



TO

Mrs Fiona Marshall
Secretary to the Århus Convention Compliance Committee
United Nations Economic Commission for Europe
Environment and Human Settlement Division
Room 332, Palais des Nations
CH-1211 Geneva 10
Switzerland

Re: Decision V/9d on Convention compliance by Bulgaria referring to communication ACCC/C/2010/58

Dear Mrs Marshall,

We would like to provide you with our comments on the information provided by the Government of Bulgaria with regard to letter of ACCC from 16.04.2016 concerning the implementation of Decision V/9d on Convention compliance by Bulgaria referring to communication ACCC/C/2010/58.

On the first place, the arguments referring to the first and second question in the answer of the Party concerned have been already repeatedly discussed before and after the adoption of Decision V/9d on Convention compliance by Bulgaria referring to communication ACCC/C/2010/58. It is obvious that the Party concerned maintains its position that “the improvement of the investment policy in Bulgaria is of higher priority of importance for the Government” than the compliance with the Aarhus Convention. However, we absolutely disagree with the argument that the access to justice as required by the Convention impacts the investment policy in Bulgaria. Just the opposite, the lack of reformed judicial system, as well as the lack of transparency and effective public participation (incl. access to justice) in the development process in Bulgaria allows, in our view, for high levels of corruption and legal violations what is critically discouraging foreign investments in Bulgaria¹.

¹ <http://www.euractiv.com/section/central-europe/news/foreign-businesses-denounce-bulgarian-corruption> (Jan-2016)

Balkani Wildlife Society

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In this regard, we remind that the proposals of NGOs for amendment of the Spatial Planning Act aimed at implementation of the requirements of decision V/9d foresee that the public concerned as defined in the Environmental Protection Act has access to justice to the final acts for the adoption of spatial plans and building permits **only if** these acts are adopted without prior SEA/EIA procedure or when the conditions of the SEA/EIA decisions are not respected. This means that the participation of third parties (e.g. public, incl. environmental NGOs), other than the currently provided in art. 131 of SPA, would be limited only to challenging acts of the public authorities which contravene provisions of the national law relating to the environment (par. 9 (3) of the Convention).

On the second place, we welcome the acknowledgment of the Party concerned that the members of the public are not allowed to appeal a refusal of the competent authorities to impose administrative measures under article 158 of the Environmental protection act. In essence, this supports our thesis that any legislative measures which are focused on the further improvement of the administrative control on spatial planning and construction as suggested by the Party concerned (incl. the amendment of art. 127, para. 6 of Spatial Planning Act from 19.09.2013 allowing the regional governor to challenge acts under SPA – see first report of Bulgaria dated 05.01.2015) would not be able to provide access to justice to members of the public with respect to spatial development acts which contravene the environmental legislation.

On the third place, we express our concern that six months after its second progress report the Party concerned has neither provided draft texts of specific legislative measures which should ensure the implementation of paragraph 2 of decision V/9d, nor communicated legislative proposals for improvement of the investment climate which may impact on the range of persons concerned in proceedings concerning spatial planning and construction.

With regard to the above, we consider that further appropriate measures are needed to bring about full compliance with the Convention in accordance with paragraph 37 of Decision I/7.

Yours faithfully,



Alexander Dountchev,

On behalf of the Balkani Wildlife Society

Date: 29.04.2016