

Compliance Committee to the Convention on
Access to Information, Public Participation
in Decision-making and Access to Justice
in Environmental Matters (Aarhus Convention)

**First progress review of the implementation of decision VI/8c
on compliance by Belarus with its
obligations under the Convention**

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I. Introduction

1. At its sixth session (Budva, Montenegro, 11-13 September 2017), the Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) adopted decision VI/8c on compliance by Belarus with its obligations under the Convention (see ECE/MP.PP/2017/2/Add.1).

II. Summary of follow-up

2. At its sixtieth meeting (Geneva, 12-15 March 2018), the Committee reviewed the implementation of decision VI/8c in open session with the participation by audio conference of representatives of Belarus and the communicant of communication ACCC/C/2014/102.

3. On 13 March 2018, the communicant of communication ACCC/C/2014/102 provided a written version of the statement it had made during the open session at the sixtieth meeting.

4. On 21 March 2018, the communicant of communication ACCC/C/2014/102 provided additional information. On the same day, the secretariat sent a request to the communicant of communication ACCC/C/2014/102 seeking clarification of whether the information was submitted in the context of paragraph 7 of decision VI/8c.

5. On 27 March 2018, the communicant of communication ACCC/C/2014/102 confirmed that its information of 21 March 2018 should be considered under paragraph 7 of decision VI/8c.

6. On 28 March 2018, the secretariat forwarded the communicant's letter of 21 March 2018 to Belarus and requested its comments.

7. On 2 April 2018, Belarus submitted information (dated 30 March 2018) on measures taken to implement decision VI/8c.

8. On 3 May 2018, Belarus submitted its comments (dated 27 April 2018) on the communicant's letter of 21 March 2018.

9. On 2 October 2018, Belarus submitted further information (dated 1 October 2018) regarding the implementation of decision VI/8c, one day after the deadline of 1 October 2018 for submitting its first progress report on decision VI/8c. As explained below, this further information will be designated as the first progress report.

10. On 5 October 2018, the secretariat forwarded the Belarus' progress report to the communicant of communications ACCC/C/2009/37, ACCC/C/2009/44 and ACCC/C/2014/102, inviting their comments by 1 November 2018.

11. On 1 November 2018, the communicant of communication ACCC/C/2014/102 provided comments on Belarus' first progress report.

12. On 7 January 2019, the secretariat forwarded a letter from the Director of the Environmental Division of the United Nations Economic Commission for Europe enclosing questions from the Committee to Belarus concerning the information provided by the communicant of communication ACCC/C/2014/102 on 21 March 2018 and 1 November 2018.

13. On 31 January 2019, Belarus provided its reply to the Committee's questions.

14. On 14 February 2019, the communicant of communication ACCC/C/2014/102 submitted additional information commenting on Belarus' reply of 31 January 2019.

15. After taking into account the information received, the Committee prepared its first progress review and adopted it through its electronic decision-making procedure on 24 February 2019. The Committee thereafter requested the secretariat to forward the first progress review to Belarus, the communicants of communications ACCC/C/2009/37, ACCC/C/2009/44 and ACCC/C/2014/102.

III. Considerations and evaluation by the Committee

16. In order to fulfil the requirements of paragraph 3 of decision VI/8c, Belarus would need to provide the Committee with evidence that Belarus take as a matter of urgency the necessary legislative, regulatory and administrative measures and practical arrangements to ensure that:

(a) There are clear requirements to inform the public of its opportunities to participate in decision-making processes on activities subject to article 6 and in particular:

- (i) With respect to environmental impact assessment reports, to inform the public in an effective manner;
- (ii) With respect to other information relevant to decisions on activities subject to article 6, including project documentation, to inform the public in an adequate, timely and effective manner;

(b) The content of the public notice required under article 6(2) of the Convention includes inter alia the following:

- (i) The public authority responsible for making the decision to permit the proposed activity subject to article 6;
- (ii) The public authority from which relevant information other than the environmental impact assessment report can be obtained and where the relevant information other than the environmental impact assessment report has been deposited for examination by the public;
- (iii) Whether the activity is subject to a transboundary environmental impact assessment procedure;

(c) The rights set out in article 6 of the Convention apply not only to the environmental impact assessment report but to all information relevant to decisions permitting activities subject to article 6, including project documentation, and that with respect to public participation on such information:

- (i) There are reasonable minimum time frames for submitting comments during the public participation procedure for all decisions under article 6 of the Convention, taking into account the stage of decision-making as well as the nature, size and complexity of proposed activities;
- (ii) There is a clear possibility for the public to submit comments directly to the relevant authorities (i.e., the authorities competent to take the decisions subject to article 6 of the Convention);
- (iii) There are clear provisions imposing obligations on the relevant public authorities to ensure such opportunities for public participation as are required under the Convention, including for making available the relevant information and for collecting the comments through written submission and/or at the public hearings;
- (iv) The full content of all comments made by the public (whether claimed to be accommodated by the developer or those which are not accepted) is submitted to the authorities responsible for taking the decision (including those responsible for the expertiza conclusion);
- (v) There are clear provisions imposing obligations on the relevant public authorities to take due account of the outcome of public participation, and to provide evidence of this in a publicly available statement of reasons and considerations on which the decisions is based;

(d) Statutory provisions regarding situations where provisions on public participation do not apply cannot be interpreted to allow for much broader exemptions than allowed under article 6(1)(c) of the Convention;

(e) The amended legal framework clearly designates which decision is considered to be the final decision permitting the activity and that this decision is promptly made public, as required under article 6(9) of the Convention.

17. In order to fulfil the requirements of paragraph 6 of decision VI/8c, Belarus would need to provide the Committee with evidence that it has:

(a) Taken the necessary legislative, regulatory, administrative, institutional, practical or other measures to ensure that members of the public exercising their rights in conformity with the provisions of the Convention are not penalized, persecuted or harassed for their involvement;

(b) Disseminated the Committee's findings and recommendations on communication ACCC/C/2014/102 to senior officials in the police, security forces, judiciary and to other relevant authorities, for their information and action, together with a request for them to disseminate the findings to all relevant officials in order to raise awareness of their obligation to ensure compliance with article 3(8) of the Convention;

(c) Delivered appropriate training and information programmes on human rights law relevant to article 3(8) of the Convention, for police, security forces and the judiciary to ensure that members of the police and security forces do not exercise their powers in a manner, and identity checks and arrests for alleged public order violations are not utilized in a way, that would restrict members of the public from legitimately exercising their rights to participate in decision-making as recognized in article 1 of the Convention.

18. According to paragraph 7 of decision VI/8c, when evaluating the implementation by Belarus of paragraph 6 of decision VI/8c, the Committee shall take into account any information received from members of the public or other sources about future incidents of alleged penalization, persecution or harassment contrary to article 3(8) of the Convention together with any information provided by Belarus regarding those alleged incidents.

19. In order to fulfil the requirements of paragraph 8(a) of decision VI/8c, Belarus would need to submit to the Committee detailed progress reports on 1 October 2018, 1 October 2019 and 1 October 2020 on the measures taken and the results achieved in the implementation of the of the above recommendations.

General observations

20. In its first progress report submitted on 2 October 2018, Belarus asked that the information submitted therein be added to the information it had provided on 2 April 2018. The Committee accordingly understands that Belarus intends the information it provided on 2 April and 2 October 2018 to be considered together as its first progress report under paragraph 8(a) of decision VI/8c. The Committee will thus examine the information submitted on 2 April and 2 October 2018 with this in mind, while for practical reasons, in keeping with the reporting deadline in decision VI/8c, the Committee will refer to the information provided by Belarus on 2 October 2018 as its first progress report.

21. In this regard, the Committee points out that, while indeed the information submitted on 2 April and 2 October 2018 could be considered together as a "progress report" in the meaning of paragraph 8(a) of decision VI/8c, they must nevertheless jointly provide sufficient and detailed information to clearly describe the measures taken and the results achieved in the implementation of each of the recommendations in decision VI/8c. The information provided by Belarus on 2 April and 2 October 2018 does not fully meet this requirement. The Committee accordingly expresses its disappointment that Belarus has not satisfied its obligation to provide a detailed progress report as requested by the Meeting of the Parties in paragraph 8(a) of decision VI/8c.

22. The Committee thus urges Belarus, in its second progress report due by 1 October 2019 to provide detailed information on the measures it has by then taken, or is

taking, to address each of the recommendations in paragraphs 3 and 6 of decision VI/8c. In that regard, the Committee recalls that in its report on decision V/9c to the sixth session of the Meeting of the Parties, the Committee had commended Belarus on its use of tables in its progress reports on decision V/9c identifying which provisions of its legislation addressed each recommendation in that decision.¹ The Committee encourages Belarus to provide a similar table in its second progress report explaining how each recommendation in paragraph 3 (a)-(e) of decision VI/8c has by that date been implemented in its legal framework.

23. In its letter of 2 April 2018, Belarus asks the Committee and other international experts to assist it to implement the recommendations of decision VI/8c. The Committee explains that the present progress review is intended as a tool to that end. Moreover, at its sixty-third meeting (Geneva, 11-15 March 2019), the Committee will hold an open session on decision VI/8c in which Belarus, communicants and observers will have the opportunity to discuss the implementation of decision VI/8c with the Committee. During the session, Belarus will have the opportunity, if it so wishes, to seek advice from the Committee on how it may best implement the recommendations in the decision.

Scope of the present progress review

24. The Committee has taken note of the additional information submitted by the communicant of communication ACCC/C/2014/102 on 14 February 2019 and any information or updates provided by the parties or observers in the future. However, since this information was received shortly before the finalization and adoption of the present progress review, Belarus has not yet had an opportunity to comment on that information. Accordingly, the Committee will consider this information in the course of its second progress review, along with any comments thereon submitted by Belarus.

Paragraph 3 of decision VI/8c

25. In its information of 2 April 2018, Belarus refers to the preparation of a national action plan to implement decision VI/8c.² Belarus has not provided the Committee with the text of the national action plan. Nor from the information provided is it clear at what stage of preparation the national action plan is presently.

26. In its comments on Belarus' first progress report, the communicant of communication ACCC/C/2014/102 states that the national action plan has not yet been adopted. It informs the Committee that the text of the draft national action plan has not been made available to the public and there has been no possibility to date for the public to comment.³

27. The Committee urges Belarus to promptly make its draft national action plan publicly available on the website of the Ministry of Nature Protection and to provide members of the public opportunities to comment thereon. Once the public's comments have been received and taken into account, the Committee invites Belarus to provide the text of the national action plan, whether then in draft or final form, together with its second progress report due on 1 October 2019.

28. In its information of 2 April 2018, Belarus refers to several pieces of legislation which it had adopted in 2016 and 2017.⁴ The Committee points out that it already examined these legislative developments in the context of its review of decision V/9c during the last

¹ ECE/MP.PP/2017/35, para. 21.

² Statement on measures taken to implement decision VI/8c from the Party concerned, 2 April 2018 (dated 30 March 2018), p. 2.

³ Comments on the Party's first progress report from the communicant of communication ACCC/C/2014/102, 1 November 2018, p. 3.

⁴ Statement on measures taken to implement decision VI/8c from the Party concerned, 2 April 2018 (dated 30 March 2018), p. 2.

intersessional period and concluded that Belarus had not yet fulfilled the requirements of that decision.⁵

29. Also in its information of 2 April 2018, Belarus reports that, in order to increase the institutional capacity of governmental bodies on conducting public discussions of environmental significant decisions and environmental assessment reports, the State Education Institution “Republic Centre for State Ecological Expertise and Advanced Training of Executives and Specialists” planned to carry out a number of training activities in 2018. It reports that the first such workshop was held in February 2018 for representatives of the Minsk City Executive Committee and regional executive committees.⁶

30. The Committee welcomes Belarus’ commitment to training governmental officials on conducting public discussions on environmentally significant decisions. However, if Belarus wishes the Committee to review these trainings in the light of paragraphs 3(a)-(e) of decision VI/8c, it will need to provide the Committee with detailed information on how these trainings will help to fulfil the recommendations in those paragraphs. Such information should include: (a) the specific content of the trainings, including the detailed programme with the titles of the presentations delivered; (b) the organizers of the trainings and professions and relevant experience of trainers and speakers; (c) the number of officials that have attended the trainings, the institution and position of each participant together with the town or region in which each is based.

31. In its information of 2 April 2018, Belarus reports on the initial steps taken, with the assistance of OSCE and the Italian Government, to commence the preparation of a “road map” for the creation of a publicly accessible web portal for environmental information as a practical arrangement to facilitate public participation.⁷ While the Committee welcomes this initiative as a potential tool to promote the implementation of public participation under the Convention more generally, it is not clear how it will fulfil the specific requirements of paragraph 3(a)-(e) of decision VI/8c.

32. In its progress report provided on 2 October 2018, Belarus reports that a draft resolution to amend Resolution No. 687 of the Council of Ministers dated 1 June 2011 has been prepared by the Ministry of Architecture and Construction.⁸ One aspect of the draft resolution is the preparation of a new version of the Regulations on the Conduct of Public Discussions in the field of Architectural, Urban Development and Construction Activities, aiming to improve the procedure for conducting public discussions in these areas, taking into account law enforcement practices and the requirements of the Convention.⁹ Belarus reported that the public, including the communicant of communication ACCC/C/2014/102, had had opportunities to comment on the draft resolution during its preparation. It reported that the draft was passing through its final stages of approval and by mid-October 2018 should be forwarded to the Council of Ministers for adoption.¹⁰

33. In its progress report of 2 October 2018, Belarus also reports that its relevant ministries and authorities are currently working to improve the procedure for conducting state reviews relating to the construction of installations and a number of amendments will be made to its legislation.¹¹

34. While welcoming the information provided on the draft resolution to amend Resolution No. 687, the Committee regrets that Belarus has not provided it with the text of the draft resolution, nor has Belarus explained which of the recommendations in paragraphs 3(a)-(e) of decision VI/8c it considers that the draft resolution will fulfil.

⁵ ECE/MP.PP/2017/35.

⁶ Statement on measures taken to implement decision VI/8c from the Party concerned, 2 April 2018 (dated 30 March 2018), p. 2.

⁷ Ibid., p. 3.

⁸ Party’s first progress report, 2 October 2018, p. 1.

⁹ Ibid.

¹⁰ Ibid., pp. 1-2.

¹¹ Ibid., p. 2.

35. Similarly, with regards to the reported proposed legislative amendments to improve the procedure for conducting state reviews, the Committee expresses its disappointment that Belarus has not been provided the text of the proposed amendments, nor an explanation of which of the recommendations in paragraphs 3(a)-(e) of the decision the proposed amendments would be intended to address.¹²

36. The Committee thus invites Belarus, together with its second progress report due by 1 October 2019, to provide the text of all legislative and other measures, whether by then in draft or final form, that it proposes to address paragraphs 3(a)-(e) of decision VI/8c, together with a table explaining which recommendations in paragraphs 3(a)-(e) the various legislative measures are intended to address.

37. Accordingly, while welcoming the initiatives summarized above, the Committee finds that based on the information provided Belarus has not yet fulfilled the requirements of paragraph 3 of decision VI/8c.

Paragraph 6(a) of decision VI/8c

38. The communicant of communication ACCC/C/2014/102 states that, despite the Meeting of the Parties having endorsed the Committee's findings that Mr. Ozharovskiy, Ms. Novikova, Ms. Sukhiy and Mr. Matskevich had each been subject to penalization, persecution and harassment under article 3(8) of the Convention, Belarus has to date taken no measures to address the ongoing aspects of that penalization, persecution and harassment. Thus, the ban on Mr. Ozharovskiy entering Belarus has not been lifted and the court decisions imposing administrative penalties on Ms. Novikova, Ms. Sukhiy and Mr. Matskevich have not been revised.¹³

39. The Committee considers that the fact that the entry ban on Mr. Ozharovskiy and the court decisions convicting Ms. Novikova, Ms. Sukhiy and Mr. Matskevich of administrative offences each still stand subjects those individuals to ongoing penalization, prosecution and harassment within the meaning of article 3(8) of the Convention. The Committee accordingly makes clear that, in order to demonstrate that it has fully met paragraph 6(a) of decision VI/8a, Belarus will need to show that it has taken the necessary measures to lift the entry ban on Mr. Ozharovskiy and cancel the administrative penalties against Ms. Novikova, Ms. Sukhiy and Mr. Matskevich.

40. As noted in paragraph 25 above, in its information of 2 April 2018, Belarus refers to the preparation of a national action plan to implement decision VI/8c.¹⁴ Belarus has not provided the Committee with the text of the national action plan and it is not clear from the information provided at what stage of preparation the national action plan is currently. The Committee also notes the concerns of the communicant of communication ACCC/C/2014/102 (see para. 26 above) that there have to date been no possibilities for the public to comment and its text is not available in the public domain.¹⁵

41. In light of the above, the Committee considers that Belarus has not yet fulfilled the requirements of paragraph 6(a) of decision VI/8c. It invites Belarus, together with its second progress report to provide:

(a) The text of its national action plan to implement decision VI/8c, whether by then in draft or final form;

¹² Ibid.

¹³ Comments on the Party's first progress report from the communicant of communication ACCC/C/2014/102, 1 November 2018, p. 3.

¹⁴ Statement on measures taken to implement decision VI/8c from the Party concerned, 2 April 2018 (dated 30 March 2018), p. 2.

¹⁵ Comments on the Party's first progress report from the communicant of communication ACCC/C/2014/102, 1 November 2018, p. 3.

(b) The text of any legislative, regulatory, administrative, institutional, practice or other measures it has by then taken, or proposes to take, to fulfil the requirements of paragraph 6(a) of decision VI/8c;

(c) Confirmation that it has lifted the entry ban on Mr. Ozharovskiy and cancelled the administrative offences against Ms. Novikova, Ms. Sukhiy and Mr. Matskevich.

Paragraph 6(b) of decision VI/8c

42. With regard to paragraph 6(b) of decision VI/8c, in its information of 2 April 2018, Belarus reported that, by letter of 31 July 2017, the Ministry of Natural Resources and Environmental Protection had in July 2017 submitted the Committee's recommendations concerning communication ACCC/C/2014/102 to the Ministry of Internal Affairs, the State Security Committee, the Supreme Court and the Ministry of Justice.¹⁶ By letter of 13 October 2017, the Ministry of Natural Resources and Environmental Protection submitted the text of decision VI/8c to the Ministry of Internal Affairs, the Supreme Court, the Ministry of Justice, the Ministry of Architecture and Construction, the Ministry of Foreign Affairs and to the Minsk City Executive Committee and regional committees with the aim of its implementation.¹⁷

43. The Committee notes that the communicant of communication ACCC/C/2014/102, in its comments on Belarus' first progress report, expresses its appreciation of the efforts made by the Ministry of Natural Resources and Environmental Protection to disseminate the Committee's recommendations on communication ACCC/C/2014/102 to relevant governmental authorities.¹⁸

44. The Committee welcomes Belarus' confirmation that the Committee's recommendations on communication ACCC/C/2014/102 and decision VI/8c have been disseminated to the ministries and institutions listed above. From the information provided, however, it is not clear whether the Ministry's letters of 31 July and 13 October 2017 included a request – as required in paragraph 6(b) of decision VI/8c – for the Committee's findings to be further disseminated to all relevant officials in order to raise awareness of their obligation to ensure compliance with article 3(8) of the Convention.

45. The Committee notes, moreover, that paragraph 6(b) requires that the Committee's findings and recommendations are disseminated to "senior officials in the police, security forces, judiciary and to other relevant authorities" not merely for their information, but also for their action. Accordingly, dissemination of the findings and recommendations alone, without a request for further action, would not meet the requirements of paragraph 6(b).

46. The Committee thus invites Belarus, together with its second progress report due by 1 October 2019, to provide copies of the Ministry of Natural Resources and Environmental Protection's letters of 31 July and 13 October 2017 or other correspondence to the above-listed ministries and institutions clearly requesting the Committee's findings to be disseminated to all relevant officials.

47. In the light of the above, the Committee welcomes the efforts made by the Ministry of Natural Resources and Environmental Protection to disseminate the Committee's recommendations but, based on the information provided, cannot yet find that Belarus has fulfilled the requirements of paragraph 6(b) of decision VI/8c.

Paragraph 6(c) of decision VI/8c

48. With regard to paragraph 6(c) of decision VI/8c, in its progress update of 2 April 2018, Belarus reported that as of September 2017, the Ministry of Natural Resources and

¹⁶ Statement on measures taken to implement decision VI/8c from the Party concerned, 2 April 2018 (dated 30 March 2018), p. 1.

¹⁷ Ibid.

¹⁸ Comments on the Party's first progress report from the communicant of communication ACCC/C/2014/102, 1 November 2018, p. 1.

Environmental Protection had held a series of consultations with the Ministry of Internal Affairs to discuss proposals on implementing the Committee's recommendations concerning communication ACCC/C/2014/102. It was agreed to elaborate training programmes for the employees of law enforcement agencies regarding the implementation of article 3(8) of the Convention. In its information of 2 April 2018, it reported that the Ministry of Natural Resources and Environmental Protection was currently drafting the training programmes and information materials.¹⁹

49. The communicant of communication ACCC/C/2014/102 calls for the public concerned to be involved in the discussion, development and implementation of such training programmes.²⁰

50. While welcoming the initial steps made to implement the paragraph 6(c) of decision VI/8c by elaborating training programmes and training materials for law enforcement officials, the Committee reminds Belarus that paragraph 6(c) of decision VI/8c requires such training and information programmes to be actually delivered in practice. Moreover, such trainings need to be delivered not only to law enforcement officials (police) but also to security forces and the judiciary.

51. In this regard, the Committee invites Belarus, together with its second progress report to provide detailed information on the training and information programmes for police, security forces and the judiciary it has by then carried out. Such information should include: (a) the specific content of the trainings, including the detailed programme with the titles of the presentations delivered; (b) the organizers of the trainings and professions and relevant experience of trainers and speakers; (c) the number and rank of police and security force personnel that have attended the trainings and the town or region in which each is based; and (d) the number of judges who have attended the trainings and in which court and town or region each judge sits.

52. In the light of the above, the Committee finds that Belarus has not yet fulfilled the requirements of paragraph 6(c) of decision VI/8c.

Paragraph 7 of decision VI/8c

53. In accordance with paragraph 7 of decision VI/8c, when evaluating Belarus' implementation of paragraph 6 of decision VI/8c, the Committee shall take into account any information received from members of the public or other sources about future incidents of alleged penalization, persecution or harassment contrary to article 3(8) of the Convention, together with any information provided by Belarus regarding those alleged incidents.

General allegations of penalization, persecution and harassment of members of the public opposing the proposed construction of the Brest battery plant

54. With respect to paragraph 7 of decision VI/8c, the communicant of communication ACCC/C/2014/102 submits that in 2018 a number of incidents of harassment or persecution of members of the public contrary to article 3(8) of the Convention occurred with respect to the proposed construction of a battery plant in Brest.²¹ The communicant alleges that deficiencies in the public participation carried out in the context of the EIA procedure and concerns about the plant's impacts on the environmental and human health have resulted in public opposition to the project.²²

¹⁹ Statement on measures taken to implement decision VI/8c from the Party concerned, 2 April 2018 (dated 30 March 2018), pp. 1-2.

²⁰ Comments on the Party's first progress report from the communicant of communication ACCC/C/2014/102, 1 November 2018, p. 1.

²¹ Letter providing information related to para. 7 of decision VI/8c from the communicant of communication ACCC/C/2014/102, 21 March 2018, pp. 1-3.

²² Ibid., pp. 1-2.

55. The communicant claims that residents, activists, human rights defenders, and journalists opposing the construction of the battery plant have faced administrative arrests, fines, dismissals and defamation.²³ In this regard, it claims that on 25 January 2018, social networks and forums carried news of visiting journalists who planned to report on locals' opposition to the battery plant construction. On 26 January 2018, the Prosecutor's Office posted a message on the official website of the Brest Regional Executive Committee "warning citizens of administrative responsibility under article 23.34 of the Offense Code for calling for participation in unsanctioned meetings because of 'the facts of handing out leaflets, sending messages on internet-forums and in social networks with calling for participation in meetings on January 27 2018 connected with the ecological situation in the region'".²⁴

56. The communicant claims that, as of 1 November 2018, residents had filed applications to hold 24 meetings, 12 pickets and one demonstration in 2018. However, only one such meeting had been authorized. The communicant claims that the Law on Mass Events is being used as a tool to put pressure on, and persecute, activists and local residents.²⁵ It claims that, by 1 November, more than a dozen people had been detained, prosecuted in the form of administrative arrest, and subject to massive fines in 2018 and that persecution has become systemic in nature.²⁶

57. Belarus reports that article 23.34 of the Code of Administrative Offenses sets out the penalties for violating the procedure for organizing or conducting mass events. Article 23.34, paragraph 1 provides that:

Violation of the established procedure for holding a meeting, rally, street procession, demonstration, picketing, other mass events performed by a participant in such events, as well as public calls for organizing or holding a meeting or rally, street procession, demonstration, picketing, or other mass events in violation of the established order of their organization or conducted by a participant in such events or otherwise face, if these acts do not constitute a crime, -

Entail a warning, or a fine of up to thirty basic values, or administrative arrest.²⁷

58. Article 23.34, paragraph 2 provides that the same violations, even if there is no crime committed by the organizer of such acts, are punishable by a fine of twenty to forty basic values or administrative arrest, and on a legal entity – from twenty to one hundred basic values.²⁸

59. Finally, article 23.34, paragraph 3 provides that acts under paragraph 1, if committed again within one year after imposing administrative penalties for the same violations, are punishable by a fine of twenty to fifty basic values or administrative arrest.²⁹

60. Belarus clarifies that "50 basic values" is equivalent to about €530, and that the average monthly salary is 1,115.3 Belarusian rubles³⁰ (approximately €450).

61. Belarus confirms that a warning from the Prosecutor's Office was posted on the official site of the Executive Committee of Brest on 26 January 2018.³¹ It explains that it had evidence that leaflets and advertisements were being disseminated in public places calling

²³ Comments on the Party's first progress report from the communicant of communication ACCC/C/2014/102, 1 November 2018, pp. 2-3.

²⁴ Letter providing information related to para. 7 of decision VI/8c from the communicant of communication ACCC/C/2014/102, 21 March 2018, p. 2.

²⁵ Comments on the Party's first progress report from the communicant of communication ACCC/C/2014/102, 1 November 2018, pp. 2-3.

²⁶ *Ibid.*, p. 3.

²⁷ Annex 2 to the reply to Committee's questions from the Party concerned, 31 January 2019, p. 1.

²⁸ *Ibid.*

²⁹ *Ibid.*

³⁰ Reply to Committee's questions from the Party concerned, 31 January 2019, p. 2.

³¹ Comments on the communicant's letter of 21 March 2018 from the Party concerned, 3 May 2018 (dated 27 April 2018), p. 4.

for citizens to take part in a public meeting in the Brest district on 27 January 2018, which would include the participation of representatives of mass media not accredited in Belarus.³² It claims the warning by the Prosecutor's Office was made in order to clarify provisions of the legislation stipulating responsibility for public calls for the organization and holding of meetings and other mass gathering events. It submits that, if this measure were not taken, it could have resulted in more active engagement of citizens in the participation in unauthorized events resulting in greater instances of administrative penalties.³³

62. Belarus also confirms that in 2018 the Brest City Executive Committee received thirty-five applications to hold mass events concerning the environment: twenty-four applications to hold meetings, ten applications to hold pickets, and one application for a demonstration.³⁴

63. The table provided by Belarus provided with its reply to the Committee's questions of 31 January 2019, confirms that only one application for a meeting, "Brest against lead" on 29 April 2018, was granted.³⁵ The other applications were apparently refused for a variety of reasons, such as the place indicated in the application is not a place where mass events are allowed, documents needed for permissions to hold pickets were absent, other events at the location were previously planned, and repair work meant the event could not proceed. The Committee notes that all applications in the table provided would appear to relate to meetings concerning the Brest battery factory, underscoring the high level of public concern regarding this project.³⁶

64. While the communicant's allegations in the first sentence of paragraph 55 and second sentence of paragraph 56 above are highly concerning, the Committee does not have sufficient information before it in the scope of the present progress review (see para. 24 above) to examine these allegations in detail at this point.

65. However, the Committee considers it striking that of the thirty-five requests to hold public meetings, pickets and a demonstration received by the Brest City Executive Committee during 2018, only one application to hold a public meeting was approved. Recalling Belarus' request to the Committee for advice to assist it in implementing the Convention (see para. 23 above), and noting the stated reasons for which the majority of applications were refused, the Committee invites Belarus to consider instructing its local authorities, including the Brest City Executive Committee, to: (a) establish, if they have not done already, a publicly available list of sites/premises at which meetings, pickets, and demonstrations are permitted, and (b) maintain a publicly available calendar so that applicants can know in advance of submitting their application, on which dates each site/premises will be available.

The detention and fining of Mr. Kabanov and Mr. Petrukhin for violations of the Law on Mass Gathering Events

66. The communicant alleges that two activists, Mr. Kabanov and Mr. Petrukhin, were detained and fined for violating the Law on Mass Events for posting on the Internet their intention to protest at the Brest city square concerning alleged shortcomings in the public participation on the decision-making for the Brest battery plant.³⁷

67. Specifically, the communicant alleges that Mr. Kabanov and Mr. Petrukhin had posted messages on their Facebook pages saying that, unless the construction was halted for a new

³² Ibid.

³³ Ibid., pp. 4-5.

³⁴ Reply to Committee's questions from the Party concerned, 31 January 2019, p. 2.

³⁵ Annex 5 to the reply to Committee's questions from the Party concerned, 31 January 2019.

³⁶ Ibid.

³⁷ Letter providing information related to para. 7 of decision VI/8c from the communicant of communication ACCC/C/2014/102, 21 March 2018, pp. 2-3.

public hearing on the EIA on the battery plant, they would go to the city square for a peaceful single picket against its construction.³⁸

68. On 21 and 22 February 2018, respectively, Mr. Kabanov and Mr. Petrukhin were allegedly issued an official warning for violating the Law on Mass Events.³⁹ On 23 February 2018, Mr. Kabanov and Mr. Petrukhin were arrested by plainclothes policeman and placed in a detention facility.⁴⁰ While in detention, the voice recorder and memory card of the activists were allegedly damaged, and the address book removed from their mobile phone.⁴¹ The communicant claims that the activists were taken from detention at 12:00 on 26 February 2018 but brought to the Leninski District Court of Brest only at 15:15 that day and that, in between these times the activists were held in an unheated van for arrested persons and the temperature outside was minus 25 degrees.⁴² The court fined the activists approximately €500.⁴³

69. Belarus states that the reason for Mr. Kabanov and Mr. Petrukhin's detention was the commission of an administrative offense under part 3 of article 23.34 of the Code of Administrative Offenses.⁴⁴ Belarus submits that, had the two activists respected and fulfilled the Law on Mass Events, it would not have resulted in administrative sanctions under article 23.34 of the Code of Administrative Offenses.⁴⁵ Belarus states that the two activists did not apply for permission yet announced on the internet on 17 February 2018, their intention to protest against the battery plant at 12:00 on 25 February 2018 at the Lenin Square in Brest.⁴⁶ Belarus confirms the official warning to Mr. Petrukhin on 22 February 2018, stating that it was "to prevent violation of the legislation on mass gathering events...as well as preparation to hold illegal picketing."⁴⁷ Belarus is silent as to the warning to Mr. Kabanov.

70. As regards the period of detention of Mr. Kabanov and Mr. Petrukhin, Belarus states that they were held in a temporary detention centre from 15:40 on 23 February 2018 until 12:15 on 26 February 2018.⁴⁸ It explains that, if an individual is charged with committing an administrative offense which is punishable by administrative arrest, in accordance with article 8(4) of the Procedural Executive of the Code of Administrative Offenses of the Republic of Belarus, the individual may be detained for a period exceeding three hours, but not more than seventy-two hours.⁴⁹

71. Belarus states that, based on the information provided by its Ministry of Internal Affairs, the conditions of detention of these individuals complied with the rules as established through the Resolution No. 996 of the Council of Ministers of the Republic of Belarus of 21 November 2013.⁵⁰ It states that it has no record of the taking of a recorder, a memory-card and cell phones from the activists.⁵¹

72. Belarus does not answer the Committee's question⁵² as to whether Mr. Kabanov and Mr. Petrukhin were left for three hours in an unheated police van and if so, why other arrangements were not made, such as permitting them to wait in the courthouse.

³⁸ Ibid., p. 2.

³⁹ Ibid.

⁴⁰ Ibid., p. 3.

⁴¹ Ibid.

⁴² Ibid.

⁴³ Ibid.

⁴⁴ Reply to Committee's questions from the Party concerned, 31 January 2019, p. 2.

⁴⁵ Comments on the communicant's letter of 21 March 2018 from the Party concerned, 3 May 2018 (dated 27 April 2018), p. 4.

⁴⁶ Ibid., p. 2.

⁴⁷ Ibid., p. 3.

⁴⁸ Ibid.

⁴⁹ Ibid.

⁵⁰ Ibid.

⁵¹ Comments on the communicant's letter of 21 March 2018 from the Party concerned, 3 May 2018 (dated 27 April 2018), p. 3.

⁵² Questions from the Committee to the Party concerned, 7 January 2019.

73. Belarus confirms that on 28 February 2018, the Leninsky district court of Brest fined Mr. Kabanov and Mr. Petrukhin 50 basic values (approximately €530) pursuant to paragraph 3 of article 23.34 of the Code of Administrative Offenses (see paras. 58-60 above).⁵³

74. The Committee welcomes the information provided by both the communicant of communication ACCC/C/2014/102 and Belarus in accordance with paragraph 7 of decision VI/8c. Having examined the information provided, the Committee considers that it supports its finding in paragraph 52 above that Belarus has not yet taken sufficient measures to fully implement paragraph 6 of decision VI/8c, as explained below.

75. Firstly, the communicant of communication ACCC/C/2014/102 submits, and Belarus does not dispute, that Mr. Kabanov and Mr. Petrukhin sought to protest against the alleged failures in the public participation in the decision-making on the Brest battery plant and its potential impact on public health and the environment. The Committee considers that Mr. Kabanov and Mr. Petrukhin were accordingly seeking to exercise their rights under the Convention.

76. Secondly, Belarus does not dispute that Mr. Kabanov and Mr. Petrukhin were detained for three days and subjected to a fine of approximately €530. While the Committee is not in a position to establish whether all events occurred as alleged by the communicant, such as the alleged phone tampering and three-hour detention in an unheated police van, the central events are not in dispute, namely that Mr. Kabanov and Mr. Petrukhin were detained following the announcement of their intention to picket against the Brest battery plant and released three days later, after the date for the planned picket had passed, and each ordered to pay a fine of €530.

77. Thirdly, while legislation requiring a prior application to be made to hold a mass event with the possibility of a detention and/or fine for violating the required procedure may, under some circumstances, serve a legitimate purpose to protect public order, when used to prevent members of the public from exercising their rights in conformity with the Convention such detentions and fines may amount to persecution, penalization and harassment within the meaning of article 3(8) of the Convention. In the present case, Belarus states that Mr. Kabanov and Mr. Petrukhin were detained for having violated the Law on Mass Events by posting on the internet their intention to individually picket on 25 February 2018. However, Belarus has not explained how a protest by two persons would constitute a “mass gathering” within the meaning of article 5 of the Law on Mass Events. Nor was this explained in the relevant court verdicts.⁵⁴ In other words, Belarus has not provided evidence that it had a legitimate basis to find that these individuals were in fact engaging in an activity prohibited by the Law on Mass Events that would justify even a warning, let alone their detention and the fines imposed upon them.

78. Accordingly, Belarus has failed to show that the detention and fining of Mr. Kabanov and Mr. Petrukhin was either entirely unrelated to their attempt to exercise their rights in conformity with the Convention or otherwise served a legitimate purpose. In this regard, the Committee notes that these individuals were not only detained for three days, which prevented their picketing, but also subjected to a fine, whereas article 23.34 of the Code of Administrative Offenses would appear to foresee either administrative arrest, or a fine, but not both (see paras. 57-59 above).⁵⁵ Moreover, the size of the fine would seem disproportionate, being more than the average monthly income in Belarus.

79. Finally, there is no evidence that Belarus has taken any measures to address the above-described harassment, penalization, and persecution.

80. Since the Committee has examined the above events in the context of paragraph 7 of decision VI/8c, it makes no findings regarding a violation of article 3(8) in connection to the above events, the Committee considers that they underline its finding in paragraph 52 above

⁵³ Comments on the communicant’s letter of 21 March 2018 from the Party concerned, 3 May 2018 (dated 27 April 2018), p. 3, and annex 1 to the reply to the Committee’s questions from the Party concerned, 31 January 2019.

⁵⁴ Annex 1 to the reply to the Committee’s questions from the Party concerned, 31 January 2019.

⁵⁵ Annex 3 to the reply to the Committee’s questions from the Party concerned, 31 January 2019.

that Belarus has not yet taken sufficient measures under paragraph 6 of decision VI/8c to ensure that members of the public are not harassed, penalized, and persecuted for exercising their rights in conformity with the Convention.

Charges against Mr. Kabanov and Mr. Petrukhin for violations of the Mass Media Act

81. The communicant of communication ACCC/C/2014/102 further alleges that, in a separate incident, Mr. Kabanov and Mr. Petrukhin were ordered by a court to pay a fine of approximately €400 under the Mass Media Act for illegally creating and distributing materials concerning the Brest battery plant on their Facebook pages and YouTube channels.⁵⁶

82. Belarus reports that on 11 April 2018 the Brest Regional Court cancelled the decision of the Pinsk city and district court of 12 March 2018 imposing the above fine and dismissed the case. It held that posting a video for an indefinite circle of people on YouTube fell outside the scope of the Mass Media Act and accordingly was not an administrative offence.⁵⁷

83. The Committee accordingly welcomes the decision of the Brest Regional Court with respect to both the cancellation of the fines against Mr. Kabanov and Mr. Petrukhin and its ruling that posting a video on YouTube is not an offence under the Mass Media Act. The Committee does, however, express its concern that such charges were brought in the first place and reminds Belarus that the imposition of such fines against persons seeking to exercise their rights under the Convention may contravene article 3(8) of the Convention.

Information from other sources

84. With respect to its review of the implementation of decision VI/8c, at its 61st meeting (Geneva, 5-9 July 2018), the Committee, recalling paragraph 25(a) of the annex to decision I/7, requested the secretariat to collate relevant information from the reports of pertinent United Nations bodies, including the United Nations Special Rapporteur on the situation of human rights in Belarus, to provide context to assist the Committee in its review of paragraph 6 of decision VI/8c.⁵⁸ In this context, the Committee takes note of the Report of the Special Rapporteur on the situation of human rights in Belarus⁵⁹ submitted to the 35th session of the Human Rights Council (Geneva, 6-23 June 2017). The Committee also takes note of the joint opinion on the Law on Mass Events by the European Commission for Democracy Through Law and OSCE Office for Democratic Institutions and Human Rights, which found that the regulation of freedom of assembly in Belarus raises a number of serious concerns regarding its compliance with relevant international standards, in particular the fundamental rights to freedom of assembly and freedom of expression.⁶⁰

Final remarks on paragraph 7 of decision VI/8c

85. Having taking into account the above matters, the Committee considers that they support its conclusion in paragraph 52 above that Belarus has not yet taken sufficient measures under paragraph 6 of decision VI/8c to ensure that members of the public are not harassed, penalized, and persecuted for exercising their rights in conformity with the Convention.

IV. Conclusions

86. While welcoming the information provided on the initial steps taken in that direction, the Committee finds that Belarus has not yet met the requirements of paragraph 3 (a)-(e) or paragraph 6 (a)-(c) of decision VI/8c.

⁵⁶ Letter providing information related to para. 7 of decision VI/8c from the communicant of communication ACCC/C/2014/102, 21 March 2018, p. 3.

⁵⁷ Annex 4 to the reply to Committee's questions from the Party concerned, 31 January 2019, pp. 2-3.

⁵⁸ ECE/MP.PP/C.1/2018/4, para. 59 (forthcoming).

⁵⁹ A/HRC/35/40, pp. 9-12, available at http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/35/40.

⁶⁰ Joint opinion on the Law on Mass Events of the Republic of Belarus, Strasbourg, Warsaw, 20 March 2012, Opinion 655/2011, ODIHR Opinion-Nr. : FOA-BEL/201/2012.

87. Recalling Belarus' request for advisory assistance (see para. 23 above), the Committee encourages Belarus to actively take part in the open session on decision VI/8c to be held during its sixty-third meeting (Geneva, 11-15 March 2019).

88. The Committee invites Belarus to involve the public, including the communicant of communication ACCC/C/2014/102:

(a) During the preparation of its national action plan to implement decision VI/8c;

(b) During the preparation of any legislative, regulatory and administrative measures and practical arrangements intended to implement the requirements of paragraph 3(a)-(e) of decision VI/8c;

(c) During the preparation of any legislative, regulatory, administrative, institutional, practical or other measures intended to implement the requirements of paragraph 6(a) of decision VI/8c;

(d) In the development and implementation of the trainings and information programmes aimed at the implementation of the requirements of paragraph 6(c) of decision VI/8c.

89. The Committee, moreover, reminds Belarus of its obligation to submit by 1 October 2019 a comprehensive second progress report with clear and detailed information on the measures taken and the results achieved in the implementation of each of the recommendations in paragraphs 3(a)-(e) and 6(a)-(c) of decision VI/8c.

90. The Committee invites Belarus, together with its second progress report due on 1 October 2019, to:

(a) Provide the text of its national action plan to implement decision VI/8c, whether then in draft or final form, as well as an approximate timeline for its implementation;

(b) Provide the text of any legislative, regulatory, administrative measures intended to address paragraphs 3(a)-(e) of decision VI/8c, whether by then in draft or final form, as well as an approximate timeline for the adoption of any of the proposed measures still then in draft form.

(c) Provide a table clearly explaining which of the recommendation in paragraphs 3(a)-(e) each of the above measures is intended to address;

(d) With respect to paragraph 6(a) of decision VI/8c, to provide:

(i) The text of any legislative, regulatory, administrative, institutional, practice or other measures it has by then taken, or proposes to take, to fulfil the requirements of paragraph 6(a) of decision VI/8c;

(ii) Confirmation that it has lifted the entry ban on Mr. Ozharovskiy and cancelled the administrative offences against Ms. Novikova, Ms. Sukhiy and Mr. Matskevich.

(e) As regards to paragraph 6(b) of decision VI/8c, to provide copies of the Ministry of Natural Resources and Environmental Protection's letters of 31 July and 13 October 2017 to the Ministry of Internal Affairs, the State Security Committee, the Supreme Court and the Ministry of Justice or other correspondence requesting those institutions to disseminate the Committee's findings to all relevant officials;

(f) With respect to paragraph 6(c) of decision VI/8c, to provide detailed information on the training and information programmes for police, security forces and the judiciary it has by then carried out. Such information should include: (i) the specific content of the trainings, including the detailed programme with the titles of the presentations delivered; (ii) the organizers of the trainings and professions and relevant experience of trainers and speakers; (iii) the number and rank of police and security force personnel that have attended the trainings and the town or region in which each is based; and (iv) the number of judges who have attended the trainings and in which court and town or region each judge sits.