

To:

United Nations

Economic and Social Council
ECONOMIC COMMISSION FOR
EUROPE Compliance Committee

of the UNECE Convention on Access to Information,
Public Participation in Decision-making and Access to
Justice in Environmental Matters

Palais des Nations, Room 429-4
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From:

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Comments and amendments regarding implementation by Belarus of the recommendations received at the fifth session of the Meeting of the Parties to the Aarhus Convention and endorsed by the Decision V/9c

We express appreciation for the opportunity to submit our comments and amendments regarding the implementation by Belarus of the Decision V/9c by the 5th Meeting of the Parties of the UNECE Aarhus Convention.

We welcome the efforts of the Belarus Focal Point, Ministry of Natural Resources and Environmental Protection (Minprirody) to implement the recommendations of the Decision V/9c. We also appreciate the additional steps undertaken by Minprirody to boost the dialog with the public and to improve the national legislation with the implementation of some of the recommendations of the Decision V/9c and Convention provisions. In particular, we are grateful to Minprirody for the work on development and adoption of the new law, which has been discussed with the public, and our organization had an opportunity to submit comments and suggestions.

At the same time, we express our regret regarding the insufficiency of the measures undertaken by Belarus to achieve substantial progress for the next Meeting of the Parties of the Convention. We would state that there are problems in the implementation of the Decision V/9c, including on a systematic basis.

1. *On the official Belarus level, including the Focal Point level, there is no clear and unambiguous understanding of the recommendations provided by the 5th session of the MOP, as well as of*

their aims. The recommendations are interpreted in favor of maintaining the current situation. This makes it difficult to accomplish Decision V/9c and requires additional steps to clarify recommendations from the Convention's bodies, as well as from the expert community. In the response by Belarus to the Committee, in particular, in the letter Minprirody wrote:

“The main part of the recommendations contained in this decision concerns improvement of the national legislation and contains direct indications on the need to change its regulations.”

This statement is not entirely correct, because Decision V/9c demands: “to take as a matter of urgency the necessary legislative, regulatory, and administrative step to establish the practical arrangements” to accomplish the recommendations by the IV and V sessions of the MOP. Decision V/9c also contains the recommendations 7b and 7c, aimed at practical measures and activities. Thereby, improvement of the legislation is important but not only the way to implement Decision V/9c. There is critical need for essential improvement of the realization of the practical use of the legislation.

Minprirody also wrote that Decision V/9c of the Meeting of the Parties does not contain recommendation on public participation in drafting of regulations (Article 8 of the Aarhus Convention) (paragraph d3 point 1 of the comments). It was the personal initiative of the Ministry of Natural Resources and Environmental Protection of the Republic of Belarus to “lay down the norm” on public participation in discussions of regulation in the Republic of Belarus in Article 15/2.

Indeed, Decision V/9c does not contain recommendations regarding Article 8 of the Convention. At the same time, it does not revoke this or other parts of the Convention in Belarus. It is commendable that Belarus in some cases complies with the Convention. But the way that Belarus attracts Committee attention to fulfillment of the Convention shows that implementation still will be a rare practice in comparison with its violation. This also is confirmed by the fact that, even now, when the new law has been adopted, the plans and programs for 2016-2020 relating to environment do not discuss with the public neither Minprirody nor other ministers.

2. *We would emphasize that the new law's adoption, to which Minprirody refers, does not address all the recommendations endorsed by Decision V/9c.* The law does not address implementation of the range of recommendations by the 5th session of the MOP, in particular: recommendations 7a, 6b, 6d, 6g, 6h, 6i.

3. *We would call you attention to the fact that there is no yet any normative base insuring implementation of the new law.* It has to include regulations on the procedures of discussion with the public of plans and the programs relating to the environment, as well as of reports on EIA.

4. *Besides, the law, adopted by Belarus President Alexander Lukashenko on Dec. 24, 2015, restricts implementation of some of the provisions of the Convention.* We called this to your attention in our letter of Nov. 27, Nov. 2015.

5. We note the facilitation of dialogue between Minprirody, the public and the Committee but we have to state that in some cases the approach by our Focal Point is not constructive. In addition, there is no systematic basis for dialogue with the public. In particular, our idea of a working group on implementation of Decision V/9c including representatives of public was welcomed by Minprirody but they did not follow up on it in the future. Besides, in the letter to

the Committee of 2/2/2016 Minprirody does not provide correct information regarding Ecohome.

5.1. Minprirody wrote: “in the statement of 28 November 2015, the NGO “Ecodom” made comments, which it has not provided before during the public discussion of the draft law (paragraph a,b,g point 1)”.

We would emphasize that our organization used all the opportunities that Minprirody provided for the discussion on the project of this law. We have been sending our comments on the several stages of the law development for its different versions. Some of the stages of this law development were not transparent for us. We also have access to some of the law revision texts, not to all of them. We have not been informed about all the changes in this text. When it was presented to the Parliament of Belarus, it was significantly different from the version available for us in the stage of development by Minprirody (during the public discussion). The changes of the text of the law have been outside the procedure of public discussion. The changed version has been not represented to the public for the comments. That’s why we had to send our comments on this latest version after the procedure of public discussion.

5.2. Minprirody also said in the letter: “The inquiry of the NGO “Ecodom” of 21 November 2014 №340 about provision of information, addressed to the Gosatomnadzor (...) has been considered according to the order, laid down by the legislation of the Republic of Belarus on appeals of citizens and legal entities. A detailed response of 8 December 2014 (...) was sent to the applicant by post. The NGO “Ecodom” requested in the inquiry the materials of inspection, and not a report on inspection, whereas the inquiry did not specify what was exactly meant under “materials of inspection”.

We would like to clarify that in our informational inquire to the Department of Nuclear and Radiation Safety of the Ministry for Emergency Situations of the Republic of Belarus we asked to provide the “materials of the inspection” because we didn’t know the exact name of this document, as well as: we have no any information about the structure and quantity of the resulting documentation. This information was not public. Materials mean the documents, prepared as result of inspection by special Comission. They have to contain information about the violations with the referrences to the norms and rules, which have been violated, as well as the recommendation how and when to fix them. Word “materials” have to be clear for officials, so they use it regarding EIA (materials of EIA).

We draw your attention to the fact that the Department didn’t publish the report or the other document resulting from this inspection (November 2014) on its web-site.

The materials of this inspection have been not provided to us.

The response by the Department does not contain the information we required in our letter. It only informed us about subject of inspection and the names of organizations, that have carried it on. The response also said that violations are not crucial and could be fixed during further construction.

In this response, the Department didn’t agree or disagree to present to us the materials of said inspection, nor did they say about other opportunities of public access to this document. The legislation on appeals of citizens an entities has been violated because the response didn’t contain required information.

6. We also draw your attention to the fact that in Belarus as before there are no

conditions to bring practice in line with the recommendations of MOP 5, as well as with the Convention's provisions. This is, among other things, about access to the information – the public has no access to the texts of the documents (including decisions) of state bodies, their reports (e.g. about the inspection of nuclear power plant construction), don't link to primary environmental information.

There is no will and no government activity for the essential change of the situation related to public participation in decision-making process in environmental matters and the matters related to the decisions on specific activities. There is a lack of mechanisms endorsing and insuring such participation. The sad example is Belarus nuclear power plant construction, which sparked a 2009 case on no-compliance at the Aarhus Convention Compliance Committee. The construction of the nuclear plant is going on with violations of the Convention. The decisions, made in violation, remain in force and still are the basis for further decisions and activities on construction of this dangerous project.

In conclusion, we would like to say that dialogue with the public and implementation of Decision V/9c, as well as Convention provisions, have to be honored, not only by Focal Point but by the others state bodies. Without this it is impossible to speak about positive changes.