



REPUBLIC OF BULGARIA
MINISTRY OF ENVIRONMENT AND WATER

Ref.: Draft decision VII/8d concerning compliance by Bulgaria with its obligations under the Convention, subject to consideration by the Meeting of the Parties to the Convention at its Seventh session, Geneva, 18–20 October 2021, Item 7 (b) of the provisional agenda

With respect Draft decision VII/8d concerning compliance by Bulgaria with its obligations under the Convention, Bulgaria would like to present to the attention of the Parties some fundamental conditions and principles of functioning of the legal order and the system of judicial review in the country which impede the implementation of the Compliance Committee's recommendations regarding the compliance cases referred by the decision and which we consider the Committee has not taken sufficient account of in the course of examining the cases. In particular, we mean the following:

- *Paragraphs 1 (a) and 2 (a) with regard Communication ACCC/C/2011/58:*

Providing access for the public (including environmental organizations) to appeal procedures concerning spatial plans and construction permits could lead to duplication of procedures for judicial examination of environmental issues, which have already been addressed in separate independent administrative and judicial procedures for issuing of decisions on strategic environmental assessment (SEA) and environmental impact assessment (EIA). In spatial planning and construction permits proceedings, the acts which are crucial for the environment are the SEA/EIA decisions. That's why the access to justice in respect of spatial planning and construction permitting on environmental issues is exercised by challenging the SEA/EIA decisions. National environmental legislation fully provides the possibility members of the public to appeal in court SEA/EIA decisions.

- *Paragraphs 1 (b) and 2 (b) with regard Communication ACCC/C/2012/76:*

The Committee's recommendation to be undertaken practical and/or legislative measures to ensure that instead of relying on the conclusions of the contested SEA/EIA decision, the courts in such appeals to make their own assessment of the risk of environmental damage, cannot be implemented by legislative measures, as such measures would come into contradiction to the principle of the independence of the judiciary, regulated in Art. 117, para. 2 of the Constitution, which ensures the free and independent formation of the internal conviction of the court in revealing the truth in the course of a case. It could not be imposed on the court as an obligation (much less by law) to ignore the conclusions of the contested decision or to appoint its own assessment of the risk of environmental damage, as this would mean to be ignored and violated the basic fundamentals of the justice and the functioning of the judiciary in Bulgaria. In view of these principles, it is clear that the court in challenging SEA/EIA decisions is obliged to assess all the evidence in the case and the arguments of the parties, given the fact that the SEA/EIA procedure is complex, public and involves broad public participation, and there is no obstacle the court to appoint, on its discretion and internal conviction, an independent expertize through the experts appointed by the court, to clarify the objective truth.

- Paragraph 5 with regard Communication ACCC/C/2016/144:

Bulgaria is fully implementing its commitments under Art. 7 of the Aarhus Convention with regard to the general spatial development plans (GSDP)/GSDP amendments, namely, through the procedure for public participation within the SEA which is in full compliance with Art. 7, in connection with Art. 6, para. 3, 4 and 8 of the Aarhus Convention. For some GSDP/GSDP amendments, SEA is mandatory, and all others are subject to assessment of the need for SEA. This means that any GSDP/GSDP amendments that could have any impact on the environment should be subject to SEA and, accordingly, public consultation within the SEA.

In conclusion, we believe that Bulgaria complies with its obligations under the Convention in the relevant cases, referred by Draft decision VII/8d, but at the same time we express our willingness to continue the constructive dialogue and fruitful cooperation, established between the Government of Bulgaria and the Committee over the years in order to find better solutions to address the compliance issues addressed in Draft decision VII/8d.