

## 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

#### Seventh session

Geneva, 18–20 October 2021

Item 7 (b) of the provisional agenda

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

### **~~Draft d~~Decision VII/8c concerning compliance by Belarus with its obligations under the Convention**

### **~~Prepared by the Bureau~~ Adopted, as amended at the meeting**

*The Meeting of the Parties,*

*Acting* under paragraph 37 of the annex to its decision I/7 on the review of compliance,<sup>1</sup>

*Mindful* of the conclusions and recommendations set out in its decision VI/8c with regard to compliance by Belarus,<sup>2</sup>

*Taking note* of the ~~report~~reports 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 VI/8c concerning compliance by Belarus with its obligations under the Convention,<sup>3</sup> and the findings of the Committee on submission ACCC/S/2015/2 submitted by Lithuania and concerning compliance by Belarus in connection with the participation of the public in Lithuania in decision-making on Ostrovets nuclear power plant,<sup>4</sup>

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

1. *Endorses* the findings of the Committee with respect to decision VI/8c that:

(a) While welcoming the efforts made in that direction, the Party concerned has not yet met the requirements of paragraph 3 of decision VI/8c;

(b) The Party concerned has not yet met the requirements of paragraph 6 of decision VI/8c, and expresses its grave concern that the situation for persons exercising their rights in conformity with the Convention in the Party concerned is, in fact, rapidly deteriorating;

2. *Reaffirms* its decision VI/8c and requests that 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:

<sup>1</sup> ECE/MP.PP/2/Add.8.

<sup>2</sup> ECE/MP.PP/2017/2/Add.1.

<sup>3</sup> ECE/MP.PP/2021/48, ~~forthcoming~~ and [ECE/MP.PP/2021/61](#).

<sup>4</sup> ECE/MP.PP/C.1/2021/13, ~~forthcoming~~.

- (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;
- (b) The content of the public notice required under article 6 (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;
- (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;
  - (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);
  - (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 comments through written submission and/or at public hearings;
  - (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);
  - (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;
- (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 (1) (c) of the Convention;
- (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 (9) of the Convention;

3. *Requests* the Party concerned, as a matter of urgency, to:

- (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<sup>5</sup> 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 (8) of the Convention;

(c) Deliver appropriate training and information programmes on human rights law relevant to article 3 (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;

4. *Requests* the Committee, when evaluating the implementation by the Party concerned of the recommendations in paragraph 3 above, to 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 (8) of the Convention, together with any information provided by the Party concerned regarding those alleged incidents;

5. *Endorses* the findings of the Committee with respect to paragraph 7 of decision VI/8c that the liquidation of Ecohome on 31 August 2021 constitutes a further incident of persecution, penalization and harassment under article 3 (8) of the Convention by the Party concerned and that in this regard, the silencing by the Party concerned of a communicant actively engaged in the Committee's follow-up procedure is a particularly flagrant case of non-compliance with article 3 (8);

6. *Invites* any person who has previously acted on behalf of Ecohome in the Committee's procedure to continue to engage with the Committee in the place of Ecohome in the follow-up procedure on decision VII/8c, and any decision that supersedes it;

7. *Decides*, in the light of the finding in paragraph 5 above, given the gravity of the Party concerned's actions and pursuant to paragraph 37 (g) of the annex to decision I/7<sup>6</sup>:

(i) *To suspend, in accordance with the applicable rules of international law concerning the suspension of the operation of a treaty, the special rights and privileges accorded to the Party concerned under the Convention;*<sup>7</sup>

(ii) *That the suspension will become effective on 1 February 2022, unless the Party concerned has cancelled the liquidation of Ecohome and reinstated Ecohome's registration as a public association under the Act on Public Associations and has notified the secretariat of this fact, providing evidence, by 1 December 2021.*

(iii) *To request the Committee to establish the fulfilment of paragraph 7 (ii) above;*

8. *Endorses* the findings of the Committee with respect to submission ACCC/S/2015/2 that:

(a) By failing to provide adequate and effective notice to the Lithuanian public concerning its opportunities to participate in the hearing in Ostrovets on 9 October 2009 and to send written comments during the decision-making on the 2010 State ecological *expertiza*, the Party concerned failed to comply with article 6 (2) (d) (ii) and (v) of the Convention;

(b) By failing to ensure that the means used to notify the Lithuanian public of the 2009 Ostrovets hearing were effective, either by carrying out the notification itself or by making the necessary efforts to ensure that Lithuania had done so effectively, the Party concerned failed to comply with article 6 (2) of the Convention;

<sup>5</sup> ECE/MP.PP/C.1/2017/19.

<sup>6</sup> ECE/MP.PP/2/Add.8.

<sup>7</sup> Ibid.

(c) By failing to provide adequate and effective notice of the 2013 Ostrovets hearing in the Lithuanian-language media, the Party concerned failed to comply with article 6 (2) of the Convention;

(d) By providing the Lithuanian public with the possibility to examine the full environmental impact assessment report at an even later stage than that provided to the Belarusian public, which was itself too late to comply with the Convention, the Party concerned failed to comply with article 6 (6) with respect to the Lithuanian public also;

(e) By failing to demonstrate how due account was taken of the comments of the Lithuanian public in the decision-making on the 2013 State ecological *expertiza*, the Party concerned failed to comply with article 6 (8) of the Convention;

(f) By not making accessible to the Lithuanian public the text of the 2010 and 2013 State ecological *expertiza* conclusions, including the reasons and considerations on which they were based, the Party concerned failed to comply with article 6 (9) of the Convention;

(g) By providing less favourable treatment to the Lithuanian public regarding access to the information relevant to the decision-making on the 2010 State ecological *expertiza*, the Party concerned failed to comply with article 3 (9) of the Convention;

**69.** *Recommends* that the Party concerned take the necessary legislative, regulatory and administrative measures and establish practical arrangements in order to ensure that, in decision-making on proposed activities with potential transboundary impacts:

(a) Arrangements are made to initiate cooperation with the affected States at an early stage to ensure translation of the main consultation documents and interpretation at hearings so that the public concerned in those countries can effectively participate in the decision-making;

(b) Adequate and effective notification is provided to the public concerned in the affected States, in its national languages, including in widely published media in each State, regarding:

(i) Any decision-making procedure subject to article 6, including the stages and time frames of the decision-making and the types of decisions, reports and other documentation that will be prepared at each stage;

(ii) Its opportunities to participate in each stage of decision-making subject to article 6, in particular concerning the specific contact point to which comments can be submitted, the exact time schedule for transmittal of comments, and its opportunities to participate in any scheduled public hearing;

(c) The public concerned in the affected States is informed in a timely manner of the possibility to examine the complete draft environmental impact assessment report for a proposed activity subject to article 6;

(d) Due account is taken of comments submitted by the public in the affected States during a public participation procedure under article 6;

(e) The text of State ecological *expertiza* conclusions, including the reasons and considerations on which they are based, is promptly made accessible to the public concerned in the affected States, and instructions are given on where it can be accessed;

(f) Concerning subparagraphs (a)–(e) above, the public in the affected States receives no less favourable treatment than the public in the Party concerned;

**710.** *Requests* the Party concerned to:

(a) Submit an updated plan of action, including a time schedule, to the Committee by 1 July 2022 regarding the implementation of the recommendations in paragraphs 2, 3 and **69** above;

(b) Provide detailed progress reports to the Committee by 1 October 2022, 1 October 2023 and 1 October 2024 on the measures taken and the results achieved in the implementation of the recommendations in paragraph 3 above;

(c) Provide detailed progress reports to the Committee by 1 October 2023 and 1 October 2024 on the measures taken and the results achieved in the implementation of the recommendations in paragraphs 2 and ~~69~~ above;

(d) Provide such further information as the Committee may request in order to assist it to review the progress by the Party concerned in implementing the recommendations in paragraphs 2, 3 and ~~69~~ above;

(e) Participate (either in person or by virtual means) in the meetings of the Committee at which the progress of the Party concerned in implementing the recommendations in paragraphs 2, 3 and ~~69~~ above is to be considered;

~~811~~. Undertakes to review the situation at its eighth session.

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