



Ecohome NGO

The situation with the realization of the right to a healthy and satisfactory environment in the Republic of Belarus

Submission to the UN Human Rights Council for the 36th Session of the Universal Periodic Review by Ecohome NGO

October, 2019

Introduction

Ecohome NGO is one of the oldest non-profit environmental organizations in Belarus founded in 1996 to promote an environment friendly way of life and ideas of sustainable development. Our activities cover various fields from education on environmental issues to protecting the environmental rights of citizens. It is important for us that each person exercises his right to a favorable environment has the tools to participate in the adoption of environmentally significant decisions, receives relevant environmental information and has the opportunity to protect his rights.

Since 1999 the Republic of Belarus has been a Party to the Aarhus Convention¹ and implementation of its provisions also became one of the main activities of Ecohome.

The realization of the right to a healthy environment in Belarus was not sufficiently covered in the previous UPR cycle and therefore was not reflected in the recommendations, so our report will present the main issues in four thematic clusters:

- access to environmental information
- public participation in decision-making on activities with a potentially significant environmental impact
- access to justice
- persecution of environmental activists

In each of these thematic cluster recommendations are given to improve the situation with the implementation of relevant provisions of law. The report also contains links to analytical materials, reviews of case law, drafted by our experts.

General information

In recent years we can find improvement of environmental legislation taking into account both the recommendations of the Aarhus Convention Compliance Committee and the analysis of national case law. At the same time, the practice itself leaves much to be desired - often state bodies treat public

¹ The UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus, June 25, 1998), approved by Decree of the President of the Republic of Belarus of December 14, 1999 No. 726 "On Approving the Convention on Access to Information, Public Participation in Decision-making and Access to Justice on Environmental Matters" , entered into force on October 30, 2001, hereinafter referred to as the Aarhus Convention).

participation formally and scornfully and when making decisions they do not take into account the public opinion when implementing a particular economic activity.

Unfortunately, the implementation of the Aarhus Convention in Belarus is limited only to the competence of the Ministry of Natural Resources and Environmental Protection and NGOs, while other state bodies do not consider as their duty the implementation of the provisions of the Convention, especially regarding interaction with the public to discuss environmental decision making.

The environmental policy in Belarus itself is not changing for the better, which is confirmed by the facts of a growing number of conflicts regarding environmental decision making and non-compliance of Belarus with UNECE environmental conventions², as well as decisions of treaty bodies, e.g. the Committee for Compliance with the Aarhus Convention and Meetings of the Parties to the Aarhus Convention³.

There is no proper and effective mechanism for public participation in decision-making with a potentially significant environmental impact in Belarus. Conflict resolution still remains at a rather low level; the parties, as a rule, are reluctant to compromise.

Inter alia cases on persecution of environmental activists in Belarus in connection with the exercise of their environmental rights cannot but cause our concern.

1. Access to environmental information

1.1. Despite the clearly specified procedure for providing environmental information governmental authorities provides it to the public incompletely, e.g. instead of sending, upon request, a copy of the protocol of public hearings, government authorities send a response that summarize the contents of the requested protocol. Moreover, the deadline for the provision of information is systematically violated: instead of 10 days under special legislation, an application is considered from 15 days to 1 month⁴.

1.2. Government authorities often refuse to provide environmental information based on unreasonable grounds. Environmental information, as well as documentation for conducting a public environmental review, are classified by government authorities to information “for official use only” or to commercial secrets. Information holder does not recognize the requested information as environmental, despite the fact that in accordance with the law the public has no obligation to explain the reasons for being interested in receiving environmental information.

1.3. There are cases of non-fulfillment by local executive authorities of requirements for the dissemination of environmental information, namely: untimely publication of an environmental

2 Decision IS/1d on compliance by Belarus with its obligations under the Espoo Convention in respect of the Belarusian nuclear power plant in Ostrovets, 2019. URL: https://www.unece.org/fileadmin/DAM/env/eia/meetings/2019/IS_MOP_5-7_February_2019_Geneva/Decision_IS.1d_.pdf

3 Review of the practice of the Aarhus Convention implementation in Belarus, NGO Ecohome, Green network, 2017. URL: http://www.unece.org/fileadmin/DAM/env/pp/mop6/NIR_2017/NGO_Reports/BY_Aarhus_2017_EN_rev_sm.pdf

4 Review of the practice of public access to environmental information, NGO Ecohome, 2018. URL: http://ecohome-ngo.by/wp-content/uploads/2018/10/Dostup-k-ekoinformatsii_obzor_Ekodom.2018.pdf

impact assessment report, notifications of public hearings and the possibility of public participation in the environmentally significant decisions-making, as well as drafting of regulatory legal acts, or incompleteness of such information. Therefore the public often does not have the opportunity to participate in public hearings and sometimes does not even know about them⁵.

Recommendations:

- to undertake all necessary measures aimed at ensuring unhindered access of the public to environmental information, e.g. educational activities for government servants and, if necessary, drafting practical guidelines on how to provide environmental information and its differences from other types of information;
- to ensure timely and complete dissemination of environmental information;
- to undertake measures to increase the general level of legal literacy of the citizens in the field of environmental rights;
- to undertake the necessary steps for Belarus to accede to the Protocol on Pollutant Release and Transfer Registers of Aarhus Convention.

2. Public participation in decision-making on activities with a potentially significant environmental impact

2.1. There is no possibility of early public participation in the environmental decision-making procedure “when all options are open and effective public participation can take place” (cited from the Aarhus Convention). Public discussion is held much later, when significant financial resources have already been invested in the project, a number of approvals have been passed and sometimes an investment agreement has already been concluded. As a result, public participation is become simply informing procedure about a pre-selected single option for project implementation.

2.2. Government authorities relate to public participation when making decisions only formally. They do not take into account the public opinion in the implementation of a business activity which subsequently leads to conflicts. The widespread practice is — when one version of the document is submitted for public discussion and another, that is significantly different from the first one, is subsequently approved and transferred to the state examination.

2.3. When organizing a particular activity, implementing a project, legislation does not always clearly indicate which document is the final decision which authorize the activity. In addition, often even the final decisions are not available to the public after they are approved, even those in the process of discussion of which the public representatives took part. Final decisions based on public discussions in the field of architectural and urban planning is marked with “for official use only” and become inaccessible to the public. Thus, the public does not have the opportunity to find out which comments and suggestions were taken into account, as well as what kind of final decision was made after public discussions.

2.4. It is possible to make significant changes to the decision in the future (by government authorities) already without public participation.

⁵ “From access to information to full participation”. The results of the study of informing citizens by local executive and administrative bodies through the site about general discussions. 2014. URL: http://ecohome-ngo.by/wp-content/uploads/2019/01/ot_dostupa_k_informacii_k_polnocennomu_uchastiyu_2014.pdf

Recommendations:

- to provide the public with the opportunity to participate in the environmental decision-making procedure at an early stage when all options are open and effective public participation can take place;
- to strengthen control over the observance by the organizers of public discussions of the procedure of discussions, including expanding public participation in the implementation of such control;
- to determine in the legislation the legal consequences of a violation of the right of the public to participate in the environmental decision-making procedure;
- to provide in the legislation the procedure for making the final decision authorizing this or that activity and establish the body responsible for such a procedure;
- to take the necessary steps for Belarus to join the Protocol on Strategic Environmental Assessment (SEA) of the UNECE Espoo (EIA) Convention.

3. Access to justice

3.1. Despite the existing legal options for protecting the environmental rights of the public, an analysis of case law⁶ reveals the existence of serious problems. For the period 2011-present, in more than 50% of cases the public is denied access to justice — the courts either do not admit cases, referring to the lack of jurisdiction (in this case, the legislation does not have an established procedure for resolving this kind of dispute and the court in its ruling does not indicate where to go) or stop the proceedings on already open cases. In some cases, courts of general jurisdiction refuse to consider disputes involving NGOs and government agencies or legal entities citing the fact that such cases should be considered by the economic court, despite the fact that the dispute is not economic.

Recommendations:

- to summarize at the level of the Plenum of the Supreme Court case law on public environmental rights protection and to explain to the courts the issues of jurisdiction of such disputes;
- to conduct thematic seminars with the judiciary (judges).

4. Persecution of environmental activists

4.1. Belarus continues harassment of environmental activists who exercise their rights under the Aarhus Convention. Harassment is expressed in the form of detentions, arrests, a prohibition of entry into the country, searches and the seizure of information materials.

4.2. Previously (2012-2013), anti-nuclear activists were most often persecuted, over the past few years — also activists who exercise their rights regarding objects in the regions (e.g., the construction of lead battery factory near Brest, river pollution in the Lida district, etc.)⁷.

⁶ Review of the case law on judicial protection of environmental rights of citizens in Belarus, NGO Ecohome, 2015, URL:

http://ecohome-ngo.by/wp-content/uploads/2019/01/court_review_web_02.2015.pdf

⁷ Decision VI/8c on Compliance by Belarus with its obligations under the Aarhus Convention establishing the facts of the persecution of anti-nuclear activists for their activities, 2017. URL: http://www.unece.org/fileadmin/DAM/env/pp/compliance/MoP6decisions/Compliance_by_Belarus_VI-8c.pdf

Information on other facts of the persecution of environmental activists in Belarus. URL:

4.3. Despite the fact that Belarus, as a Party of the Aarhus Convention, has declared compliance with the rights of environmental activists, it has not yet taken sufficient and necessary measures to implement the recommendations of the Aarhus Convention Compliance Committee and practical measures have not been taken with respect to activists whose rights have already been violated (for example, 10-year entry ban to Belarus for Russian scientist A. Ozharovsky has not been canceled).

Recommendations:

- to undertake necessary legislative and other measures to ensure that people when exercising their rights under the convention will not be punished, harassed in connection with their participation in relevant activities;
- to bring legislation governing the conduct of public events and establishing liability for its violation in accordance with international standards on freedom of assembly;
- to undertake practical and individual measures to restore the rights of environmental activists violated by state bodies.

<http://www.unece.org/environmental-policy/conventions/public-participation/aarhus-convention/tfwg/envppcc/implementation-of-decisions-of-the-meeting-of-the-parties-on-compliance-by-individual-parties/sixth-meeting-of-the-parties-2017/decision-vi8c-concerning-belarus.html>