

To:

Compliance Committee
of the UN ECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters

through the Secretariat of the Convention

Ms. Ella Behlyarova, Secretary to the Aarhus Convention
United Nations Economic Commission for Europe
Environment and Human Settlement Division
Room 332, Palais des Nations
CH-1211 Geneva 10, Switzerland
E-mail: Ella.Behlyarova@unece.org

From:

Public Association “Ecohome”, Belarus

**COMMUNICATION
CONCERNING NON-COMPLIANCE BY BELARUS WITH THE UN ECE CONVENTION
ON ACCESS TO INFORMATION, PUBLIC PARTICIPATION IN DECISION-MAKING
AND ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS
(Article 3 paragraph 8)**

1. This communication is filed in relation to the Republic of Belarus and alleges its non-compliance with Article 3 paragraph 8 of the Aarhus Convention.
2. This communication alleges that the Government of Belarus failed to comply with its obligations under Article 3 paragraph 3 of the Aarhus Convention by harassing and persecuting anti-nuclear activists exercising their rights under the Convention.
3. **This communication is partially confidential.** The confidentiality request covers the name of XX, who is afraid of publicly appearing in such communication. For the purpose of the public version of the communication we suggest that name is replaced by “XX” or any other symbol.

I SUMMARY OF THE COMMUNICATION

4. The communication alleges non-compliance by Belarus of its obligations under Article 3(8) of the Aarhus Convention.

5. The communicant argues that the activists and NGOs opposing plans to construct nuclear power plant in Belarus were subject to harassment and persecution by the Government of Belarus. This was done in form of detentions, arrests, bans on entering the country, searches, and seizure of information materials.

6. **This communication is partially confidential.**

II INFORMATION ABOUT THE COMMUNICANT

7. This communication is filed by:

Public Association “Ecohome”

Zelenaya st. 14
Komarovo village
Svirskiy p/s
Myagelskiy Rayon
Minsk Oblast
Belarus 222394

8. Contact information to be used for the purpose of this communication:

Irina Sukhiy, founder

Public Association “Ecohome”
Novovilenskaya st. 38
Minsk 220053
Belarus
ecohome.by@gmail.com , suhisha@gmail.com
t/f:+375 17 3354725
mobile +375297778111

Please, copy all correspondence to:

Mr. Andriy Andrusevych

Resource & Analysis Center “Society and Environment”
Sakharova st.42, office 509
Lviv
Ukraine 79012
andriy.andrusevych@rac.org.ua

III BELARUS– THE STATE CONCERNED BY THIS COMMUNICATION

9. The Republic of Belarus is the state party concerned by this communication (hereinafter referred as Belarus).

10. Belarus signed the Convention on Dec 16, 1998; a decision to approve the Convention was taken on Dec 14, 1999 (Decree of the President of the Republic of Belarus No.726). The notification was filed with the depositary on Mar 9, 2000. No declaration or reservation was made upon notification of approval.

11. The Convention entered into force for Belarus on October 30, 2001 (Convention's entry into force date).

IV THE FACTS

12. Since 1986 activists and NGOs in Belarus had been making efforts to raise awareness of the citizens about nuclear power effects on the environment and human health (Belarus territory was heavily affected by Chornobyl accident). Since late 2000's these efforts aimed at actions to ensure that the public in Belarus is aware of possible implications of the nuclear power plant construction in Belarus.

13. As soon as the Government of Belarus took a decision to plan construction of the nuclear power plant in Ostrovets, the activists and NGOs opposing such plans were subject to harassment and persecution. This was done in form of detentions, arrests, bans on entering the country, searches, and seizure of leaflets.

Search and seize examples:

14. **On March 6 and 12, 2009**, home apartment of XX was subject to throughout search by the police (including making photos inside). The search was authorized by local prosecutor's office following a request by local police about the need to find unidentified printing and dissemination source of informational leaflets. XX was also detained in 2009 and requested to hand in two copies of home-made leaflets covering NPP construction issue.

15. **On October 9, 2009**, a Russian expert Andrey Ozharovskiy was detained as he tried to bring copies of the NGO EIA critique to the public hearings in Ostrovets town related to nuclear power plant construction (Annex 7). All his materials were seized and police started administrative case against him, which was closed due to the fact that EIA critique is not "periodic" printed materials (Annex 8).

16. **In autumn 2012**, during the electoral campaign to the Belarusian Parliament, XX was subjected to personal searches, the house was raided, and the printed materials relating to the Ostrovets NPP construction were seized (leaflets, newspapers, books). The authorities started an administrative case against that person for disobedience to the police. In 2012-2014, a court considered this case and fined XX for Br 4 million.

Detentions and arrest examples:

17. **On October 9, 2009**, a Russian expert Andrey Ozharovskiy was detained and then arrested when he tried to bring copies of the NGO EIA critique to the public hearings in Ostrovets town. He was sentenced to 7 days of administrative arrest and was released on October 16, 2009, as ordered by the local court (Annex 7). All his materials were seized.

18. **On 18 July 2012** in Minsk: at 11:22 the police detained Belarus journalist and the coordinator of the anti-nuclear campaign Tatyana Novikova (Annex 1) together with the Russian expert Andrey Ozharovskiy (Annex 5). Ms. Novikova and Mr. Ozharovskiy were on their way to hand over a petition to the Russian Embassy expressing their concerns about the construction and operation of a new nuclear power station near Ostrovets. By a court decision Tatyana Novikova was arrested for 5 days. Andrey Ozharovskiy arrested for 10 days (Annex 5) and he was later subject to a 10 years ban to enter Belarus (Annex 4). The alleged charges were “public order violation by using brutal language on the street”.

19. **On 18 July 2012** in Minsk: Having learnt about arrest of Ms. Novikova and Mr. Ozharovskiy, some minutes after their arrest, Ms. Sukhiy, head of the environmental organization Ecohome, left her office (located in a different part of Minsk city) to substitute the arrested colleagues and to bring a copy of the above mentioned petition to the Russian Embassy. At the same time, Mikhail Matskevich, human rights defender, left the same building and was on his way to provide legal assistance to the detained activists (Ms. Novikova and Mr. Ozharovskiy). At 12:00 both Irina Sukhy (Annex 3) and Mikhail Matskevich (Annex 2) were detained by police just as they left the building. By a court decision Mikhail Matskevich was arrested for 5 days. Chairperson of the public association “Ecohome” Iryna Sukhiy was fined for Br 1 million 500 thousand (Annex 3). The alleged charges were “public order violation by using brutal language on the street”.

20. During her arrest, Ms. Novikova was placed in bad conditions despite her poor health condition after a serious illness. The police seized her vital drugs (post cancer treatment) and placed in special camera along with other things, and she got them only due to a private initiative of one of the policemen. The other important anticancer pills police did not let her take during 48 hours.

21. **On April 26, 2013**, an officially permitted street action “Chernobyl Way-2013” was planned in Minsk, traditionally conducted on the anniversary of the Chernobyl tragedy. Just hours before the manifestation, the police detained Ms. Iryna Sukhiy and several activists who were responsible for delivery of the agitation materials (posters, flags, etc.) to the action (Annex 9). The alleged reason for detention was documents check. They were no able to participate in the action, therefore. Ms. Tatyana Novikova was blocked in the apartment by the police until the action was over, although she was one of the official organizers of the event (as indicated in the application for the permit for the action). XX was detained by the traffic police on the way from Ostrovets to Minsk to take part in the “Chernobyl Way-2013”, and then was forcibly kept in the police department, allegedly for documents check just till the action was over. After the “Chernobyl Way-2013”.

V NATURE OF ALLEGED NON-COMPLIANCE

22. **We allege that Belarus failed to comply with its obligations under Art. 3 (8) by harassing and persecuting activists who were trying to promote their views on nuclear energy development in Belarus.**

23. Paragraph 8 of the Article 3 of the Aarhus Convention states:

“8. Each Party shall ensure that persons exercising their rights in conformity with the provisions of this Convention shall not be penalized, persecuted or harassed in any way for

their involvement. This provision shall not affect the powers of national courts to award reasonable costs in judicial proceedings”.

24. We consider that actions by the Government of Belarus - searches, detentions, arrests and seizures of information materials - constitute harassment and persecution of activists exercising their rights under the Convention since all these actions took place in relation to specific events, persons and issues directly falling under the scope of the Aarhus Convention.

25. The facts give sufficient reasoning to the allegation of persecution when analyzed from the perspective of three questions: when they took place? who was concerned? and what were the issues raised?, as explained below.

When the facts took place?

26. Mr. Andrey Ozharovskiy was detained during the public hearings on nuclear power plant project in Ostrovets city, just at the entrance of the premises where the hearings were to start. His detention prevented him from bringing printed comments on the project documentation. Arrested and later departed from Belarus. October 9, 2009.

27. Ms. Tatsiana Novikova was detained and arrested on her way to the Russian Embassy in Minsk where she planned to hand in a statement to the Prime Minister of Russia calling upon Russian Federation not to finance construction of the nuclear power plant. Arrested. July 18, 2012.

28. Mr. Andrey Ozharovskiy was detained and arrested on his way to the Russian Embassy in Minsk where she planned to hand in a statement to the Prime Minister of Russia calling upon Russian Federation not to finance construction of the nuclear power plant. Arrested. July 18, 2012.

29. Ms. Iryna Sukhiy was detained on her way to the Russian Embassy in Minsk where she planned to hand in a statement to the Prime Minister of Russia calling upon Russian Federation not to finance construction of the nuclear power plant. Fined. July 18, 2012.

30. Mr. Michael Matskevich was detained on his way to provide legal assistance to detained environmental activists Ms. Novikova and Mr. Ozharovskiy (which had plans to hand in a statement calling on Russia to abstain from financing nuclear power plant construction in Belarus). Arrested. July 18, 2012.

31. Ms. Iryna Sukhiy, as well as some other activists, was detained for documents check on the street just before start of street action ‘Chornobyl Way 2013’ (permitted by authorities). She planned to express concerns over nuclear power plant construction (by using specific banners) during that street action. April 26, 2013. Kept for several hours till the action was over.

32. Ms. Tatsiana Novikava was blocked in the apartment as she intended to leave to participate in the street action ‘Chornobyl Way 2013’. She planned to express concerns over nuclear power plant construction by visual materials (Annex 9). April 26, 2013. Blocked for several hours till the action was over.

33. XX was detained on the way to Minsk (from Ostrovets city) for documents check on the way to ‘Chornobyl Way 2013’ street action. Kept in the police department just till the end of the street action.

Who was concerned?

34. Mr. Andrey Ozharovskiy is known Russian antinuclear activist. He is known for his critical comments on Belarus nuclear power plant, as well as other nuclear projects.
35. Ms. Tatsiana Novikava is well known anti-nuclear activist in Belarus, associated with environmental NGO Ecohome (Minsk). She made numerous submissions and comments, as well as media articles, in relation to the nuclear power plant project in Belarus.
36. Ms. Irina Sukhiy is chair of the board of NGO Ecohome. This NGO was clearly the lead NGO in Belarus organizing the public during the public discussions over nuclear power plant construction in Belarus.
37. Mr. Michael Matskevich is well known human rights activist in Belarus.
38. XX is well known anti-nuclear activist, for years raising awareness of the local population about environmental and health risks of the nuclear energy and nuclear power plant project in Belarus.
39. All together, these 5 persons were the core team encouraging the public to participate in the discussions over nuclear program and nuclear power plant project in Belarus.

What were the issues raised?

40. The documents, seized after the search in the house of XX in 2009, were the leaflets on nuclear power plant construction impact.
41. When detained, Mr. Andrey Ozharovskiy was about to participate in the public hearings related to the project to construct a nuclear power plant in Belarus. He also brought copies of extensive comments on the EIA documentation of the nuclear power plant project made available for the public discussion process by Belarus Government. Previously, he was participating in several events related to the project discussions.
42. When detained on July 18, 2012, Ms. Tatyana Novikova, in coordination with other activists, was on her way to hand in a statement calling on Russia on abstain from financing nuclear power plant construction in Belarus.
43. When detained on July 18, 2012, Ms. Irina Sukhiy, in coordination with other activists, was on her way to hand in a statement calling on Russia on abstain from financing nuclear power plant construction in Belarus.
44. When detained on July 18, 2012, Mr. Michael Matskevich, was on his way to the police department to provide legal assistance to the detained (and later arrested) environmental activists which planned to hand in a statement calling on Russia on abstain from financing nuclear power plant construction in Belarus.
45. When detained on July 18, 2012, Mr. Andrey Ozharovskiy, in coordination with other activists, was on his way to hand in a statement calling on Russia on abstain from financing nuclear power plant construction in Belarus.
46. When detained for documents check on April 26, 2013, Ms. Irina Sukhiy and other activists were about to participate in a street action with banners calling to stop nuclear power plant

construction. The banners were related to nuclear power plant project (police prevented any attempt to take the banners from the car) (Annex 9).

47. When blocked in her house on April 26, 2013, Ms. Tatyana Novikava was about to leave to participate in the street action (as one of the official organizers) with banners and posters related to the nuclear power plant project (Annex 9).

48. In conclusion, the searches, detentions, arrests, seizing and other actions by the Government of Belarus were taken in relation to anti-nuclear activists in Belarus, which were trying to express their opinion about a project to construct a nuclear power plant in Belarus. All together, these actions by the Government of Belarus were aimed at preventing the activists from expressing their opinion and participating in the public discussion process about nuclear power plant in Belarus and constitute persecution of persons trying to exercise their rights under the Aarhus Convention.

VI USE OF DOMESTIC REMEDIES OR OTHER INTERNATIONAL PROCEDURES

49. The activists unsuccessfully appealed their arrests in courts, in some cases (see Annexes 1 and 7 as examples). They also filed court complaints about conditions of arrests, also unsuccessfully (Annex 6).

50. Some facts in relation to the detention of the activists were brought to the attention of the Compliance Committee of the Aarhus Convention in course of the follow-up to the communication C/44. The government of Belarus was already providing some information as to facts to arrest in response to questions from the Compliance Committee.

VII CONCLUSIONS

51. We allege, as substantiated by the facts and considerations above, that actions by the Government of Belarus - searches, detentions, arrests and seizures of information materials - constitute harassment and persecution of activists trying to promote their views on nuclear energy development in Belarus, in particular during public discussion of a specific project to construct the first nuclear power plant in Belarus.

52. Therefore, we allege that Belarus failed to comply with its obligations under Art. 3 (8) by harassing and persecuting activists who were exercising their rights under the Convention.

LIST OF ANNEXES

Annex 1. Decision of Minsk City Court, August 3, 2012, rejecting appeal on arrest of T. Novikava. Judge Yankovskiy G.

Annex 2. Decision of Central Rayon Minsk City Court of July 18, 2012, arresting M. Matskevich for 3 days. Judge Yesman V.

Annex 3. Decision of Central Rayon Minsk City Court of July 18, 2012, imposing a fine on I. Sukhiy in the amount of Br 1 million 500 thousand. Judge Yakunchikhin A.

Annex 4. Notice by Moskovkiy Police Department in Minsk of July 28, 2012, imposing on Andrey Ozharovkiy Belarus entrance ban for 10 years.

Annex 5. Decision of Moskovkiy Rayon Minsk city Court of July 18, 2012, arresting A.Ozharovkiy for 10 days. Judge Motyl T.

Annex 6. Complaint by T.Novikava to the police on the condition of arrest (August 26, 2012) and decision rejecting allegations of inhuman conditions (September 13, 2012).

Annex 7. Decision of Grodno Oblast Court, October 16, 2009, rejecting A.Ozharovkiy appeal against his arrest decision of October 9, 2009. Judge Sobolev I.

Annex 8. Decision of the Vice Minister of Information of Belarus of November 9, 2009, closing administrative case against Andrey Ozharovski for distribution of periodic printed materials.

Annex 9. Banners and posters, which police prevented from using on April 26, 2013.