

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 Secretary to the Aarhus Convention
United Nations Economic Commission for Europe
Environment and Human Settlement Division
Room 332, Palais des Nations
CH-1211 Geneva 10, Switzerland

Cc:

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From:

Environment-People-Law

New development with regard to Communication ACCC/C/2014/118 Ukraine

EPL as a communicant would like to draw Compliance Committee's attention to the following information.

On January 28, 2016 the Supreme Administrative Court of Ukraine ruled on the case number C / 800/24 769/13 brought by NGO "Donetsk environmental movement" and Environmental NGO "Mama-86" contesting the Donetsk Regional Council decree of January 16, 2013 № 6 / 18-456 "On approval of the draft agreement on the sharing of hydrocarbons to be extracted within Yuzivska field."

The High Administrative Court of Ukraine overturned erroneous decisions of both appellate and local courts and adopted a new decision on the plaintiffs' claims, reaching such conclusions

1) in matters of local government decision-making procedure in terms of ensuring public participation, including NGOs rights to access to public information, the courts should be guided by the provisions of the Law of Ukraine "On local government in Ukraine" and the Law of Ukraine "On access to public information" instead by Article 11 of the Law of Ukraine "On production sharing agreements";

2) acting contrary to this on January 16, 2013 the defendant illegally posted on its website only part of the draft decision 6 / 18-456 "On approval of the draft agreement on the sharing of hydrocarbons to be extracted within the Yuzivska field" (without appendix "Agreement on the sharing of hydrocarbons to be extracted within the Yuzivska field");

3) not disclosing of this Agreement as part of the decision prevented public discussion of the draft decree, which when adopted approved the mentioned Agreement;

4) as to confidentiality of information on the terms of the Agreement the High Administrative Court of Ukraine again cited the Law of Ukraine "On access to public information" particularly

the requirements to be satisfied for legitimate limitation of access to information, as well as the rule that access shall be limited to information and not to the document itself, and said that the defendant had not provided any proof of satisfaction of the requirements for limitation of access to information contained in the Agreement. Thus, the defendant violated the procedure of decision making, namely violated the provisions on the previous publication of a draft decision and publication of a draft decision in full including all annexes, by which violated the right of the plaintiffs to timely and full public information, effectively restricting their right to participate in public discussion on the relevant draft decision within the statutory period of twenty days, the right to submit suggestions and comments on the draft decision. Failing to publish the Agreement as part of the decision the defendant prevented public discussion of the draft decision, which when adopted approved the mentioned Agreement.

Having in mind that in 2013 by its resolutions the Cabinet of Ministers of Ukraine approved the final drafts of the Agreements for both Yuzivska and Oleska fields, which also have never been published, in March 2016 EPL filed a petition to the Cabinet of Ministers of Ukraine and the Ministry of environmental protection of Ukraine asking to finally open access to the abovementioned PSAs, based on the conclusions and ruling of the High Administrative Court of Ukraine. Both authorities provided vague answers, and the PSAs remained limited in access.

Furthermore, in February 2015 EPL obtained a court order obliging the State Geology and Mineral's Service to provide EPL with a copy of the permit for the use of minerals granted to Shell within the Yusivska field. The State Geology and Mineral's Service claimed that the permit contains confidential information on the terms of Yuzivska PSA. The court disagreed and issued the court order. Yet the State Geology and Mineral's Service until now have not obeyed the court order. The State Executive Service has already twice fined the State Geology and Mineral's Service for not complying with the court order, yet EPL has not seen any copy of the permit up till this day.

Prepared by

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