

To:

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

through the Secretary to the Aarhus Convention Compliance Committee
United Nations Economic Commission for Europe
Environment Division
Palais des Nations
CH-1211 Geneva 10, Switzerland
aarhus.compliance@un.org

From:

Public Association "Ecohome", Belarus

**COMMUNICATION
CONCERNING NON-COMPLIANCE BY BELARUS WITH THE UNECE CONVENTION ON
ACCESS TO INFORMATION, PUBLIC PARTICIPATION IN DECISION-MAKING AND
ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS
(Article 6 paragraph 2, 3, 4, 9)**

I. Information on correspondent submitting the communication

1. Public Association "Ecohome",

Permanent address [REDACTED]

Telephone [REDACTED]

Email [REDACTED]

2. Contact persons:

Name Ms Marina Dubina

Title/Position Executive director

Telephone [REDACTED]

Email [REDACTED]

Name Mr Siarhei Mahonau

Title/Position Legal advisor

Email [REDACTED]

II. Party concerned

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

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

III. Facts of the communication

Factory construction project:

5. Seven kilometers away from Brest (a city next to the Polish border, the capital of region, population is more than 350 thousand people), a factory for the production of car batteries was constructed (but has not been put into operation at the moment).

Decision Making Process:

6. On July 15, 2016, a commission was created to select the location of the land plot for the construction and maintenance of the "Battery Plant LLC" iPower" with natural gas-fired boiler plant at the address: Brest district, FEZ "Brest", district area "Airport" (hereinafter – the factory).

November 03, 2016 the selection of the site.

7. On November 15, 2016, the Brest district executive committee authorized the factory project design (Annex 1).

8. Decisions on the factory establishing, land plot selection and providing, permission on project design and construction were not published and were not the subject of discussion with the public.

Public participation and public discussion of the EIA report:

9. In 2016, an environmental impact assessment of the plant construction project was carried out.

10. The newspaper *Zarya nad Bugom* No. 47 (November 24, 2016) published notifications of public hearings on the EIA report on the construction project of the battery factory. Dates of hearings - from November 28 to December 27, 2016 (Annex 2). The newspaper is the official herald of the Brest region (not the city of Brest) and is published once per week with a circulation of 3,000 copies. The public hearings were originally planned with residents of the surrounding villages, the city of Brest was not informed about the hearings.

11. According to the legislation requirements on December 2, 2016, by order No. 221-r of the chairman of the Brest district executive committee, was established a commission to conduct public hearings on the EIA report on the battery factory project (Annex 3).

12. On December 08, 2016, the newspaper *Zarya nad Bugom* No. 49 published repeated notification of public hearings of the EIA report on the battery factory construction project, the dates for public hearings - from November 28 to December 27, 2016 (Annex 2).

13. On January 9, 2017, the deputy chairman of the Brest Region Executive Committee approved the protocol for public hearings of the EIA report on the battery factory project, according to which public hearings were held from December 08, 2016 to January 7, 2017, there were no comments and suggestions from the public (Annex 4).

14. On May 26, 2017, a positive conclusion of the state environmental *expertiza* was received for the factory project. At the same time, a modified version of the EIA report was submitted to the state environmental *expertiza*, which was not published and discussed with the public.

15. The decision issuing construction permit was not published.

16. Till present time there is not clear which state body authorized the construction of this facility and by which decision (which is a decision allowing the implementation of activities).

In April 2020, at the request for information, which authority and by what decision allowed the construction, the Brest Regional Executive Committee refused to provide information.

17. At the end of 2017, the public learned about the construction of the plant and began to apply to various authorities with requests for information, proposals for the cessation of construction and the proper conduct of public hearings of the project.

18. On January 15, 2018, a meeting was held at *Telmy village House of culture* near Brest, at which representatives of authorities and factory informed public about the project.

19. Starting from February 25, 2018, residents of Brest and the region gather every Sunday in the Lenin in Brest for "feeding pigeons" - these meetings are formally called in which they protest against the construction battery of the factory and discuss related news. The mass event is not authorized by authorities. For the entire period from 2018 to the day this Communication sent, local residents submitted applications for 325 meetings, 18 pickets and 16 demonstrations. Local authorities allowed only one meeting on April 29, 2018.

20. By order of the Chairman of the Brest Regional Executive Committee dated June 14, 2019 No. 60-p, the construction of factory was suspended until the identified violations were eliminated, although the factory itself was actually built and equipment was installed (Annex 5).

IV. Provisions of the Convention with which non-compliance is alleged

21. Article 6, para 2: *The public concerned shall be informed, either by public notice or individually as appropriate, early in an environmental decision-making procedure, and in an adequate, timely and effective manner.*

22. Article 6, para 3: *The public participation procedures shall include reasonable time-frames for the different phases, allowing sufficient time for informing the public in accordance with paragraph 2 above and for the public to prepare and participate effectively during the environmental decision-making.*

23. Article 6, para 4: *Each Party shall provide for early public participation, when all options are open and effective public participation can take place.*

24. Article 6, para 9: *Each Party shall ensure that, when the decision has been taken by the public authority, the public is promptly informed of the decision in accordance with the appropriate procedures. Each Party shall make accessible to the public the text of the decision along with the reasons and considerations on which the decision is based.*

V. Nature of alleged non-compliance

25. We allege that Belarus violated the right of the public to participate in environmental decision making when authorizing the construction of a battery factory (according to the provisions of para 2, 3, 4, 9 of Article 6 of the Aarhus Convention).

26. We believe that the provisions of Article 6 of the Aarhus Convention are applicable to decisions regarding the construction of a battery plant.

27. According to paragraph 20 of Appendix I to the Aarhus Convention "List of activities referred to in Article 6, paragraph 1(a)": "Any activity not covered by paragraphs 1-19 above where public participation is provided for under an environmental impact assessment procedure in accordance with national legislation."

28. The national legislation of Belarus provides public participation in the framework of the EIA procedure for this facility.

29. According to Art. 15.2 of the Law of the Republic of Belarus “On Environmental Protection”: “In case if according to legislation on environmental impact assessment for facility EIA is carried out ... reports on environmental impact assessments are also subject to public discussion.”

30. The “Battery Factory” facility according to the Law of the Republic of Belarus “On State Ecological Expertise, Strategic Environmental Assessment and Environmental Impact Assessment” by subparagraph 1.3 of paragraph 1 of Article 5 and subparagraph 1.1. of paragraph 1 of Article 7 is the facility for which an environmental impact assessment is carried out because of the fact that the basic size of the sanitary protection zone of the object is more than 300 meters (the sanitary protection zone of the plant is 500 meters).

Article 6(2): timely and adequate informing

31. Information on planned activities and public discussions was not disseminated, for example, in regular papers in Brest (of which there are at least 5 and some of them are published twice a week). The chosen methods of disseminating information about public hearings were not aimed making the potentially interested public, especially in Brest, have a reasonable opportunity to learn about the proposed activities and take part in public hearings.

32. Thus, the Committee, in its Findings on Communication ACCC / 2006/16, paragraph 67, notes “The requirement for the public to be informed in an “effective manner” means that public authorities should seek to provide a means of informing the public which ensures that all those who potentially could be concerned have a reasonable chance to learn about proposed activities ECE/MP.PP/2008/5/Add.6 Page 12 and their possibilities to participate¹.”

33. In this case, public hearings were held without effective public informing, which precluded any opportunity for the public to prepare and take an effective participation in the decision-making process.

34. In the newspapers announces was published false information that the public discussion would be held from November 28 to December 27, 2016, while it was actually held from December 8, 2016 to January 7, 2017.

35. Thus, in violation of Article 6 part 2 of the Aarhus Convention, informing the public about the possibility of taking part in the decision was not effective.

Статья 6(3): reasonable time-frames

36. Public discussions were held from December 08, 2016 to January 7, 2017. The period of their holding was during the Christmas holidays (December 25 and January 7), as well as the New Year (January 1).

37. Thus, the Committee, in its Findings on Communication ACCC / C / 2008/24, paragraph 90, notes that “in many countries of the UNECE region the period between 22 December and 6 January is considered as Christmas holiday season, despite the fact that officially many offices work during that time².”

38. Therefore, we allege that Belarus violated the requirements of Article 6 part 3 of the Aarhus Convention by not providing reasonable time for the public to learn the documentation and the

1 https://www.unece.org/fileadmin/DAM/env/documents/2008/pp/mop3/ece_mp_pp_2008_5_add_6_e.pdf

2 https://www.unece.org/fileadmin/DAM/env/pp/compliance/CC-26/ece_mp_pp_c.1_2009_8_add.1_as%20re-submitted%20CLEAN.pdf

possibility of preparing and participating effectively in public hearings, since the public hearings took place state holidays in country (New Year, Christmas on December 25 and January 7).

Статья 6(4): early public participation, when all options are open

39. Decision-making - about conclusion of an agreement between the company and the regional authorities, on the selection of a land plot, on permission to project design, at projecting stage public was not informed and the opportunity to participate was not provided.

40. This has caused widespread public protests, continuing for the third year already. Their grounds is both the potential danger of lead used in production and the fact that the decision to build was made in violation of the public's right to participate in decision making. Some facts about the persecution of activists and bloggers participating in the protests have already been brought to the attention of the Aarhus Convention Compliance Committee according to paragraph 7 of Decision VI / 8c on Belarus³.

41. National legislation does not provide the right for public to participate in decision-making at the earliest stage (when were made decisions on the land plot providing, conclusion of an agreement with the regional executive committee, and the project design stage), but only at the stage of discussion of the EIA report on project documentation.

Environmental impact assessment is carried out for the developed project. In accordance with national legislation, first a land plot is provided to the developer by the local authority, then the developer receives permission for project design from the local authority, after the project documentation is developed, an environmental impact assessment of the proposed activity (EIA) is made, and only its report is submitted for public hearings.

The adoption of decisions by the local government on the provision of land plot, on the project design are not the subjects of discussion with the public.

42. Thus, in Findings of the Communication Committee ACCC / C / 2005/12⁴, paragraphs 73-74, the Committee notes that even if the public is given the opportunity to participate in decision-making on specific activities, the requirement to provide the public with the opportunity to participate at the earliest stage when all possibilities are open for considering various options should be carried out.

43. Therefore, we allege that Belarus violated article 6 paragraph 4 of the Aarhus Convention by providing for public participation only discussion of the EIA report of the factory, and not providing the public with the opportunity to participate at the very early stage of decision-making when there are various possibilities open.

Article 6 (9): when the decision has been taken by the public authority, the public is promptly informed of the decision

44. The public was not informed about the decision on factory construction, as well as about the reasons for making such a decision.

45. National legislation does not contain a norm defining what constitutes a decision authorizing a particular activity.

46. In the notice of public hearings of the EIA report, the Brest district executive committee is indicated as the body responsible for making the decision, but in 2019 the construction was suspended by the order of the Brest regional executive committee - these are different types of administrative decisions and different government bodies.

³ [http://www.unece.org/fileadmin/DAM/env/pp/compliance/MoP6decisions/Compliance by Belarus VI-8c.pdf](http://www.unece.org/fileadmin/DAM/env/pp/compliance/MoP6decisions/Compliance_by_Belarus_VI-8c.pdf)

⁴ https://www.unece.org/fileadmin/DAM/env/documents/2007/pp/ECE_MP.PP_C_1_2007_4_Add_1.pdf

47. The Brest Regional Executive Committee refused to provide information on the decision authorizing the construction of the factory (Annex 6). The refusal of the Brest Regional Executive Committee has been appealed to the court; the case is currently under consideration.

48. The public was not only unable to find out about the adoption and reasons for making a decision on constructing the factory, but also currently does not have information about which decision in the context of part 9 of article 6 of the Convention is a decision on the permission of factory activity.

49. Thus, we allege that Belarus violated para 9 of Article 6 of the Aarhus Convention by failing to inform the public about the decision taken and not providing the text of this decision indicating the reasons and considerations underlying this decision.

VI. Use of domestic remedies

50. On 29 January 2018, the Ecodom public association, together with three local residents, filed a lawsuit in court to suspend the implementation of the project to create a battery factory due to a violation of the public's right to participate in an environmentally significant decision. The main requirement was the repeated public discussion of the EIA report in accordance with the procedure established by national legislation. On March 27, 2018, the Moscow District Court of Brest refused to satisfy the claim, on the grounds that "the plaintiff's arguments about the violation of the public discussion of the EIA report and the possible harmful effects of the project are refuted by the conclusion of the state environmental *expertiza*. And the legislation does not provide for the possibility of holding repeated public discussions in the presence of the conclusion of the state environmental *expertiza*". (Annex 7).

The court of appeal upheld the decision on May 28, 2018.

VII. Use of other international procedures

51. No any international procedures were used in this case.

VIII. Confidentiality

52. This Communication is not confidential.

IX. Supporting documentation (copies, not originals)

List of annexes:

1. The Brest District Executive Committee Resolution Nr 1847 dated Nov 15, 2016.
2. A cover letter and copies of publications in the newspaper *Zarya nad Bugom* No. 47 dated November 24, 2016 and No. 49 dated December 08, 2016 - notices on public discussions of the EIA report of the battery factory project.
3. An order of the Chairman of Brest District Executive Committee Nr 221-r fayed Dec 02, 2016 on establishing a commission for organizing of public hearings of EIA report on battery plant factory project.
4. Protocol of public discussion of the EIA report on the battery factory project, approved on January 9, 2017.
5. The order of the Chairman of the Brest Region Executive Committee dated June 14, 2019 No. 60-r on the suspension of the construction of the "Battery Factory LLC" "AyPower" facility with its own natural gas boiler at the address: Brest district FEZ "Brest" district area "Airport" area 1st launch complex until elimination identified violations.

6. The answer of the Brest Regional Executive Committee of April 4, 2020 on refusal to provide information on which body and by what act allowed the creation and / or construction of the battery factory (final decision).

7. Decision of the Moscow District Court of Brest from March 27, 2018.

X. Signature

On behalf of Ecohome,

Marina Dubina,
Executive Director
May 24, 2020

A handwritten signature in blue ink, appearing to be 'M. Dubina', written over the printed name and title.