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Meeting of the Parties to the Convention on  
Access to Information, Public Participation  
in Decision-making and Access to Justice  
in Environmental Matters

### Compliance Committee

#### Fifty-eighth meeting

Budva, 10–13 September 2017

Item 8 of the provisional agenda

#### Communications from members of the public

### Findings and recommendations with regard to communication ACCC/C/2014/102 concerning compliance by Belarus

Adopted by the Compliance Committee on 18 June 2017

## Contents

	<i>Page</i>
I. Introduction .....	2
II. Summary of facts, evidence and issues .....	3
A. Legal framework and relevant case-law .....	3
B. Substantive issues .....	4
III. Consideration and evaluation by the Committee.....	11
IV. Conclusions and recommendations .....	21
A. Main findings with regard to non-compliance .....	21
B. Recommendations.....	21

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## I. Introduction

1. On 24 April 2014, “Ecohome”, an environmental non-governmental organization (the communicant), submitted a communication to the Compliance Committee under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) alleging the failure by Belarus to comply with its obligations under article 3, paragraph 8, of the Convention with respect to the alleged harassment of environmental activists.<sup>1</sup>
2. At its forty-fifth meeting (Maastricht, the Netherlands, 29 June-2 July 2014), the Committee determined on a preliminary basis that the communication was admissible.
3. Pursuant to paragraph 22 of the annex to decision I/7 of the Meeting of the Parties to the Convention, the communication was forwarded to the Party concerned on 19 February 2015.
4. The Party concerned provided its response to the communication by letter dated 17 July 2015, received on 20 July 2015.
5. The Committee held a hearing to discuss the substance of the communication at its fiftieth meeting (Geneva, 6-9 October 2015), with the participation of representatives of the communicant and the Party concerned. At the same meeting, the Committee confirmed the admissibility of the communication.
6. At the request of the Committee, on 14 November 2016 the secretariat forwarded questions to the Party concerned. The Party concerned provided its reply to the questions on 3 February 2017.
7. By letter of 8 May 2017, the Committee sent further questions to the communicant. The communicant provided its reply on 11 May 2017. The Party concerned provided comments on the communicant’s reply on 18 May 2017.
8. The Committee prepared its draft findings in closed session and completed them through its electronic decision-making procedure on 26 May 2017. In accordance with paragraph 34 of the annex to decision I/7, the draft findings were then forwarded on that date for comments to the Party concerned and the communicant. Both were invited to provide comments by 13 June 2017.
9. The communicant and the Party concerned provided comments on 13 and 15 June 2017, respectively.
10. The Committee proceeded to finalize its findings in closed session. It made some minor amendments in the light of the comments received and agreed that no other changes were necessary. The Committee then adopted its findings on 18 June 2017 through its electronic decision-making procedure and agreed that they should be published as a formal pre-session document for its fifty-eighth meeting. It requested the secretariat to send the findings to the Party concerned and the communicant.

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<sup>1</sup> Documents concerning this communication, including correspondence between the Committee, the communicant and the Party concerned, are available on a dedicated web page of the Committee’s website (<http://www.unece.org/environmental-policy/conventions/public-participation/aarhus-convention/tfwg/envppcc/envppcccom/acccc2014102-belarus.html>).

## II. Summary of facts, evidence and issues<sup>2</sup>

### A. Legal framework and relevant case-law

#### Constitutional rights and freedoms

11. The Constitution of the Party concerned, adopted in 1994 and subsequently amended, sets out the rights and freedoms of citizens of Belarus. Article 21 of the Constitution guarantees the rights and freedoms of Belarusian citizens enshrined in the Constitution, the national laws and those determined by international obligations.

12. Article 23 of the Constitution provides a list of conditions under which the stated personal rights and freedoms may be restricted. Article 25 specifies that any restriction or deprivation of personal freedom is possible only in the instances and under the procedure specified by law. Article 24 provides the right to protection from unlawful interference with privacy. Article 29 guarantees the inviolability of the home or other lawful property of citizens. Article 33 guarantees freedom of opinions, beliefs and expression, and article 34 guarantees the right to receive, store and disseminate complete, reliable and timely information on the activities of State bodies, including the state of the environment. Article 37 guarantees the right to participate in public affairs, directly or through freely chosen representatives.

13. Article 46 of the Constitution states that: “Everyone has the right to a healthy environment and compensation for harm caused by violation of this right. The State exercises control over the management of natural resources in order to protect and improve the living conditions, as well as the protection and restoration of the environment”.

#### Involvement of public associations and citizens in activities to protect the environment

14. The Law on Protection of the Environment of 26 November 1992 No. 1982-XII (as amended on 16 June 2014, with the revisions of 31 December 2014) establishes the legal framework on environmental protection and has the aim to ensure the constitutional rights of citizens to a healthy life and a healthy environment.

15. Article 4 of the Law on the Protection of the Environment regulates the participation of public associations and other legal entities and citizens in the activities of the environmental State bodies and requires transparency in the work of State bodies and public associations on issues of environmental protection.

#### Use of obscene language

16. The Code of Administrative Offences of Belarus of 21 April 2003 No 194-3 regulates administrative offences. Article 17.1 on “Disorderly conduct” provides:

Obscene language in a public place, offensive molestation to citizens and other deliberate acts that violate public order, activity of organizations or the peace of citizens and expressed in obvious disrespect for society ... shall be punishable with a fine in the amount of two to thirty base values or shall invoke an administrative detention.<sup>3</sup>

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<sup>2</sup> This section summarizes only the main facts, evidence and issues considered to be relevant to the question of compliance, as presented to and considered by the Committee.

<sup>3</sup> Reply of the Party concerned to the Committee’s questions, 3 February 2017, annex 1, p. 4.

### **Identity checks**

17. Article 8.1 of the Procedural-Executive Code of Administrative Offences states:

In order to prevent administrative offences, establish [the] identity of an individual, with regard to whom an administrative process is carried out, draw up a protocol on administrative offence, ensure timely and proper consideration of a case on [an] administrative offence, it is admissible to use the following measures aimed at ensuring administrative process: 1) administrative detention of an individual.

18. In accordance with article 8.2 of the Procedural-Executive Code Administrative Offences, detention may be applied, inter alia, for the purposes of establishing identity. Article 8.4 of the Code provides that the period of administrative detention may last no more than three hours, unless otherwise provided by the Code.

19. Article 25 of the Law “On Internal Affairs Authorities of the Republic of Belarus” vests internal affairs authorities with the right to “examine identity documents of citizens as well as other documents, which are necessary to examine compliance by these citizens with the rules that are overseen and controlled by the internal affairs authorities, should these citizens be suspected of committing crimes and administrative offences”.

### **Administrative detention**

20. In accordance with article 6.7 of the Code of Administrative Offences: “Administrative detention [consists in the isolation of an individual in the places determined by a body responsible [for] the execution of administrative penal[ies], and can be imposed for up to fifteen days.”

## **B. Substantive issues**

21. The communicant alleges that the Party concerned has failed to comply with article 3, paragraph 8, of the Convention because activists opposing the planned Ostrovets nuclear power plant in Belarus were subject to harassment and persecution by the Government, including unlawful detentions, arrests, bans on entering the country, searches and seizures of information materials. The communicant alleges that the aforementioned actions by the Party concerned took place in the context of the activists exercising their rights under the Aarhus Convention. The communicant bases its allegations on actions taken by the authorities of the Party concerned with respect to the following environmental activists:

(a) Mr. Ozharovskiy, a Russian anti-nuclear activist who is known for his critical comments on the Ostrovets nuclear power plant, as well as other nuclear projects;

(b) Ms. Novikova, a well-known anti-nuclear activist in Belarus associated with the communicant who made numerous submissions and comments, along with media articles, in relation to the Ostrovets nuclear power plant;

(c) Ms. Sukhiy, the chair of the board of the communicant, which is the lead NGO in Belarus organizing the public during the public discussions over nuclear power plant construction in Belarus;

(d) Mr. Matskevich, a well known human rights activist in Belarus;

(e) XX, another environmental activist, who has for many years worked to raise the awareness of the local population about the environmental and health risks of the nuclear energy and nuclear power plant project in Belarus.<sup>4</sup>

22. The communicant alleges that all five persons are prominent activists encouraging the public to participate in the discussions over the nuclear programme of the Party concerned and the Ostrovets nuclear power plant project.

23. The communicant cites the events set out below to substantiate its allegation under article 3, paragraph 8, of the Convention.

#### **Incidents involving search and seizure**

##### **(a) 6 and 12 March 2009**

24. The communicant alleges that on 6 and 12 March 2009, the home of XX was subject to a thorough search by the police (including taking photographs). The search was authorized by the local prosecutor's office following a request by the local police, who sought to identify the person(s) who had printed and disseminated certain leaflets. XX was also detained in 2009 and requested to hand in two copies of home-made leaflets concerning the proposed construction of the Ostrovets nuclear power plant.<sup>5</sup>

25. The Party concerned submits that the searches of 6 and 12 March 2009 were already raised in communication ACCC/C/2009/44<sup>6</sup> and examined by the Committee, which stated that "on the basis of the information provided, the Committee could not assess with sufficient certainty what happened exactly and therefore the Committee refrains from making findings on this issue". It submits that the Committee also reported the above finding to the Meeting of the Parties to the Convention.<sup>7</sup>

##### **(b) 9 October 2009**

26. The communicant submits that on 9 October 2009, Mr. Ozharovskiy was arrested at the entrance of the building in Ostrovets where the public hearing on the nuclear power plant was to be held. Mr. Ozharovskiy was carrying leaflets containing a "critique" prepared by NGOs of the environmental impact assessment (EIA) of the Ostrovets project. All his materials were seized and he was sentenced to seven days' administrative arrest for the unauthorized distribution of periodicals under article 22.9, part 2, of the Administrative Offences Code.<sup>8</sup>

27. The Party concerned submits that this incident was also already considered by the Committee in the context of communication ACCC/C/2009/44 and, furthermore, that the communicant's account of these events is not accurate. It submits that the EIA "critique" was available on the Internet and had been forwarded to the Construction Directorate on 21 September 2009 and that some of the comments received from the public were taken into account in the finalization of the environmental impact assessment. According to the Party concerned, the materials therefore did not provide anything new for the public or the

<sup>4</sup> Communication, p. 6. The communicant has requested confidentiality with respect to the identity of this individual.

<sup>5</sup> Communication, para. 14.

<sup>6</sup> ECE/MP.PP/C.1/2011/6/Add.1, para. 22 (b).

<sup>7</sup> Opening statement of the Party concerned for hearing at Committee's fiftieth meeting, 7 October 2015, pp. 5-6.

<sup>8</sup> Communication, para. 15.

public authorities. It also states that, in accordance with Ministry of Information Decision No. 16 of 3 November 2009, the materials were subsequently returned to Mr. Ozharovskiy.<sup>9</sup>

28. The Party concerned submits that Mr. Ozharovskiy was in fact detained for a public order violation and for wilfully disregarding the rules laid down by the organizers of the public hearing. It also states that, during the registration for the public hearing on 9 October 2009, every participant was subject to search, including the representatives of public authorities (813 persons in total), and that this was done on the basis of a legislative requirement and intended to ensure security at the event.<sup>10</sup>

**(c) Autumn 2012**

29. The communicant alleges that, in autumn 2012, during the electoral campaign for the Belarusian parliament, XX was subjected to personal searches, XX's house was raided, and printed materials (leaflets, newspapers and books) relating to the construction of the Ostrovets plant were seized. It is alleged that the authorities started an administrative case against XX for disobedience to the police and that in the period 2012-2014 a court considered this case and fined XX Rbl 4 million (approximately €200).<sup>11</sup>

30. The Party concerned submits that the communicant's description of events contains inaccuracies and contradictions. It highlights that the communicant alleges that the incident relates to search and seizure, but at the same time states that proceedings were brought against XX for disobedience to the police without making reference to the seizure of leaflets, newspapers or books, nor providing any documents confirming these facts. The Party concerned further states that the reference to the period of 2012-2014 either contradicts the time limits laid down in its legislation for the examination of breaches of administrative law or demonstrates that further information has been omitted.<sup>12</sup>

31. The Party concerned further emphasizes that all the incidents relating to searches and seizures described in paragraphs 24-30 above relate only to two issues of the *Ostrovets Messenger* newspaper, a non-professional publication, and to one poster.<sup>13</sup>

**Incidents relating to detentions and arrests**

**(a) 9 October 2009**

32. The communicant submits that, as described in paragraph 26 above, on 9 October 2009, Mr. Ozharovskiy was arrested as he was about to enter the premises of the public hearing in Ostrovets and all his materials were seized, including the leaflets on the NGO critique of the EIA for the Ostrovets project. Mr. Ozharovskiy was sentenced by court decision to seven days' administrative arrest. He was released on 16 October 2009 and later deported from Belarus.<sup>14</sup>

33. The Party concerned submits that Mr. Ozharovskiy was detained for a public order violation and that all persons attending the hearing were subject to a search (see para. 28 above). It submits that Mr. Ozharovskiy began to behave aggressively and to disturb the peace. The Party concerned alleges that Mr. Ozharovskiy was a registered participant at the

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<sup>9</sup> Opening statement of the Party concerned for hearing at Committee's fiftieth meeting, p. 8.

<sup>10</sup> Ibid., pp. 7-8.

<sup>11</sup> Communication, para. 16.

<sup>12</sup> Opening statement of the Party concerned for hearing at Committee's fiftieth meeting, p. 7.

<sup>13</sup> Ibid., p. 7.

<sup>14</sup> Ibid., p. 13.

public hearing on 9 October 2009 and that it is established practice for mass events that the distribution of any kind of printed information requires the consent of the event organizer.<sup>15</sup>

34. The Party concerned also submits that, directly after the arrest of Mr. Ozharovskiy, Ms. Novikova entered the hall to speak about the arrest and was given the floor to speak.<sup>16</sup>

**(b) 18 July 2012, 11.22 a.m.**

35. The communicant submits that at 11.22 a.m. on 18 July 2012 the police arrested Ms. Novikova together with Mr. Ozharovskiy as they were on their way to hand over a petition to the Embassy of the Russian Federation in Minsk. Both Mr. Ozharovskiy and Ms. Novikova were arrested for “public order violation by using obscene language on the street” under article 17.1 of the Administrative Code. The petition expressed concerns about the construction and operation of the proposed nuclear power plant near Ostrovets and called upon the Russian Federation not to finance its construction.<sup>17</sup>

36. The communicant alleges that, following her arrest, Ms. Novikova was detained by court decision for five days.<sup>18</sup> Mr. Ozharovskiy was detained by court decision for 10 days<sup>19</sup> and was subsequently issued a 10-year ban on entering Belarus.<sup>20</sup>

37. The Party concerned submits that it views this as a political issue, since handing over a petition is a political act. It further states that the Belarussian nuclear power plant was being constructed by the Russian Federation and that handing over a petition is an attempt to draw attention to oneself and to “score points”.<sup>21</sup>

38. The Party concerned further states that, in response to an enquiry from the Ministry of the Environment, the Supreme Court of Belarus had indicated that no information was identified that would provide evidence on which to base administrative proceedings against Mr. Ozharovskiy and Ms. Novikova with regard to the public activities in which they are engaged or their expressed disagreement with the construction of the nuclear power plant.<sup>22</sup>

39. The Party concerned further emphasized that in recent years it had become necessary to take additional anti-terrorist measures and that therefore certain amendments and additions had been inserted into national legislation to strengthen the guarantees for public safety, security and public order.<sup>23</sup>

*Conditions during the detention of Ms. Novikova*

40. The communicant submits that during her detention, Ms. Novikova was held in bad conditions despite her poor health condition after a serious illness. The police initially seized her vital drugs (post-cancer treatment) among other personal belongings. Due to the private initiative of one of the policemen, some medication was subsequently returned to her. However, she was prevented from taking other anti-cancer pills for 48 hours.<sup>24</sup>

41. With regard to the alleged denial of access to her medicines during her detention, the Party concerned submits that Ms. Novikova submitted a complaint to the Administration of

<sup>15</sup> Ibid., pp. 7-8.

<sup>16</sup> Ibid., p. 17.

<sup>17</sup> Communication, para. 18.

<sup>18</sup> Decisions of the Moscow district court of the city of Minsk of 18 July 2012.

<sup>19</sup> Ibid.

<sup>20</sup> Communication, annex 4.

<sup>21</sup> Opening statement of the Party concerned for hearing at Committee’s fiftieth meeting, p. 8.

<sup>22</sup> Ibid.

<sup>23</sup> Ibid.

<sup>24</sup> Written statement by Ms. Novikova, 29 August 2012.

the Investigative Committee of the Party concerned, which decided not to instigate criminal proceedings. The Party concerned states that the Investigative Committee's decision of 5 October 2012 makes clear that Ms. Novikova was transferred to the Rayon Directorate of Internal Affairs at 8.45 p.m. and that, after she had made an urgent request to receive her medicines, they were returned to her and an ambulance was called. It further submits that after Ms. Novikova had arrived at the Offenders Custody Centre of the Chief Directorate of Internal Affairs of the Minsk City Executive Committee, she was examined by a paramedic and this examination was repeated daily.<sup>25</sup>

42. The Party concerned further alleges that Ms. Novikova's medication was brought to her by a friend and was given to her daily according to her requirements and the quantity she needed. It also states that further medication was administered to her during her detention.<sup>26</sup>

**(c) 18 July 2012, 12 p.m.**

43. The communicant submits that at approximately noon on 18 July 2012, having learned of the arrest of Ms. Novikova and Mr. Ozharovskiy some minutes before, Ms. Sukhiy, head of the NGO Ecohome, left her office to bring a copy of the petition regarding the Ostrovets nuclear power plant to the Russian Embassy in the place of her arrested colleagues. At the same time, Mr. Matskevich, a human rights activist, left the same building to provide legal assistance to Ms. Novikova and Mr. Ozharovskiy. At 12 p.m., both Ms. Sukhiy and Mr. Matskevich were arrested by police just as they left the building. Both were accused of committing a "public order violation by using obscene language on the street" under article 17.1 of the Administrative Offences Code. Mr. Matskevich was detained by court decision for five days<sup>27</sup> Ms. Sukhiy was fined Rbl 1.5 million (approximately €75).<sup>28</sup>

44. The response of the Party concerned to this incident is set out in paragraphs 37-39 above.

**(d) 26 April 2013**

45. Both parties agree that, on 26 April 2013, an officially permitted street action "Chernobyl Way 2013" was planned in Minsk.

*Ms. Sukhiy*

46. The communicant submits that Ms. Sukhiy and several other activists were stopped by police in civil clothing at 5.54 p.m. on 26 April 2013 directly after leaving Ms. Sukhiy's apartment to go to the Chernobyl Way 2013 street action. The street action was scheduled to begin at 6.30 p.m. and Ms. Sukhiy was responsible for delivery of the materials for the action (posters, flags, etc.) for the event.<sup>29</sup> The communicant alleges that Ms. Sukhiy and the other activists were informed by the police that they needed to establish their identity owing to the recent increase in the number of robberies in the district. Ms. Sukhiy went back into her apartment to pick up her passport and then immediately handed it over to the

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<sup>25</sup> Opening statement of the Party concerned for hearing at Committee's fiftieth meeting, pp. 9-10.

<sup>26</sup> *Ibid.*, p. 10.

<sup>27</sup> Decision of the central district court of Minsk, 18 July 2012.

<sup>28</sup> *Ibid.*

<sup>29</sup> Communication, para. 21.



police waiting on the street. According to the communicant, Ms. Sukhiy and the other activists were then brought to the police station in an unmarked van.<sup>30</sup>

47. The communicant further submits that Ms. Sukhiy and the other activists were released at approximately 9 p.m., the official finishing time for the street action, which indeed finished around that time. The communicant alleges that Ms. Sukhiy and the other activists were thus held for the documents check for just under three hours. The communicant states that they were not given any explanations as to why it took so long.<sup>31</sup>

48. The Party concerned agrees that these detentions took place but submits that the police officers were at the scene because the Internal Affairs Department of the Minsk Pervomaysky District Administration had received information that a group of 15 people were consuming alcohol and engaging in disorderly conduct in the vicinity of Ms. Sukhiy's apartment. The Party concerned states that while checking the information, Ms. Sukhiy and three other persons were detained for an identity check.<sup>32</sup> It further states that steps were taken to establish the identities of those detained, after which they were released immediately.<sup>33</sup>

*Ms. Novikova*

49. According to the communicant, Ms. Novikova was present in Ms. Sukhiy's apartment on 26 April 2013 before the Chernobyl Way 2013 event and saw the police arrest Ms. Sukhiy and the other activists through the apartment window. The communicant states that Ms. Novikova saw the van that picked up Ms. Sukhiy and the other activists return to the front of the apartment building. The communicant further claims that Ms. Sukhiy's daughter, who was a teenager at the time, went outside the building a number of times and informed Ms. Novikova that the same police officers that had arrested Ms. Sukhiy remained in front of the building and, when she tried to take some posters stored in a car in front of the building, stopped her from doing so. The communicant claims that, based on these facts, Ms. Novikova assumed that leaving the apartment would entail her being subjected to an "identity check" or arrested as had happened one year earlier (see para. 35 above). The communicant submits that Ms. Novikova was blocked in the apartment from around 6 p.m. until approximately 9 p.m.<sup>34</sup> The communicant also provides a photograph taken from a window of a van in which the police officers in plain clothing were allegedly waiting.<sup>35</sup>

50. The Party concerned submits that it has no record of Ms. Novikova being detained on 26 April 2013 and that no action was taken on that day to detain her or to establish her identity. It further submits that the photograph provided as evidence by the communicant does not indicate the date and time when it was taken and only shows a civilian car, which does not demonstrate that Ms. Novikova was "blocked" in the apartment by unknown persons. The Party concerned further submits that Ms. Novikova could have phoned the emergency services of the Ministry of Internal Affairs but failed to do so. According to the Party concerned, the communicant's statement therefore rests only on the evidence of Ms.

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<sup>30</sup> Factual clarification provided by the communicant, 11 May 2017, pp. 1-2.

<sup>31</sup> *Ibid.*, p. 2.

<sup>32</sup> Comments from the Party concerned dated 18 May 2017 on communicant's reply of 11 May 2017 to Committee's questions, p. 2. See also Letter of the Ministry of Internal Affairs annexed to the comments of the Party concerned of 18 May 2017.

<sup>33</sup> Opening statement of the Party concerned for hearing at Committee's fiftieth meeting, p. 10.

<sup>34</sup> Communicant's reply to the Committee's questions, 11 May 2017, p. 2.

<sup>35</sup> *Ibid.*, p. 3.

Novikova herself and Ms. Sukhiy's daughter, a minor at the time, in contrast to the official statements of its Ministry of Internal Affairs.<sup>36</sup>

XX

51. The communicant alleges that XX was detained by the traffic police on the way from Ostrovets to Minsk to take part in the Chernobyl Way 2013 event, and then was forcibly kept at the police station, allegedly for a documents check, until shortly after the action finished.

52. The Party concerned submits that this information should be treated with some scepticism because it is too general and not supported by any documents. It further states that it may be able to further comment on this occurrence if it was provided with more detailed information.<sup>37</sup>

### **Resulting violation of article 3, paragraph 8**

53. The communicant alleges that the aforementioned searches, detentions, arrests, seizures and other actions by the Party concerned were targeted at anti-nuclear activists in Belarus trying to express their views about the construction of the Ostrovets nuclear power plant. The communicant alleges that, together, the actions of the Party concerned aimed at preventing the activists from expressing their opinions and participating in the public discussion process regarding the construction of the Ostrovets plant and thus constitute harassment and persecution under article 3, paragraph 8, of the Convention.

54. The Party concerned denies these allegations. The Party concerned states that the Constitution of Belarus guarantees the rights and freedoms of citizens, the right to a judicial review of the legality of a detention or arrest, the freedom of opinion and belief and the free expression of them. It further states that it involves citizens of Belarus in tackling environmental issues in accordance with article 4 of the Law on the Environmental Protection.

55. The Party concerned states that, to date, a certain part of the population has expressed negative attitudes towards the development of nuclear power in Belarus. It stresses that the expression of their opinion is their constitutional right; however, such expressions of opinion must not be accompanied by any public order violation.

56. The Party concerned provided information on the internal measures it has taken to prevent violations of article 3, paragraph 8, of the Convention. It states that it requested additional information about the alleged harassment of activists and was not able to establish a causal link between the activists' anti-nuclear activities and their detentions.<sup>38</sup> The Party concerned also provided statistical information about the number of people against whom administrative prosecutions were brought for public order violations under article 17.1 of the Administrative Offences Code.

57. The Party concerned also points out that Ms. Sukhiy has been a member of the Public Coordination Council for the Environment attached to the Ministry of the Environment since it was created, and remains in this capacity at present. In addition, members of "Ecohome", in particular Ms. Novikova, regularly take part in Council meetings and have also been involved in preparation of the National Report on Implementation of the Aarhus Convention.

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<sup>36</sup> Comments from the Party concerned on the communicant's reply to the Committee's questions, 18 May 2017, p. 2.

<sup>37</sup> Opening statement of the Party concerned for hearing at Committee's fiftieth meeting, p. 10.

<sup>38</sup> Response of the Party concerned to the communication, annex.

### Domestic remedies

58. The communicant submits that some of the activists appealed the Court decisions issuing their arrests to the superior court, referring to Ms. Novikova and Mr. Ozhavorskiy as examples.<sup>39</sup> The communicant also refers to the complaint about conditions of arrest brought by Ms. Novikova.<sup>40</sup>

59. The Party concerned does not disagree that several of the activists used domestic remedies to challenge the incidents described in the communication. The Party concerned does not challenge the admissibility of the communication.

## III. Consideration and evaluation by the Committee

60. Belarus ratified the Convention on 9 March 2000. The Convention entered into force for Belarus on 30 October 2001, the date of the Convention's general entry into force.

### Admissibility

61. The Party concerned has not disputed the admissibility of the communication. The Committee finds that none of the grounds for inadmissibility in decision I/7, paragraph 20, apply to the present communication, nor should the case be considered inadmissible on the basis of paragraph 21. Accordingly, the communication is admissible.

### Scope of Committee's considerations

#### *Allegations concerning treatment of the person identified as "XX"*

62. The Committee notes that several of the incidents referred to in the communication concern a person identified only as "XX". The Committee considers that fairness and due process of its procedure require that the Party concerned must be able to adequately respond to all allegations against it. If the Party concerned is not able to identify the specific incident in question, it may not be in a position to adequately prepare its response to the communicant's allegation concerning that incident. The Committee notes that a number of other human rights bodies do not accept either anonymous complaints or complaints made by someone else on behalf of persons who remains anonymous.<sup>41</sup> For instance, while the European Court of Human Rights may, upon request, withhold the applicant's name from being made public, under the Court's procedure the applicant's name cannot be withheld from the State Party.<sup>42</sup> Other bodies, such as the Inter-American Court for Human Rights, do not categorically exclude that the identity may be withheld from the Party concerned but leave it to be considered on a case-by-case basis.<sup>43</sup>

<sup>39</sup> Communication, p. 7, referring to annexes 1 and 7 to the communication.

<sup>40</sup> Communication, p. 7, referring to annex 6 to the communication.

<sup>41</sup> European Court of Human Rights, *Practical Guide on Admissibility Criteria* (2014), pp. 14 and 34, available from [http://www.echr.coe.int/Pages/home.aspx?p=caselaw/analysis/admi\\_guide](http://www.echr.coe.int/Pages/home.aspx?p=caselaw/analysis/admi_guide). For the practice of United Nations human rights bodies, see, e.g., *Toonen v. Australia*, *Jewish Community of Oslo v. Norway*, opinion of the Committee on the Elimination of Racial Discrimination on communication No. 30/2003 (CERD/C/67/D/30/2003), para. 7.3, and *Groupe d'Intérêt pour le Matronyme v. France*, decision of the Committee on the Elimination of Discrimination against Women on communication No. 13/2007 (CEDAW/C/44/D/12/2007).

<sup>42</sup> *Practical Guide on Admissibility Criteria*, p. 34.

<sup>43</sup> Inter-American Court of Human Rights, *Petitions and Case System: Informational Brochure* (Washington, D.C., Organization of American States, 2010), sects. 26, 27 and 31 and section entitled

63. While not ruling out that there may be cases of alleged non-compliance with article 3, paragraph 8, where a Party concerned would be able to adequately respond to the allegations concerning its compliance without knowing the identity of the person concerned, the Committee considers that this is not so with respect to the allegations concerning the persons identified as “XX” in the present case. Thus, while not precluding that there may be cases in which the Committee may be able to take into account the treatment of anonymous persons, for example, in certain systemic cases or where the Committee has received reliable information from other sources, the Committee will not examine the allegations concerning the persons identified as “XX” in the present case.

*Allegations concerning the events of 9 October 2009*

64. The Committee notes that the incidents of 9 October 2009 concerning Mr. Ozharovskiy were already brought before the Committee in the context of communication ACCC/C/2009/44.<sup>44</sup> In its findings on that communication, the Committee held:

The allegations concerning harassment are serious, and the alleged facts, if sufficiently substantiated, would amount to harassment in the sense of article 3, paragraph 8, and would therefore constitute non-compliance with the provisions of the Convention. However, on the basis of the information provided, the Committee could not assess with sufficient certainty what happened exactly and therefore the Committee refrains from making a finding on this issue.<sup>45</sup>

Having already examined whether the events of 9 October 2009 amounted to non-compliance with article 3, paragraph 8, of the Convention in its findings on communication ACCC/C/2009/44, the Committee will not re-examine the same allegation again in the scope of the current communication.

**Article 3, paragraph 8, of the Convention**

65. The communicant alleges that the Party concerned has violated article 3, paragraph 8, of the Convention on the basis of the incidents described in paragraphs 24-51 above. The Committee considers that in order to demonstrate a breach of article 3, paragraph 8, by the Party concerned, four elements must be established, that is:

- (a) One or more members of the public have exercised their rights in conformity with the provisions of the Convention;
- (b) The member of the public or those members of the public have been penalized, persecuted or harassed;
- (c) The penalization, persecution or harassment was related to the member(s) of the public’s exercise of their rights under the Convention;
- (d) The Party concerned has not taken the necessary measures to fully redress any penalization, persecution or harassment that did occur.

Each of these elements is discussed in more detail below.

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“Form for submitting a petition to the IACHR”, article 28 b. Available from <http://www.oas.org/en/iachr/mandate/petitions.asp>.

<sup>44</sup> ECE/MP.PP/C.1/2011/6/Add.1, paras. 22 and 27-28.

<sup>45</sup> ECE/MP.PP/C.1/2011/6/Add.1, para. 65.

**(a) One or more members of the public have exercised their rights in conformity with the provisions of the Convention**

66. The Committee considers that the rights referred to in article 3, paragraph 8, encompass the broad range of rights granted to members of the public by article 1 of the Convention, namely the rights of access to information, public participation in decision-making and access to justice, which contribute to the right of every person of present and future generations to live in an environment adequate to their health and well-being. The exercise of these rights would include situations in which the provisions of the Convention concerning access to information, public participation in decision-making and access to justice set out in articles 4 to 9 of the Convention are applicable and also situations covered by the general provisions of article 3 of the Convention, but is not limited to them. Accordingly, the Committee finds that article 3, paragraph 8, applies to all situations in which members of the public seek access to information, public participation or access to justice in order to protect their right to live in an environment adequate to their health or well-being.

**(b) The member of the public or those members of the public have been penalized, persecuted or harassed**

67. The terms “penalized”, “persecuted” and “harassed” are not defined in the Convention, and they are to be understood according to their ordinary meaning in their context and in the light of the Convention’s object and purpose.<sup>46</sup> According to the ordinary meaning of the terms: “to penalize” means to impose a restriction or penalty on, to put at a disadvantage; “to harass” means to trouble or vex by repeated attacks; and “to persecute” means to seek out and subject (a person, group, organization, etc.) to hostility or ill-treatment, on grounds of political belief, religious faith, race, etc.; to oppress, to torment.<sup>47</sup> As stated in the Aarhus Convention Implementation Guide, article 3, paragraph 8, “is a broadly worded provision which aims to prevent retribution of any kind.”<sup>48</sup>

68. In determining whether the treatment complained of amounts to penalization, persecution or harassment, the Committee notes the approaches taken within the framework of human rights instruments. Such instruments generally provide wide protection against human rights violations combined with possibilities for the State concerned to claim its actions served a legitimate aim or at least did not relate to the special characteristics of the person concerned. This approach envisages that, depending on the particular facts of the case at hand, an action taken by the State may be objective and reasonable, pursue a legitimate purpose and be proportional in one set of circumstances, and not in another.

69. Whether the treatment complained of amounts to penalization, persecution or harassment must be assessed on a case-by-case basis in the light of the particular circumstances, including whether the action taken by the State is objective and reasonable, and pursues a legitimate purpose. When making this assessment, the Committee considers whether the treatment complained of could be reasonable and proportional and pursue a legitimate public purpose. If so, the treatment could be in compliance with article 3, paragraph 8, of the Convention. However, the Committee must also consider whether acts taken ostensibly in order to serve a legitimate purpose (such as protecting public order) may in fact have another, illegitimate, purpose, for example to prevent persons from exercising their rights to participate under the Convention. If that were the case, such acts or treatment

<sup>46</sup> United Nations, Vienna Convention on the Law of Treaties, *Treaty Series*, vol. 1155, article 31.

<sup>47</sup> See, e.g., the *Oxford English Dictionary*, online version (<http://www.oed.com/>).

<sup>48</sup> *Aarhus Convention: An Implementation Guide*, 2nd. ed., United Nations publication, Sales No. E.13.II.E.3p. 71.

may amount to persecution, penalization and harassment within the meaning of article 3, paragraph 8, of the Convention.

70. While not an issue in the current case, the Committee notes that the wording of article 3, paragraph 8, is not limited in its application to acts of public authorities as defined in article 2, paragraph 2, of the Convention, but rather covers penalization, persecution or harassment by any State body or institution, including those acting in a judicial or legislative capacity. It also covers penalization, persecution or harassment by private natural or legal persons that the Party concerned did not take the necessary measures to prevent.

**(c) The penalization, persecution or harassment was related to the member(s) of the public's exercise of their rights under the Convention**

71. A key element of article 3, paragraph 8, is causation. The treatment amounting to penalization, persecution or harassment must have occurred because the communicant has sought to exercise his or her rights under the Convention. If a person has been penalized, persecuted or harassed but that was entirely unrelated to his or her exercise of his or her rights under the Convention, then there is no breach of article 3, paragraph 8.

72. With respect to the level and burden of proof, the Committee considers that useful guidance may be drawn from the approach taken by the European Court of Human Rights to cases of alleged discrimination under article 14 of the European Convention on Human Rights. When determining whether discrimination has occurred, the European Court of Human Rights has held that the applicant is only required to show evidence of a difference in treatment, after which the onus passes to the State to demonstrate that the difference in treatment can be justified.<sup>49</sup>

73. Applying the above approach to article 3, paragraph 8, the Committee considers that the communicant must first establish a prima facie case that members of the public were penalized, persecuted or harassed because they sought to exercise their rights under the Convention. The burden of proof then moves to the Party concerned to show, on the balance of probabilities, that the penalization, persecution or harassment was entirely unrelated to the fact that those persons sought to exercise their rights under the Convention.

**(d) The Party concerned has not taken the necessary measures to fully redress any penalization, persecution or harassment that did occur.**

74. The final element examines the extent to which the penalization, persecution or harassment has already been fully redressed through domestic remedies, for example by compensation to the persons concerned or other appropriate means.

75. The Committee now examines the incidents that are the subject of the present communication in the light of the above considerations.

**Arrests on 18 July 2012 for “using obscene language in the street”**

76. At 11.22 a.m. on 18 July 2012, Mr. Ozharovskiy and Ms. Novikova were arrested on Gazeta Pravda Avenue in Moskovskiy Rayon, Minsk, for committing a “public order violation by using obscene language on the street”. Mr. Ozharovskiy, a Russian citizen, was held in detention for 10 days and given a 10-year ban from entering Belarus. Ms. Novikova was held in detention for five days despite poor health after a serious illness and was

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<sup>49</sup> *Timishev v. Russia*, Eur. Ct. H.R., Applications 55762/00 and 55954/00 (2005), para. 57.

allegedly denied access to her essential post-cancer medication during some of the period of her detention.

77. At 12 p.m. on 18 July 2012, Ms. Sukhiy and Mr. Matskevich were arrested on Novovilenskaya Street, Minsk, for committing a “public order violation by using obscene language on the street”. Mr. Matskevich was held in detention for five days. Ms. Sukhiy was fined Rbl 1.5 million (approximately €75).

78. Mr. Ozharovskiy and Ms. Novikova deny that they were using obscene language on the street, and state that they were instead on their way to the Russian Embassy to present a petition concerning the proposed construction of the Ostrovets nuclear power plant.

79. Likewise, Ms. Sukhiy and Mr. Matskevich deny that they were using obscene language on the street. Ms. Sukhiy states that, after learning of the arrests of Mr. Ozharovskiy and Ms. Novikova forty minutes earlier, she was on her way to the Russian Embassy to present the petition in their place. Mr Matskevich says that he was on his way to provide legal assistance to Mr. Ozharovskiy and Ms. Novikova following their arrest.

**(a) One or more members of the public have exercised their rights in conformity with the provisions of the Convention**

80. The Committee considers that a petition against a proposed activity that may have a significant environmental impact, such as a nuclear power plant, is a legitimate exercise of the public’s right to participate in decision-making as recognized in article 1 of the Convention. Likewise, a member of the public who provides legal assistance to persons seeking to exercise their rights in conformity with the provisions of the Convention is thereby taking part in these persons’ exercise of their rights and is consequently entitled to the protection afforded by article 3, paragraph 8, of the Convention.

**(b) The member of the public or those members of the public have been penalized, persecuted or harassed**

81. The Party concerned does not dispute that:

(a) Mr. Ozharovskiy was arrested for “using obscene language in the street” at 11.22 a.m. on 18 July 2012 and sentenced to 10 days’ administrative detention and a 10-year ban on entering Belarus;

(b) Ms. Novikova was arrested for “using obscene language in the street” at 11.22 a.m. on 18 July 2012 and sentenced to five days’ administrative detention;

(c) Mr. Matskevich was arrested for “using obscene language in the street” at 12 p.m. on 18 July 2012 and sentenced to three days’ administrative detention;

(d) Ms. Sukhiy was arrested for “using obscene language in the street” at 12 p.m. on 18 July 2012 and ordered to pay a fine of Rbl 1.5 million.

82. There is nothing in the Convention that prevents Parties taking measures to prevent the use of obscenities in public areas, in order to ensure a safe space for other members of the public or to further other legitimate concerns. Depending on the circumstances, the arrest of a member of the public for using “obscene language in the street” may therefore be a legitimate and proportional exercise of State power. However, as set out in paragraph 69 above, in some instances such arrests could be made ostensibly in order to serve a legitimate purpose (such as the protection of public order) but in fact have another, illegitimate, purpose, for example to prevent persons from exercising their rights to participate under the Convention. The Committee considers, if that were the case, such

arrests would amount to persecution, penalization and harassment within the meaning of article 3, paragraph 8, of the Convention.

83. Bearing the above in mind, the Committee examines whether or not the arrests of Mr. Ozharovskiy, Ms. Sukhiy, Ms. Novikova and Mr. Matskevich on 18 July 2012 were related to their exercising their rights under the Convention.

**(c) The penalization, persecution or harassment was related to the member(s) of the public's exercise of their rights under the Convention**

84. As set out above, the communicant must first establish a prima facie case that Mr. Ozharovskiy, Ms. Sukhiy, Ms. Novikova and Mr. Matskevich were arrested because they sought to exercise their right to participate in decision-making as recognized in article 1 of the Convention. The burden of proof then moves to the Party concerned to show, on the balance of probabilities, that the arrests were entirely unrelated to the fact that they sought to exercise their rights under the Convention.

85. In this case, the Party concerned does not dispute that:

(a) Mr. Ozharovskiy and Ms. Novikova were subjected to the above arrests while on their way to submit a petition against the construction of the Ostrovets nuclear power plant to the Russian Embassy;

(b) Ms. Sukhiy was arrested while on her way to take the petition to the Russian Embassy in the place of Mr. Ozharovskiy and Ms. Novikova;

(c) Mr. Matskevich was arrested while on his way to provide legal support to Mr. Ozharovskiy and Ms. Novikova.

86. Given that the Party concerned does not dispute that the activists were seeking to deliver the petition to the Russian Embassy, the Committee considers it implausible that all four persons would risk the successful delivery of the petition by, within 40 minutes of each other, using "obscene language on the street". Accordingly, the communicant has established "prima facie" causation between the arrests on 18 July 2012 and the intended delivery of the petition. It is therefore for the Party concerned to demonstrate to the Committee that the arrests on 18 July 2012 were entirely unrelated to the delivery of the petition.

87. In this regard, the Party concerned states that it "regards this as a politicized issue, since handing over a petition is a political act. The Belarusian [nuclear power plant] is being constructed by the Russian Federation. Handing over a petition is an attempt to draw attention to oneself and to 'score points'"<sup>50</sup>.

88. The Committee considers that the above statement in no way demonstrates that the above arrests for "using brutal language on the street" were unrelated to the delivery of the petition. Rather, the statement of the Party concerned implies that the arrests were politically motivated. The Committee also notes that, in the court proceedings following the above arrests, all four activists were convicted of having used "obscene language on the street" solely on the evidence of the police officers that made the arrests.<sup>51</sup>

89. In the light of the above, the Committee considers that the Party concerned has failed to demonstrate, on the balance of probabilities, that the arrests, and the resulting detentions, travel ban and fine, were entirely unrelated to the fact that those arrested were

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<sup>50</sup> Opening statement of the Party concerned for hearing at Committee's fiftieth meeting, p. 8.

<sup>51</sup> Communication, annexes 1, 2, 3 and 5.



on their way to deliver a petition regarding the Ostrovets nuclear power plant to the Russian Embassy.

90. Accordingly, the Committee finds that the arrests of Mr. Ozharovskiy, Ms. Sukhiy, Ms. Novikova and Mr. Matskevich on 18 July 2012, which thereby prevented them from delivering the petition on the Ostrovets nuclear power plant to the Russian Embassy, constituted harassment, penalization and persecution within the meaning of article 3, paragraph 8, of the Convention.

91. Following on from the above, the Committee finds that the associated detentions of Mr. Ozharovskiy, Ms. Novikova and Mr. Matskevich, the fine imposed on Ms. Sukhiy and the 10-year travel ban placed upon Mr. Ozharovskiy further compounded the harassment, penalization and persecution the Committee found in the preceding paragraph.

92. Similarly, any period in which Ms. Novikova was denied access to her cancer medication during her detention likewise compounded the harassment, penalization and persecution found above. In this context, the Committee notes that the denial of medical treatment during detention has been held by various international human rights bodies to constitute inhuman and degrading treatment.<sup>52</sup>

**(d) The Party concerned has not taken the necessary measures to fully redress any penalization, persecution or harassment that did occur**

93. No information has been put before the Committee that would indicate that the Party concerned has taken any measures to redress the incidents of persecution, penalization and harassment of 18 July 2012 examined above.

**(e) Conclusion regarding the arrests of 18 July 2012 for “using obscene language in the street”**

94. The Committee finds that:

(a) The arrest of Mr. Ozharovskiy for “using obscene language in the street” at 11.22 a.m. on 18 July 2012, which thereby prevented him delivering a petition to the Russian Embassy concerning the Ostrovets nuclear power plant, and his related 10 days’ administrative detention and 10-year ban on entering Belarus constituted harassment, penalization and persecution in non-compliance with article 3, paragraph 8, of the Convention;

(b) The arrest of Ms. Novikova for “using obscene language in the street” at 11.22 a.m. on 18 July 2012, which thereby prevented her delivering a petition to the Russian Embassy concerning the Ostrovets nuclear power plant, and her related five days’ administrative detention constituted harassment, penalization and persecution in non-compliance with article 3, paragraph 8, of the Convention;

(c) The arrest of Mr. Matskevich for “using obscene language in the street” at 12 p.m. on 18 July 2012, which thereby prevented him providing legal assistance to Mr.

<sup>52</sup> *Essono Mika Miha v. Equatorial Guinea*, Human Rights Committee, Communication No. 414/1990, (CCPR/C/51/D/414/1990), para. 6.4; *Nathaniel Williams v. Jamaica*, Human Rights Committee, Communication No. 609/1995 (CCPR/C/61/D/609/1995), para. 6.5, applying article 7 and article 10, para. 1, of the International Covenant on Civil and Political Rights; *Keenan v. United Kingdom*, App. No. 27229/95, Eur. Ct. H.R., 3 April 2001, paras. 115-116, applying article 3 of the European Convention on Human Rights; and *Civil Liberties Organisation v. Nigeria*, African Commission on Human and Peoples’ Rights, Communication No. 151/96, 15 November 1999, para. 27, applying article 5 of the African Charter on Human and Peoples’ Rights.

Ozharovskiy and Ms. Novikova following their arrests while delivering a petition to the Russian Embassy concerning the Ostovets nuclear power plant, and his related three days' administrative detention constituted harassment, penalization and persecution in non-compliance with article 3, paragraph 8, of the Convention;

(d) The arrest of Ms. Sukhiy for "using obscene language in the street" at 12 p.m. on 18 July 2012, which thereby prevented her delivering a petition to the Russian Embassy concerning the Ostovets nuclear power plant, and her related fine of Rbl 1.5 million constituted harassment, penalization and persecution in non-compliance with article 3, paragraph 8, of the Convention.

### **Events during Chernobyl Way 2013 street action on 26 April 2013**

95. The Committee examines two incidents on 26 April 2013 which the communicant alleges constitute violations of article 3, paragraph 8, of the Convention, namely:

(a) Ms. Sukhiy was stopped for a "documents check" on the street outside her apartment shortly before the start of the Chernobyl Way 2013 street action and detained until it was over. Ms. Sukhiy was responsible for bringing posters and flags, etc., for the event;

(b) Ms. Novikova was blocked in Ms. Sukhiy's apartment due to the presence of police outside the apartment building for several hours until the Chernobyl Way 2013 street action was over. Ms. Novikova was one of official organizers named in the application for the permit for the action.

#### **(a) One or more members of the public have exercised their rights in conformity with the provisions of the Convention**

96. The Committee notes that on 26 April 2013 both Ms. Sukhiy and Ms. Novikova intended to participate in the Chernobyl Way 2013 street action, an annual event conducted on the anniversary of the Chernobyl nuclear accident. The Committee also notes that the event had been officially authorized by the authorities of the Party concerned. The Committee considers that an authorized street action concerning an activity covered by the Convention, such as nuclear energy, constitutes a means through which the public can raise the awareness of public authorities and the wider public regarding their concerns about the potential environmental impacts of nuclear energy. The Committee thus considers that both the organization of, and participation in, an authorized action of this nature is a legitimate exercise of the public's right to participate in decision-making as recognized in article 1 of the Convention.

#### **(b) The member of the public or those members of the public have been penalized, persecuted or harassed**

##### *Documents check of Ms. Sukhiy on 26 April 2013*

97. The Party concerned does not dispute that Ms. Sukhiy was subjected to a documents check on 26 April 2013 and that she was detained for that purpose until her identity was established.

98. The Committee notes that under section 8.4 of the Procedural-Executive Code of Administrative Offences of the Party concerned, persons may be subject to administrative detention of a period of up to three hours while the documents check is carried out. The Committee considers that, depending on the circumstances, a documents check may be a legitimate and proportional exercise of State power. However, the Committee also recognizes the potential for documents checks to be used in a way that would restrict members of the public from exercising their rights under the Convention. In this regard, the

Committee notes that, the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association highlighted that wide stop-and-search-powers could be used to limit the rights to peaceful assembly and freedom of association.<sup>53</sup>

99. The Committee also notes that various international human rights bodies have acknowledged that even a detention of only a few hours can constitute an arbitrary deprivation of liberty.<sup>54</sup>

100. Bearing the above in mind, the Committee examines whether or not the prolonged documents check of Ms. Sukhiy on 26 April 2013 was related to her exercising her rights under the Convention in paragraphs 104-107 below.

*Ms. Novikova blocked from leaving apartment on 26 April 2013*

101. With respect to the communicant's allegation that Ms. Novikova was prevented from leaving Ms. Sukhiy's apartment to attend the Chernobyl Way 2013 street action on 26 April 2013 owing to the presence of plain-clothed police in front of the apartment throughout the duration of the street action, the Committee considers that the mere presence of police on the street outside an apartment or other building does not necessarily constitute harassment, penalization or persecution of persons inside. However, if the police presence is prolonged or repeated, and if the persons inside have reasonable grounds to believe that the presence is directed at them, such a presence may in itself constitute harassment, penalization or persecution in the sense of article 3, paragraph 8, of the Convention.

102. The Committee notes that the Party concerned states that it has no record of any incident concerning Ms. Novikova on 26 April 2013. Since Ms. Novikova was not arrested or charged on 26 April 2013, the Committee appreciates that the Party concerned may not, in 2017, have a documentary record of this incident. It does not mean, however, that it did not happen.

103. In the light of the fact that, as accepted by the Party concerned, Ms. Sukhiy and other persons were detained by police for a documents checks outside Ms. Sukhiy's apartment as they were leaving to go to the Chernobyl Way 2013 event, it is not unlikely that the incident concerning Ms. Novikova unfolded as described by the communicant. However, since the Committee has no evidence before it that would establish, among other things, that Ms. Novikova was definitely present in Ms. Sukhiy's apartment at the relevant time, it considers that it does not have sufficient evidence before it to make a finding with respect to this allegation. The Committee will accordingly not examine the alleged incident concerning Ms. Novikova on 26 April 2013 further.

**(c) The alleged penalization, persecution or harassment was related to the member(s) of the public's exercise of their rights under the Convention**

*Documents check of Ms. Sukhiy on 26 April 2013*

104. The communicant first has the burden of establishing that Ms. Sukhiy was detained for a documents check because she sought to exercise her right to participate in decision-making as recognized in article 1 of the Convention. The burden of proof then moves to the Party concerned to show, on the balance of probabilities, that these events were entirely unrelated to the fact that Ms. Sukhiy sought to exercise her rights under the Convention.

<sup>53</sup> A/HRC/23/39/Add.1, para. 44.

<sup>54</sup> See, e.g., *Rantsev v. Cyprus and Russia*, Eur. Ct. H.R., Application No. 25965/04, para. 317, and *Iskandarov v. Russia*, Eur. Ct. H.R., Application No. 17185/05, para. 140.

105. The communicant alleges that Ms. Sukhiy was detained on the street outside her apartment for an identity check approximately thirty-five minutes before the start of the Chernobyl Way 2013 street action. Despite promptly handing over her identity documents, she was detained by the police for just under three hours and then released a few minutes before the officially scheduled end of the street action. The Party concerned accepts that Ms. Sukhiy was detained for the documents check on the street in front of her apartment and does not dispute that Ms. Sukhiy is chairperson of the Board of “Ecohome”, one of the main organizers of the Chernobyl Way event.

106. The Committee takes note of the timing of Ms. Sukhiy’s detention for the documents check, thirty-five minutes before the street action, and the fact that she was detained for nearly the entire duration of the street action, despite having promptly provided her identity documents to the police and without being informed of any reasons for the delay. On the basis of these facts, the Committee is satisfied that the communicant has provided sufficient evidence to establish prima facie causation in the present case. It is therefore for the Party concerned to demonstrate to the Committee that the documents check of Ms. Sukhiy on 26 April 2013 was entirely unrelated to her exercise of rights under the Convention.

107. In its response to the communication, the Party concerned states that it had received reports of a group of 15 people consuming alcohol and engaging in disorderly conduct in the vicinity of Ms. Sukhiy’s apartment and, during the check of the information received, Ms. Sukhiy and three other persons were subject to a documents check. It states that “steps were taken to establish the identities of those detained, after which they were released immediately”. The Party concerned reiterated this point in its comments on the draft findings. However, it provides no explanation as to why the documents check needed to last for almost three hours, i.e., until just before the scheduled end of the Chernobyl Way 2013 event. The Party concerned has also not provided any other evidence to the Committee that would establish on the balance of probabilities that the documents check of Ms. Sukhiy on 26 April 2013 was entirely unrelated to her intention to participate in the Chernobyl Way 2013 street action. The Committee thus finds that the detention of Ms. Sukhiy for a documents check lasting nearly the entire duration of the Chernobyl Way 2013 street action amounted to harassment, penalization and persecution within the meaning of article 3, paragraph 8, of the Convention.

**(d) The Party concerned has not taken the necessary measures to fully redress any penalization, persecution or harassment that did occur**

108. No information has been put before the Committee that would indicate that the Party concerned has taken any measures to redress the harassment, penalization and persecution of Ms. Sukhiy on 26 April 2013 examined above.

**(e) Conclusion regarding the events of 26 April 2013**

109. The Committee finds that the prolonged documents check of Ms. Sukhiy on 26 April 2013, which prevented her participation in the Chernobyl Way 2013 street action, constituted harassment, penalization and persecution in non-compliance with article 3, paragraph 8, of the Convention.

**Seriousness of the findings of non-compliance with article 3, paragraph 8**

110. The Committee emphasizes the seriousness of its findings in paragraphs 94 and 109 above that the Party concerned is in non-compliance with article 3, paragraph 8, of the Convention. 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.

## IV. Conclusions and recommendations

111. Having considered the above, the Committee adopts the findings and recommendations set out in the following paragraphs.

### A. Main findings with regard to non-compliance

112. The Committee finds that:

(a) The arrest of Mr. Ozharovskiy for “using obscene language in the street” at 11.22 a.m. on 18 July 2012 and his related 10 days’ administrative detention and 10-year ban on entering Belarus constituted harassment, penalization and persecution in non-compliance with article 3, paragraph 8, of the Convention;

(b) The arrest of Ms. Novikova for “using obscene language in the street” at 11.22 a.m. on 18 July 2012 and her related five days’ administrative detention constituted harassment, penalization and persecution in non-compliance with article 3, paragraph 8, of the Convention;

(c) The arrest of Mr. Matskevich for “using obscene language in the street” at 12 p.m. on 18 July 2012 and his related three days’ administrative detention constituted harassment, penalization and persecution in non-compliance with article 3, paragraph 8, of the Convention;

(d) The arrest of Ms. Sukhiy for “using obscene language in the street” at 12 p.m. on 18 July 2012 and her related fine of Rbl 1.5 million constituted harassment, penalization and persecution in non-compliance with article 3, paragraph 8, of the Convention;

(e) The prolonged documents check of Ms. Sukhiy on 26 April 2013, which prevented her participation in the Chernobyl Way 2013 street action, constituted harassment, penalization and persecution in non-compliance with article 3, paragraph 8, of the Convention.

### B. Recommendations

113. The Committee, pursuant to paragraph 36 (b) of the annex to decision I/7, and noting the agreement of the Party concerned that the Committee take the measures request in paragraph 37 (b) of the annex to decision I/7, recommends that the Party concerned:

(a) 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;

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

(c) Deliver appropriate training and information programmes on human rights law relevant to article 3, paragraph 8, of the Convention, for police, security forces and the judiciary to ensure that members of the police and security forces do not exercise their powers in a manner, and identity checks and arrests for alleged public order violations are

not utilized in a way, that would restrict members of the public from legitimately exercising their rights to participate in decision-making as recognized in article 1 of the Convention;

(d) Report to the Committee on an annual basis on all measures taken to fulfil the measures above.

114. 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 contrary to article 3, paragraph 8, of the Convention together with any information provided by the Party concerned regarding those alleged incidents.

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