



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

**Subject:**

**Re: Decision VI/8d (Bulgaria) - to the communicant and observer**

**Reference:**

**Communication ACCC/C/2010/58**

Dear Mrs Marshall,

We would like to provide you with our comments on the Committee's draft report for the 7<sup>th</sup> of the Meeting of the Parties on the progress by the Party concerned (Bulgaria) to implement decision VI/8d on communication ACCC/C/2011/58.

Since 2012, the Bulgarian government has not taken a single step towards fulfilling the monitored violations of the Convention in this case. On the contrary, numerous amendments to the Spatial Planning Act (hereinafter referred as the 'SPA') were adopted, all of them providing new restrictions of the access to court and access to information. The communicant has taken the effort to inform the Committee for some of those amendments, however for not all of them. In our communication throughout the monitoring process on implementation of decision VI/8d we have sent information only on the most notorious amendments to the SPA, those that clearly show blatant disregard to the provisions of the Convention or the findings in decision VI/8d of 2012 on communication ACCC/C/2011/58. The last of those communications of ours was dated 26.10.2020. Since the previous discussion and decision of the Convention, the government has not taken a single step for improving the situation.

The case-law of the national courts in applying the SPA and/or the Convention also deteriorated significantly. In the recent years all attempts of the national courts for direct application of the Convention ceased. What is more, all attempts even to interpret SPA in view of the aims of the Convention ceased too. There has not been any single court decision or ruling admitting the *locus standi* of the public concerned under the meaning of the convention to challenge the legality of administrative acts of the national authorities under the SPA on environmental grounds.

**Balkani Wildlife Society**

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The list of the case-law we have sent is by no means exhaustive. In our communications during the monitoring process, we have sent the Committee a variety of national courts decisions and/or rulings, aiming at illustrating to the Committee the direction the jurisprudence has taken and the main types of cases of violations of the Convention. The rest of the case-law of the national courts is very similar to the decisions and rulings we have sent. In that respect, we may assume that the national jurisprudence has settled. And the national jurisprudence settled in a state of ignoring the Convention, completely and thoroughly ignoring.

In addition, the Constitutional Court recently has adopted one very restrictive decision to further limit the circle of persons with standing (*lat. locus standi*) to appeal territorial and spatial plans. The Constitutional Court ignores all other constitutional rights, including the right of clean and healthy environment, but the right of property. Furthermore, decision provides extremely narrow interpretation of the constitutional right of everyone to enjoy his/her property, to the extent that only one's right to construct or develop spatially his/her own real estate plot is respected. The right of the neighbouring owners to enjoy their property is completely neglected. What is more, the traditional and well established in Bulgarian law system right of the neighbouring owners to enjoy sunshine and light and calm on their real estate property was ignored as a valid property right by the merits of that decision.

As for the legal standing (*lat. locus standi*) of the citizens to challenge the legality of the administrative acts under SPA on any kind of environmental grounds - it has been left completely out of the picture. Additional details on the decision of the Constitutional Court was provided in communication dated 26.10.2020.

In view of the above, the draft report for the 7<sup>th</sup> of the Meeting of the Parties fails to address the real issue on the case. It is not that the Party Concerned fails to make progress on decision VI/8d on communication ACCC/C/2011/58. The reality of the situation is that the Party Concerned makes numerous legislative or other efforts to worsen the violations of the Convention and to deteriorate the Convention implementation even further.

Taking this into account and the fact that the Aarhus Convention is a part of European Union *acquis communautaire*, we make a request for the convention to refer the case to the European Commission, without dismissing the further actions under the Aarhus Convention itself."

Yours faithfully,

Andrews Kovatchev,

On behalf of the Balkani Wildlife Society

Date: 15<sup>th</sup> July 2021