

**To:**

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

through the Secretariat of the Convention

**Ms. Aphrodite Smagadi,**  
Legal Affairs Officer - Aarhus Convention Secretariat  
[Aphrodite.Smagadi@unece.org](mailto:Aphrodite.Smagadi@unece.org)

**From:**

**European ECO Forum Legal Focal Points**  
*represented by*  
**Mr. Andriy Andrusevych,**  
Governing Board Member,  
Resource & Analysis Center "Society and Environment"  
[andriy.andrusevych@rac.org.ua](mailto:andriy.andrusevych@rac.org.ua)

**CC:**

**Ms. Ella Behlyarova,**  
Secretary to the Aarhus Convention  
[Ella.Behlyarova@unece.org](mailto:Ella.Behlyarova@unece.org)

**Mr. Thomas Alge,**  
Head Environmental Law  
OEKOBUERO - Coordination office of Austrian Environmental Organisations  
(ZVR873642346)  
Justice and Environment  
Volksgartenstrasse 1, A-1010 Wien (Vienna)  
[thomas.alge@oekobuero.at](mailto:thomas.alge@oekobuero.at)

**Re: Communication Ref. ACCC/C/2009/44; Reply to questions posed by the Compliance Committee in its letter of April 07, 2010**

1. This letter provides communicant's response to the questions posed by the Compliance Committee in relation to communication ACCC/C/2009/44. In its letter of April 07, 2010, the Committee asked:
  - a. Are there any legal remedies (as required by article 9, paragraph 1, of the Aarhus Convention) available under Belarusian legislation to any person that considers that his or her request for information has been "ignored, wrongfully refused, [...] inadequately answered, or otherwise not dealt with" in accordance with the provisions of article of the Convention?
  - b. If the answer is yes, have you benefited from such review procedures in relation to the allegations made in paragraphs 48-52 of the communication? If you have not made use of any available remedies, please explain why not.

2. This response is structured in accordance to questions posed. In answering those questions, the communicant provides some additional facts and information to that provided in the original communication.

### **Q1: Legal remedies under 9(1)**

3. Article 74-4 of the Law on Environmental Protection provides that denial to provide environmental information can be challenged to a higher public authority and (or) to a court. The first option is hardly available when request for information is sent to the top (head) unit, e.g. the Ministry of Energy itself (unlike situations where request is sent to a local body of a ministry). Court procedures provide for two possibilities depending on parties or subject of the lawsuit. Normally, general jurisdiction courts have jurisdiction to consider lawsuits alleging illegal denial to provide information by public authorities. Commercial courts have jurisdiction to consider lawsuits alleging illegal denial to provide information by commercial companies or similar entities (those engaging in economic activities).

### **Q 2: Whether communicant benefited from available remedies**

4. The communicant is confident that no national remedies were used to benefit from available procedures in relation to allegations made in paragraphs 48-52 of the communication. This is largely due to the fact that violations were becoming known to the public much after the correspondence took place. In other words, at the time when correspondence took place the public could not know that information was misleading or incomplete. Filing court cases afterwards made no sense since it would be too late for the information to be used in a meaningful way. The public used approach of filing subsequent (additional) requests for information instead. There was no intention to “punish” public authorities by filing lawsuits for providing misleading information.

### **Additional facts & information**

5. New important facts took place after the communication was filed. Those facts are directly relevant to the questions posed by the Compliance Committee. These facts took place after public participation procedures were applied, as described in the original communication.

6. At the stage of state environmental expertiza (an environmental decision-making process) no public participation is possible except for organizing so called “public environmental expertiza”. In later 2009 NGO “Ecohome” (Belarus) decided to carry out such **public environmental expertiza**. Public expertiza is a process of evaluation of the EIA documentation by expert pool composed for this purpose. Some experts live outside Belarus (including the undersigned person).

7. Ecohome requested access to full EIA of the planned nuclear power station in paper and electronic form. Since official public notice referred the public to the state company responsible for construction of NPP for any information about EIA, NGO Ecohome sent a request (letter of December 30, 2009, No.71) to the Directorate for the Construction of the Nuclear Power Plant asking to provide paper and electronic version of the full EIA.

8. The Directorate responded on February 17, 2010 (letter No.09/278) that EIA can be accessed only at the premises of the Directorate, in working hours, in the period of February 22 – March 22, 2010.

9. The communicant is confident that electronic version was available at the time of those requests and even earlier. Our confidence is based on the fact that we have in our possession the electronic version of the full EIA for Belarus NPP.

10. In March 2010 NGO Ecohome filed a lawsuit in Ostrovets court of general jurisdiction against the Directorate for the Construction of the Nuclear Power Plant alleging non-compliance with the national legislation and Article 4 of the Aarhus Convention. NGO Ecohome asked to court to order that the respondent provides full EIA in paper and electronic form.

11. On March 22, 2010, Ostrovets court denied standing to NGO Ecohome based on the reasoning that the subject matter of the lawsuit lies within economic relations between the Directorate for the Construction of the Nuclear Power Plant (respondent) and NGO Ecohome (plaintiff). It suggested that the plaintiff brings this lawsuit to the commercial court.

12. NGO Ecohome appealed this decision to the Grodno regional court. On formal grounds the appeal was rejected and, by that time, appeal period elapsed.

13. On April 29, 2010, NGO Ecohome, this time joined by a physical person Mr.Magonov, filed a joint lawsuit to the Ostrovets court on the same subject. On June 16, 2010, the Ostrovets court denied standing on the same reasoning as in March. As to physical person, the court stated that that, as a second plaintiff, Mr. Nagonov made no his own claims towards the respondent, so no separate decision on standing for that plaintiff was needed. NGO Ecohome and a physical person appealed this decision to the Grodno regional court. The hearing is scheduled for July 21, 2010.

14. Copies of relevant court decisions can be provided to the Compliance Committee upon request (originals in Russian).

15. In our opinion, the organizations/persons mentioned in paragraphs 7-14 above can still resort from administrative appeal to the Ministry of Energy (as a body to which the Directorate is subordinated).

**Respectfully submitted to the Compliance Committee on July 16, 2010**