

24 November 2021

Ref: ECE/ENV/2021/149

Dear Mr. Pirshuk,

**Re: Decision VII/8c of the Meeting of the Parties concerning compliance by Belarus,
paragraphs 5 and 7: Liquidation of Ecohome**

I write at the request of Ms. Áine Ryall, Acting Chair of the Compliance Committee under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention), to enclose a letter for your urgent attention.

Should you have any questions with regard to the enclosed, please do not hesitate to contact the secretariat.

Yours sincerely,



Marco Keiner
Director
Environment Division

Mr. Baliaslau Pirshuk
First Deputy Minister
Ministry Natural Resources and Environmental Protection
Republic of Belarus

- Cc: Permanent Mission of the Republic of Belarus to the United Nations Office and other international organizations in Geneva
Representatives of European ECO Forum, communicant of communications ACCC/C/2009/37 and ACCC/C/2009/44
Representatives of Ecohome, communicant of communication ACCC/C/2014/102
Representatives of Nuclear Transparency Watch, Greenpeace Netherlands and WISE International, as observers
- Enc: Letter to the Republic of Belarus from Ms. Áine Ryall, Acting Chair of the Aarhus Convention Compliance Committee

Áine Ryall
**Acting Chair of the Compliance Committee under the Convention on Access to Information,
Public Participation in Decision-making and Access to Justice in Environmental Matters
(Aarhus Convention)**

24 November 2021

Dear Mr. Pirshuk,

**Re: Decision VII/8c of the Meeting of the Parties concerning compliance by Belarus,
paragraphs 5 and 7: Liquidation of Ecohome**

I refer to your letter of 8 November 2021. Having carefully reviewed your letter, I consider that it would be important for me to clarify a number of issues. I accordingly do so on behalf of the Committee below.

1. Comments by Belarus on Committee's supplementary report

In your letter, you assert that, in his letter of 20 August 2021, Mr. Jonas Ebbesson, the Chair of the Compliance Committee, “did not mention the forthcoming additional findings and recommendations for the main report for the upcoming session of the Meeting of the Parties on the implementation of ... decision VI/8c”. Mr. Ebbesson’s letter of 20 August 2021 was sent to Belarus *prior* to Ecohome’s liquidation on 31 August 2021. This means that Belarus was thus on notice *even before* the Supreme Court’s order liquidating Ecohome that Ecohome’s liquidation “may amount to a flagrant case of non-compliance by Belarus with article 3 (8)” and that, given the information then before the Committee, it was “for Belarus to clarify the situation to the Committee and to demonstrate if there is any reason why the proposed liquidation of Ecohome would not constitute penalization, persecution or harassment in violation of article 3 (8) of the Convention.”

In his letter of 20 August 2021, Mr. Ebbesson moreover made clear that the Committee would “report these events and any subsequent developments, including whether the Ministry of Justice reconsiders its court proceedings against Ecohome, to the Meeting of the Parties at its seventh session”.

There is thus no basis for Belarus to claim that it had no notice that the Committee would report the liquidation proceedings against Ecohome to the seventh session of the Meeting of the Parties. Likewise, there are no grounds for Belarus to claim that it had no notice that the Committee would find that, unless Belarus demonstrated otherwise, the proposed liquidation of Ecohome constituted penalization, persecution or harassment in violation of article 3 (8) of the Convention.

In your letter of 8 November 2021, you also claim that the Committee’s supplementary report on decision VI/8c was prepared in violation of paragraph 35 of the annex to decision I/7 and paragraphs 199 and 221 of the Guide to the Compliance Committee. In this regard, I draw your attention to paragraphs 16–19 of the supplementary report, where the Committee has already addressed each of the points raised by Belarus. For your ease of reference, I set out paragraphs 16–19 of the supplementary report below:

16. In accordance with its procedure, the Committee will in normal course examine any developments that occur after it has adopted its report to the Meeting of the Parties under paragraph 35 of the annex to decision I/7¹ during the next intersessional period.²

¹ ECE/MP.PP/2/Add.8.

² Guide to the Aarhus Convention Compliance Committee (second edition, May 2019), para. 221.

17. In the present case, the actions taken by the Party concerned since the Committee adopted its report under paragraph 35 of the annex to decision I/7 on 26 July 2021 are of such a grave nature that it is imperative that they be brought to the attention of the Meeting of the Parties at its seventh session. Moreover, given the implications of the Party concerned's actions for the Committee's future follow-up on decision VI/8c, and any decision that supersedes it, the Committee considers it necessary to make a supplementary report to the seventh session on decision VI/8c specifically addressing these actions.

18. The present supplementary report on decision VI/8c is adopted in accordance with the Committee's mandate to "examine compliance issues and make recommendations if and as appropriate" as set out in paragraph 14 of the annex to decision I/7 of the Meeting of the Parties on review of compliance and pursuant to the request set out in paragraph 21 of decision VI/8 of the Meeting of the Parties on general issues of compliance.³

19. In accordance with the Committee's commitment to ensure that all Parties subject to the review of compliance are treated equally, since each of the Parties whose compliance was the subject of a report to the seventh session of the Meeting of the Parties had two weeks to comment on the Committee's draft report concerning their compliance, the Party concerned has been given two weeks to comment on the present supplementary report also.⁴

I underline that, as stated in paragraph 18 quoted above, the Committee's supplementary report was adopted pursuant to paragraph 14 of the annex to decision I/7 and paragraph 21 of decision VI/8. In contrast to the Committee's main report on decision VI/8c,⁵ which was indeed adopted under paragraph 35 of the annex to decision I/7, the 12-week deadline set out in paragraph 35 did not, and given the date of Belarus' liquidation of Ecohome, could not, apply to the supplementary report.

At various points in your letter, you refer to paragraphs of the Compliance Committee's "draft supplementary report" on decision VI/8c. As you may recall, the Committee's draft supplementary report was sent to Belarus on 29 September 2021 for its comments by 8 October 2021. Following Belarus' request for an extension, the Chair of the Committee extended the deadline for comments until 13 October 2021. After taking into account the comments received by the extended deadline, the Committee adopted its supplementary report on 14 October 2021 and submitted it to the seventh session of the Meeting of the Parties (Geneva, 18–21 October 2021). The findings set out in paragraphs 53 and 61 of the Committee's supplementary report were endorsed by the Meeting of the Parties through paragraph 5 of decision VII/8c.

2. Comments by Belarus on the violations of article 3 (8)

As I explained in the preceding paragraph, the Committee's supplementary report on decision VI/8c became final upon its adoption on 14 October 2021 and the supplementary report's findings were endorsed by the Meeting of the Parties at its seventh session. The Committee will thus not revisit the findings contained in the supplementary report. Having carefully reviewed your letter of 8 November 2021, I consider it may however be of assistance for me to provide some further explanations of the reasoning of the Committee contained in the supplementary report.

At page 5 of your letter, you state that "the reasons for the judicial liquidation of the organization...were a violation of the general requirements of the legislation on the activities of a public association and not activities in the field of environmental protection." I must make clear that the fact that Ecohome was liquidated under the Act on Public Associations and not under legislation in the field of environmental protection is immaterial for the purposes of article 3 (8) of the Convention. As a

³ ECE/MP.PP/2017/2/Add.1.

⁴ ECE/MP.PP/2021/61.

⁵ ECE/MP.PP/2021/48.

nongovernmental organization engaged in promoting environmental protection, Ecohome was, until its liquidation, indisputably a member of the public exercising its rights in conformity with the provisions of the Convention. The Party concerned was thus required by article 3 (8) to ensure that Ecohome, as a nongovernmental organization engaged in promoting environmental protection, was not penalized, persecuted or harassed.⁶ Upon the Supreme Court's order of 31 August 2021, Ecohome ceased to exist as a legal entity and thereafter could no longer engage in activities promoting environmental protection. In examining whether Ecohome's liquidation amounted to penalization, persecution or harassment under article 3 (8), the Committee considered whether the liquidation of Ecohome was reasonable and proportional and pursued a legitimate public purpose.⁷ Having carefully examined all the information put before it, the Committee concluded that there was nothing in any of the documents provided that showed that the action taken by the Party concerned to liquidate Ecohome was objective, reasonable or proportional, or that it pursued a legitimate purpose.⁸ Rather, the Committee found that the silencing by the Party concerned of a communicant actively engaged in the Committee's follow-up procedure was a particularly flagrant case of non-compliance with article 3 (8).⁹

At page 2 of your letter of 8 November 2021, you state that the "deadlines provided for in the Law were not violated". Whether or not the deadlines in the Law on Public Association were violated is immaterial to the fact that the deadline of 20 July 2021 set in the Ministry of Justice's caution had already expired before the caution was delivered to Ecohome. As the Committee concluded in paragraph 50 of its supplementary report, this was an egregious lack of due process. The Committee has before it Belpochta's delivery record for the Ministry of Justice's letter of 14 July 2021 enclosing the caution.¹⁰ Belpochta's delivery record states that the Ministry of Justice's letter was delivered on 22 July 2021. Belarus has not provided any other documentary evidence that would prove that the caution issued by the Ministry of Justice was in fact delivered to Ecohome prior to that date. The Committee accordingly concluded, in paragraph 50 of its supplementary report, that since the caution was delivered to Ecohome only after the deadline in the caution had already expired it was impossible for Ecohome to have complied with the caution.¹¹

At page 3 of your letter of 8 November 2021, you assert that the Committee's finding that the Ministry of Justice requested documents that were not requested during the inspection is "not true". In the light of your assertion, I consider it may be of assistance to provide some further explanation regarding the Committee's finding. In its letter of 22 June 2021, the Ministry of Justice requested Ecohome to provide a "list of its members as of 1 July 2021". However, the written caution stated that it was issued, inter alia, because the list of members provided by Ecohome did "not correspond to Appendix No. 2 to the Resolution of the Ministry of Justice dated 30 August 2005, No. 48, since it does not contain the information about members' date of birth, their place of residence, home phone numbers, their place of work or study, office telephone numbers, as well as personal signatures." Nowhere in its letter of 22 June 2021 does the Ministry of Justice refer to Appendix No. 2 of Resolution No. 48/2005. Nor does its letter of 22 June 2021 state that the "list of members" must include each members' "date of birth, place of residence, home phone numbers, their place of work or study, office telephone numbers, as well as personal signatures."

Similarly, in its letter of 22 June 2021, the Ministry of Justice asked Ecohome to provide "documents confirming that the public association has a legal address". The caution stated that, while Ecohome had provided a "photocopy of its rental agreement for the premises used as its legal address" and "a transfer and acceptance act of the premises", it had not provided "documents regarding the owner of the premises and other documents confirming the right to locate PA Ecohome at the legal address". However, nowhere in its letter of 22 June 2021 does the Ministry of Justice explicitly request

⁶ ECE/MP.PP/2021/61, para. 43.

⁷ ECE/MP.PP/2021/61, para. 45.

⁸ ECE/MP.PP/2021/61, para. 47.

⁹ ECE/MP.PP/2021/61, para. 53.

¹⁰ Annexes 4 and 5 to the reply by communicant of communication ACCC/C/2014/102 to Committee's request for supporting documentation, 20 September 2021.

¹¹ ECE/MP.PP/2021/61, para. 50.

“documents regarding the owner of the premises”.

In the light of the above, the Committee held, in paragraph 49 of its supplementary report, that “the Caution was issued to Ecohome, and Ecohome was consequently liquidated, for not having provided documents that the Ministry of Justice, in its letter of 22 June 2021, had not in fact requested”¹² and that this was an egregious lack of due process.

At page 5 of your letter, you state that the State was “forced to take such a decisive step [i.e. to liquidate Ecohome], taking into account the systematic violation of the national legislation by Ecohome”. The Committee closely studied the caution by the Ministry of Justice issued on 13 July 2021 and the Supreme Court’s judgment of 31 August 2021. Neither the caution nor the subsequent judgment of the Supreme Court judgment state that Ecohome had violated national legislation on a systemic basis. Rather, the caution states that it was issued due to the alleged failure by Ecohome to provide documents purportedly (but not in fact) requested in the Ministry of Justice’s letter of 22 June 2021, a single instance.

At pages 5–6, you claim that “since 2020, Ecohome refused to interact with state bodies” and that it “took a non-constructive position in response to the Ministry of Natural Resources’ proposal for cooperation”. While the Ministry of Natural Resources may be disappointed that Ecohome took a position that was different from its own, the right to hold views and positions that differ from those of the authorities’ is a fundamental right of any non-governmental organization. I assure you that such situations are common in many other Parties to the Convention also.

Also on page 6, you claim that there was “evidence of a violation of the national legislation by Ecohome in connection with the commission of illegal actions that do not fall under the object and purpose of the Aarhus Convention: participation by representatives of this public association in unauthorized mass events of a political nature”. Neither the caution dated 13 July 2021 nor the Supreme Court’s judgment refer to these alleged violations. Belarus cannot thus legitimately claim after the fact that these were grounds justifying Ecohome’s liquidation.

I note the statement on page 4 of your letter that judges in Belarus are independent and subordinate only to the law. This is a common feature of many Parties to the Convention. As you may be aware, pursuant to article 27 of the Vienna Convention on the Law of Treaties, a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. It is entirely up to Belarus to decide which measures it will take to fully meet the requirements of paragraph 7 of decision VII/8c. Since the Ministry of Justice’s caution was (a) delivered to Ecohome after the deadline imposed by the caution had already expired and (b) issued to Ecohome for failing to provide certain documents that the Ministry of Justice, in its letter of 22 June 2021, had not in fact expressly requested, one possibility might be for the Ministry of Justice to urgently petition the Supreme Court to revisit its judgment in the light of these procedural defects and to request that the liquidation order be reversed or set aside. Such petitions to address procedural defects are a feature of the legal systems of a number of Parties to the Convention.

Considering the very short time now remaining until the expiry of the deadline set out in decision VII/8c, I urge Belarus to act as a matter of urgency to take all the necessary measures to ensure that Ecohome is able to resume its operations as a registered public association as of 1 December 2021 and for Belarus to thereby fulfil the conditions in paragraph 7 of decision VII/8c.

¹² ECE/MP.PP/2021/61, para. 49.

Let me conclude by assuring you that the Committee appreciates the constructive approach demonstrated by Belarus in its work with the Committee and looks forward to productive cooperation with Belarus throughout the coming intersessional period.

Yours sincerely,

A handwritten signature in cursive script that reads "Áine Ryall".

Áine Ryall

Mr. Baliaslau Pirshtuk
First Deputy Minister of Natural Resources and Environmental Protection
Republic of Belarus

Cc: Permanent mission of the Republic of Belarus to the UN Office and other international organizations in Geneva