

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)

From: Environment-People-Law

March 10th 2011

On March 4th 2011, Environment-People-Law received the recent draft of the Aarhus Convention Compliance Committee Report on Compliance by Ukraine (hereinafter – the Report) along with the Letter to Minister for Foreign Affairs of Ukraine and Minister for Ecology and Natural Resources of Ukraine inviting them to provide comments to the Report and asking to provide the latest draft Decree of the Cabinet of Ministers of Ukraine “On public participation in decision-making in the field of environmental protection” and a copy of the recently adopted law on city planning and building by 17 March 2011.

Environment-People-Law would kindly like to draw your attention to some minor errors made in the Report and provide additional information essential for finalization of the Report.

A. Regarding the draft Law of Ukraine “On the amendments to article 25 of the Law of Ukraine “On Environmental Protection”

The report states,

21. Ukraine provided the Committee with [...] the draft Law of Ukraine “On the amendments to article 25 of the law of Ukraine on Environmental Protection”. The email stated that that draft law had been available for public commenting during July and August 2009, and the public’s comments were currently being processed.

31. [...] The Committee has also been informed that article 25 of the Law of Ukraine “On Environmental Information” has recently been approved.

1. First of all, there is no such law in Ukraine as the Law “On Environmental Information”. The article 25 of the Law of Ukraine “On Environmental Protection” defines environmental information, so both paragraphs of the Report (21 and 31) are talking about the same draft law, namely, the draft Law of Ukraine “On the amendments to article 25 of the Law of Ukraine “On Environmental Protection” (regarding environmental information).
2. It is correct that the above-mentioned draft law had been available for public commenting during July and August 2009. The comments were collected, but the Ministry has never informed those who submitted comments on whether they were or were not taken into account. Following the collection of comments for a year and a half the Ministry did nothing to proceed further with this draft law. However, on February 1st 2011 the draft law was posted again on the ministerial webpage for public commenting. The comments were accepted by March 4th 2011.
3. This draft law has not been adopted yet.

4. Furthermore, the proposed draft Law of Ukraine “On the amendments to article 25 of the Law of Ukraine “On Environmental Protection” replaces in the title of the Article 25 and in its body a compound definition “information on the state of the environment (environmental information)” with a simple one — “environmental information”. Article 50 of the Constitution of Ukraine proclaims that “the right to free access to information on the state of the environment is guaranteed to everyone. No one shall make such information secret”. Article 8 of the Law of Ukraine “On state secret” establishes that the information on the state of the environment could not be classified as state secret. Pursuant to Article 30 of the Law of Ukraine “On information”, information on the state of the environment possessed by public authorities could not be classified as confidential. Proposed amendment, if enacted, will diminish abovementioned constitutional and legislative guaranties of the openness of environmental information by limiting it merely to para 3(a) of Article 2 of the Convention.
5. Also, the draft law does not list information on activities affecting or likely to affect the environment to be environmental information.
6. However, on January 13th 2011 the parliament of Ukraine passed a new Law of Ukraine “On access to public information” and a new release of the Law of Ukraine “On information” is to become effective on May 9th 2011. The new release of the Law of Ukraine “On information” contains Article 13 defining environmental information. It reads as follows:

Article 13. Information on the state of the environment (environmental information)

1. Information on the state of the environment (environmental information) - information and / or data about:

the state of elements of the environment and its components, including genetically modified organisms, and the interaction among these elements;

factors affecting or likely to affect the elements of the environment (substances, energy, noise and radiation, and activities or measures, including administrative, agreements on the environment, policies, legislation, plans and programs);

health and safety conditions of human life, cultural objects and buildings to the extent that they are or likely to be affected by the state of the elements of the environment;

other information and / or data.

2. Legal regime of information on the state of the environment (environmental information) is determined by laws of Ukraine and international treaties of Ukraine ratified by the Verkhovna Rada of Ukraine.

3. Information on the state of the environment, except for information on location of military facilities can not be classified.

7. These two newly enacted laws provide for access to environmental information on the level required by the Convention and even broader. They regulate all of the aspects relating to Article 4 of the Convention and most of the aspects relating to Article 5. Thus, in our opinion, there is no need to adopt any further legislation on establishing a domestic definition of environmental information and regulating access to environmental information upon request. However, there still is a need to create a legal framework requiring
 - i. that public authorities obtain environmental information relevant to their functions, including those functions on which they base their decisions (see para. 2 (a) of the secretariat’s letter of 9 March 2009).

- ii. that public authorities do not limit the provision of information under article 6, paragraph 6, and article 4 of the Convention to publication of the environmental impact statement but include other relevant information to ensure more informed and effective public participation (para. 2 (f) of the letter of 9 March 2009);
- iii. disclosure of EIA studies in their entirety as the rule (with the possibility for exempting parts being an exception to the rule) (para. 2 (g) of the letter of 9 March 2009);
- iv. that texts of decisions, along with the reasons and considerations on which they are based, are publicly available (para. 2 (h) of the letter of 9 March 2009).

B. Regarding the draft Decree of the Cabinet of Ministers of Ukraine “On public participation in decision-making in the field of environmental protection” and the recently adopted law on city planning and building

1. The draft Decree of the Cabinet of Ministers of Ukraine “On public participation in decision-making in the field of environmental protection” which was submitted for public commenting in September of 2010 establishes a clear legal framework for public participation during ecological expertiza (including ecological expertiza of objects and activities adversely affecting the environment) and resolves most of the problems identified by the Committee in its findings.
2. However, on February 17 of 2011 the Parliament of Ukraine passed the Law of Ukraine “On regulation of city-building activity” (Закон «О регулировании градостроительной деятельности»). The Law has not been officially published yet.
3. This Law amends the Law of Ukraine “On environmental expertiza” and annuls the provision establishing that the project documentation for new activities and building and reconstruction of objects adversely affecting the environment are subject to ecological expertiza. Thus, when the Law “On regulation of city-building activity” will become effective (in 3 months after its official publication), the Decree of the Cabinet of Ministers of Ukraine “On public participation in decision-making in the field of environmental protection” will no longer reach the decisions permitting specific activities adversely affecting the environment.
4. The Law of Ukraine “On regulation of city-building activity” introduces a single building permit for new objects and activities including those adversely affecting the environment. This permit will be issued based on a conclusion of expertiza which in appropriate cases will involve environmental experts. The new expertiza is no longer conducted by public authorities, but private companies, thus its conclusions no longer are acts of public authorities which can be challenged in a court. The Law of Ukraine “On regulation of city-building activity” does not provide for public participation either during stage of expertiza, or during procedure for issuing a building permit.
5. Normative acts establishing procedures for such expertiza and permit issuance have not been adopted yet. Thus, for the time being it is not possible to predict whether provisions providing for public participation will be incorporated in these procedures.

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