



ECOHOME

# **BELARUS AND THE AARHUS CONVENTION: FROM ACCEDING TO WITHDRAWING**

2024

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Ecohome is an environmental non-governmental organisation with a 28-year history. It was founded in 1996. Our organisational values are based on the principles of sustainable development, democracy, human rights and gender equality.

Environmental justice is the focus of our work. It is crucial for us to ensure that all individuals are aware of their right to a favourable environment, have the resources to engage in environmental decision-making, and have access to the latest environmental data.

On 31 August 2021, the Supreme Court of Belarus dissolved the Ecohome NGO.

At the October 2021 Meeting of the Parties to the Aarhus Convention, the liquidation of the organisation was identified as a form of persecution of environmental activists and NGOs. In addition, the restoration of the Ecohome's legal status was demanded.

As the decision on liquidation remains in force since 1 February 2022, Belarus has been subject to the most severe sanction within the Aarhus Convention, namely the deprivation of rights and privileges. For example, state representatives have lost the opportunity to be elected to the bodies of the Convention or host the Meeting of the Parties. The Belarusian authorities have decided to withdraw from the Aarhus Convention due to their disagreement with the application of these measures.

In 2022, NGO Ecohome was designated by the State Security Committee of Belarus (KGB) as an extremist formation, and its website and social media accounts were declared extremist materials. Despite these challenges, the organisation has continued its work.

#### **Our focus areas include:**

- Protecting environmental rights
- Monitoring and analysis of the situation of environmental activists and NGOs in Belarus
- Anti-nuclear campaign and renewable energy
- UWEC Work Group: Working group on the environmental impact of the war in Ukraine
- Developing a “green” vision for the future of Belarus
- Establishing “green” communities
- Environmental education and awareness-raising campaigns
- Contemporary art for the environment

# INTRODUCTION

“The Aarhus Convention is the most ambitious venture in environmental democracy undertaken under the auspices of the United Nations”.

*UN Secretary-General Kofi Annan*

**The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention)**<sup>1</sup> is a unique document of international law as an international legal guarantee of human rights in environmental protection. The Convention recognises broad public participation rights in environmental decision-making, going beyond the traditional interaction between states and international organisations in international conventions. The treaty places greater emphasis on the active involvement of citizens in environmental policy, rather than focusing on the technical aspects of nature protection. This approach contributes to the development of ecological democracy. The accession of Belarus to the Convention was occurred on the background of political crisis and a way to declare country’s commitment to democratic values and intention to strengthen international cooperation an environment was chosen as the less controversial area of cooperation. This accession was intended to help Belarus integrate into the international community and promote domestic political and social reforms.

## 1. History of the Aarhus Convention

### 1.1. Environment for Europe process

The late 1980s and early 1990s saw significant global geopolitical shifts in the Eurasian region, alongside the emergence of democratic processes across all areas of society. The future of the environment and the need to coordinate action to protect it were also on the agenda. On 21-23 June 1991, the presidents of Czechoslovakia and Switzerland, ministers responsible for the environment from most European countries (as well as Japan, USA, Brazil and Turkey) and representatives of many international organisations gathered at Dobříš Castle in the Czech Republic, thus launching the ministerial process “Environment for Europe”. This is a distinctive collaboration of participating states in the UN Economic Commission for Europe,<sup>2</sup> along with UN institutions, other international organisations, NGOs, businesses and other stakeholders. One of the key objectives of the Environment for Europe initiative is to foster collaboration and partnerships between EECCA<sup>3</sup> countries and other UNECE member states.

To date, nine ministerial conferences have been held, during which important documents have been adopted, including conventions, protocols, guidelines and declarations. The Republic of Belarus has participated in all Ministerial Conferences (the first one as the Belarusian SSR), except for the ninth one, which was held in Nicosia (Republic of Cyprus) on 5-7 October 2022. The host government decided to exclude representatives of the authorities of Belarus and Russia from this conference. The government considered the presence of official representatives of the states responsible for unleashing and supporting the war in Ukraine to be unacceptable.

<sup>1</sup> Text of the Aarhus Convention: <https://unece.org/DAM/env/pp/documents/cep43e.pdf>

<sup>2</sup> The United Nations Economic Commission for Europe (UNECE) is one of five regional commissions of the United Nations. The United Nations Economic and Social Council (ECOSOC) established the organisation in 1947 intending to promote economic activities and strengthen economic ties within the UNECE region and between the region and the rest of the world. It includes 56 states: almost all the countries of Europe and Central Asia, as well as Turkey, Canada, the United States and Israel. Belarus has been a member of the UNECE since 1947.

<sup>3</sup> Eastern Europe, Caucasus and Central Asia.

At the third conference in Sofia (23-25 October 1995), ministers endorsed the [Pan-European Biological and Landscape Diversity Strategy](#), guidelines on access to environmental information and public participation in decision-making, and access to justice in environmental matters. The working group established for this purpose was tasked with submitting a draft convention for signature at the next ministerial conference in June 1998 in Aarhus, Denmark.

## 1.2. Public participation in drafting the Convention text

Almost 40 of the 55 ECE member states were actively involved in the negotiation of the draft convention. Countries such as the United States and Canada were not included in this group. The Commission of the European Economic Community (EEC) not only harmonised and coordinated the positions of the EEC states but also facilitated the possibility of including the Commission itself and other Community institutions into the scope of the subjects of the convention on equal terms with the member states.

It is worth noting that the participation of environmental NGOs in the negotiations on the text of the Convention was unprecedented in the history of international environmental law. NGOs have been involved in the preparation of the Convention since the establishment of an informal group of 8 people (representatives of Germany, Norway, Poland, Russia and the Coalition of NGOs and INGOs)<sup>4</sup>. The group prepared a preliminary draft convention as a basis for starting negotiations. The Coalition delegation, comprising four representatives (two from Western Europe, one each from Central and Eastern Europe), was fully involved in the negotiations, except for the right to vote. The Coalition was highly engaged in plenary sessions and numerous working groups, presenting a multitude of proposals. A significant number of these proposals were incorporated into the final text of the convention, and the positive influence of NGO representatives on the drafting process is widely acknowledged.

The Pan-European NGO Coalition was established in advance of the Second Ministerial Conference on the Environment for Europe (April 1993, Lucerne, Switzerland) to facilitate the participation of non-governmental organisations in the conference. Over time, the European EcoForum evolved from an *ad hoc* coalition of environmental civil society organisations and other NGOs active in the UNECE region (over 200) into a leading entity in the field of environmental policy. The Forum is still actively involved in the Environment for Europe ministerial process and participates in many international events, and meetings of convention bodies, including the Aarhus and Espoo Conventions.

## 1.3. Adoption of the Aarhus Convention

The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters was signed on 25 June 1998 in Aarhus, Denmark, during the 4th Environment for Europe Ministerial Conference and is now known as the Aarhus Convention. The objective of the convention is to clarify and make binding the provisions of the political declarations contained in the Guidelines on Access to Environmental Information and Public Participation in Environmental Decision-Making, which were adopted by the Ministers at the 3rd Sofia Conference in 1995.

The Convention, adopted under the auspices of the UN Economic Commission for Europe, was signed in Aarhus by 35 countries, including the EU<sup>5</sup>, while four of the participating States (Hungary, Belarus, Malta and Germany) that did not do so in Aarhus signed the Convention before the deadline of 21 December 1998.

<sup>4</sup> International Union for Conservation of Nature (<https://www.iucn.org/>) and the Regional Environmental Centre for Central and Eastern Europe (operated from 1990 to 2019 in Szentendre, Hungary).

<sup>5</sup> At that time it exists in the form of the European Economic Community.

The decision of Germany, Russia and Turkey not to sign the convention was met with disapproval, given their active role during the negotiations. This necessitated the search for compromise solutions. Non-governmental environmental organisations have been particularly critical of this, accusing these countries of significantly diluting the provisions of the convention, including formulating some provisions in the form of recommendations rather than binding legal norms. In the case of Germany, this criticism had an impact. The new federal government, established following the adoption of the Aarhus Conference, decided to sign<sup>6</sup> it. Change of government has influenced this process in other countries as well. The new Slovak government formally decided to sign the convention, but due to bureaucratic shortcomings was unable to do so before the deadline.<sup>7</sup> In Russia, the political crisis and several changes of government made it impossible to proceed with the procedure preceding the formal intention to sign. However, the existence of a political decision in this matter was officially confirmed.

## 2. The Aarhus Convention and Belarus

### 2.1. Accession to the Convention, harmonisation of laws and regulations

The delegation of Belarus, which participated in the 4th Environment for Europe Ministerial Conference on 23-25 June 1998 in Aarhus, did not sign the Convention on the day of its adoption. However, the country met the deadline for signing and did so on 16 December 1998. On 14 December 1999, a presidential decree approved the convention, thereby confirming the binding nature of this international agreement. The Convention entered into force for Belarus and the other signatories on 30 October 2001. From the moment the convention entered into force, its norms became part of Belarusian legislation and were subject to direct application. Nevertheless, several convention provisions required implementation in national legislation, so some norms were amended.

The first of these was the Law on Environmental Protection<sup>8</sup> that was expanded with Article 74, providing for the public's right to access environmental information and introducing several concepts and definitions. However, the definitions contained in the Law were not sufficient to articulate the concept of "environmental information" and required the adoption of the list of information related to environmental information, approved by resolution of the Ministry of Natural Resources and Environment.<sup>9</sup>

With a view to ensuring the public's right to participate in environmentally significant decisions, the Law provides for public discussion of the Environmental Impact Assessment (EIA) report, the possibility of conducting a public EIA,<sup>10</sup> the adoption of the first Policy and Procedure for Conducting an EIA and the list of Economic or Other Activity Types and Facilities for which the environmental impact assessment of planned economic and other activities is mandatory.

The legislation on architectural and urban planning activities also introduced the concept of public participation in decision-making and provided for such a possibility.<sup>11</sup>

<sup>6</sup> Germany signed the Aarhus Convention on 21 December 1998 but did not ratify it until 15 January 2007.

<sup>7</sup> Slovakia adopted the Aarhus Convention on 5 December 2005.

<sup>8</sup> Law of the Republic of Belarus No. 1982-XII "On Environmental Protection" of 26 November 1992.

<sup>9</sup> Resolution of the Ministry of Natural Resources and Environmental Protection of the Republic of Belarus No. 22 of 29 May 2003.

<sup>10</sup> Resolution of the Ministry of Natural Resources and Environmental Protection of the Republic of Belarus No. 30 of 17 June 2005 "On Approval of the Policy and Procedure for Environmental Impact Assessment of Planned Economic and Other Activities in the Republic of Belarus and the List of Economic or Other Activity Types and Facilities for Which Environmental Impact Assessment of Planned Economic and Other Activities is Mandatory".

<sup>11</sup> Law of the Republic of Belarus No. 300-Z "On Architectural, Urban Planning and Construction Activities in the Republic of Belarus" of 5 July 2004.

## 2.2. Aarhus Centres

While the Aarhus Convention was welcomed by most of its signatories, implementation proved challenging, particularly in countries with a relatively recent history of democracy. A joint [UNECE-OSCE project](#) has been launched to establish a network of Aarhus Centres. The initiative was supposed to assist States in implementing the provisions of the Convention and the public in exercising the rights granted to it.

### Their tasks include:

- Assistance in ensuring the public's right to timely receipt of reliable and complete information on the state of the environment, on planned and ongoing activities that may have a significant impact on the environment;
- Establishing interaction between the public and government agencies;
- Providing practical assistance to public authorities in fulfilling their obligations under the Convention;
- Environmental education and raising public awareness of environmental issues;
- Promoting public participation in decision-making and access to justice in environmental matters;
- Raising awareness of the Aarhus Convention as well as increasing public participation in environmental decision-making.

To date, the OSCE has assisted in the establishment of over 60 Aarhus Centres in 15 countries. It should be noted that the Centres are not part of the OSCE structure or governmental organisations. They may have different organisational and legal forms and may function as either a structural subdivision of a ministry or an informal institution of a public organisation, or as an independent legal entity.

The Aarhus Center of the Republic of Belarus was established on 30 December 2005 as part of a joint project between the Ministry of Natural Resources and Environmental Protection of the Republic of Belarus and the OSCE Office in Minsk. In line with the joint EU/UNDP project “Support to the development of a comprehensive framework for international environmental cooperation in the Republic of Belarus”, the first regional Aarhus Centre was inaugurated in Hrodna in January 2012. The third Aarhus Center was established in 2019 under the Union of Lawyers based on the Cooperation Agreement between the Ministry of Natural Resources and the public association Belarusian Republican Union of Lawyers, concluded on 4 August 2017. The centre's activities were also designed to facilitate interaction between the public and state authorities in the implementation of the Aarhus Convention.

As part of their activities, the Aarhus Centres consulted with representatives of the public and government agencies on the application of the Aarhus Convention provisions, held various educational events, participated in the development of legislation, the preparation of national reports on the implementation of the Aarhus Convention by Belarus, and carried out other work. In addition, several information and guidance tools have been produced, including “Together: Practical Guidelines for Public Participation in Environmental Decision-Making”.<sup>12</sup>

The websites of all three Aarhus Centres are currently inaccessible. There has been no published information regarding shut down of the centres.

<sup>12</sup> O. L. Zakharova, 2017, Aarhus Center of the Republic of Belarus.



## 2.3. Practical implementation: successes and failures

The period when Belarus was a party to the Aarhus Convention saw significant progress in terms of public involvement in the processes of addressing environmental issues and the creation of opportunities for participation in environmental decision-making. Multiple new concepts were introduced into the legislation, which were subsequently adjusted on numerous occasions to take into account the enforcement practice. Additionally, access to environmental information was adjusted. The judicial practice has been shaped by the most challenging aspects of the Convention's implementation.

### Access to environmental information

The legal groundwork for public access to environmental information was initially identified as a key area for improving legislation<sup>13</sup> for the implementation of the Aarhus Convention in Belarus. It should be noted that at the time of the Convention's entry into force, many acts of Belarusian legislation contained provisions declaring the right of citizens and public associations to receive information that could be classified as environmental information.

To improve legislation in Belarus, several international projects were implemented in 2000-2001 under the supervision of the Ministry of Natural Resources and Environment, with financial support of European partners. In particular, during this period, a draft Law on Environmental Information was prepared and submitted for consideration but was never adopted.

The Law on Environmental Protection has been amended to include additional provisions. In particular, the concept of environmental information was introduced, and the right of the public to "receive, by the established procedure, complete, reliable and timely information on the state of the environment, its pollution, measures for its protection and other environmental information" was introduced. Furthermore, the competence of the Ministry of Natural Resources to determine the list of information defined as environmental information was established.<sup>14</sup> However, these norms did not fully comply with the provisions of the Convention. They required public to prove their interest in obtaining environmental information, whereas the principles of the international treaty stipulated its provision without such proof.

In 2007, the issues of access to environmental information were further developed with the amendment of the Law on Environmental Protection. This amendment defined environmental information, its composition, sources and types, forms of presentation and dissemination, specified requirements for the content of an application requesting environmental information, established the procedure and conditions for restricting access to environmental information, the procedure for providing environmental information to state bodies and other state organisations, individuals and legal entities, the procedure for providing specific environmental information, the procedure for spreading general-purpose environmental information, etc.

<sup>13</sup> Codes: Land, Water, Forestry. Laws: On Informatisation, On Hydrometeorological Activity, On Sanitary and Epidemic Welfare of the Population, On State Environmental Expert Review, On Public Health, On Protection and Use of Wildlife, On Protection of Atmospheric Air, On Protected Areas, On Radiation Safety, On the Protection of the Population and Territories from Natural and Man-Made Emergencies, On the Legal Regime of Territories Subjected to Radioactive Contamination as a Result of the Chernobyl Catastrophe, On Drinking Water Supply, On Local Governance and Self-Government, On Industrial Safety of Hazardous Production Facilities, On the Safety of Genetic Engineering Activities.

<sup>14</sup> This list was later approved by the relevant Resolution of the Ministry of Natural Resources No. 22 of 29 May 2003.



This act was followed by the adoption of the Regulation on the Procedure for the Creation and Maintenance of the State Data Fund on the State of the Environment and Factors Affecting It, the Scope of General-Purpose Environmental Information Subject to Mandatory Spread, the Holders of Such Information Tasked with Its Dissemination and the Frequency of Its Dissemination,<sup>15</sup> which is also an important step in the implementation of the provisions of the Convention. At present, the data fund functions as a State Register of Environmental Information on the State of and Impact on the Environment. The annual reports are available on the [website](#) of the Ministry of Natural Resources.

A reference manual “The List of State Bodies and Organisations of the Republic of Belarus Responsible for Collecting, Storing and Spreading Environmental Information” was published.<sup>16</sup>

In 2016, amendments were made to Article 2 of the Law of the Republic of Belarus “On Information, Informatisation and Protection of Information” dated 10 November 2008, which establishes the specifics of legal regulation of information relations related to environmental information, i.e. in case of conflict between the norms of the Law on Information and the Law on Environmental Protection on environmental information issues, the norms of the Law on Environmental Protection shall be applied.

Despite the progressiveness of the legislative changes adopted in Belarus between 2000 and 2016, aimed at ensuring public access to environmental information, it should be noted that there is still room for improvement in the enforcement of these norms. In particular, there is a clear need to implement liability measures for violations of the right of access to environmental information. For instance, there is a common practice of classifying requested information as restricted information, a trade secret, and a violation of the norm on the separation of classified information from environmental information. This is often due to a lack of understanding by holders of environmental information of the procedure for its provision. Consequently, such requests are often considered under the legislation on citizen appeals.<sup>17</sup>

The [Ecological Web Portal of the Republic of Belarus](#) has been operating since 2020.

In advance of the Republic of Belarus’ accession to the Protocol on Pollutant Release and Transfer Registers, the Ecology Belarusian Research Facility has developed a list of significant sources of pollution, along with the requisite information to be entered into the database. Additionally, a list of indicators included in the National Pollutant Release and Transfer Register and their threshold values according to the [PRTR Protocol](#) has been compiled. However, Belarus did not ratify the PRTR Protocol, and the results of the pilot project in the Hrodna Region, which was supported by international partners, are no longer available.

## Public participation in environmental decision-making

During the period of Belarus’ participation in the Aarhus Convention, there has been a shift in legal regulation and practice. Previously, public consultations were held on certain types of activities. Now, there is the possibility of discussing state plans, programs and draft regulations.

Following Belarus’ accession to the convention, an Aarhus Convention Implementation Guide for [government officials](#) and [members of the public](#) was developed and made available to interested parties.

<sup>15</sup> Resolution of the Council of Ministers of the Republic of Belarus No. 734 of 24 May 2008, title as amended: “On the State Register of Environmental Information on the State of the Environment and its Impact”.

<sup>16</sup> *Gosudarstvennyye organy i organizatsii Respubliki Belarus’, osushchestvlyayushchiye sbor, khraneniye i rasprostraneniye ekologicheskoy informatsii* [The List of State Bodies and Organisations of the Republic of Belarus Responsible for Collecting, Storing and Disseminating Environmental Information]. Ministry of Natural Resources and Environmental Protection of the Republic of Belarus with the support of the Danish Environmental Fund. Minsk, 2004, 88 p.

<sup>17</sup> For more details, see the reports “[Implementation of the provisions of the Aarhus Convention in the period 2017-2021](#)” and “[Access to environmental information: implementation issues and rights protection](#)” (rus).

## The right to participation has evolved along three main lines:

- Public participation in Ministry of Natural Resources and Environment activities, interaction of state bodies with the public;
- Participation in environmental decision-making: discussion of EIA reports and, subsequently, Strategic Environmental Assessment (SEA) reports and public environmental expert review;
- Participation in the discussion of draft plans, programmes, and statutory regulations.

At the time of Belarus' accession to the Convention, numerous legal instruments were in place to guarantee the public's right to participate in the development of state plans and programmes related to the environment. However, the issue was that this legal declaration was not developed, supported or formalised in the acts that regulated the actual planning process. In legislation, the right to public participation was often established at the level of a legislative act. However, its content and the duties and responsibilities of public authorities were not further specified in other acts, which effectively negated the binding nature of general norms of laws and codes, making them declarative.

In the absence of legal regulation of the mandatory provision of information to the public on the drafting of statutory regulations with direct executive force and other legally binding rules concerning the environment, the practice of applying the provisions on public participation stipulated by Article 8 of the Aarhus Convention was sporadic and largely dependent on the will of the state body responsible for project development.

The Ministry of Natural Resources initiated a practice of discussing draft statutory regulations with the public shortly after Belarus joined the convention. This information was sent to the members of the Public Coordination Environmental Council under the Ministry of Natural Resources, and later the practice of posting drafts on the website of the Ministry was introduced. Other agencies also practised involving the public in the discussion of draft statutory regulations. For instance, the Ministry of Forestry engaged in regular dialogue with leading environmental NGOs, such as APB Birdlife Belarus and others, and incorporated their feedback into its decision-making process. The National Centre for Biosafety, in its role as the lead agency in drafting the Law on the Safety of Genetically Engineered Activities, initiated the preparation of several legislative acts, which were made available on the Centre's website for public review. The public association *Ekopravo* (Environmental Law) played a pivotal role in the development of these acts.

Public interaction with the Ministry of Natural Resources and Environment was not limited to discussion of draft environmental legislation.

Since 2001, the [Public Coordination Environmental Council](#) has been operating under the Ministry of Natural Resources, the main purpose of which is interaction between the Ministry of Natural Resources and environmental public associations. In 2003-2004, similar councils were established at the Regional and Minsk City Committees of Natural Resources and Environmental Protection.

In 2013, the Regulations on the Procedure for the Activities of Public Environmental Defenders were adopted. Compared to the abolished institution of public inspectors, this provision excludes the certification procedure and simplifies the reporting procedure of public environmentalists, but significantly limits their powers. As of August 2023, more than 500 public environmentalists were registered in Belarus.

On behalf of the Republic of Belarus, representatives of public organisations participated in the 21st session of the Conference of the Parties to the UN Framework Convention on Climate Change, held from 30 November to 11 December 2015 in Paris. The primary outcome of this conference was the endorsement of the revised Paris Agreement on climate change, which superseded the Kyoto Protocol after 2020 and established the international legal framework for the implementation of greenhouse gas reduction initiatives by UNFCCC participating states.

In July 2013, the Communications and Public Information Division was established within the Nuclear and Radiation Safety Department of the Ministry of Emergency Situations of the Republic of Belarus. A new Information Centre has been set up at the Belarusian NPP. Its main objective is to provide the local population with information about nuclear power and its facilities, the nature of nuclear energy, and the principles of NPP operation.

The procedures for public participation in environmental decision-making have undergone numerous revisions. The policy and procedure for carrying out EIAs have been replaced by government decrees which set out a separate procedure for each of the public consultations. The laws have been adapted to reflect practice and the recommendations of the Meeting of the Parties. Thus, in 2015, the Law on Environmental Protection was supplemented with Article 15-2 “Public Consultations on Draft Environmental Decisions and Environmental Impact Assessment Reports”, enshrining the right of public participation in the environmental decision-making. Article 1 of the law defines the concept of “environmental decisions”.

Following Article 15-2 of the Law, the Council of Ministers of the Republic of Belarus adopted Resolution No. 458 of 14 June 2016, which approves the Regulation on the Procedure for Organising and Conducting Public Consultations on Draft Environmental Decisions, Environmental Impact Assessment Reports, and Accounting for Environmental Decisions Taken. The resolution enshrines the norms on public participation in environmental decision-making and public consultations on EIA reports.

The changes were designed to supplement and specify the types of activities that may have a significant impact on the environment following Annex I to the Aarhus Convention.

A new version of the Law of the Republic of Belarus No. 399-Z “On State Environmental Expert Review, Strategic Environmental Assessment and Environmental Impact Assessment” of 18 July 2016 was adopted. Article 7 of the Law outlines the facilities for which an environmental impact assessment is required. The specified facility list is harmonized with Annex I to the Aarhus Convention. Types of activities listed in Annex I to the Aarhus Convention and not listed in Article 7 of the Law on State Environmental Expert Review, Strategic Environmental Assessment and Environmental Impact Assessment shall be subject to EIA in accordance with Article 7(1.1) and (1.2) (the size of sanitary protection zones is determined by Resolution of the Ministry of Health of the Republic of Belarus No. 35 “On Approval of Sanitary Standards and Regulations ‘The Establishment of Sanitary Protection Zones for Enterprises, Facilities and Other Sites That May Affect Human Health and the Environment’” dated 15 May 2014 and Annulment of Decision No. 11 of the Ministry of Health of the Republic of Belarus of 10 February 2011”).

A new provision has been adopted following paragraph 4 of Article 15 of the Law of the Republic of Belarus No. 399-Z “On State Environmental Expert Review, Strategic Environmental Assessment and Environmental Impact Assessment” of 18 July 2016. It states that “the findings of the state environmental expert review shall be recognized as a final decision on the proposed economic and other activities with regard to the permissible environmental impact of such activities and the use of natural resources for the implementation of such activities within the meaning of the Convention on Environmental Impact Assessment in a Transboundary Context, signed in Espoo on 25 February 1991”, but the definition of the term “final decision” requires further elaboration.

The procedure for organising and conducting public consultations on draft environmental decisions or environmental impact assessment reports is established by the Regulation on the Procedure for Organising and Conducting Public Consultations on Draft Environmental Decisions, Environmental Impact Assessment Reports, Accounting for Environmental Decisions Taken, approved by the Resolution of the Council of Ministers of the Republic of Belarus No. 458 of 14 June 2016. Chapter 2 of the above-mentioned Regulation sets out the procedure for public consultation on draft plans the implementation of which has an impact on the environment and/or is linked to the use of natural resources.

In 2019, amendments to the Law on Protected Areas came into force, introducing a new Article 15, which regulates the participation of natural and legal persons in public consultations on draft environmental decisions concerning protected areas and their receipt of environmental information relating to protected areas.

**At present, environmental legislation offers legal support for the participation of natural and legal persons in the process of environmental decision-making, including:**

- Public consultation on draft concepts, programmes, plans, schemes, regional action plans, the implementation of which has an impact on the environment and/or is related to the use of natural resources, as well as amendments and additions to them that are not technical;
- Public consultation on legislative acts of the Republic of Belarus (as regards the provisions regulating relations concerning the conduct of economic and other activities harmful to the environment following the criteria established by the President of the Republic of Belarus or a state body authorised by the President);
- Public consultation on decisions to issue permits for the removal of plants in populated areas, permits for the transplantation of plants in populated areas in cases specified in the legislation on plant life;
- Public consultation on strategic environmental assessment reports;
- Public consultation on environmental impact assessment reports.

The right of individuals, public associations and bodies of territorial public self-government to participate in the consideration of issues affecting their interests in connection with the forthcoming land withdrawal and final land allocation (Article 24 of the Land Code) has been provided. The 2019 Law on Peatland Protection and Utilisation provides for public participation in peatland management, and the provision and dissemination of environmental information on peatland protection and utilisation.

Following paragraph 7 of the Regulation on the Procedure for Organising and Conducting Public Consultation on Draft Environmental Decisions, Environmental Impact Assessment Reports, and Accounting for the Environmental Decisions Taken, approved by Resolution of the Council of Ministers of the Republic of Belarus No. 458 of 14 June 2016, state bodies acting as organisers of public consultations are obliged to create a special **“Public consultations”** section on their official websites, accessible from the home page, **and to publish the following information there:**

- Announcements of initiation of drafting environmental decisions; notices;
- Drafts of environmental decisions; EIA reports;
- Results of public consultations (minutes of meetings, minutes of public consultations, a summary document (table) of comments and suggestions received, reflecting the results of their consideration);
- Announcements of cancellations of draft environmental decisions;
- Decisions made;
- Information on the reversal of decisions taken; information on the conduct of any public environmental expert reviews that have been initiated;
- Other information.

**On the [Ministry of Natural Resources website](#), a “Public Consultations” section has been created with the following subsections:**

- Drafts of environmental decisions
- Development plans
- Debate on draft legal acts
- List of decisions taken

To establish the procedure for the implementation of the public's right to public environmental expert review, an interim Policy and Procedure for the Organisation and Conduct of Public Environmental Expert Review was developed and approved by the Minister of Natural Resources and Environmental Protection on 15 March 2010, and six months later the Resolution of the Council of Ministers of the Republic of Belarus No. 1592 of 29 October 2010 "On Approval of the Regulation on the Procedure for the Organisation and Conduct of Public Environmental Expert Review" was adopted. In 2021, it was amended to eliminate legal uncertainty when conducting public environmental expert reviews during public consultations on urban planning projects, amendments and additions to them, as well as pre-design (pre-investment) and design documentation for the construction and reconstruction of facilities for which an environmental impact assessment is carried out.

Despite the development and improvement of legislation, including through the recommendations of the Aarhus Convention Compliance Committee, as well as the active participation of public environmental organisations and citizens, many practical problems and challenges with the proper implementation of the right to participate in environmental decision-making remained.<sup>18</sup> For instance, regarding public consultation notifications, executive committees rarely exceed the mandatory requirements by posting notices on their website and publishing them in the local newspaper.<sup>19</sup> However, the principles of the Convention advocate for adequate, timely, and effective communication, which may be achieved by an announcement in a local shop rather than a commonplace notice in the district newspaper with a small circulation.

## Access to justice in environmental matters

The right to access to justice on the issues regulated by the Convention – namely, protection of the right to access to environmental information and to participate in environmental decision-making during the period of Belarus' participation in the Convention – has been enshrined in legislation. Without this, it would be difficult to exercise the right, given the specificity of the Belarusian justice system.

Most particularly, it is the 2007 amendments to the Law on Environmental Protection, which introduced the right of appeal against a refusal to provide environmental information and the right of the public to bring an action in court for the suspension (prohibition) of economic and other activities that hurt the environment, including where such activities violate environmental protection requirements, cause environmental damage or create a risk of environmental damage. This is essentially the introduction of a progressive opportunity of public interest litigation (*actio popularis*). A certain body of case law has emerged which reflects both the main public concerns and the main obstacles to access to justice.

The main problem with the judicial system in Belarus is the lack of independence of the courts. In hearing a case, the court should be guided solely by the law and not by the opinion of individual officials, career considerations and other personal interests and qualities of the judge. When the court is willing to make a decision independently, issues such as the lack of competence of judges in environmental cases or existing legal uncertainty or conflicts in the law can be resolved through an appeal to a higher court. The role of this court is to correct errors made by the court of first instance and to establish a consistent approach to legal practice.

<sup>18</sup> For more information on enforcement practices on public participation in environmental decision-making, see the review "[Implementation of the Provisions of the Aarhus Convention in the period 2017 and 2021](#)" and the [Survey Report: "Practice of Public Participation in Environmental Decision-Making"](#) (rus) (2020).

<sup>19</sup> In the [2017-2021 review](#), Ecohome identified individual improvements that can help eliminate emerging conflicts, see page 9.



A series of strategic court cases bring positive results, with the legislation and law enforcement practice being changed. As a result, the public now has free access to the materials and results of public consultations, which are posted on the websites of executive committees. Initially, in several cases, access to them could not be obtained even through the court. The resolution of some issues was already reflected after the formal withdrawal of Belarus from the convention. For example, the legislation now explicitly states the possibility to appeal not only the refusal to provide environmental information but also inadequate provision of it in form or scope. This was repeatedly the subject of comments from the public and consideration at the [Task Force on Access to Justice](#). At the same time, the key issue of access remained unresolved. Courts were continuing to refuse cases on the grounds of lack of jurisdiction without specifying the body with competence over the dispute. Furthermore, how NGOs were shut down in 2020-2022 does not reflect well on the court as an independent and competent body and proof the rule of law absence.

In 2020, Ecohome published a review entitled “[Judicial Protection of Environmental Rights in Belarus](#)”. This review presents the main trends and problems based on an analysis of over 60 cases. Further details on the specifics of Belarusian justice in the context of the right to a favourable environment are provided in the roadmap.<sup>20</sup>

Since 1 January 2021, the National Center for Legal Information in Belarus, in collaboration with the Supreme Court, has established a [publicly accessible electronic repository of court decisions](#). This database contains court rulings issued by courts of general jurisdiction that have been legally enacted and that conclude the initial consideration of a case by first-instance courts. It also includes rulings from higher instances based on the results of appeals and protests against these rulings. The establishment of a repository of court decisions facilitates the transparency of judicial proceedings and the standardisation of judicial practice, including in cases pertaining to the protection of the right to a favourable environment.

### 3. The Aarhus Convention Compliance Committee

#### 3.1. Reports on Belarus’ compliance with the provisions of the Convention

At the inaugural Meeting of the Parties in Lucca, Italy, in October 2002, the Aarhus Convention Compliance Committee was established. The body is non-judicial in nature and its primary objective is to ascertain whether there has been compliance or non-compliance with the Convention in a given case. It then makes recommendations to the Meeting of the Parties on the appropriate measures to be applied.

##### **The objects of the committee’s review are:**

- submissions by the parties where the non-compliance with a convention by one of the parties is alleged by the other party;
- the Secretariat’s objections if the national report submitted shows non-compliance with the Convention;
- communications from members of the public, which can be submitted by any NGO or individual;
- requests of the Meeting of the Parties;
- a party’s request for interpretation and advice.

<sup>20</sup><https://ecohome.ngo/road-map-justice-eng/>

Concerning Belarus, the Committee received four public communications of violations of the provisions of the Convention by that country and one communication of non-compliance by Belarus from Lithuania. On one occasion, Belarus itself approached the Committee with a request for clarification and interpretation of the Convention.

### **The public communications concerned:**

1. the construction of the Neman Hydroelectric Power Plant,
2. Astravets NPP (one public communication and a submission by Lithuania),
3. persecution of anti-nuclear activists in Belarus,
4. and the construction of a battery factory in the vicinity of Brest.

When considering a complaint, the Committee examines whether it meets the admissibility criteria – whether it concerns a Party to the Convention and the relations governed by the Convention. Next, the situation and national legislation are analyzed. The Committee may request additional information and clarification from the party and the communicant, either by correspondence or orally at the meeting.

Following its review, the Committee prepares draft findings which are sent to the Party and the communicant with a request for comments. In consideration of the aforementioned factors, the Committee prepares and approves a final version of the findings, including recommendations for remedial action, and forwards it for consideration at the next Meeting of the Parties, which shall take a final decision.

### **Construction of the Neman HPP<sup>21</sup>**

On 14 March 2009, members of the public submitted a communication to the Compliance Committee alleging that Belarus had failed to fulfil its obligations under the Convention. The [communication](#) alleged that, by failing to provide information to the public on the Neman River hydropower project in Belarus, Belarus had failed to fulfil its obligations under Articles 4(1) and 6(1) of the Convention, namely:

Article 4(1) of the Aarhus Convention requires Parties to ensure public access to environmental information. State bodies should make such information available to the public without an expression of interest and in the form requested unless the bodies have reason to provide the information in a different form or the information has already been provided. In this instance, the Committee determined that public authorities, including the contracting authority, had not adequately responded to requests from members of the public. In some cases, they asked for information on the intended purpose for which it would be used.

Article 6(6) stipulates that it is the responsibility of all Parties to provide the public with free access to information relevant to the decision-making process. This information includes a description of the proposed activity and its environmental impacts, as well as avoidance and mitigation measures. It also outlines the major alternatives considered in making decisions. The Committee has determined that the Belarusian legislation in question only requires the contracting authority to provide information about the EIA to the public. This is not in accordance with the principles of the Convention. In addition, although public disclosure is required by law, the EIA statement, EIA report and consultations minutes are not necessarily made available to the public.

The Communication further alleged that, by failing to provide adequate information and consultation to the public in the decision-making process, Belarus had failed to comply with the requirements of the Convention under Article 6(2), (3), (7) and (9) concerning adequate, timely and effective public information, reasonable time for public participation, adequate opportunity to submit comments on the project, and information on the findings of the environmental impact assessment.

<sup>21</sup> Communication [ACCC/C/2009/37](#)



In 2010, after examining public communication, analysing the national legislation and the information provided by Belarus, the Committee prepared a [report](#) containing findings and recommendations on the communication ACCC/C/2009/37 concerning Belarus' failure to comply with the provisions of the Convention.

The Committee found that Belarus had violated the provisions of the Convention contained in Article 4(1) and Article 6(2), (3), (6), (7) and (9).

**In 2011, [Decision IV/9b of the Meeting of the Parties](#) endorsed the conclusions of the Committee and recommended the adoption of legislative and other practical measures to ensure that:**

- the public does not have to state their interest in access to environmental information;
- the public is informed of decision-making processes in an adequate, timely and effective manner;
- reasonable minimum time frames for submitting the comments during the public participation procedure are in place;
- there is a clear possibility for the public to submit comments directly to the relevant authorities;
- there is a clear responsibility on the part of the relevant public authorities to ensure that the relevant information is made available and to gather comments through written submissions and/or public consultations;
- statutory provisions regarding situations where provisions on public participation do not apply cannot be interpreted to allow for much broader exemptions than allowed by the Convention.

## **Construction of the Belarusian NPP**<sup>22</sup>

On 10 December 2009, the European EcoForum submitted a communication to the Compliance Committee alleging that Belarus had failed to fulfil its obligations concerning the NPP construction project, in particular with regard to access to justice, failure to prosecute members of the public for exercising their rights under the Convention, as well as with regard to access to environmental information and public participation in decision-making on matters concerning plans, programmes, policies and regulations relating to the environment.<sup>23</sup>

**The Committee [found](#) that Belarus had violated the provisions of the Convention by:**

- restricting access to the full version of the EIA Report to the premises of the Directorate of the NPP in Minsk and not allowing any copies to be made;
- not duly informing the public that, in addition to the publicly available 100-page EIA report, there was a full version of the EIA Report (more than 1,000 pages long);
- providing for public participation only at the stage of the EIA for the NPP, with one consultation on 9 October 2009, and effectively reducing the public's input to only commenting on how the environmental impact could be mitigated, and precluding the public from having any input on the decision on whether the NPP installation should be at the selected site in the first place (since the decision had already been taken);
- not informing the public in due time of the possibility of examining the full EIA Report;
- by limiting the possibility for members of the public to submit comments.

<sup>22</sup> Communication [ACCC/C/2009/44](#)

<sup>23</sup> Articles 3(1) and (8), 4(1), 6(2, 4, 6, 7), 7 and 8 of the Convention.

In 2014, the Meeting of the Parties adopted [Decision V/9c](#), which recommends, among other things, that the country ensure that it clearly defines which decision is considered to be the final decision authorising the activity in question; ensure that the full content of all comments made by the public is communicated to the decision-making authorities; and take measures regarding public participation in the preparation of plans and programmes relating to environmental matters.

## Lithuania's submission on Belarusian NPP<sup>24</sup>

On 27 March 2015, the Lithuanian Ministry of Environment made a submission to the Compliance Committee alleging that Belarus had failed to comply with Article 3(9) and Article 6(2-4), (6) and (8) of the Convention regarding decision-making on the nuclear power plant located in Astravets, Belarus, approximately 50 km from Vilnius.

Lithuania asserts that the Lithuanian public was unable to participate in the decision-making process on the NPP due to Belarus' failure to respond to the public's queries about the project and to hold public consultations on the EIA report in Lithuania, despite six requests from Lithuania in 2013-2014 in this regard. Lithuania also asserts that the public was not adequately informed about the Astravets-related consultations in 2009 and that the public affected was not informed at the earliest stage of the procedure.

In 2021, the Meeting of the Parties endorsed the findings of the Committee and recommended that Belarus implement the necessary legislative, regulatory and administrative measures and include practical measures to ensure that, when making decisions on planned activities with potential transboundary implications, the following steps are taken:

- Arrangements should be made to initiate cooperation with the affected States at an early stage to ensure translation of the main consultation documents and interpretation at consultations so that the public concerned in those countries can effectively participate in the decision-making;
- Adequate and effective notification should be provided to the public concerned in the affected States, in their national languages;
- Due consideration should be given to comments submitted by the public of affected States;
- The text of state environmental expert review findings, including the reasons and considerations on which they are based, is promptly made accessible to the public concerned in the affected States.

## Persecution of anti-nuclear activists in Belarus<sup>25</sup>

On 24 April 2014, Ecohome submitted a communication to the Compliance Committee, in which it alleged that Belarus had failed to comply with its obligations under Article 3(8) of the Convention concerning the alleged harassment and persecution of environmental activists.

In 2017, the Meeting of the Parties to the Aarhus Convention adopted [Decision VI/8c concerning compliance by Belarus with its obligations under the Convention](#). The decision maintains Belarus' non-compliance status. The country has not yet implemented all the recommendations set out in previous decisions regarding the construction of the Neman HPP and the Astravets NPP. It was anticipated that Belarus will implement further legislative changes in relation to public participation in environmental decision-making and access to environmental information. The 2017 decision also acknowledged that the detentions, arrests, and imposition of fines on anti-nuclear activists are directly related to their activities and constitute instances of punishment, harassment, and persecution of activists for their activities, which is prohibited under Article 3(8) of the Convention.

<sup>24</sup> [Submission ACCC/S/2015/2](#)

<sup>25</sup> [Communication ACCC/C/2014/102](#)

The decision on Belarus also stated that the Committee would take into account any information received from members of the public or other sources about future alleged cases of punishment, persecution or harassment.

Following the submission by Belarus and the public of information on the steps taken by the country to implement the recommendations, the Compliance Committee prepared the [First Progress Review of the Implementation of Decision VI/8c on Compliance by Belarus with its Obligations Under the Convention](#).

The Committee recommended that Belarus rescind the decisions to hold anti-nuclear activists administratively responsible, as well as the decision to ban a Russian nuclear physicist, who was involved in the Belarusian Anti-Nuclear Campaign, from entering Belarus. It was also necessary to disseminate the findings and recommendations on preventing harassment and pressure on activists to realise their environmental rights to senior police, security, judicial and other relevant officials.<sup>26</sup>

In addition, the Committee provided an initial evaluation of the harassment of [activists](#) in relation to the construction of the battery factory.

### **Construction of a battery factory in the vicinity of Brest<sup>27</sup>**

On 24 May 2020, Ecohome submitted a [communication](#) to the Compliance Committee alleging that the requirements of Article 6(2-4) and (9) of the Convention regarding public participation in decision-making concerning the Brest battery factory had not been met, **namely:**

- Effective, timely and adequate information to the public about public consultation was not ensured;
- There was no reasonable time to review the documentation and prepare for the discussions, as the consultation period took place over the New Year and Christmas;
- Consultations were not organised at an early stage. The public has been consulted only on the EIA report of the project documentation;
- The public was not informed of the decision and the reasoning behind it.

The communication was admissible but not under consideration due to Belarus' withdrawal from the Aarhus Convention.

## **3.2. Implementation of the Committee's recommendations**

It should be noted that the Committee's role is not to penalise a State for non-compliance with the provisions of the Aarhus Convention. Rather, its objective is to identify optimal solutions for the further implementation of its principles and the prevention of future violations. The Committee's findings and recommendations play a major role in the development of legislation and enforcement practices.

Chapter 2.3 "Practical implementation: successes and gaps", outlines how the legislation of Belarus has evolved in line with the implementation of the provisions of the Convention. It is worth noting that the majority of these changes were implemented in response to the recommendations of the Meeting of the Parties to the Convention, which were adopted following an in-depth review of the communications submitted by the public and Lithuania's submission regarding Belarus' non-compliance with the Convention.

<sup>26</sup> [The expelled nuclear physicist Ozharovsky was allowed to enter Belarus.](#)

<sup>27</sup> Communication [ACCC/C/2020/182](#)

Following each decision made by the Meeting of the Parties, Belarus developed implementation plans and prepared national reports, which reflected changes in legislation and practice. The public participated in the discussion of these reports by preparing their analytical reviews.

Nevertheless, despite legislative changes, there was often a lack of corresponding changes in enforcement practices, which resulted in many issues. Regrettably, the majority of subsequent decisions on Belarus have largely mirrored the recommendations previously made, dating back to 2011. This indicates a lack of progress in fully implementing the recommendations.

Many problems in legislation and enforcement practice, reflected in the review of the practice of implementation of the Aarhus Convention in the Republic of Belarus for 2011-2021<sup>28</sup>, remained unresolved.

Despite the changes, mainly legislative, the Republic of Belarus remained in a state of permanent non-compliance with the provisions of the Aarhus Convention. The development of enforcement practices has not kept pace with the recommendations made to Belarus in the aforementioned cases.

The necessary measures to prevent the persecution of environmental activists, as required by Decision VI/8c on anti-nuclear activists, have not been taken either. This led to continued harassment and pressure on activists, including those opposing the construction of a battery factory near Brest. The general situation of persecution of environmental activists and pressure on environmental organisations get worse, eventually leading to Belarus' withdrawal from the Convention.

### **3.3. Persecution of environmental activists**

The protection of environmental activists from prosecution and reprisals for their activities is one of the Convention's key provisions. Article 3(8) requires States Parties to ensure that persons exercising their rights under the Convention are not subjected to punishment, harassment or any form of discrimination. This provision is designed to create a secure environment for activists to exercise their environmental rights under the Aarhus Convention. These include access to environmental information, justice in environmental cases and participation in environmental decision-making without fear of negative consequences for their activities, without fear of being detained, pressured or intimidated.

In 2017, [Decision VI/8c](#) was adopted concerning Belarus for harassing and persecuting anti-nuclear activists. The Meeting of the Parties thus confirmed the facts of persecution and recommended that the country take appropriate measures to prevent the persecution of environmental activists for their activities. Paragraph 7 of the Decision also stated that "when evaluating the implementation of the Party concerned of the above recommendations, the Committee will take into account any information received from members of the public or other sources about future incidents of alleged penalization, persecution or harassment". The decision on the case of violations in the construction of the NPP enabled the public and activists to inform the Committee immediately about cases of harassment and pressure on environmental activists and initiatives in Belarus, without having to submit individual communications on violations to the Committee, which would have taken a long time to consider (the procedure from the submission of a communication to the decision on it could take about three years).

In light of the aforementioned, Ecohome duly informed the Aarhus Convention Compliance Committee of the situation with regard to harassment and pressure on environmental activists and initiatives, including cases of detention and pressure on activists of the initiative group challenging the construction of a battery factory near Brest.

<sup>28</sup> Review of the implementation of the provisions of the Aarhus Convention in the Republic of Belarus for the years [2011-2014](#), [2014-2017](#) and [2017-2021](#).

Following the presidential elections in August 2020, the Belarusian authorities initiated a comprehensive crackdown on the civil sector. This included inspections of organisations, office searches, detentions, administrative and criminal trials, the forced liquidation of NGOs and the compulsion of organisations to dissolve and cease activities. Defamatory articles in the media were also published against both organisations and their representatives. All of these reprisals had an impact on environmental organisations, as Ecohome continued to inform the Compliance Committee and the Secretariat of the Convention.

### 3.4. The liquidation of Ecohome NGO and the Committee's assessment

One of the pivotal moments that shaped further Belarus' involvement in the Convention was the shutting down of the Ecohome NGO.

On 2 July 2021, the Ministry of Justice of Belarus initiated an inspection of the activities of Ecohome. On 16 July 2021, Ecohome director's apartment was searched in a criminal case investigation proceeding.<sup>29</sup> On 22 July 2021, the Ministry of Justice issued a warning to Ecohome based on the results of the inspection. On 26 July 2021, the Ministry filed a lawsuit to the Supreme Court regarding the liquidation of Ecohome. On 31 August 2021, the Supreme Court granted the claim and [liquidated](#) the public association.<sup>30</sup>

The 7th Meeting of the Parties to the Aarhus Convention was scheduled to take place from 18-21 October 2021. Among the items on the agenda was a decision on Belarus' compliance with its obligations under the Convention. Even though the Meeting of the Parties to the Convention was scheduled to take place three months later and the Committee had already adopted its report to the Meeting of the Parties on Belarus in July, the Committee expressed its concern and considered that the actions taken by Belarus were of such a serious nature that it was necessary to inform the Meeting of the Parties at its seventh session. This was due to information received by the Committee on the liquidation process of Ecohome.

Therefore, the Committee prepared a [Supplementary Report of the Compliance Committee on the compliance of Belarus](#), in which it considered and assessed the information received on the inspection and liquidation of Ecohome.

In its report, the Committee noted that Ecohome was a non-governmental organisation concerned with the protection of the environment and was exercising its rights in accordance with the provisions of the Convention. And therefore, Belarus must ensure that Ecohome is not penalized, persecuted or harassed for doing so. "If members of the public are penalized, harassed or persecuted for exercising their rights under the Convention, it puts in grave jeopardy the implementation of the Convention as a whole by the Party concerned", the report said.

The Committee found Belarus's actions to liquidate the organisation to be "unilateral, inappropriate or disproportionate". The warning and subsequent liquidation were clear indications of a flagrant disregard for due process. The case demonstrated that Belarus had not implemented the recommendation set out in Decision VI/8c to "take 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".

<sup>29</sup> The Belarusian authorities initiated criminal proceedings under Articles 239 and 342 of the Criminal Code of Belarus, which criminalise mass riots and collective actions that seriously violate public order. Between 14 and 16 July, more than 60 searches were carried out at the homes of NGO representatives and their offices across the country.

<sup>30</sup> Read more about the crackdown that led to the shutting down of the Ecohome NGO ([timeline, documentation](#)).



The Committee concluded that another case of harassment, punishment and persecution by Belarus was the liquidation of Ecohome on 31 August 2021. In light of the gravity of the situation, the Committee has recommended that the Meeting of the Parties consider “suspending the special rights and privileges accorded to the Party concerned [Belarus]”, should Belarus fail to cancel the liquidation of Ecohome and restore its registration.<sup>31</sup>

Furthermore, the Committee noted in its report that it “understands that Ecohome is moreover not the only environmental non-governmental organization liquidated by the Party concerned in recent month”. The Committee also expressed concern that such “actions by the Party concerned are also bound to have a deterrent effect on any remaining non-governmental organizations in the Party concerned engaged in promoting environmental protection”.

## 4. Withdrawal of Belarus from the Aarhus Convention

### 4.1. Withdrawal process and prerequisites

At the 7th Meeting of the Parties to the Aarhus Convention in October 2021, [Decision VII/8c](#) was adopted on Belarus’ compliance with its obligations under the Convention. It reviewed the progress made on implementing the recommendations previously made to Belarus regarding cases involving violations of the Convention’s provisions in the construction of the Neman Hydroelectric Power Plant, the Astravets Nuclear Power Plant, harassment of anti-nuclear activists, and approved the findings of the Compliance Committee, which recognised the liquidation of Ecohome as a case of harassment and persecution of NGOs.<sup>32</sup> The government of Belarus was informed that it must take steps to restore the organisation by 1 December 2021, otherwise, the suspension of special rights and privileges under the convention will come into force for the country from 1 February.

In a letter to the [UNECE Executive Secretary](#), the Ministry of Natural Resources and Environmental Protection, the responsible body for the implementation of the Aarhus Convention in Belarus, stated that Decision VII/8c, which suspends special rights and privileges under the Convention, must be cancelled by 1 January 2022. Otherwise, Belarus will withdraw from the Aarhus Convention.

The decision of the Meeting of the Parties was not reconsidered. Belarus did not take any steps to cancel or revise the decision to liquidate Ecohome. Consequently, the restriction of special rights and privileges came into force.

On 18 July 2022, [the Republic of Belarus announced its decision to withdraw](#) from the Aarhus Convention, to which it had been a party since 2001. According to the Presidential press service, the decision was prompted by the fact that “in October 2021, Belarus faced a biased and discriminatory attitude from the governing bodies of the Convention, as well as pressure on the sovereign state. Under the current conditions, it is impossible for Belarus to fully participate in the Convention”.

This decision has prompted a negative response from [UN human rights experts](#) and [international organisations](#), given the crucial role this agreement plays in promoting transparency in environmental protection and public participation in these matters.<sup>33</sup>

<sup>31</sup> [Supplementary report of the Compliance Committee on compliance by Belarus\\* of 15 October 2021.](#)

<sup>32</sup> [Read more about the Ecohome liquidation timeline.](#)

<sup>33</sup> [Read more about Ecohome’s position on Belarus’ withdrawal from the Aarhus Convention here.](#)

## 4.2. Public and environmental consequences of withdrawal from the Aarhus Convention

The Convention was designed with the primary objective of creating more effective opportunities for the exercising of the right to a healthy environment, which is also enshrined in the Constitution of Belarus. The decision to withdraw from the Convention suggests that the right in question is of no importance to the state if the agreement to implement it can be so easily abandoned. The circumstances surrounding the withdrawal, namely that the country was recognised as not fulfilling its obligations, and in response, instead of correcting the situation, it simply refused to fulfil them, negatively designates Belarus as a partner. There is no guarantee that such state will not refuse to fulfil credit obligations or defence treaties tomorrow.

The Convention has a Compliance Committee, a distinctive international mechanism designed to assist States in implementing the Convention and to provide additional protection for the public interest. In 2022, another institution was established: the Rapid Response Mechanism in the format of the [Special Rapporteur on Environmental Defenders](#). This institution's mandate is to protect eco-activists from prosecution in countries party to the Convention.

Withdrawal from the Convention would be a step towards Belarus' self-isolation from the international community, including in the environmental sphere. It would also represent a rejection of the best international practices and approaches to the protection of environmental rights, as well as participation in international environmental projects.

Withdrawal from the Aarhus Convention will reduce the ability of citizens to control environmental policies and decisions of the authorities. This may result in the non-transparent use of natural resources, optionality of ensuring proper access to environmental information and participation in environmentally significant decisions, and as a consequence – environmental degradation. Furthermore, it is anticipated that repressive measures against environmental activists and NGOs will increase, as international protection and support are expected to be weakened. This will further exacerbate the already critical situation of persecution of civil society in Belarus.

## 5. Prospects of Belarus' re-accession to the Aarhus Convention

Upon accession to the Convention, the State must implement the minimum legal and other appropriate measures necessary to fulfil its obligations at the time of entry into force. The Convention Secretariat can provide advisory support to the State. Once the domestic decision-making process is complete, the State must submit a formal written expression of its intention to accede to the Convention to the Meeting of the Parties.

On 4 April 2023, the Republic of Guinea-Bissau became the first country outside the UNECE region to [accede](#) to the Aarhus Convention.

Guinea-Bissau has taken many important steps in preparation for its accession, including the revision of national legislation, the development of a roadmap for accession, and the presentation of a preliminary assessment report on Guinea-Bissau's institutional, political, and regulatory framework to the Meeting of the Parties. This report outlines the steps already taken and the activities the country plans to undertake to implement the provisions of the convention. This includes the adoption of new legislation or amendments to existing legislation.

The prospects for Belarus' re-accession to the Aarhus Convention are contingent upon many factors, including political will and the country's continued commitment to adapting its national legislation and enforcement practice to the requirements of the Convention. The case of Guinea-Bissau demonstrates that accession is feasible if certain conditions are met. Belarus has already had experience of participation in the Aarhus Convention, so it has a legislative framework that can facilitate the process of re-accession. With the requisite political will and proper preparation, Belarus has the potential to become a party to the Aarhus Convention once more. This would facilitate improvements in environmental transparency and public participation in the country.



## A roadmap to return

The accession of Belarus to the Aarhus Convention will necessitate the completion of many actions within the national legislation and the consent of the Meeting of the Parties to the Aarhus Convention.

Belarus must conduct an independent assessment of its institutional, policy and regulatory framework. Furthermore, the country must enhance its legislation to align with the stipulations of the Aarhus Convention, as outlined by the Compliance Committee in the context of examining allegations of non-compliance. Additionally, it is essential to implement other practical measures.

### Particularly:

- *Ensure that legislation on public access to environmental information is improved*

It is essential to clarify the relationship between the norms set out in the Laws “On Environmental Protection”, “On Citizen and Legal Entity Appeals”, “On Information, Informatisation and Protection of Information”, and “On Trade Secrecy”. Currently, there is considerable uncertainty surrounding this relationship, which is leading to differing interpretations of the relevant legislation. For example, state bodies apply the norms of the Law on Citizen and Legal Entity Appeals on the time limits for responding to appeals by citizens or NGOs requesting environmental information, while the Law on Environmental Protection provides for shorter time limits for responding to the request. The Law on Trade Secrecy stipulates that trade secrets may not include “information on the state of the environment that has or may harm ensuring the safe functioning of production facilities, the safety of individual citizens and the population as a whole”. This does not fully comply with Article 4 of the Convention, which states that information on “emissions related to the environment” may not be classified as confidential.

- *Ensure the implementation of Article 6 of the Convention by providing for public participation in decision-making on specific activities at an early stage of the decision-making process*

The provisions of the Environmental Protection Law stating that ‘EIA reports are subject to public discussion’ not in line with the principles of the Aarhus Convention. The EIA report forms part of the design documents. It is not a decision of a public authority. The public is involved in the discussion at the stage of the prepared EIA report, which is a later stage than required by the Aarhus Convention. The legislative approach does not provide sufficient clarity on the distinction between the “decision”, the early stage of the decision-making process, and the “final decision” in the context of the Aarhus Convention. It also fails to specify how the “decision” should reflect the results of public participation.

- *Improve the effectiveness of implementation of Article 7 of the Aarhus Convention*

In some cases, the timeframes set for public consultation are insufficient for effective public participation, given the complexity of the plan or programme. In the context of SEA, there is no opportunity for public participation at the stage of defining the scope or forming the concept of a plan or programme.

- *Improve legislation on access to information on environmental decisions (Arts. 6-8)*

It is essential to establish a legal framework for a unified web portal of information on planning documents, decisions on specific types of activities, and other related decisions in the context of the implementation of the Aarhus Convention. With regard to decisions on specific types of activities (Article 6 of the Convention), the web portal should provide information from the initial stage, including the investor’s statement of intent, expert review findings and the issuance of a construction permit.

- *Regulate the implementation of Article 5 provisions to ensure the collection and dissemination of environmental information. This should include creating conditions for the functioning of PRTRs and other environmental information resources, including those obtained in the course of environmental monitoring, to ensure its faster and more effective provision to the public.*

- *Improve the legal regime for public access to justice in environmental matters (Article 9 of the Convention)*  
It is necessary to legislate on “injunctions” in the context of Article 9(4) of the Convention; the obligation to appeal administratively (to a superior body, or person) against decisions, acts, and omissions in the context of the Aarhus Convention before going to court should be abandoned, as such a procedure does not comply with the principle of Article 9 of the Convention on consideration of cases in court or by “another independent and impartial body”. It is necessary to resolve the issues of jurisdiction over disputes relating to the implementation of the rights outlined in the Convention, except for cases where courts refuse to hear cases because they do not understand the substance of the dispute – perhaps in the form of an explicit instruction that the court should in any event consider the merits of the case; to remove obstacles to access to justice, a norm should be introduced that allows public organisations to standing on behalf of the general public when the case is a matter of the implementation of the rights outlined in the Convention.

- *Improve legislation to ensure the implementation of Article 3(8) of the Aarhus Convention,*  
in light of the actions of Belarus in harassing environmental activists (findings of the Aarhus Convention Compliance Committee on Communication ACCC/C/2014/102 and relevant decisions of the Meeting of the Parties to the Convention – Decisions VI/8c and VII/8c).

**It is also necessary to implement organizational and institutional measures, including:**

- The preparation and implementation of a roadmap, including a set of measures regarding Belarus’ accession to the Aarhus Convention;
- The establishment of an institutional framework (agency) for the dissemination of environmental information, which will assist the public in searching for environmental information, organising public consultations, etc.;
- The establishment and maintenance of publicly accessible real-time environmental information resources (web portals, registers, etc.);
- The organisation of educational courses and training programmes for government officials, representatives of law enforcement bodies, judges, lawyers and the provision of relevant training manuals on the application of the Aarhus Convention;
- The implementation of training and awareness-raising programmes on human rights issues relevant to Article 3(8) of the Convention for police, security forces and the judiciary to ensure that police and security forces do not abuse their powers and do not carry out ID checks and arrests for alleged public order violations in a manner that impedes the exercise by members of the public of their rights to participate in decision-making;
- Ensuring that Article 3(8) of the Convention is implemented. This means that members of the public who exercise their rights in accordance with the provisions of the Convention should not be penalised, persecuted or harassed because they participated in relevant activities.

# CONCLUSION

The Aarhus Convention is a distinctive instrument that advances environmental democracy.

The accession of Belarus to the Convention was a pivotal moment in the country's journey towards environmental democracy, paving the way for greater public participation in environmental decision-making. The nation's legislation continued to develop, and the culture of public involvement in environmental decision-making grew.

Despite legislative changes and the introduction of new environmental standards, there has been a failure to exercise the right on access to environmental information and participate in environmental governance in practice. The political context in the country presented significant challenges to the full implementation of the Convention's provisions.

The withdrawal of Belarus from the Aarhus Convention was a step backwards in terms of international environmental cooperation and the country's democratic development.

We express our hope that, following democratic changes in Belarus, the country will resume its participation in the convention, thus continuing the path towards strengthening global environmental and democratic standards.

The re-accession of Belarus to the convention will require significant input from both governmental structures and the public to implement the recommendations previously provided, as well as to align the legislation and enforcement practice with the provisions of the Convention.