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To Mrs. Fiona Marshall
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Re: Communication to the Aarhus Convention's Compliance Committee (Pre-admissibility) - response to the letter dated September 4, 2014 and to the letter dated November 11, 2014

Dear Mrs. Marshall,
Further to your letters we hereby provide you the required answers:

I. The aim of the our communication is to address a general failure of Bulgaria to implement Article 1, Article 3 paragraph 1, Article 6, Article 7, Article 9 paragraph 2, 3, 4, 5 of the Aarhus Convention through provisions of the Waste Management Act with respect to public participation in decision-making of municipal associations, which determined policy, plans and programs for waste management on regional principle, and also with respect to right of the public to access to justice in relation the decisions to these associations.

The communication directly concerns implementation shortcomings of Art.31 of Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives, which imposes on Member States the obligation to ensure that relevant stakeholders and authorities and the general public have the opportunity to participate in the elaboration of the waste management plans and waste prevention programmes, and have access to them once elaborated.

II. Bulgaria deposited its instrument of ratification of the Convention 17 December 2003, meaning that the Convention entered into force for Bulgaria on 16 March 2004, i.e. ninety days after the date of deposit of the instrument of ratification. Furthermore, Bulgaria has not opted out of the aspects of the compliance mechanism relating to communications from the public.

The Convention and its amendment and supplement of 2005, are ratified by the National Assembly of the Republic of Bulgaria with 2 laws which are promulgated in "State Gazette" № 91/2003 and № 20/2007. However the Convention itself has not yet been promulgated in the "State Gazette" and therefore not yet part of domestic legislation. According Art.5, para.4 of Constitution of the Republic of Bulgaria, the international treaty be part of the domestic law of the land if has been promulgated after is ratified. Only after promulgation in the "State Gazette", the international treaty shall take priority over any conflicting standards of domestic legislation.

The attached of Balkani Wildlife Society to Communication to Aarhus Convention Compliance Committee Ref. № ACCC/C/2012/76 many judgments of Bulgarian courts

clearly illustrate our claim that the Aarhus Convention has not priority over none of conflicting standards of domestic legislation although it is ratified by the National Assembly and is in force for Bulgaria since 2004. For this reason, we cannot challenge the conflicting provisions of the Waste Management Act by Bulgarian courts.

III. Why we think it is important that citizens have access to information, be entitled to participate in decision-making and have access to justice in matters relating to regional associations of municipalities to manage municipal waste?

The Eurostat information indicates that Bulgaria is among EU member countries that generated the highest share of municipal waste in total municipal waste generation. On average, each Bulgarian citizen generated 460 kg municipal waste. At the same time Bulgaria is lagging behind in development of integrated waste management systems in pursuance Council Directive 1999/31/EC and Directive 2008/98/EC. Landfilling is still the most widely used method for managing and treating Municipal Solid Waste - 98 % of the generated municipal waste had deposited into landfills, including illegal municipal dumps.

The Bulgarian national authorities are admitted that there are to date 100 landfill sites in operation in the Republic of Bulgaria which have not been adapted to the requirements of Article 14 of Directive 1999/31/EC. These are the pleas in law and main arguments for the Action brought on 27 March 2014 -European Commission v Republic of Bulgaria (Case C-145/14) in Court of Justice of the European Union.

With a view to complying with obligations Bulgaria under EU legislation on waste management, in 2010, at the proposal of the Council of Ministers, the National Assembly adopted supplements in the Waste Management Act (which have been preserved and in new Waste Management Act in 2012) which require the municipalities to establish regional associations for waste management. According to the Law, all of the policy of the member municipalities in regard municipal waste management depends on the General meeting of the regional association, namely:

- **Determination of the particular waste treatment installations, the structure and development of the regional waste management system;**
- **Award of public procurements and selection of suppliers and contractors for the construction of the components of the regional waste management system;**
- **Conduct of procedures for selection of an operator or operators of the regional waste management system;**
- **Endorsement of a uniform price for treatment per tonne of waste received in the regional waste management system;**
- **Adoption of an investment programme for the development of the regional waste management system;**
- **Determination of the procedure and manners of collection and distribution of the price due from the users of the system (the municipalities which are members of the regional association);**
- **Conclusion of contracts and fixing the prices in the cases where the regional waste management system is used by municipalities outside the regional association or by other holders of waste;**
- **The exercise of control over the operation of the regional waste management system and the activity of the selected operator or operators;**
- **The ownership of the regional landfill and/or of the waste treatment installations.**

The regions including the municipalities which use a common regional landfill are approved by the Council of Ministers in 2003 and their boundaries do not coincide with the boundaries of territorial administrative regions approved under territorial-administrative division of Bulgaria according to the Constitution. The regions for waste management are 55, the territorial administrative regions are 28, and the municipalities are 280. For example, the Region for waste management "Yambol" includes some of the municipalities of two territorial administrative regions - 3 of 5 municipalities of the territorial administrative region Yambol and 2 of the 4 municipalities of territorial administrative region Sliven. The region for waste management "Stara Zagora" includes all 11 municipalities of the territorial administrative region Stara Zagora and municipality Tvarditsa of the territorial administrative region Sliven.

Furthermore, there are regions for waste management which includes only 1 municipality, as the region of the Municipality Malko Tarnovo (*with total area 799 km² and 3 793 residents*), region of the Municipality Antonovo (*with total area of 472 km² and 6 262 residents*), the region of the Municipality Rudozem (*with total area 191 km² and 10 070 residents*) and the region of the Municipality Petrich (*with total area of 80 km² and 54 000 residents*). But there are also regions which includes 5 municipalities, as the region "Yambol" (*with total area 4 181 km² and 285 346 residents*), there are also regions which includes 9 municipalities, as the region "Pazardzhik" (*with total area of 3 272 km² and 245 372 residents*) and the region Provadia (*with total area of 3 310 km² and 99 921 residents*), that even regions which includes 12 municipalities, as the region "Montana" (*with total area of 3 962 km² and 157 488 residents*) and the region "Stara Zagora" (*with total area of 5 594 km² and 347 070 residents*).

The total area of the region for waste management and the number of its residents and economic actors are of essential importance in the context of:

- **The concrete measures aimed at reducing the harmful emissions in air, water and soil from waste treatment installations, less impact on the ecosystem and better quality of life for citizens.**
- **Determination of the type and capacity of installations waste treatment, including and the capacity of the area of the regional landfill;**
- **Determination of the fees for services provided by Regional associations for waste management, which natural or legal persons are obliged to pay to municipalities on the principle "Polluter pays" (the fee includes and cost of transport of waste from home to landfill).**

Evidence that municipal authorities also did not agree with this distribution is that 7 years after its approval by the Council of Ministers – in 2010 they are obliged with law to establish regional associations for waste management. Until 2010 in Bulgaria are started only 6 projects for construction of regional landfills - for the regions of Montana, Ruse, Pernik, Sevlievo, Silistra and Sozopol, which include only 35 municipalities. The remaining 245 municipalities, divided into 49 regions, are not prepared joint projects for the construction of regional landfills. In Bulgaria until 2010 were started only 6 projects for construction of regional landfills - for the regions of Montana, Ruse, Pernik, Sevlievo, Silistra and Sozopol, which include only 35 municipalities. The remaining 245 municipalities, divided into 49 regions, were not preparing joint projects for the construction of regional landfills.

The regional associations for waste management were established forced by the municipalities at the end of 2010 as Art.19b para.11 of the Waste Management Act regulates further, that **"Any municipality which refuses to participate, which causes a delay, frustrates the establishment or functioning of a regional association and/or of a regional waste management system, shall pay the losses sustained and the gains foregone by the**

rest of the municipalities in the relevant region". This threat for municipalities is saved with identical text in the current Waste Management Act (promulgated SG.53/2012) – Art.24, para.11.

IV. Our main arguments that without the participation of citizens and NGOs these regional associations for waste management do not have sufficient capacity to meet the aims of the European directives and of the Aarhus Convention for of the environment and human health, are based on the following facts:

1. The policy of all 55 regional associations is mainly directed towards the preparation of projects for construction of regional landfills, and not to the construction of facilities for recycling, composting and preparing for re-use of waste, according to the hierarchy of waste management, established in Directive 2008/98 / EC. This cast serious doubt on implementation of requirements until 2020, the preparing for re-use and the recycling of waste materials such as at least paper, metal, plastic and glass from households will increased to a minimum of overall 50 % by weight.

2. The Construction of regional landfills is funded by the European Regional Development Fund through the Operational Programme "Environment 2007-2013" and by the municipal budgets under Priority axis 2: "Improvement and development of waste treatment infrastructure". Bulgaria reports to European Commission on the progress of the program through the target indicators: "The share of municipals covered by regional waste management systems"; "The share of settlements covered by regional waste management systems"; "The share of population covered by regional waste management systems"; "Constructed and commissioned integrated systems for waste management" etc.

There is serious risk of default agreed with the EC due to the lack of capacity of regional associations for waste management for the preparation and effective project management. For 7 years - since 2007, were constructed and commissioned only two regional landfills with funds in OP "Environment" – in Botevgrad and Sofia, which serve total 1 344 382 residents. At the end of 2015, according to the revised Commission Decision of 14.02.2013 on in Bulgaria must be constructed and commissioned a total of 25 regional landfills, which are contracted funds under OP "Environment".

Has serious risk for some of the projects to be lost the contracted funds, because the relevant regional associations of municipalities for waste management have not awarded implementation to real and effective procedures for the investigation of suitable sites for landfills and for environmental assessment and environmental impact assessment. An examples of this are the projects for regional landfills for the regions Razlog, Samokov, Yambol, Stara Zagora, Dupnitsa, etc., against which there are series court cases, petitions, protests, communications to the Commission and Petitions Committee the European Parliament.

3. According to Art.14 of Directive 1999/31/EC, until 16 July 2009 the municipalities were obliged to suspend the exploitation and to make measures for recultivation of all municipal landfills, which does not comply with the requirements of the Bulgarian and European standards for protection of the environment and human health. To date, however, the municipalities continue to exploit and to upgrade 113 such dumps (Case C-145/14 in Court of Justice of the European Union).

We find the risks for citizens in connection with the above two lines.

On the one hand, the categorical refusal of the municipalities for suspending the exploitation of this old landfills increase the fees burden for residents, because the allowances for disposal in landfills collected according to Waste management Act are doubled if landfill do not comply with the legislation. As an example - for the year 2014 the Municipalities Montana, Haskovo, Sozopol and others who disposed of modern regional landfills, were

levying as allowances for landfilling on natural and legal persons in the amount of 22 Lev (€ 11.24) per tonne, while the municipality of Yambol, who disposed of the old dump, was levying allowances amounting to 44 Lev (€ 22.50) per tonne. For the year 2015 allowances are determined in the amount of 28 Lev (€ 14.32) per tonne for disposal in landfills which complied with the legislation and the amount of 56 Lev (€ 28.63) per tonne for the disposal of old dumps.

On the other hand - which is more terrible, the exploitation of old landfills causes grave and irreparable damage to the environment. They can affect human health via their contamination of groundwaters, soils, air and even the food. Landfills are sources of leachate (leach solution) and methane. The leachate, which uncontrolled flows and seeps into the soil from a landfill site, contaminate surface water (for landfill near rivers and lakes, as Samokov and Razlog) and groundwater (as landfill Yambol). This is of particular concern because even after remedial action has been taken to prevent further contamination, they often take a long time to recover to acceptable quality levels. Methane escapes from landfills either directly to the atmosphere or by diffusion through the cover soil. The huge amounts of waste that are buried in landfill sites can mean that methane is produced for years after the site is closed, due to the waste slowly decaying under the ground.

4. The Regional associations of municipalities for waste management proved that do not have sufficient capacity and to prepare a legality methodology for determining the household waste fee which natural and legal persons are obliged to pay to the "polluter pays" principle.

According to Local Taxes and Fees Act, the municipalities charged local household waste fee for the services: provision of receptacles for storage of household waste (containers, dust bins etc); collection, including separate one, of household waste and transportation of the said waste to sanitary landfills or other facilities and installations for their processing;) research, design, construction, maintenance, operation, closure and monitoring of waste landfills or other facilities or facilities for disposal, recycling and recovery of municipal waste, including allowances under Article 60 and 64 of the Waste Management Act; cleaning of street roadways, squares, driveways, parks and other spatial-development areas of settlements assigned for public use.

For many years the municipalities determined the fees not according to the real amount of waste, generated by the taxpayer concerned, and on the basis of tax valuation or carrying amount of assets of the his property. This created a series of appeals from citizens and NGOs. Civil Initiative "Justice" is adamant that "Garbage is generated by people, not properties, which make it totally unjust to determine garbage fee on the basis of the taxable value of the property in question, not the garbage disposed". Their appeals were upheld by the courts in Bulgaria. On 04 July 2011, the Bulgarian Commission for Protection against Discrimination issued a statement confirming that the existing garbage fee collection principles in Sofia constituted a discriminatory practice due to the different criteria used for natural and legal persons.

On his part, on 23 September 2013 the Ombudsman of the Republic of Bulgaria Konstantin Penchev (former Chairman of the Supreme Administrative Court) approached the General Meeting of SAC with the request to issue an interpretative ruling on the issue whether the determination of the garbage charge prorated to the tax evaluation of the property changes its substance and converts it into a hidden property tax.

The National Assembly also comply with the will of citizens and at the end of 2013 adopted amendments to the Law on Local Taxes and Fees for excluding the option for municipalities to collect garbage charges at rates determined on the basis of the tax evaluation of the real estates, their book value or their market price. This amendment shall enter into force as of 1 January 2015.

To date, however, municipalities are not prepared to introduce methods for determining the amount of the fee according to the amount of household waste. Citizens and NGOs are deprived of the opportunity to help direct the general meetings of the regional associations in the study of world practice, the preparation of the methodology, its implementation and monitoring.

THE CONCRETE VIOLATIONS OF THE CONVENTION

V. Art.1 of the Aarhus Convention requires each Party shall be guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being.

Undeniably through the Access to Public Information Act, Promulgated, SG № 55/2000, all individuals and legal entities have access to administrative acts, contracts and other documents in environmental. The access to these documents is regulated and the Environmental protection Act and partially in the Waste management Act. But this access to already established decisions and documents relating to the policies on waste management in Bulgaria is not sufficient for implementation of the objectives of the Aarhus Convention. **The Waste Management Act categorically prohibit citizens and NGOs take part in the process of making and supervising the implementation of decisions of municipal associations for waste management on a regional principle, respectively these citizens and NGOs contribute to better decisions or to appealed decisions that violate their personal rights to live in an environment adequate to human health and well-being.**

VI. Art.3, para.1 of the Aarhus Convention requires Each Party to take the necessary legislative, regulatory and other measures, including measures to achieve compatibility between the provisions implementation of Convention with respect to the **information, public participation and access-to-justice**. This means to be taken the necessary legislative, regulatory and other measures in order to guarantee the right of access to information, public participation in decision-making, and access to justice on all environmental matters, including on policies, plans and programs for waste management.

Art.24, para.1 of current Waste management Act (Promulgated SG 53/13.07.2012) provides: *“The municipalities included in each of the regions of Article 49, paragraph 9, established under this Act, a Regional Association.”*

Art.49, para.9 of that Act refer to the National plan for waste management (accept of Ministry Council in 2003 without public discussion and without environmental assessment).

Art.24, para.11 of that Act states: *“(11) Municipality which refuses to participate, cause delay, frustrate the establishment and functioning of regional associations and/or regional system for waste management, pay damages and the loss of other municipalities in the region.”*

According to **Art.24, para.4** of current Waste management Act: *“Members of Regional Association can only be municipalities”*, and according to **Art.25, para.1**: *“The General Meeting of the regional association is composed of the mayors of participating municipalities”*.

Art.26, para.1 of that Act provides:

(1) The General Meeting could decide to:

1. Election of the chairman;
2. Admission of new members to the regional association;
3. Giving an opinion on the municipality to join an association of municipalities;

4. of the individual facilities for waste treatment, structure and development of the regional system for waste management;

5. Determination of municipalities that assign public procurements on choosing of suppliers and contractors for the construction of the elements of regional system for waste

management and the representativeness of local committees in the conduct of public procurement;

6. Allocation of responsibilities between the municipalities to implement the objectives of Article 31, paragraph 1.

7. Adoption of an investment program for development of the regional system of waste management;

8. Determine the modalities for collection and distribution of the price payable by users of the system (local - regional association members);

9. Consent and pricing where regional system for waste management is used by municipalities outside the regional association or other holders of waste;

10. The control of the operation of regional system for waste management and operation of the selected operator / s;

11. Ownership of the regional landfill and / or facilities for waste treatment;

12. Internal rules of the association;

13. Other issues related to the activities of regional association.

Cited items 4-11 of that paragraph, directly affect citizens as taxpayers. But same citizens or theirs associations have no right to participate in meetings of the General Assembly of Regional Association, according aforementioned Art.24, para.4.

For confirmation of this is opinion of the General Meeting of the Regional Association “Regional Centre for Waste Management, Yambol region” – item 9 of the annexed Minutes № 6 of 27.02.2012, in connection with our request to attend meetings under the Aarhus Convention:

“On item 9 of the agenda: Decision in relation to the application from NGO “Movement environmental” (“DEN”) for their participation in an advisory capacity in meetings of Regional Association

*After discussion of the submitted proposal, presentation of the regulations and opinions of the mayors, that municipal jurists are aware of the submitted proposal and gave their opinions that according to current regulations that possibility is not allowed, the General Meeting approved the following **DECISION:***

According to current regulations of the Republic of Bulgaria, not be possible to participate in an advisory capacity for NGO “Movement environmental” (“DEN”) in meetings of Regional Association for waste management, region Yambol.

This proposal was approved with 5 votes cast "for", "against" – no, "abstain" – no.”

Evidenced by the same Minutes, the General Meeting has taken decisions on:

1. Election of the President of the Association

2. Decision to finance the updating of the basic documents related to the Project Proposal for Construction of infrastructure of waste in the region and allocation of funds

3. Decision to amending the Decision on item 6.4 of the Minutes № 2 of the decisions of the General Meeting of the Association, held on 30.03.2011 (for the award of public procurement contracts for the Project)

4. Decision to supplementing the Decision on item 3 of the Minutes № 2 of the decisions of the General Meeting of the Association, held on 30.03.2011 (determining the source of financing of own financial contribution and working capital).

5. Decision to supplementing or amending the Decision on item 4.3 of the Minutes № 2 of the decisions of the General Meeting of the Association held on 30.03.2011(determination of members from each municipality for the project team) in connection with the Decree 330 of 05.12.2011 of the Council of Ministers. Project activities award methods.

6. Determining the scope of a regional system for waste management in the region Yambol

7. Decision to negotiation with the organization involved in recovery of packaging waste for pre-treatment of waste from the municipalities in the region.

8. Determination of the ownership of Cell 1 of the regional landfill, connecting infrastructure and facilities, constructed within the framework of regional system on the Project Proposal “Construction of regional system of waste management in the region of Yambol”.

All these decisions directly affect the taxpayers of the municipalities of Yambol, Tundzha, Sliven, Nova Zagora and Straldzha which are included in the association.

Citizens and NGOs have no right to challenge decisions of the General Meeting in judicial or other order. Art.26, para.6 of current Waste management Act imperatively states: *“Decisions of the General Meeting could only be appealed by interested municipalities under the Administrative Code”*.

According to Bulgarian legislation, a representative of the municipality before natural and legal persons and the court can only be mayor (Article 44 paragraph 1 item 15 of the Local Self-government and Local Administration Act). I.e. only the mayors of the municipalities have the right to take legal action against a decision of the General Meeting of the Regional Association.

According to Bulgarian legislation, citizens, NGOs and other legal entities have the right to appeal against administrative acts under the Administrative Procedure Code (APK), including administrative acts of the mayors. But the votes of the mayor during the sessions of the General Meeting of the Regional Association, does not meet the specific legislative definitions of administrative acts enshrined in APC and therefore could not be appealed.

Under the APC, citizens and NGOs cannot and to challenge decisions of the General Meeting of the Regional Associations of waste management, because current Waste management Act (Art.24 para.6) states: “The Regional Association is a legal entity based in the municipality that owns the land on which it is constructed or the construction of the facility for waste treatment, or who is given the right to build”. According to Bulgarian legislation (Law on non-profit legal entities, Commercial Law and Waste management Act), decisions of the General Meeting could only be appealed by members of this General Meeting – in this case with the regional associations for waste management could only be appealed by the mayors of municipalities.

Further aggravating circumstance for denial of justice is the fact, that most of these regional associations of municipalities are not legitimately registered as legal entities in the Court and in the Central Register non-profit legal entities according to Bulgarian legislation. Of 55 regional associations for waste management in Bulgaria, only 10 are registered in the Central Register non-profit legal entities at the Ministry of Justice. Under to Law on non-profit legal entities, all others 45, which are not legitimately registered (including Regional association “Yambol”) are illegitimate, but Waste management Act gives them rights to approved decisions, which create obligations for citizens without the right to challenge.

Furthermore, **Art.26, para.7 of current Waste management Act** limits and the mayors themselves to challenge decisions of the General Meeting of Regional Association as regulated: *“A municipality that does not meet the general meeting within the prescribed time limit **should be responsible for damages and the loss of members of the regional association**”*.

On the basis of the above, we think that the Republic of Bulgaria has failed to fulfil its obligations under Art.3, para.1 of the Aarhus Convention et seq., because by failing to take the necessary legislative, regulatory and other measures, including measures to achieve compatibility between the provisions implementation of Convention with respect to the information, public participation and access-to-justice concerning the activities of regional associations for waste management, which define policies, plans and programs

for waste management of municipalities, respectively and obligations of taxpayers in the implementation of these policies, plans and programs.

Cited texts of Waste management Act were in breach and of Art.31 of Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives, which requires Member States to ensure that relevant stakeholders and authorities and the general public have the opportunity to participate in the elaboration of the waste management plans and waste prevention programmes, and have access to them once elaborated.

VI. Decisions of the Regional Association for waste management are subject to Annex 1 of Aarhus Convention – item 5 Waste management, because they related to determining the type, number and capacity of installations for the incineration of municipal waste with a capacity exceeding 3 tons per hour; installations for the disposal of non-hazardous waste with a capacity exceeding 50 tons per day; landfills receiving more than 10 tons per day or with a total capacity exceeding 25 000 tons, excluding landfills of inert waste. These decisions include and agreements to apply for funding of projects for construction of regional centres for waste management with EU and national funding. With them are not only sets the framework of the investment and the type of a regional waste management - landfill or processing plant waste.

As an illustration we will mention the case in the region “Yambol”, although he is typical for the whole country.

Before the adoption of the National Programme for Waste Management and the Waste Management Act, taxpayers of the Municipalities Yambol, Sliven, Nova Zagora and Tundzha were clearly and categorically expressed their desire for building not dump, and a plant for waste incineration. The will of the citizens was supported by decisions of the Municipal Councils of Yambol, Tundzha, Nova Zagora and Sliven. On this basis between the four municipalities was established trading company “Eco engineering” Ltd, registered with decision № 89 / 12.01.2000, on the company file 46/2000 of the Sliven District Court with the sole object of: **design, construction, operation and implementation of the production of a plant for the processing of municipal solid waste of Municipalities Sliven, Nova Zagora, Yambol and Tundzha, with place of construction of the plant near the city Kermen - village Nikolaevo, Municipality Sliven, District Sliven.**

In 2010 the General Meeting of the newly established Regional Association for waste management of region "Yambol" approved decision the municipalities to signed an application for funding under the Operational Programme "Environment" (European Regional Development Fund) for the construction of regional landfill - not a plant for processing waste, as required by the decisions of municipal councils.

According to Art.25, para.1 of Waste management Act, the General Meeting is composed of the mayors.

Constitution of the Republic of Bulgaria (Article 138 and Article 139) and the Local Self-government and Local Administration Act (Art.18 and Art. 38) are constituted Municipal Council of a municipality as the supreme authority of local government and the mayor of the same municipality - as executive authority and executor of the decisions of the Municipal Council.

The Municipal Councillors are representatives of civil society in local government. Their rights and obligations established by the Constitution and the Local Self-government and Local Administration Act, partially cover the principles of the Aarhus Convention on public participation for: decisions on specific activities (Art.6 of the Aarhus Convention); concerning plans, programmes and policies relating to the environment (Art.7 of the Aarhus Convention);

public participation during the preparation of executive regulations and/or generally applicable legally binding normative instruments (Art.8 of the Aarhus Convention).

The Municipal Councillor shall have the right to address queries to the mayor (Art.33, para.1 item 4 of the Local Self-government and Local Administration Act), but not have right appeal by court or other order decisions of mayors.

In the above case with the Regional Association of Municipalities for waste management in the region “Yambol”, the Municipal councils (or individual municipal councillors) are not entitled to challenge the consent of Mayors to sign an agreement for a project for the construction of landfill, and not a plant for waste processing despite the fact that this consent categorically contradicts the essence of the decisions of the municipal councils and creates new, inconsistent with the public, obligations of taxpayers and directly affects their rights to protect human health and the environment.

The Waste management Act obliges municipal councils to make decisions about participation of the municipality in the regional association for waste management in the regions defined by the Council of Ministers (Art.24, para.2), but does not give any rights of councillors to participate or to challenge to decisions of the General Meeting of the same associations.

Article 24 paragraph 4 and Article 26 paragraph 6 of the current Waste Management Act sets the absolute prohibition as municipal councils and non-profit organizations or individual citizens to participate at an early stage (according to Article 6 paragraph 6 of the Aarhus Convention) or to challenge (under Article 9 of the Aarhus Convention) any decisions of the establishment of mayors General Meetings of Regional associations of municipalities for waste management, which fall under item 5 of Annex I of the Aarhus Convention.

VII. Art. 7 of the Aarhus Convention states: *“Each Party shall make appropriate practical and/or other provisions for the public to participate during the preparation of plans and programmes relating to the environment, within a transparent and fair framework, having provided the necessary information to the public. Within this framework, article 6, paragraphs 3, 4 and 8, shall be applied. The public which may participate shall be identified by the relevant public authority, taking into account the objectives of this Convention. To the extent appropriate, each Party shall endeavour to provide opportunities for public participation in the preparation of policies relating to the environment.”*

The Waste management Act not provide for obligations for mayors, which form the General Meeting of the Regional associations for waste management, to inform the public at an early stage of possible decisions or the draft decisions of this General Meeting, including for determining the individual facilities for waste treatment, structure and development of the regional system for waste management, the investment program for the development of this system, etc., which are inherently plan and program for waste management in the region concerned.

Art.26, para.5 of the Waste management Act only regulates obligation of mayors to publish on the web sites of municipalities already adopted decisions of the General Meeting of the regional associations. However, practice shows that this obligation is not respected by the mayors. Furthermore, citizens and NGOs do not give rights to challenge to these decisions.

VIII. As regards the our arguments relating to the violation of Art.9, paragraphs 2, 3, 4 and 5

The non-profit association for public or private benefit „Movement Environmental” (DEN) is registered with the judgment № 62 of 30.12.2011 r. of Yambol District Court and is

registered in the Central Registry at the Ministry of Justice. Objectives of association, according to the statute, are:

1. To promote the upholding of principles of the rule of law;
2. To promote the public discussion for the full effectiveness of European legislation and standards in the Republic of Bulgaria;
3. To promote the development of civil, environmental and political culture and with regard to improving the public awareness about the content and mechanisms for the rights and freedoms of citizens;
4. To perform public scrutiny to observance of the legislation on nature protection, access to information and the development of civil society;
5. To alert the competent authorities for violations of the legislation on nature protection, access to information and the development of civil society or to seek appropriate liability in cases of such violations, including by court order;
7. To promote the search for information through civic education in the field of freedom of information;
8. To work for the transparency of the institutions of central and local government;
9. To support public institutions in developing and implementing a reasoned and scientifically sound proposals and methodologies to improve the secondary legislation in the field of ecology,
10. To involve young people in the initiatives of the association, by contributing to their personal growth, enrichment of civil, environmental and political culture and protect their rights and freedoms.

The non-profit association for public or private benefit „Movement Environmental” (DEN) meeting any requirements under Art.2, para.5 of Aarhus Convention and national law, because promote environmental protection, prevention of human health and the fight against corruption. In this sense, it is “the public concerned” in regard decisions of the General Meetings of the Regional associations for waste management. Within the meaning of Article 9 paragraph 2 of Convention NGO “DEN” have a sufficient interest to challenge the substantive and procedural legality of any decision, act or omission subject of the General Meetings of the Regional associations with a view to protect the rights of citizens to a clean environment and good health.

But on the basis of the already cited several times in our communication Art.24 para.4 and Art.26 para.6 of current Waste management Act, in violation of Art.9, para.2,3,4,and 5, NGO “DEN” have not access to administrative or judicial procedures to challenge acts and omissions of the Regional associations for waste management.

As already mentioned, NGO „DEN” had submitted a formal application on 01.02.2012 for access to meetings of the Regional Association for the waste management region Yambol by relying on the Aarhus Convention. We have not received a response, respectively our NGO has no right to challenge tacit refusal, because the Waste management Act or the other laws in Bulgaria do not provide legal possibility for applications to participate in General Meetings of Regional Associations for the waste management by natural or legal persons, other than the mayors of the municipalities included in the region.

In November 2013 we managed to get through an application under the Access to Public Information Act part of the minutes of the meetings of the General Meeting of the regional association for waste management in the region of Yambol. Of Minutes № 6 of 27.02.2012 r. we learned that our application is discussed in item 9 of agenda, but it is rejected on the ground, that the Waste management Act not provide public participation in meetings.

For those in our communication problems are repeatedly alerted the Ministry of Environment and Water, including with requests for review by the Public Council of MEW and legislative changes in line with the Aarhus Convention. Our written correspondence with the MEW so far has shown a clear reluctance of the Bulgarian authorities to implement the principles of the Aarhus Convention in the Law on Waste Management in connection with the activities of the regional associations of municipal waste management.

Many judgments of the Bulgarian courts presented by Balkani Wildlife Society to the Communication to Aarhus Convention Compliance Committee of Ref. № ACCC/C/2012/76 clearly illustrate our claim that the Aarhus Convention has not priority over none of conflicting standards of domestic legislation.

IX. In support of our assertions, we send the following documents with English translation:

1. The current Waste management Act (Promulgated SG No 53 of 13 July 2012) - the texts of laws that violate the Aarhus Convention are marked with yellow
2. Minutes № 6 of 27.02.2012 r. of the General Meeting of the Regional association for waste management for region “Yambol“.

Finally, we have used of all available domestic remedies. All the cases in our communication serves as exemplary cases, only to illustrate the fact that several provisions of Waste management Act fail to implement or preclude the application of the Convention in Bulgaria. Those cases were chosen amongst a many others such cases of infringements upon the rights, guaranteed by the Aarhus Convention, which we could to present a list upon request.

Considering the our communication and the supporting documentation, we claim our communication be declared admissible and the Committee to examine the substance of the violations of the applicable procedures, as enshrined in Aarhus Convention with cited texts of current Waste management Act in Bulgaria.



With respect:
Dimitar Dimitrov
Chairman of the Board
NGO “Environmental Movement”