

To Secretariat of the Aarhus Convention
To the Task Force on Public Participation in Decision-making

From Belarus NGO "Ecohome" and Green Alliance

To the recommendations on the public participation in environmental decision-making

17.04.2013

This text is to precede our proposals to Recommendations and therefore we would like to draw Task Force on Public Participation in Decision-Making and Convention Secretariat attention on key issues we have faced with during the implementation of Aarhus Convention in Belarus and which can be carried out systematically. Since the issues described below affect the Convention, we think they are to be considered, as well as our proposals how to solve them in the context of Recommendations.

Our observations of practice regarding the implementation of Aarhus Convention in Belarus allow us to assert about a number of fundamental problems and contradictions, as well as about essential violations of its provisions, inter alia, that were reflected in the findings and recommendations of the Aarhus Convention Compliance Committee concerning the construction of hydropower station on the river Neman and the Belarusian nuclear power station [*see* Decision IV/9b of the Meeting of the Parties on compliance by Belarus with its obligations under the Convention (ECE/MP.PP/2011/2/Add.1)]. After the findings and recommendations of the Committee were presented Belarus, the situation with compliance of Aarhus Convention has not improved. On the one hand this problem is related to the specificity of the Convention, and on the other hand with the political situation in our country (International conventions, domestic legislation and human rights are being systematically violated in Belarus at whole). The tightening of authoritarian political regime leads to further restrictions of public participation in decision-making process as such, regardless they influence the environment or not.

Belarusian practice of the implementation and realization of Aarhus Convention provisions constitute "a good practice" only to a small extent, where it concerns the national legislation. Though, when the most significant cases are considered, for instance, the construction of the Belarusian nuclear power station, this is a negative practice indicating on the gross and intentional violations of the Convention.

However, this mentioned negative practice deserves a serious attention, since it reveals the weakest spots of the Convention. Mistakes and misinterpretations of the Convention, which can be applied ubiquitously in countries of former USSR and so-called Eastern bloc by virtue of the similarity of public administration tradition, deserve such attention as well. Simultaneously, this practice indicates the alterations in the practice of the Convention Bodies work, which can improve the compliance of Aarhus Convention in a broad sense.

Our experience of the participation in public discussions in Belarus indicates the following fundamental problems regarding the public participation in decision-making:

1. The Convention allows governments to interpret the voices of public in decision-making as an optional procedure, and the voices of public as itself are given advisory status, not obligatory for consideration (they interpret the procedure of discussion as the informing procedure). Simultaneously, the best practices show progress exactly where public opinion is taken into account mandatory and the legislation establish this lie of the land. In accordance with Belarusian legislation comments from public are advisory. Belarusian legislation also requires that the comments from

public to be in conformity with norms of legislation, but not with own opinion of public. Thus, authorities can take into consideration only those comments, which they want to consider. The fact of inadequate approach to accounting of public opinion was reflected in the final report on OVOS (assessment of the impact on the environment) of the Belarusian nuclear power station project. There is also a situation, when the public is involved into the process of discussion of documents (eg., plans for the detailed planning of urban areas), however after the final approval the public does not have an access the final version of documents, which were initially discussed with it (denial of access is justified by references to copyright or official nature of the information). In Belarus presidential decrees *de facto* have the highest legal force and can completely alter certain decisions made during the public discussions. Thus, decisions discussed with the public can be completely or partly changed and are not subject to discussion again (the procedure of discussion of presidential decrees is not provided).

2. On the other hand, text of the Convention and the recommendations to it allows to make conclusion that **the public can and has to participate not in all decisions**. Thus, developers of the final text of recommendations (*) explained during the meeting in Luxembourg that there are a number of decisions, for example, such as licensing, where the public can not participate in. However, in our opinion, this is an inappropriate approach. Consideration of the public views is possible even in the licensing procedure. Moreover, we find it is reasonable proposals to prevent the projects for the licensing procedure without due consultation with the public. Such interpretation of the Convention – when it is recognized that the public participates not in all decisions – leads to the fact that authorities permit the public to participate only on those stages of integrated decision-making, where the Convention requires it as obligatory, particularly, on the stage of OVOS (assessment of the impact on the environment). This is what occurred in Belarus with the construction of nuclear power station – the public was invited for participation solely in the discussion of OVOS, which commenced after the final decision about the construction of nuclear power station in Belarus was made without any consultations with the public.

3. Belarusian practice shows that the compliance of Aarhus Convention may not be compulsory, and the project carried out with gross violations of the Conventions, human rights and Belarusian legislation can succeed without review of the decisions, even in cases when the Convention Bodies took these violations into consideration! Thus, even if there were set up the facts of infringements of Aarhus Convention, there are no any mechanisms of reparation of violated rights and review of decisions.

The Aarhus Convention Compliance Committee made its findings and recommendations on the occasion of the construction of nuclear power station and presented them Belarus officially. However, these findings and recommendations do not advise Belarus to reconsider the decisions made with violations and conduct the procedures one more time, as well as perform other actions concerning the certain project, but these findings and recommendations are general and recommend the improvements of enforcement practice in principle. This is quite dangerous path, discrediting the Convention in the eyes of its members.

In connection with these three fundamental problems we would like to draw attention that the following principles, which we offer to articulate and on that basis make recommendations, subordinating them to the three principles, consistent with the Convention spirit:

- 1. The decisions having impact on the environment must not be made without consideration of the public view.**
- 2. Equal rights for public! Public constitutes an equal participant of decision-making process**

at the same extent as an initiator of activity affecting the environment. The initiator of activity can not possess more rights, more influence on the authorities on the ground that he creates workplaces and can bring money to the local budget.

3. The decisions made without appropriate public opinion, with violations of Aarhus Convention are to be abolished. In some cases, if the infringements have systematic feature, the procedures of consideration of public opinion should be conducted repeatedly.

Our specific proposals on the improvement of the text of recommendations are contained in the attached file " Aarhus_Conv_Draft_Rec_on_PPDM_07.03.2013_trackchanges_ecohome_RUS.doc" in «trackchanges» format.

Our explanations to some corrections and questions addressed to the compilers of the text of recommendations are contained in the attached file «Aarhus_Conv_Draft_Rec_on_PPDM_07.03.2013_comments_ecohome_RUS.doc».

Separately, we would like to draw attention on the insufficient quality translation of the text of recommendations from English into Russian. Sometimes incorrect translation leads to misunderstanding or even distorts the meaning of recommendations. For examples, points 3, 15, 24, 27c, 60c, 66a, 75d, 88, 164d. In the file "Aarhus_Conv_Draft_Rec_on_PPDM_07.03.2013_trackchanges_ecohome_RUS.doc" there are contained options to improve translation.

The best regards,
Irina Sukhii,
Chair of Ecohome Board