

United Nations Economic Commission  
for Europe  
Chairman of the Compliance Committee  
of the Convention on Access to  
Information, Public Participation in  
Decision-making and Access to Justice in  
Environmental Matters  
Mr. Jonas Ebbesson

Dear Mr. Ebbesson,  
Dear Members of the Committee!

I would like to express my gratitude to the Committee for Compliance with the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (hereinafter referred to as the Aarhus Convention), for the opportunity to comment on the information No. 28 of 21 March 2018, provided by the Public Association “Ecodom”.

In accordance with para. 8 of Article 3 of the Aarhus Convention, each Party shall ensure that persons exercising their rights under the provisions of the Convention were not punished, persecuted or harassed in any form for their activities.

However, based on the provisions of the Convention, public activities, aimed at preserving the environment, shall be carried out within the national legislation of each Party.

Provisions, which regulate the procedure for holding mass gathering events, are set up in the Law of the Republic of Belarus “On Mass Gathering Events in the Republic of Belarus” (hereinafter – the Law).

The Law determines that a mass gathering event is a meeting, a street procession, a demonstration, picketing and other event.

A picketing is defined as the form of public expression by a citizen or a group of citizens of socio-political, group, personal and other interests or protest (without procession), including by hunger strike, on any problematic

issues with or without the use of posters, banners and other means. As a picketing shall be treated any joint mass presence of citizens in a pre-determined public place (including in the open air) at the appointed time for the performance of a predetermined act, which is organized (including through the global computer network “Internet” or other information networks) for the public expression of their socio- political interests or protest.

According to Articles 5 and 6 of the Law, a mass gathering event is carried out upon submission of an application by the organizer of a mass gathering event to the local executive body and in line with the decision taken by this body to permit holding of the mass gathering event.

According to the second part of Article 8 of the Law, the organizer and other persons are not entitled to declare in the mass media, the global computer network the Internet or other information networks about the date, place and time of its holding, to produce and distribute with this purpose flyers, posters and other materials.

According to the second part of Article 8 of the Law, before obtaining permission to hold a mass gathering event its organizer as well as other persons are not allowed to announce through the mass media, the global computer network “Internet” or other information networks on the date, place and time of its holding, or to produce and distribute for this purpose flyers, posters and other materials.

Mr. A.Kabanov and Mr. S.Petrukhin were acting beyond the provisions of the Aarhus Convention and violated the requirements of the national legislation of the Republic of Belarus on the organization and holding of mass gathering events, when speaking and calling on against the construction of a battery factory near the city of Brest. The violation of the legislation on mass gathering events incurs administrative responsibility.

In particular, on 17 February 2018, Mr. S.Petrukhin on the video clip “How Mikhail Sitko saved the city from V.Lemeshevsky” (was published on youtube channel of “People's Reporter”) announced his intention to participate in picketing on 25 February 2018 at 12 pm on Lenin Square in Brest with the expression of protest against construction of a battery plant. At the same time the Brest City Executive Committee did not receive Mr. S.Petrukhin’s application to permit holding a picketing on 25 February 2018. The Brest City Executive Committee did not issue such permission.

Therefore Mr. S.Petrukhin’s statement in the global computer network “Internet” on holding picketing on 25 February 2018 at 12 pm on Lenin Square in Brest contained the signs of an administrative offense pursuant to second part of Article 23.34 of the Code of Administrative Offenses of the Republic of Belarus (hereinafter referred to as the Code of Administrative Offenses).

To prevent violation of the legislation on mass gathering events, on 22 February 2018 the Prosecution Service of Brest city made an official notification to Mr. S. Petrukhin prohibiting a repeated commission of the offense, that imposes administrative responsibility under part 2 of Article 23.34 of the Code of Administrative Offenses of the Republic of Belarus, as well as preparation to hold illegal picketing.

Furthermore, in accordance with the decision of the Court of Lenin district of Brest city dated 28 February 2018, Mr. S. Petrukhin was brought to administrative responsibility for the abovementioned offense with penalties in the form of fine in the amount of 50 basic values under part 3 of Article 23.34 of the Code of Administrative Offenses of the Republic of Belarus. Such violation was classified under part 3 of Article 23.34 of the Code of Administrative Offenses of the Republic of Belarus, taking into account that on 7 April 2017 Mr. S. Petrukhin was brought to administrative responsibility under part 1 of Article 23.34 of the Code of Administrative Offenses of the Republic of Belarus.

In accordance with the decision of the Court of Lenin district of Brest city dated 28 February 2018, Mr. A. Kabanov was brought to administrative responsibility with penalties in the form of fine in the amount of 50 basic values under part 3 of Article 23.34 of the Code of Administrative Offenses of the Republic of Belarus.

As it is described in the records of administrative detention of Mr. S. Petrukhin and Mr. A. Kabanov dated 23 February 2018, contained in the cases files of administrative offenses, commission of the offense set out in part 3 of Article 23.34 of the Code of Administrative Offenses of the Republic of Belarus was grounds for their detention. There is no information on the withdrawal of a recorder, a memory-card and cell phones from those persons.

Furthermore, the detainees were provided with the records of administrative detention for review. In this regard they should and could know grounds for their detention. Also there is no information on damage of a recorder and a memory card as well as on the removal of a phone book from a cell phone in the cases files while they were at the temporary detention centre. Such complaints have not been submitted to the Prosecution Service of Brest city from the detainees.

The Constitution of the Republic of Belarus of 1994 (Article 35), stipulates the citizens' right to freedom of meetings, street processions, demonstrations and picketing as well as envisages legislative regulation of their holding. As it was noticed previously, nowadays, the Law of the Republic of Belarus «On Mass Gathering Events in the Republic of Belarus» stipulates the order for the organization and holding of meetings, street processions,

demonstrations and picketing. Therewith, this Law stipulates a permissive (not a notifying) order for holding mass gathering events.

Nevertheless, Mr. S. Petrukhin and Mr. A. Kabanov chose illegal acts as means of protest against construction of a battery plant in violation of the order for holding mass gathering events, established by the national legislation. For that reason they were brought to administrative responsibility.

The Republic of Belarus is committed to the Aarhus Convention and does not throw obstacles in expressing public opinion while guaranteeing freedom of thoughts, opinions and freedom of expression to everyone.

If Mr. S. Petrukhin and Mr. A. Kabanov had respected and fulfilled the Law of the Republic of Belarus «On Mass Gathering Events in the Republic of Belarus», it would not have resulted in bringing them to administrative responsibility in accordance with Article 23.34 of the Code of Administrative Offenses of the Republic of Belarus.

Reaction measures were taken by the Prosecution Service and law enforcement authorities in conformity with the legislation of the Republic of Belarus.

Taking the foregoing into consideration, we draw the Aarhus Convention Compliance Committee's attention to unreliability of the information provided by the public association "Ecodom" and misrepresentation of facts, which took place.

With regard to the events, that took place on 25 and 26 January and are described in the letter of the public association, we would like to explain as follows.

Taking into consideration the evidence-based information on dissemination of leaflets and advertisements in public places, located on the territory of Brest city, and communications containing calls, addressed to citizens, for taking part in meetings planned to be held on 27 January 2018 in villages of Brest district, with participation, as it was found out, of representatives of mass media non-accredited in the Republic of Belarus and dedicated to environmental situation in the region, which was provided to the Prosecution Service of Brest region, the decision to post respective information of clarification nature on the web-site of the Executive Committee of Brest district was taken with the aim to prevent citizens from possible destructive manifestations on the part of opposition forces and negative consequences.

In accordance with paragraph 3 of Article 7, paragraph 7 of part 1 of Article 9 of the Law of the Republic of Belarus «On the Foundations for Crime Prevention Activity», the information of the Prosecution Service of Brest region, containing interpretation of the legislation of the Republic of Belarus in force, was posted on the official site of the Executive Committee of Brest district on 26<sup>th</sup> of January 2018. Particular aim of this information was to

clarify provisions of the legislation stipulating responsibility for public calls for the organization and holding meetings, other mass gathering events in violation of the established order for their organization and holding.

Therefore, if measures aimed at clarifying the legislation had not been taken, it could have resulted in more active engagement of citizens in participation in unauthorized events and bringing participants of an event to administrative responsibility as negative consequence.

Prosecution Service of Brest region did not take any actions of prosecution reaction as well as law enforcement authorities of Brest district did not take any enforcement measures with regard to citizens.

In conclusion, we would like to underline, that public shall not abuse the rights provided for in the Aarhus Convention while implementing its activities, taking into consideration, that a number of the Convention's provisions have regard to safeguards for the rights of citizens under the national legislation of each Party. Therefore, legal entities, public associations and citizens of the Republic of Belarus have not only rights, but obligations to respect requirements provided for in the national legislation as well. Not fulfilling of the national legislation could be grounds for bringing to different types of responsibility.

In this regard, we would like to note, that there is no fact of prosecution of Mr. S. Petrukhin and Mr. A. Kabanov that corresponds to point 8 of Article 3 of the Aarhus Convention. Also we would like to draw attention to the fact, that the abovementioned persons committed acts violating the national legislation of the Republic of Belarus on the organization and holding mass gathering events.

Attachments on \_\_\_\_\_ pages in 1 copy.

Respectfully Yours,

First Deputy Minister  
National Focal Point

Iya V.Malkina