On May 14, 2007 Citizens Association “Ecohome” (Minsk, Belarus) sent a request to the Ministry of Energy asking 4 questions related to the issue of NPP (**Annex I** to this Communication, in Russian). In particular, the 4th question was:

“How it is envisaged to ensure public participation in discussing the need to construct NPP on the territory of Belarus?”

24. On June 01, 2007, the Ministry of Energy of Belarus sent a reply (**Annex II** to this Communication, in Russian). Answering the 4th question the Ministry basically said the following:

“In our republic [of Belarus] there’s need to take steps to develop positive attitude of citizens towards development of nuclear energy...” and

“In addition, to increase [citizens] trust in nuclear energy and to overcome “Chornobyl syndrome” there’s a need for a wide information and awareness raising campaign...and we hope for a cooperation in this context with NGOs dealing with environmental protection and safety issues”.

2008-2009

25. In April 2008 Mr. Nikolay Ulasevich, an environmental activist, sent a request to the Ministry of Energy asking how public participation is ensured in planning and constructing NPP in Belarus, in particular how the Aarhus Convention Article 6 is implemented in this context (copy of the request is not available).

26. On May 8, 2008, the Ministry of Energy sent a reply (**Annex III** to this Communication, in Russian). In its reply the Ministry said, in particular:

“Article 6 of the Aarhus Convention does not set specific timeframes and forms for informing about and public participation in decision-making to permit activities listed in Annex I, including nuclear power plants...”

“Informing of the public concerned shall be adequate, timely and effective... Procedures for public participation shall include reasonable timeframes for different phases... The **public which may participate in this process shall be identified by relevant public authority** (Article 7).”

The most effective way to quickly inform the public about the intent to construct a NPP is close cooperation with mass media... For this purpose the Ministry of Energy... prepared materials for publication in the mass media, [the Ministry] organized measures to explain the need to construct NPP... Information about the intention to construct NPP was widely covered by TV, radio and Internet. Several legal acts... which are available to the public... include wording on speeding up works to construct NPP”.

“Upon request by the Ministry of Energy... a public poll was carried out in Belarus in December 2007 – February 2008 to find out citizens’ attitude to construction of the NPP. The results were that 54,8% percent of the citizens are in favor of development of the nuclear energy (in 2005 – 25,8%), against – 23% (in 2005 – 46,7%).”

“This information proves that Aarhus Convention is being implemented in relation **to its requirements on informing of the public concerned**”

“As preparation works make progress, more information will be released about construction of the NPP. Any citizens organization or public concerned will be informed about environmental impacts of the NPP. **After the choice of technology and location is made**, environmental impact assessment report [OVNS report] will be prepared...”

OVNS report will be presented for comments to the national and international public...”

“As Belarus is a party to Espoo Convention, materials of OVNS report will be also sent to neighboring and interested states, as well as IAEA.”

[emphasis added]

27. On December 18, 2008, Ms. Novikava Tatsiana, an environmental activist, sent a request to the Cabinet of Ministers of Belarus requesting information about possible construction of the NPP in the Ostrovets district (*rayon*).

28. Several replies were provided by various ministries, including the Ministry of Energy. Most replies referred the applicant to the Ministry of Energy for more information. The Ministry of Energy replied on January 13, 2009 (**Annex IV** to this Communication, in Russian). In its reply the Ministry confirmed that three possible locations were screened, but only one (Ostrovets) was found to have no negative factors for the construction of NPP. It also said that a special State commission has approved Ostrovets district as a key (priority) location for the NPP construction on December 20, 2008. In addition, the letter said (last paragraph):

“Construction of the NPP in Ostrovets or **any other region** of Belarus will not lead to any negative impact on the environment and human health **as it will be explained in the EIA report** [OVNS report] of the NPP...”

[emphasis added]

4.3 Public participation

29. The following official steps were taken in the course of EIA and public participation related to construction of the nuclear power plant:

- **July 31, 2009:** the web-sites of the Ministry of Energy, Ministry of Environment and Directorate for the Construction of the Nuclear Power Plant¹ published a **public notification** (in Russian and English) about commencement of public consultations. The notification is reproduced in **Annex V** to this Communication.
- **September 9, 2009:** the the web-sites of the Ministry of Energy, Ministry of Environment and Directorate for the Construction of the Nuclear Power Plant published EIA documents (in Russian and English), including (a) *Brief overview of the environmental impact assessment during construction and operation of the nuclear power plant in the Republic of Belarus*, (b) *Statement on possible environmental impact of Belarusian NPP (preview report on EIA of Belarusian NPP)*.²
- **September 9, 2009:** a public notice (in Belarusian) and *Brief overview of the environmental impact assessment during construction and operation of the nuclear power plant in the Republic of Belarus* (in Russian) are published in the Ostrovetskaya Pravda newspaper (photocopies attached as **Annex VI** to this Communication).
- **October 9, 2009:** Public hearings were held in the city of Ostrovets (where nearby NPP is to be built). Just a few days before that date they were given a status of “national hearings” (as opposed to “local”). The hearings were held with unprecedented security and logistics arrangements (such as several security lines, metal screeners, etc.).

¹ It should be noted, that since July 31, 2009 the web-site of the Directorate for the Construction of the Nuclear Power Plant (www.dsae.by) has not been operating on a regular basis.

² It is unclear what is meant by “preview report on EIA” (or preliminary report on EIA).

30. Relevant facts related to the public hearings of Oct 9, 2009, are presented and analyzed in the Section V “NATURE OF ALLEGED NON-COMPLIANCE” of this Communication..

Barriers in campaigning and awareness raising

31. Since 2007 several activists and NGOs in Belarus (and other countries) had been making efforts to raise awareness of the citizens about NPP effects on the environment and human health. All this time the NGOs and activists were under severe pressure from the Belarus Government trying to stop and prevent criticism of the NPP construction. Some of the facts - probably most illustrative - are presented below.

Defamation example:

32. Two local activists - Mr. Nikolay Ulasevich and Mr. Ivan Kruk – are well known for their efforts (such as spreading information leaflets) to raise awareness of the citizens about NPP effects on the environment and human health. Some of their correspondence on the NPP issue with public authorities is cited above (*Access to Information about NPP* section).

33. During night from January 8 to January 9 unidentified persons spread two false leaflets (**Annex VII**) in two distinct districts - Ostrovets and Smorgon. One of the leaflets represented a “public announcement” on behalf of Mr. Nikolay Ulasevich and Mr. Ivan Kruk (as “chair” and “leader” of Gay Party). Clearly, neither of them was/is a member of such a party and there’s no such political party in Belarus. The announcement was calling upon citizens to join gay parade, join gays political party, and invitation to gay celebration event. It also included obviously stupid statements about effects of nuclear energy (such as “two-headed fish”, “three-headed cows”, etc). It also included their home address and telephone numbers.

34. Another leaflet represented a “newspaper” (one sided A4 format page) published on behalf of Mr. Aleksandr Dzergachou (local opposition activist). The truth is Mr. Dzergachou never published that information, it was published and distribute without his knowledge. The “newspaper” is written in an obviously stupid manner and discusses “negative” perspectives of the NPP construction.

35. A few days later Mr. Nikolay Ulasevich and Mr. Ivan Kruk filed a complaint with local police arguing that this campaign was organized by state special agencies, scanned signatures used in the leaflet were taken from their applications for piquet permits recently filed with local administration.

Detention & search example:

36. On March 6 and 12, 2009, home apartment of Mr. Ulasevich was subject to throughout search by the police (including making photos inside). The search was authorized by local prosecutor’s office following a request by local police about the need to find unidentified printing and dissemination source of informational leaflets. Mr. Ulasevich was also detained on March 5, 2009 and requested to hand in two copies of home-made leaflets covering NPP construction issue.

Arrest example:

37. On October 9, 2009, a Russian expert Andrey Ozharovskiy was detained and then arrested when he tried to bring copies of the NGO EIA critique to the public hearings in Ostrovets town. He

was sentenced to 7 days of administrative arrest and was released on October 16, 2009, as ordered by the local court.

4.4. Key applicable national legislation

38. The national legislation on access to information and public participation in decision-making on nuclear issues comprises the following key laws and regulations:

general:

- *The Law of the Republic of Belarus on State Environmental Expertiza* of June 18, 1993 (as subsequently amended)
- *Instructions on the Procedures for State Environmental Expertiza*, adopted by the Decision of the Ministry of the Environmental Protection of Belarus No.8, May 11, 2001.
- *Instructions on the Procedures for Environmental Impact Assessment of the Planned Economic and Other Activities in the Republic of Belarus and the List of Types and Objects of Economic and Other Activities Which Are Subject to Compulsory EIA*, adopted by the Decision of the Ministry of the Environmental Protection of Belarus No.30, June 17, 2005.

specific:

- *Law of the Republic of Belarus on the Use of Nuclear Energy* of July 30, 2008.
- *Regulation on the procedures for discussion of the issues in the area of the use of nuclear energy with participation of citizens associations, other organizations and citizens*, adopted by the Decision of the Cabinet of Ministers of Belarus No.571 on May 4, 2009

39. Copies of these documents can be provided upon request (in Russian).

40. This Section includes analysis of the first three documents listed above exclusively in relation to nuclear projects and in comparison to the provisions of the specific documents listed above.

41. State environmental expertiza and environmental impact assessment (OVOS) are the two procedures commonly considered together as a decision-making process (in the meaning of Article 6 of the Convention) in Belarus.³ These procedures shall be applied to nuclear projects.

42. Recently adopted *Law on the Use of Nuclear Energy* is a key legal document setting basic rules and principles related to location, design, construction and operation of nuclear facilities (Art. 2). It sets rights and obligations related to citizens' access to information in nuclear field (Articles 3 and 39), public participation (Articles 5, 6, 8 and 40). Chapter 10 "Guarantees of citizens and organizations rights in the field of use of nuclear energy", comprising Articles 39-41, is the key part of the Law dealing with access to information and public participation in the field of nuclear energy.

43. Recently adopted *Regulation on the procedures for discussion of the issues in the area of the use of nuclear energy with participation of citizens associations, other organizations and citizens*

³ Strictly speaking, OVOS is a separate procedure which does not qualify as decision-making itself.

(hereinafter – the Regulation) introduced new special regime for public participation in decision-making on nuclear issues.

44. The *Regulation* sets a legal basis and order (procedures) for discussing nuclear issues with citizens, their associations and other organizations, including the public of states possibly affected by the transboundary impact of the planned activities in the area of nuclear energy (para.1 of the *Regulation*). The *Regulation* does not apply to activities in the area of nuclear energy use, information about which is classified as state secret (para.1, part 2).

45. The *Regulation* makes a direct reference to the Aarhus Convention as to the definitions of terms used in the *Regulation* (para.2), as well as to Espoo Convention and the Law on Use of Nuclear Energy. The *Regulation* itself does not provide for definitions of the relevant terms, such as public, public concerned, environmental information, etc.

V NATURE OF ALLEGED NON-COMPLIANCE

46. This communication alleges two kinds of non-compliance: (a) several violations of the Aarhus Convention requirements which took place during decision-making to plan and authorize NPP construction in Belarus (sub-section 5.1, 5.2 and 5.4 below) and (b) non-compliance of some national legislation in nuclear energy field with Aarhus Convention requirements (sub-section 5.3 below).

5.1 Lack of access to information related to authorization of the nuclear power plant construction (Art.4 (1))

47. We allege that the Government of Belarus provided incomplete and misleading information upon requests related to the plans to construct a NPP in Belarus, which constitutes a violation of the Article 4(1).

Environmental information

48. The information requested from the Government (as indicated in the Sub-Section “Facts – Access to Information about NPP” above) falls within the meaning of “environmental information” under subparagraph (b) of the paragraph 3 of the Article 3. Indeed, the key information requested were details about Government’s plan to construct NPP, its location and possibilities for public participation.

49. Reply by the Ministry of Energy of June 01, 2007 to a request by Ecohome NGO:

- failed to acknowledge the fact that the Government planned to speed up works related to NPP construction (as reflected just two weeks later in the Directive No.3 by the President of Belarus of June 13, 2007);
- failed to provide adequate answer explaining how public participation is envisaged in the course of NPP planning and construction. The answer only focused on the need for propaganda in favor of NPP construction;
- failed to provide information about planned important measures (such as establishment of special state bodies for construction and nuclear safety, as reflected just 5 month later in the Decree of the President of Belarus No.565 of Nov 12, 2007).

50. Reply by the Ministry of Energy of May 8, 2008, to a request by Mr. Ulasevich:
- failed to acknowledge the fact that a key decision to construct a NPP was taken on January 15, 2008 by the Security Council and subsequently approved by the President of Belarus on January 31, 2008;
 - failed to provide information about measures to ensure public participation;
 - provided misleading information about identification of the public to be involved in the context of a decision-making falling under Article 6;
 - failed to acknowledge the need to involve the public early in practice by stating that the public will be consulted after the choice of technology and location;
 - provided misleading information about implementation of the Aarhus Convention's requirements on informing the public concerned since at the time of reply no decision-making falling under Article 6 was taking place.

51. Reply by the Ministry of Energy of January 13, 2009, to a request by Ms. Tatsiana Novikava provided misleading and premature information about environmental and human health effects of the NPP construction by stating that no negative effects would take place and by stating that absence of such effects will be explained in the EIA report.

52. This correspondence was taking place during the period when most important policy and planning decisions were taken (2007-2008). None of the replies invited the applicants to comment on possible decisions to introduce nuclear energy or even informed about plans to take such decisions.

53. **In summary**, Belarus failed to comply with the requirements of Article 4 paragraph 1 by providing incomplete and misleading information upon requests by citizens and NGOs in relation to NPP construction.

5.2 Lack of public participation in the decision-making related to authorization of the nuclear power plant construction (Art.6, 7, and 8)

Violations of Article 6

Applicability

54. Article 6(1)(a) sets that:

“Each Party [s]hall apply the provisions of this article with respect to decisions on whether to permit proposed activities listed in annex I”.

55. Nuclear power stations are listed in paragraph 1 of the Annex to the Convention.

56. The state environmental expertiza is widely recognized as a permitting decision-making procedure in the context of Article 6.

57. Therefore, a decision making process to grant permit on construction of the nuclear power plant falls under para.11 of Annex I, and therefore falls under the scope of Article 6.

Dissemination and content of public notice (Art.6(2))

58. **Publishing a notification to the public about commencement of public consultations in the Internet is not adequate informing of the public concerned as required by Article 6(2).** According to the most recent assessments, only 29.1% of the population of Belarus have access to Internet <http://www.internetworldstats.com/stats4.htm#europe>).

59. **Publishing a notification to the public about commencement of public consultations on nuclear power plant in a local newspaper is not adequate informing of the public concerned as required by Article 6(2).** *Ostrovetskaya Pravda*, the only newspaper where public notice was published about proposed nuclear power plant, is a local newspaper with a circulation of about 5,500 issues. It is distributed only in the region where the proposed nuclear power plant is to be constructed.

60. **Publishing a notification to the public about commencement of public consultations on nuclear power plant in a local newspaper and Internet do not comprise together an adequate informing of the public concerned as required by Article 6(2).** Construction of a nuclear power plant is an issue of national concern and not a local issue. In particular, this is supported by the fact that its construction went through approval by various national authorities, including the President of Belarus.

61. **The public notice published in the newspaper clearly lacks several elements required by Article 6(2) a)-e).** The public notice, as published, covers only the following information:

- Public discussions on NPP EIA will be held in Ostrovets city on October 9.
- Brief information on EIA can found on pages 3-5 of the newspaper
- Name, address and date since when full EIA can be obtained.

62. For example, it provides for no information as to where the public concerned can send its comments as required by subparagraph d) indent v. No information is given as to public authority responsible for making a decision, as required by subparagraph c). This information is not provided in the brief EIA published in the newspaper.

Early participation requirements (Art.6(4))

63. **The public consultations process was started at a late stage when most important options are closed already in violation of the requirements of the Article 6(4).** Three most important alternatives are not subject to public discussions:

- No-action alternative
- Choice of technology
- Locational alternative

64. The Brief EIA provides for no alternatives as to the choice of technology. In fact, both Brief EIA and EIS say that Russian project [of the nuclear power plant] “was adopted” (see, e.g, page 5 of the *Brief information on EIA*). No reference was given as to who and when adopted this. Discussion of other types of technology in the EIS makes no sense in light of such statement.

65. Brief EIA provides no information on no-action alternative therefore misleading general public about the options it has. The EIS (130 pages in total) discusses no-action alternative only in the context of construction of heat power stations, disregarding completely so called demand-management (i.e., energy saving) since the purpose of the power plant is not to generate electricity for its own sake but to meet the demand for it in the country. In addition, various decisions already taken (see part *Facts*) clearly left no-action alternative out of the discussion.

66. The locational alternatives are presented in a way where only one location has no complicating factor (see page 5 of the Brief EIA).

67. In summer 2009 the Government of Belarus started construction of road to NPP site. This clearly supports conclusion that even locational alternatives were not available at the time of public consultation process. Photo of the road construction sign is attached as **Annex VIII**.

Relevant information about decision-making (Art.6(6))

68. **Brief EIA – as a key document for understanding of the project by general public – cannot ensure effective public participation as required by Article 6(6)**. It focuses attention of the public only two issues: so called locational alternatives and socio-economic benefits. In fact, the only alternatives given for public discussion in the Brief EIA are these location alternatives.

69. **EIS (OVOS report) provided to the public is much shorter than original in violation of the Article 6(6) (f)**. During public hearings in Ostrovest on October 9, 2009, public officials suddenly said that EIS which was made available to the public (135 pages) is in fact a shorter version of a 1000-pages full EIS (OVOS report). This facts had been never indicated before while EIS is an official document submitted by the developer to the public authority for review. The fact that public did not know about full report constitutes a violation of the requirements under Article 6(6), subparagraph (f).

Possibility to submit comments during public hearings (Art.6 (7)).

70. This part of the Communication introduces and discusses specific facts which took place in the course of attempts by NGOs to participate in the public hearings held on October 9, 2009, in Ostrovets town.

71. The public hearings did not allow the public to submit its comments relevant to the proposed construction of NPP because:

- (a) the hearings were organized in a small town,
- (b) the hearings were organized on a working day and during working hours,
- (c) registration process prevented NGOs from being present,
- (d) NGOs which were able to get in had no possibility to bring and disseminate written comments,
- (e) NGOs which were able to get in had almost no possibility to speak.

72. **We allege that organizing a single public hearings on NPP construction - an issue of national importance - in a small town prevents public concerned from submitting their views and comments and, therefore, violates requirements of paragraph 7 of the Article 6**. The public hearings were organized as “local hearings”. Therefore, key environmental NGOs (registered in Minsk, the capital) and the public from other regions had little chance to come and participate. Just a few days before the hearings they were assigned a status of “national”.

73. **We allege that organizing a single public hearings on a working day and during working hours prevents public concerned from participating and submitting their comments, and, therefore, violates requirements of paragraph 7 of the Article 6**. The public hearings were organized on Friday, from 10 am to 5 pm. There're very few professional environmental NGOs in Belarus who employ people on a regular basis. Most activists also have regular jobs. Participation in public hearings cannot be considered a grounded request in terms of employer-employee

relations. Therefore, organizing public hearings on a working day and during working hours prevented many representatives of the public from coming.

74. **We allege that pre-registration organized for selected representatives of employees' groups prevented environmental NGOs from attending the public hearings, and, therefore, violates requirements of paragraph 7 of the Article 6.** The registration procedure was scheduled for between 10 and 12 am. However, at 10:10 the hearings room was already full with representatives of employees groups (*trudovye kolektivy*) brought by small buses, all having registration tags already. Only a few environmental NGOs were able to register and get in.

75. **We allege that prohibition of bringing copies of written comments on EIA report, their confiscation prevented environmental NGOs from submitting their comments and views, and, therefore, violates requirements of paragraph 7 of the Article 6.** NGOs which were able to get in had no possibility to bring and disseminate written comments. All (about 100) copies of the EIA critique prepared by NGOs were confiscated and prohibited from being circulated at the hearings. At the same time, organizers of the public hearings were disseminating leaflets about benefits of the NPP construction.

76. **We allege that giving environmental NGOs a possibility to speak for only 3 minutes prevented environmental NGOs from submitting their comments and views, and, therefore, violates requirements of paragraph 7 of the Article 6.** Environmental NGOs spent almost 5 hours listening to presentations and speeches in favor of NPP construction. At the very end they – upon demand – were given 3 minutes to speak about their views on NPP construction.

77. **In summary**, Belarus failed to comply with the requirements of Article 6 paragraphs 2, 4, and 7 by not properly informing the public concerned about decision to authorize NPP construction, by not ensuring early participation of the public, by not providing relevant information about decision on NPP and by depriving NGOs and other public concerned from submitting their comments and views during public hearings.

Violations of Article 7

78. **We allege that Government of Belarus failed to take any steps to provide public participation in adopting plans, programs and policies in the field of nuclear energy. This constitutes violation of the requirements of the Article 7 of the AC.**

79. We consider the following decisions to be policies in the meaning of Article 7:

- Energy Security Strategy (2007)

80. It is our understanding that this Strategy was a decision on introducing nuclear energy in Belarus, which should be considered as a policy decision.

81. We consider the following decisions to be plans or programs in the meaning of Article 7:

- **June 14, 2007:** Directive No.3 of the President of Belarus “Economy and Saving – Key Factors for Economic Security of the State”
- **November 12, 2007:** Decree of the President of Belarus No.565 “On Some Measures to Construct Nuclear Power Plant”
- **January 15, 2008:** a decision by the Security Council to construct a nuclear power plant

- **January 31, 2008:** President of Belarus signed the Decision of the Security Council No.1 “On the Development of Nuclear Energy in the Republic of Belarus”.

82. While none of the decisions uses the term “plan or program” in its title, it is clear that they fall under that category since they were required by law, adopted by highest executive bodies and create the basis for future nuclear projects.

83. As explained in the sub-sections on Access to information about NPP (in the FACTS and ALLEGED VIOLATIONS sections above), the public was not even informed about these decisions, no notice was given on intention to adopt them, no drafts provided.

84. **In summary**, Belarus failed to comply with the requirements of Article 7 by not taking any steps to provide for public participation in adoption policy and planning decisions on nuclear energy in Belarus.

Violations of Article 8

85. **We allege that adopting procedures for public participation in the area of nuclear projects without publishing draft and giving opportunity to comment constitutes a violation of the requirements of Article 8 of the AC.**

86. We consider that *Regulation on the procedures for discussion of the issues in the area of the use of nuclear energy with participation of citizens associations, other organizations and citizens (2009)* falls under executive regulations in the meaning of Article 8. Draft Regulation was never made public and the public had no possibility to provide comments.

87. **In summary**, Belarus failed to comply with the requirements of Article 8 by not taking any steps to provide for public participation in adoption of a generally applicable rules on public participation in the field of nuclear energy.

5.3 Inadequate national legislation on public participation in decision-making on nuclear issues (Art 3.1)

Requirements on public notice (Article 6(2) of the Convention)

88. Paragraph 11 of the *Regulation* states that the “public discussions” (or discussions with the public) shall be carried out (a) on national level if the consequences of the planned nuclear activities have national character or (b) on local level if the consequences of the planned nuclear activities have regional character. There’s no reference to what is meant by “having national character” or “local character”. In our view, this provision is unclear and limits public participation only to the public concerned living (or active) in a specific region or city, at least in case of activities falling under (b). In particular, that would mean that national NGOs would not be able to participate unless they are registered or located in that specific region.

89. Paragraph 15 of the *Regulation* says that the public notice about planned nuclear activities shall be given (distributed) to the public, including population, living in the area where the proposed planned activity is envisaged to take place, as well as on areas (territories) possibly affected by the planned activity. This requirement substantially limits the scope of “public concerned” in the meaning of the Convention by using only one (locational) criteria for defining the public to be

notified. **This is in contradiction with the requirements of Article 6(2) of the Convention to inform the public concerned of the proposed activity.**

90. Paragraph 14 of the *Regulation* states that public notice about **commencement** of public consultations may be made through publication of the EIS, publication and distribution of flyers and other brochures, direct informing via mail, electronic mail, electronic networks. Under paragraph 17 of the *Regulation* the developer together with local authorities shall inform the public via mass-media and other means about periods, date and place of the public hearings, place where the public can examine environmental impact statement and report on EIA (OVOS report). There's no direct requirement to publish environmental impact statement (except when organizing nation-level public hearings, para. 18). **These requirements are clearly in violation of those imposed by Article 6(2) since they are only related to the commencement of public consultation procedures (subparagraph d) of the Article 6(2).**

Requirements on reasonable timeframes (Article 6(3) of the Convention)

91. Paragraph 19 of the *Regulation* states that public consultations shall not be held, **as a rule**, earlier than 30 days after the public notice about commencement of public consultations was given. Moreover, it says that **during** that period [30 days] the developer should distribute the environmental impact statement. Paragraph 20 further says that the period of public consultations shall not exceed, as a rule, one month. This is the minimum period of time established in the EIA legislation of Belarus. It is also unclear, at what time this period of consultations starts while strict reading would suggest that from the time of public notice. Altogether these two provisions mean that a public may be notified of a planned nuclear activity and then shall wait until EIS is distributed, then develop and provide comments within a single month. **We consider this to be in violation of the requirements under Article 6(3) since periods established are not reasonable, especially as related to the possibility envisaged by the legislation to held hearings after 30 days of public notice whereas no obligation is imposed to make EIS available at the time of public notice is made.**

Requirements on due account to be taken of the outcomes of public participation (Article 6(8) of the Convention)

92. The *Regulation* requires that the EIA report (OVOS report) shall include records of the public consultations (paragraphs 25-26). The records shall include all comments received as well as grounds for accepting or declining that. Since EIA report is a document prepared by the developer and further submitted to the public authority for approval (state environmental expertiza) it cannot be qualified as "decision". **This contradicts the requirement of the paragraph 8 of the Article 6 of the Convention.**

Requirements communicating final decision (Article 6(9) of the Convention)

93. The *Regulation* lays down public participation procedures to be applied during the OVOS process (environmental impact assessment by the developer). The OVOS process cannot end with a decision since it is not a decision-making procedure. National legislation does not provide for any other possibilities to participate in decision-making on nuclear issues. **Therefore, the procedures established by the Regulation inevitably leads to violation of the requirements under paragraph 9 of the Article 6 of the Convention.**

94. The *Regulation* provides for the requirement to publish the EIA (OVOS) report (para.28) together with a note on comments (proposal) declined with explanations of grounds for declining. However, at the same time EIA legislation and the *Regulation* itself require that the EIA report

includes full list of comments and proposals received from the public, together with explanations for accepting and declining them (para's 25-26). This is not the only contradicting provisions of the Regulation. Paragraph 4 of the *Regulation* provides that EIA report is subject to public consultations, while EIA legislation clearly states that EIA report is a final stage of OVOS process. Neither EIA legislation, nor the *Regulation* provide for any possibilities to discuss EIA report.

95. The conclusions of the state environmental expertiza can be considered to qualify as a decision in the meaning of the Article 6 of the Convention. Those conclusions are not subject to publication or distribution to the public. **Therefore, national legislation does not require communicating decision to the public as required by paragraph 9 of the Article 6 of the Convention.**

96. **In summary**, Belarus has failed to comply with its obligations under Article 3(1) by not taking necessary legislative and regulatory measures to implement provisions of paragraphs 2, 3, 8 and 9 of the Article 6 of the Convention with regard to planned nuclear activities.

5.4 Persecution of activists (Art 3.8)

97. **We allege that Belarus failed to comply with its obligations under Art. 3 (8) by putting pressure on activists who were trying to promote their alternative views on nuclear energy development in Belarus.**

98. The barriers described in the sub-section 4.3 (Facts) are self-speaking and shall be understood as attempts by the Government of Belarus to persecute and threaten people who were trying to use their rights provided under the Aarhus Convention.

99. This is especially evident with the case of arrest of Andey Ozharovskiy. He is a member of the NGO team which prepared analysis of the EIA report. When he tried to enter the building where public hearings were held with about 100 copies of NGO analysis, the guard requested that all those copies stay out of the building. In response, Mr.Ozharovskiy through copies on the floor, he was detained by police immediately and that was qualified by the court as administrative offence and subject to 7 days of arrest.

100. **In summary**, Belarus failed to comply with its obligations under Art. 3 (8) by putting pressure on activists who were trying to promote their alternative views on nuclear energy development in Belarus.

VI USE OF DOMESTIC REMEDIES OR OTHER INTERNATIONAL PROCEDURES

101. The communicant is not aware of claims filed with any national courts regarding this issues in question, except for appeals on the arrest of Mr.Ozhrovskiy. We believe that national courts cannot provide adequate protection of public rights, the use of such remedies may even pose a risk to their families.

Espoo Convention Implementation Committee

102. The issue of NPP construction was also brought to the attention of the Implementation Committee of the Espoo Convention by a Ukrainian NGO "Ecoclub" on July 1, 2009.

103. At the time when this communication is filed, no information is available whether Espoo Convention Implementation Committee decided to start non-compliance procedure or not.

Aarhus Convention Compliance Committee

104. This communication incorporates all facts and allegations made in relation to NPP by **Amicus Curiae Memorandum** filed by European ECO Forum within communication Ref: ACCC/C/2009/37, as well as additional facts referred to in the **Amicus Curiae Joinder Motion** sent by two organizations from Belarus. It is our understanding that the issues raised by the Amicus Memo will be only considered as additional examples for the purpose of consideration of the issues falling within the scope of the communication ACCC/C/2009/37.

VII CONCLUSIONS

105. We allege that the Government of Belarus failed to comply with its obligations under the Aarhus Convention in the course of planning and authorizing nuclear power plant construction in Belarus, namely:

- Belarus failed to comply with the requirements of Article 4 paragraph 1 by providing incomplete and misleading information upon requests by citizens and NGOs in relation to NPP construction.
- Belarus failed to comply with the requirements of Article 6 paragraphs 2, 4, and 7 by not properly informing the public concerned about decision to authorize NPP construction, by not ensuring early participation of the public, by not providing relevant information about decision on NPP and by depriving NGOs and other public concerned from submitting their comments and views during public hearings.
- Belarus failed to comply with the requirements of Article 7 by not taking any steps to provide for public participation in adoption policy and planning decisions on nuclear energy in Belarus.
- Belarus failed to comply with the requirements of Article 8 by not taking any steps to provide for public participation in adoption of generally applicable rules on public participation in the field of nuclear energy.
- Belarus failed to comply with its obligations under Art. 3 (8) by putting pressure on activists who were trying to promote their alternative views on nuclear energy development in Belarus.

106. We allege that Belarus has failed to comply with its obligations under Article 3(1) by not taking necessary legislative and regulatory measures to implement provisions of paragraphs 2, 3, 8 and 9 of the Article 6 of the Convention with regard to planned nuclear activities.

LIST OF ANNEXES

Annex I. Request for information by Citizens Association “Ecohome” (in Russian).

Annex II. Reply by the Ministry of Energy to request by Ecohome (in Russian).
Annex III. Reply by the Ministry of Energy to information request by Mr.Ulasevich (in Russian).
Annex IV. Reply by the Ministry of Energy to information request by Ms.Novikava (in Russian).
Annex V. Public notice published on July 31, 2009 (in Russian).
Annex VI. Public Notice and Brief EIA published in local newspaper (in Belarusian and Russian).
Annex VII. Copies of false leaflets (in Belarusian and Russian).
Annex VIII. Photo of road construction sign.