



# Economic and Social Council

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## Economic Commission for Europe

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

#### Sixth session

Budva, Montenegro, 11–13 September 2017

Item 7 (b) of the provisional agenda

#### **Procedures and mechanisms facilitating the implementation of the Convention: compliance mechanism**

### **Draft decision VI/8c concerning compliance by Belarus with its obligations under the Convention**

#### **Prepared by the Bureau**

*The Meeting of the Parties,*

*Acting* under paragraph 37 of the annex to its decision I/7 on the review of compliance (ECE/MP.PP/2/Add.8),

*Mindful* of the conclusions and recommendations set out in its decision V/9c with regard to compliance by Belarus (see ECE/MP.PP/2014/Add.1),

*Taking note* of the report of the Compliance Committee under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters on the implementation of decision V/9c concerning compliance by Belarus with its obligations under the Convention (ECE/MP.PP/2017/35), and the findings of the Committee on communication ACCC/C/2014/102 (ECE/MP.PP/C.1/2017/19) concerning the harassment and persecution of nuclear activists,

*Encouraged* by the willingness of Belarus to discuss in a constructive manner with the Committee the compliance issues in question,

1. *Endorses* the finding of the Committee that the Party concerned has not yet fulfilled all the requirements of decision V/9c but has made considerable progress to date in that direction;

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2. *Also endorses* with respect to decision V/9c the following findings of the Committee:

(a) The Party concerned has fulfilled the requirements of paragraph 6 (a) of decision V/9c, namely, to ensure that the general requirement of stating an interest does not apply to requests for access to environmental information;

(b) The Party concerned has not yet fully met the requirements of paragraph 6 (b) of decision V/9c to establish clear requirements to inform the public of its opportunities to participate in decision-making processes on activities subject to article 6 and, in particular, it has not yet established clear requirements to inform the public in an effective manner with respect to environmental impact assessment reports and, with respect to other information relevant to decisions on activities subject to article 6, including project documentation, to do so in an adequate, timely and effective manner;

(c) The Party concerned has not yet fully met the requirements of paragraph 6 (c) of decision V/9c to establish clear requirements regarding the form and content of the public notice, by not clearly requiring the following to be addressed in the public notice:

(i) The public authority responsible for making the decision to permit the proposed activity subject to article 6;

(ii) The public authority from which relevant information other than the environmental impact assessment report can be obtained and where the relevant information other than the environmental impact assessment report has been deposited for examination by the public;

(iii) Whether the activity is subject to a transboundary environmental impact assessment procedure;

(d) The Party concerned will remain in non-compliance with article 6 of the Convention until the legal framework of the Party concerned is revised to ensure that the rights set out in article 6 of the Convention apply not only to the environmental impact assessment report, but to all information relevant to decisions permitting activities subject to article 6, including project documentation; this is a fundamental point;

(e) While the Party concerned has fulfilled the requirements of decision V/9c set out below with respect to public participation on environmental impact assessment reports, it has not yet fulfilled these requirements with respect to public participation on other information relevant to decisions to permit activities subject to article 6, including project documentation:

(i) The requirement in paragraph 6 (d) of decision V/9c to establish reasonable minimum time frames for submitting comments during the public participation procedure for all decisions under article 6 of the Convention, taking into account the stage of decision-making as well as the nature, size and complexity of the proposed activity;

(ii) The requirement in paragraph 6 (e) of decision V/9c to establish a clear possibility to submit comments directly to the authorities competent to take the decisions subject to article 6 of the Convention;

(iii) The requirement in paragraph 6 (f) of decision V/9c to establish clear provisions imposing obligations on the relevant public authorities to ensure such opportunities for public participation as are required under the Convention, including for making available the relevant information and collecting comments through written submissions and/or at public hearings;

(iv) The requirement in paragraph 6 (g) of decision V/9c to establish clear provisions imposing obligations on the relevant public authorities to take due account of the outcome of public participation, and to provide evidence of this in a publicly available statement of reasons on which the decision is based;

(f) The Party concerned has implemented the requirement to promptly inform the public of decisions in relation to the conclusions of State ecological expertise. However, without a clear indication as to what constitutes the final decision in the system of the Party concerned, the Party concerned has not fully met the requirements of paragraph 6 (h) (i) of decision V/9c;

(g) The Party concerned has implemented the requirement to maintain and make accessible copies of decisions and relevant information regarding decisions taken as a result of an environmental impact assessment. However, without a clear indication as to what constitutes the final decision in the system of the Party concerned, the Party concerned has not fully met the requirements of paragraph 6 (h) (ii) of decision V/9c;

(h) The Party concerned has implemented the requirement to create publicly accessible lists or registers of decisions for decisions taken as a result of an environmental impact assessment. However, without a clear indication as to what constitutes the final decision in the system of the Party concerned, the Party concerned has not fully met the requirements of paragraph 6 (h) (iii) of decision V/9c;

(i) The Party concerned has not yet fulfilled the requirements of paragraph 6 (i) of decision V/9c, namely to ensure that statutory provisions regarding situations where provisions on public participation do not apply cannot be interpreted to allow for much broader exemptions than allowed under article 6, paragraph 1 (c), of the Convention;

(j) While the steps taken so far are welcome, the Party concerned has not yet fully met the requirement in paragraph 7 (a) of decision V/9c to clearly designate in its legal framework which decision is to be considered the final decision and to make those decisions publicly available;

(k) The Party concerned has fulfilled the requirements of paragraph 7 (b) of decision V/9c to submit the full content of all comments made by the public regarding the environmental impact assessment report; however, it has not yet fulfilled the requirements of that paragraph with respect to comments on other information relevant to decisions to permit activities subject to article 6;

(l) The Party concerned has met the requirements of paragraph 7 (c) of decision V/9c to make appropriate provision for the public to participate during the preparation of plans and programmes relating to the environment;

3. *Reaffirms* its decision V/9c and requests the Party concerned take as a matter of urgency the necessary legislative, regulatory and administrative measures and practical arrangements to ensure that:

(a) There are clear requirements to inform the public of its opportunities to participate in decision-making processes on activities subject to article 6 and in particular:

(i) With respect to environmental impact assessment reports, to inform the public in an effective manner;

- (ii) With respect to other information relevant to decisions on activities subject to article 6, including project documentation, to inform the public in an adequate, timely and effective manner;<sup>1</sup>
- (b) The content of the public notice required under article 6, paragraph 2, of the Convention includes inter alia the following:
  - (i) The public authority responsible for making the decision to permit the proposed activity subject to article 6;
  - (ii) The public authority from which relevant information other than the environmental impact assessment report can be obtained and where the relevant information other than the environmental impact assessment report has been deposited for examination by the public;
  - (iii) Whether the activity is subject to a transboundary environmental impact assessment procedure;<sup>2</sup>
- (c) The rights set out in article 6 of the Convention apply not only to the environmental impact assessment report but to all information relevant to decisions permitting activities subject to article 6, including project documentation, and that with respect to public participation on such information:
  - (i) There are reasonable minimum time frames for submitting comments during the public participation procedure for all decisions under article 6 of the Convention, taking into account the stage of decision-making as well as the nature, size and complexity of proposed activities;<sup>3</sup>
  - (ii) There is a clear possibility for the public to submit comments directly to the relevant authorities (i.e., the authorities competent to take the decisions subject to article 6 of the Convention);<sup>4</sup>
  - (iii) There are clear provisions imposing obligations on the relevant public authorities to ensure such opportunities for public participation as are required under the Convention, including for making available the relevant information and for collecting the comments through written submission and/or at the public hearings;<sup>5</sup>
  - (iv) The full content of all comments made by the public (whether claimed to be accommodated by the developer or those which are not accepted) is submitted to the authorities responsible for taking the decision (including those responsible for the *expertiza* conclusion);<sup>6</sup>
  - (v) There are clear provisions imposing obligations on the relevant public authorities to take due account of the outcome of public participation, and to provide evidence of this in a publicly available statement of reasons and considerations on which the decisions is based;<sup>7</sup>

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<sup>1</sup> See decision V/9c, para. 6 (b).

<sup>2</sup> Ibid., para. 6 (c).

<sup>3</sup> Ibid., para. 6 (d).

<sup>4</sup> Ibid., para. 6 (e).

<sup>5</sup> Ibid., para. 6 (f).

<sup>6</sup> Ibid., para. 7 (b).

<sup>7</sup> Ibid., para. 6 (g).

(d) Statutory provisions regarding situations where provisions on public participation do not apply cannot be interpreted to allow for much broader exemptions than allowed under article 6, paragraph 1 (c), of the Convention;<sup>8</sup>

(e) The amended legal framework clearly designates which decision is considered to be the final decision permitting the activity and that this decision is promptly made public, as required under article 6, paragraph 9, of the Convention;<sup>9</sup>

4. *Endorses* the following findings of the Committee with regard to communication ACCC/C/2014/102:

(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;

5. *Welcomes* the recommendations made by the Committee during the intersessional period with respect to its findings on communication ACCC/C/2014/102 in accordance with paragraph 36 (b) of the annex to decision I/7;

6. *Also welcomes* the willingness of the Party concerned to accept the Committee’s recommendations, namely, 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;

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<sup>8</sup> Ibid., para. 6 (i).

<sup>9</sup> Ibid, paras. 6 (h) (i) and 7 (a).

(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;

7. *Notes with appreciation* that when evaluating the implementation of the Party concerned of the above recommendations, the Committee will take into account any information received from members of the public or other sources about future incidents of alleged penalization, persecution or harassment contrary to article 3, paragraph 8, of the Convention together with any information provided by the Party concerned regarding those alleged incidents;

8. *Requests* the Party concerned:

(a) To submit to the Committee detailed progress reports on 1 October 2018, 1 October 2019 and 1 October 2020 on the measures taken and the results achieved in the implementation of the above recommendations;

(b) To provide such further information as the Committee may request in order to assist it to review the progress of the Party concerned in implementing the above recommendations;

(c) To participate (either in person or by audio conference) in the meetings of the Committee at which the progress of the Party concerned in implementing the above recommendations is to be considered;

9. *Undertakes* to review the situation at its seventh session.

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