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Item 7 (b) of the provisional agenda
Procedures and mechanisms facilitating the implementation of the Convention: compliance mechanism

Report of the Compliance Committee on compliance by Bulgaria*,**

Summary

This document is prepared by the Compliance Committee pursuant to the request set out in paragraph 21 of decision VI/8 of the Meeting of the Parties (ECE/MP.PP/2017/2/Add.1) and in accordance with the Committee's mandate set out in paragraph 35 of the annex to decision I/7 of the Meeting of the Parties on review of compliance (ECE/MP.PP/2/Add.8).

* The present document is being issued without formal editing.
** This document was submitted late owing to additional time required for its finalization.

I. Introduction

1. At its sixth session (Budva, Montenegro, 11–13 September 2017), the Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) adopted decision VI/8d on compliance by Bulgaria with its obligations under the Convention (see ECE/MP.PP/2017/2/Add.1).

II. Summary of follow-up

2. On 21 July 2018, prior to the adoption of decision VI/8d, the communicant of communications ACCC/C/2011/58 and ACCC/C/2012/76 submitted information on proposed legislative amendments. The communicant was informed by the secretariat that this information would be considered in the follow-up procedure on the implementation of decision VI/8d.

3. At its sixtieth meeting (Geneva, 12–15 March 2018), the Committee reviewed the implementation of decision VI/8d in open session with the participation by audio conference of representatives of the Party concerned and the communicant of communications ACCC/C/2011/58 and ACCC/C/2012/76. Observer European ECO Forum also took part in the open session.

4. On 21 March 2018, the communicant of communications ACCC/C/2011/58 and ACCC/C/2012/76 submitted a written statement.

5. On 1 October 2018, the Party concerned submitted its first progress report on decision VI/8d, on time.

6. On 5 October 2018, the secretariat forwarded the first progress report to the communicant of communications ACCC/C/2011/58 and ACCC/C/2012/76, inviting its comments by 1 November 2018.

7. On 1 November 2018, the communicant of communications ACCC/C/2011/58 and ACCC/C/2012/76 submitted its comments on the first progress report of the Party concerned.

8. After taking into account the information received from the Party concerned and the communicant, the Committee prepared its first progress review and adopted it through its electronic decision-making procedure on 18 February 2019.

9. On 25 February 2019, the secretariat forwarded the Committee's first progress review to the Party concerned and the communicant of communications ACCC/C/2011/58 and ACCC/C/2012/76.

10. At its sixty-third meeting (Geneva, 11–15 March 2019), the Committee reviewed the implementation of decision VI/8d in open session, with the participation by audio conference of a representative of the Party concerned. Though invited, the communicant of communications ACCC/C/2011/58 and ACCC/C/2012/76 did not take part in the open session.

11. On 14 March 2019, the Party concerned provided a written version of the statement it had delivered during the open session on decision VI/8d held during the Committee's sixty-third meeting.

12. On 9 August 2019, the Executive Secretary of the United Nations Economic Commission for Europe wrote to the Deputy Prime Minister of Foreign Affairs of the Party concerned to remind it of the deadline of 1 October 2019 set out in paragraph 9 (a) of decision VI/8d for the Party concerned to provide its second progress report on the measures it has by that date taken, and the results achieved, to implement the recommendations in paragraphs 3 and 8 of the decision.

13. On 30 September 2019, the Party concerned submitted its second progress report on decision VI/8d, on time.

14. On 1 October 2019, the secretariat forwarded the second progress report to the communicant of communications ACCC/C/2011/58 and ACCC/C/2012/76, inviting its comments thereon.

15. On 29 October 2019, the communicant of communications ACCC/C/2011/58 and ACCC/C/2012/76 provided its comments on the second progress report by the Party concerned.

16. After taking into account the information received, the Committee prepared its second progress review and adopted it through its electronic decision-making procedure on 4 March 2020. On the same day, the secretariat forwarded the second progress review to the Party concerned and the communicant of communications ACCC/C/2011/58 and ACCC/C/2012/76.

17. At its sixty-sixth meeting (Geneva, 9–13 March 2020), the Committee reviewed the implementation of decision VI/8d in open session, with the participation by audio conference of representatives of the Party concerned and the communicant of communications ACCC/C/2011/58 and ACCC/C/2012/76.

18. On 13 March 2020, the Party concerned provided a written version of the statement it had delivered during the open session on decision VI/8d held during the Committee's sixty-sixth meeting.

19. On 30 September 2020, the Party concerned submitted its final progress report on decision VI/8d, on time.

20. On 28 October 2020, the communicant of communications ACCC/C/2011/58 and ACCC/C/2012/76 provided its comments on the final progress report by the Party concerned.

21. The Committee completed its draft report to the seventh session of the Meeting of the Parties on the progress by the Party concerned to implement decision VI/8d through its electronic decision-making procedure on 30 June 2021. In accordance with paragraph 34 of the annex to decision I/7, the draft report was forwarded on 1 July 2021 to the Party concerned and the communicant with an invitation to provide comments by 15 July 2021.

22. At its seventy-first meeting (Geneva online, 7–9 July 2021), the Committee reviewed the implementation of decision VI/8d in open session with the participation via virtual means of the Party concerned and the communicant of communications ACCC/C/2011/58 and ACCC/C/2012/76.

23. On 15 July 2021, the Party concerned and the communicant of communications ACCC/C/2011/58 and ACCC/C/2012/76 each provided comments on the Committee's draft report.

24. After taking into account the information received, the Committee finalized and adopted its report to the seventh session of the Meeting of the Parties on the implementation of decision VI/8d through its electronic decision-making procedure on 26 July 2021 and thereafter requested the secretariat to send it to the Party concerned and the communicants.

III. Considerations and evaluation by the Committee

25. In order to fulfil the requirements of paragraph 3 of decision VI/8d, the Party concerned would need to, as a matter of urgency, take the necessary legislative, regulatory and administrative measures to ensure that:

(a) Members of the public, including environmental organizations, have access to justice with respect to General Spatial Plans and Detailed Spatial Plans;

(b) Members of the public concerned, including environmental organizations, have access to review procedures to challenge construction and exploitation permits for the activities listed in annex I to the Convention.

26. In paragraph 5 of decision VI/8d, the sixth session of the Meeting of the Parties decided:

(a) To issue a caution to the Party concerned;

(b) That the caution will be lifted on 1 October 2019 if the Party concerned has fully met the requirements in paragraph 3 of decision VI/8d and has notified the secretariat of this fact, providing evidence, by the same date.

27. In order to fulfil the requirements of paragraph 8 of decision VI/8d, the Party concerned would need to review the approach of its courts to appeals under article 60 (4) of the Administrative Procedure Code of orders for preliminary enforcement challenged on the ground of potential environmental damage, and to undertake practical and/or legislative measures to ensure that:

(a) Instead of relying on the conclusions of the contested environmental impact assessment (EIA) / strategic environmental assessment (SEA) decision, the courts in such appeals make their own assessment of the risk of environmental damage in the light of all the facts and arguments significant to the case, taking into account the particularly important public interest in the protection of the environment and the need for precaution with respect to preventing environmental harm;

(b) The courts in their decisions on such appeals set out their reasoning to clearly show how they have balanced the interests, including the assessment they have undertaken of the risk of environmental damage in the light of all the facts and arguments significant to the case, taking into account the particularly important public interest in the protection of the environment and the need for precaution with respect to preventing environmental harm;

(c) Training and guidance is provided for judges and public officials in relation to how to carry out the above-mentioned balancing of interests in environmental cases, including on how to properly reflect that balancing in their reasoning.

28. The Committee welcomes the three progress reports received from the Party concerned, all of which were submitted on time.

29. The Committee also welcomes the information and comments provided by the communicant of communications ACCC/C/2011/58 and ACCC/C/2012/76.

Scope of consideration

30. The Committee notes that the communicant of communications ACCC/C/2011/58 and ACCC/C/2012/76 refers to amendments to the Environmental Protection Act and Biodiversity Act which have reduced the opportunities to challenge activities deemed to be of "national significance" to one court instance, rather than two instances as for other activities subject to the Convention.[1] The Committee considers that these amendments are outside the scope of paragraphs 3 and 8 of decision VI/8d. The Committee will thus not examine these amendments in the context of its review of decision VI/8d. This does not however preclude the possibility for the Committee to examine this issue in a future communication if relevant evidence is put before it.

31. The communicant also submits that, since the Committee's findings on communication ACCC/C/2011/58 were adopted in 2012, the Party concerned has made numerous amendments to the Spatial Planning Act that have introduced new restrictions on access to justice and access to information.[2] The Committee clarifies that, in its review of decision VI/8d, it can only examine amendments to the Spatial Planning Act which are within the scope of paragraph 3 or 8 of decision VI/8d. However, this does not preclude the Committee from examining other amendments falling within the scope of the Convention in a future communication if put before it.

[1] Comments on Party's final progress report from communicant of communications ACCC/C/2011/58 and ACCC/C/2012/76, 28 October 2020, p. 2.

[2] Comments on Committee's draft report by communicant of communications ACCC/C/2011/58 and ACCC/C/2012/76, 15 July 2021, p. 1.

Paragraph 3 (a) of decision VI/8d: Access to justice regarding General and Detailed Spatial Plans

32. The Party concerned, in its final progress report, once again restates its assertion that providing the public access to justice regarding spatial plans would lead to a duplication of review procedures on environmental issues and cause delays in investment activities. It also repeats its previous statement that improving investment policies in Bulgaria is a priority for the government.[3]

33. The Party concerned likewise reiterates its view that access to justice with respect to spatial planning in Bulgaria is exercised by challenging the SEA statement or decision, and that in the Bulgarian legal system, the existence of an SEA statement or decision is an absolute prerequisite for the approval of spatial development plans which allow the implementation of investment proposals with an impact on the environment.[4]

34. The Party concerned claims that the Bulgarian legislator has excluded judicial review of general spatial development plans precisely in light of the protection of the public interest and the protection, as a priority, of constitutional values, including the protection of the environment and the right to a favourable environment.[5]

35. Finally, the Party concerned maintains that the opportunities for consultation available to "supervision bodies and competent authorities", by way of administrative control, and to the public, including environmental organizations, through submitting objections and alerts to the relevant authorities, help prevent violations in the process of adoption of spatial development plans. In addition, it submits that the mandatory public consultation procedures on proposed plans, as well as transparency and public awareness in the course of the SEA procedure, further contribute to preventing omissions and violations by administrative bodies in spatial planning procedures.[6]

36. The communicant of communications ACCC/C/2011/58 and ACCC/C/2012/76 considers that the Party concerned's final progress report shows that no progress has been made concerning access to justice in spatial planning. It submits that the 2019 and 2020 amendments of the Spatial Planning Act introduced no legislative measures providing access to justice for members of the public with regard to spatial planning.[7] It claims that it has provided plenty of evidence of the ongoing adoption of spatial plans in violation of environmental legislation, for example, the adoption of plans without a prior SEA procedure or without respecting the conditions set by the SEA decision.[8]

37. The communicant claims that, since the Committee adopted its findings on communication ACCC/C/2011/58 in 2012, the Party concerned has not taken a single step towards fulfilling the violations of the Convention identified in that case. On the contrary, numerous amendments to the Spatial Planning Act have been adopted, each adding further restrictions on access to the courts and access to information. The communicant also claims that the case law of the national courts has deteriorated significantly and that in recent years the national courts have abandoned attempts to apply the Convention directly or even to interpret the Spatial Planning Act in the light of the Convention, with not a single ruling granting standing to the public concerned to challenge the legality of administrative acts under the Spatial Planning Act on environmental grounds.[9]

38. The communicant further reports that, in a ruling on 15 October 2020, the Constitutional Court declared article 215 (6) of the Spatial Planning Act to be unconstitutional. It submits, however, that this decision cannot resolve the Party concerned's

[3] Party's final progress report, 30 September 2020, p. 1; Party's second progress report, 30 September 2019, p. 1.

[4] Party's final progress report, 30 September 2020, pp. 1–2.

[5] Ibid., p. 2.

[6] Ibid.

[7] Comments on Party's final progress report from communicant of communications ACCC/C/2011/58 and ACCC/C/2012/76, 28 October 2020, p. 2.

[8] Ibid; Communicant's comments on Party's second progress report, 29 October 2019, p. 2.

[9] Comments on Committee's draft report from communicant of communications ACCC/C/2011/58 and ACCC/C/2012/76, 15 July 2021, pp. 1–2.

non-compliance regarding the lack of access to justice regarding spatial development plans, since, based on the Constitutional Court's decision, access to justice is to be granted exclusively to the owners of real estate properties that have been negatively affected by a general spatial development plan.[10]

39. The Party concerned confirms that the Constitutional Court declared article 215 (6) of the Spatial Planning Act to be unconstitutional in its decision no. 14 of 15 October 2020. In the light of that decision, by an amendment adopted on 23 February 2021, article 127 (12) and (13) were inserted into that Act. Article 127 (12) entitles owners of real estate directly affected by a General Spatial Plan to appeal against the plan within 14 days. Article 127 (13) prescribes the ways in which owners of real estate may be "directly affected" by a General Spatial Plan.[11]

40. The Committee expresses its serious disappointment that, nearly nine years after the Committee adopted in findings on communication ACCC/C/2011/58 and seven years after those findings were endorsed by the Meeting of the Parties through decision V/9d, the Party concerned in its final progress report once again re-states arguments that it has made on numerous occasions during the Committee's review of decisions V/9d and VI/8d as to why, in its view, access to justice with respect to spatial plans would be inappropriate and why providing access to justice with respect to SEA decisions and statements is sufficient. The Committee makes clear that it already considered these arguments in its report on decision V/9d to the sixth session of the Meeting of the Parties and concluded that, despite the legislative reform to provide for access to justice for SEA statements/decisions, the Party concerned, in failing to provide access to justice with respect to spatial plans, still failed to comply with the requirements of the Convention.[12]

41. Likewise, in its report on decision V/9d to the sixth session of the Meeting of the Parties, the Committee had already made clear that:

> The requirements set out in the Convention are legally binding minimum standards. Whatever other considerations, socioeconomic or otherwise, may also need to be taken into account, the Convention's legally binding requirements must be ensured as a minimum.[13]

42. In this regard, in its second progress review the Committee made clear to the Party concerned that:

> Its policies on investment, development or economic growth are not a justification not to comply with its binding obligations under the Convention. Rather, as reflected in the fifth paragraph of the Convention's preamble, the obligations in the Convention are important tools to ensure each Party's sustainable and environmentally sound development.[14]

43. With respect to the Party concerned's claim that provide access to justice regarding spatial plans will result in a duplication of review procedures, the Committee already addressed this assertion in its second progress review:

> Regarding the submission by the Party concerned that providing access to justice regarding spatial plans will lead to a duplication of review procedures, the Committee clarifies that neither its findings on communication ACCC/C/2011/58 nor decision VI/8d require the Party concerned to "duplicate" review procedures to challenge issues that could be raised in the context of review procedures on the SEA decision/statement. However, the Party concerned must take the necessary measures to ensure that members of the public, including environmental organizations, have access to justice regarding General Spatial Plans and Detailed Spatial Plans not only for contraventions of national law that can be addressed through review procedures

[10] Comments on Party's final progress report from communicant of communications ACCC/C/2011/58 and ACCC/C/2012/76, 28 October 2020, pp. 3–4.

[11] Party's comments on Committee's draft report, 15 July 2021, p. 1.

[12] ECE//MP.PP/2017/36, paras. 23–26.

[13] ECE//MP.PP/2017/36, para. 31.

[14] Committee's second progress review, 4 March 2020, para. 34.

> on the SEA decision/statement. Rather members of the public must also be able to challenge contraventions of national law regarding General and Detailed Spatial Plans that cannot be addressed through contesting the SEA decision/statement itself.[15]

44. To assist the Party concerned to understand why access to justice regarding the SEA decision/statement itself was insufficient, the Committee in its second progress review provided examples of scenarios that could not be addressed by providing access to justice only regarding the SEA decision/statement itself.

> For example, ... in its findings on communication ACCC/C/2011/58, the Committee already made clear that the failure to provide the possibility for environmental NGOs and other members of the public to challenge a spatial plan that was not subject to a prior SEA procedure or which does not respect the conditions of the SEA decision/statement constitutes non-compliance with article 9 (3) of the Convention.[16] The Committee considers that the same applies when an SEA decision/statement is successfully challenged but the related spatial plan remains in force. The Committee accepts the submission of the Party concerned that in each of these scenarios the spatial plan would be illegal. However, if the spatial plan remains in force, albeit illegally, there is currently no possibility for members of the public, including environmental NGOs, to challenge that.[17]

45. The Committee has trouble understanding the argument of the Party concerned that the aim of excluding general spatial development plans from judicial review is to protect constitutional values such as the protection of the environment. This statement indicates a fundamental misunderstanding of the purpose of article 9 of the Convention. The Committee points out that to safeguard the important public interest in the protection of the environment is precisely the objective behind the broad access to justice provided under article 9 of the Convention, which obliges the Party concerned to ensure that the public enjoys access to administrative or judicial procedures with regards to any national law relating to the environment.

46. Moreover, the Committee makes clear that the fact that a Party may provide for public participation meeting the requirements of article 6 or 7 in no way diminishes the obligation on that Party to meet its requirements under article 9 of the Convention also. On the contrary, public participation and access to justice are two of the three separate but complementary pillars of the Convention. Only by fully implementing each of the Convention's three pillars can a Party be in compliance with the Convention.

47. The Committee takes note of the information provided by the communicant and the Party concerned referred to in paragraphs 38 and 39 above. However, based on the information provided, there is nothing before the Committee that would indicate that members of the public now enjoy access to justice with regards to General Spatial Plans in accordance with article 9 (3) of the Convention. Rather, it appears that access to justice regarding General Spatial Plans will henceforth be akin to that for Detailed Spatial Plans, that is, for directly affected owners of real estate only. The Committee recalls that in its findings on communication ACCC/C/2011/58, it already held that that situation constitutes non-compliance of the Party concerned with article 9 (3) of the Convention.[18]

48. In light of the foregoing, the Committee concludes that none of the measures described by the Party concerned in its progress reports, nor of the developments mentioned by the communicant in its comments thereto, provide access to justice in accordance with the requirements of article 9 (3) of the Convention for members of the public, including environmental NGOs, with respect to General and Detailed Spatial Plans. The Committee accordingly finds that the Party concerned has not yet met the requirements of paragraph 3 (a) of decision VI/8d, nor made any progress in that direction.

[15] Committee's second progress review, 4 March 2020, para. 36.
[16] ECE/MP.PP/C.1/2013/4, para. 70.
[17] Committee's second progress review, 4 March 2020, para. 37.
[18] ECE/MP.PP/C.1/2013/4, para. 70.

Paragraph 3 (b) of decision VI/8d: Review of construction and exploitation permits

49. The Party concerned makes the same assertions with respect to paragraph 3 (b) of decision VI/8d as it does for paragraph 3 (a). In particular, it argues that providing the public access to justice regarding construction and exploitation permits would likewise lead to a duplication of review procedures on environmental issues, and that access to justice with respect to construction permit proceedings in the Party concerned is exercised by challenging the EIA statement or decision.[19] It furthermore claims that the "consultation regimes" concerning the issuance of construction and exploitation permits allow a wide range of supervisory bodies and competent authorities to carry out administrative control and provide members of the public, including environmental organizations, with the opportunity to submit objections and alerts to the relevant authorities to help prevent violations in the process of adoption of construction and exploitation permits.[20]

50. The communicant of communications ACCC/C/2011/58 and ACCC/C/2012/76 submits that the Party concerned's final progress report shows that no progress has been made regarding paragraph 3 (b) of decision VI/8d.[21] It refers to the evidence which it has previously provided of building permits being adopted in violation of environmental legislation and those violations not being able to be challenged by members of the public.[22]

51. As with paragraph 3 (a) above, the Committee expresses its grave disappointment that in its final progress report the Party concerned once again simply restates assertions which the Committee has already addressed on multiple occasions. The Committee points the Party concerned to its second progress review, where it already made clear that:

> Regarding the assertion by the Party concerned that providing access to justice regarding construction and exploitation permits will lead to a duplication of review procedures, the Committee clarifies that, as for spatial plans above, neither its findings on communication ACCC/C/2011/58 nor decision VI/8d require the Party concerned to "duplicate" review procedures to challenge issues that could be raised in the context of review procedures on the EIA decision. However, the Party concerned must ensure that members of the public, including environmental organizations, have access to justice to challenge not only those aspects of the procedural and substantive legality of construction and exploitation permits that can be addressed through review procedures on the EIA decision. Rather, the Party concerned must put in place the necessary measures to ensure that members of the public are also able to address any aspects of the procedural and substantive legality of construction and exploitation permits that cannot be addressed through review procedures on the EIA decision itself.[23]

52. With respect to the Party's assertions that the public has opportunities to submit objections regarding potential violations during the course of the public participation procedure for construction and exploitation permits, the Committee points out that the opportunities for the public to submit objections during the public participation procedure concern article 6 of the Convention. They in no way diminish the obligations of the Party concerned to ensure access to justice under article 9 (2) of the Convention.

53. Regarding the possibility for the public to submit an alert regarding a potential violation in the course of a public participation procedure for a construction or exploitation permit, the Committee notes that, in its findings on communication ACCC/C/2016/144 (Bulgaria), it has examined whether the possibility to submit an alert constitutes access to justice for the purposes of the Convention. In those findings, the Committee has held:

> Although it is possible for a member of the public to submit a request to the administrative authority to exercise its power to prevent the execution of an

[19] Party's final progress report, 30 September 2020, p. 1; Party's second progress report, 30 September 2019, pp. 1–2.

[20] Party's final progress report, 30 September 2020, p. 2.

[21] Comments on Party's final progress report from communicant of communications ACCC/C/2011/58 and ACCC/C/2012/76, 28 October 2020, p. 2.

[22] Ibid.

[23] Committee's second progress review, 4 March 2020, para. 43.

> administrative act (via an "alert"...), the administrative authority is under no obligation to exercise this power, as is demonstrated by the facts of the case. On this point, the Committee recalls its findings on communications ACCC/C/2013/85 and ACCC/C/2013/86 (United Kingdom), in which it held "the right to ask a public authority to take action does not amount to a 'challenge' in the sense of article 9, paragraph, 3, and especially not if the commencement of action is at the discretion of the authority".[24]

54. While the above finding concerned access to justice under article 9 (3), the Committee considers the same reasoning is equally applicable to the right to challenge the substantive or procedural legality of a decision, act or omission under article 9 (2) of the Convention also.

55. Based on the foregoing, the Committee finds that the Party concerned has not yet met the requirements of paragraph 3 (b) of decision VI/8d, nor made any progress in that direction.

Paragraph 8 (a) and (b) of decision VI/8d: assessment of the risk of environmental damage and setting out of reasoning in appeals of orders for preliminary enforcement

56. In its final progress report, the Party concerned submits that, in accordance with the Judiciary Act and the Administrative Procedure Code, in cases concerning contested SEA or EIA statements or decisions, the court is obliged to assess all the evidence and the arguments of the parties. It also notes that the court has the discretion to appoint an independent expert.[25]

57. The Party concerned states that, pursuant to articles 60 (1) and 166 (2) of the Administrative Procedure Code, when considering a request for suspension of preliminary enforcement the court is required to compare the particularly important interest of the complainant with the interest of the party in whose favour the preliminary enforcement is allowed. It submits, however, that courts cannot be obliged by law to ignore the conclusions of a contested EIA or SEA decision or to make their own risk assessment, since this would violate the functioning of the judiciary in Bulgaria.[26]

58. The Party concerned notes that the Supreme Judicial Council has requested an opinion from the Chair of the Supreme Administrative Court on paragraph 8 (a) and (b) but that opinion has not yet been received. [27]

59. The Party concerned submits that, in its view, paragraphs 8 (a) and (b) cannot be implemented through taking legislative measures, since such measures would come into contravention with the principle of the independence of the judiciary enshrined in article 117 (2) of the Constitution and Chapter 2 of the Administrative Procedure Code.[28] The Party concerned therefore asks the Committee to clarify what legislative or practical measures might be taken in order to meet the requirements of paragraphs 8 (a) and (b) of decision VI/8d.[29]

60. The communicant of communications ACCC/C/2011/58 and ACCC/C/2012/76 claims that the Bulgarian courts still systematically fail to objectively assess risk of environmental damage in light of all the facts and arguments of a case and considering the particularly important public interest in the protection of the environment and the need for precaution with respect to environmental harm.[30]

61. The communicant submits that, although article 60 of the Administrative Procedure Code was amended in 2019 to include a requirement for preliminary enforcement orders to

[24] Committee's findings on communication ACCC/C/2016/144 (Bulgaria), ECE/MP.PP/C.1/2021/29, para. 113, citing ECE/MP.PP/C.1/2016/10, para. 84.

[25] Party's final progress report, 30 September 2020, p. 2.

[26] Ibid., p. 3.

[27] Ibid.

[28] Ibid.

[29] Ibid.; Party's statement at the Committee's sixty-sixth meeting, 13 March 2020, p. 1.

[30] Comments on Party's final progress report from communicant of communications ACCC/C/2011/58 and ACCC/C/2012/76, 28 October 2020, p. 5.

be motivated, the case law regarding article 60 (4) of the Administrative Procedure is still very contradictory.[31]

62. The Committee takes note of the information provided by the Party concerned that its Supreme Judicial Council had asked the Supreme Administrative Court for an opinion on the implementation of paragraph 8 (a) and (b) of decision VI/8d. The Committee notes, however, that the Party concerned already reported in its first progress report in October 2018 that it had sent the Committee's findings to the authorities competent for implementation, namely the Supreme Judicial Council and the Ministry of Justice, with a request for an opinion and suggestions for their implementation.[32] The Committee expresses its concern that, more than two years later, the opinion has still not been provided nor any other concrete steps taken to fulfil the requirements of paragraph 8 (a) and (b) of decision VI/8d.

63. The Committee also takes note of the information provided by the communicant that the Party concerned has amended article 60 of the Administrative Procedure Code to include a requirement that orders for preliminary enforcement be motivated. However, having not been provided with the text of the amendment, the Committee is not in a position to assess whether article 60 as amended would bring the Party concerned closer to fulfilling the requirements of paragraph 8 (b) of decision VI/8d.

64. Finally, the Committee welcomes the request by the Party concerned for the Committee to provide advice on possible legislative or practical measures it might take to meet the requirements of paragraph 8 (a) and (b) of decision VI/8d.[33] The Committee makes clear that paragraph 8 (a) and (b) of decision VI/8d by no means requires the Party concerned to take any steps that would call into question the separation of powers or the independence of the judiciary provided for in its Constitution. On the contrary, paragraph 8 (a) and (b) recommends the Party concerned to take practical or legislative measures to ensure that its courts *independently* assess the risk of environmental damage in light of all the facts and argument significant to the case, instead of relying on the conclusions of the same EIA or SEA decision which is contested by the appellants to the respective preliminary enforcement order.

65. The Committee notes that it is entirely within a Party's discretion as to the measures it considers most appropriate to take to implement the recommendations of a decision by the Meeting of the Parties. One way to address the recommendations of paragraph 8 (a) and (b) would be for the Party concerned to amend its Administrative Procedure Code to clearly set out the need for courts, in appeals of orders for preliminary enforcement challenged on the grounds of potential environmental damage, to make their own assessment of the risk of environmental damage in accordance with the wording of the recommendations in paragraph 8 (a) and (b). The Committee stands ready, upon request, to provide more detailed advice on possible measures the Party concerned might take to implement paragraphs 8 (a) and (b) at an early point in the next intersessional period.

66. Based on the information before it, the Committee finds that, while welcoming the steps made in that direction, the Party concerned has not yet met the requirements of paragraph 8 (a) and (b) of decision VI/8d.

Paragraph 8 (c) of decision VI/8d: Training and guidance for judges and public officials on "balancing the interests"

67. In its final progress report, the Party concerned states that training modules are regularly conducted by the National Institute of Justice (NIJ) as part of the obligatory qualification for administrative judges, which include practical and discussion classes on the assessment or risk of environmental damage and the balancing of interests under article 60 (5) of the Administrative Procedure Code.

68. The Party concerned has informed the Committee of the second electronic training session on "Challenges of the Aarhus Convention in law enforcement" conducted for

[31] Ibid.

[32] Party's first progress report, 1 October 2018, p. 1.

[33] Party's final progress report, 30 September 2020, p. 3; Party' statement at the Committee's sixty-sixth meeting, 13 March 2020.

magistrates from 5 to 19 November 2019, following a similar training in December 2018 that it had reported upon in its second progress report.[34]

69. The Party concerned has also informed the Committee of a handbook on "Administrative Courts and European Union Law", which it states is available on the e-learning portal of the NIJ and includes a special section on the Convention and the practical issues of its application by the administrative courts.

70. In its comments on the Committee's draft report, the Party concerned provides further information on the content of the 2018 and 2019 training sessions held by the NIJ. It reports that:

(a) From 3–13 December 2018, the NIJ conducted an e-learning on "Challenges of the Aarhus Convention in Law Enforcement". The training was in the format of a case study. It included a lecture on the Convention and the discussion of a practical case related to the problems in filing a complaint with a request for suspension of construction and installation works, the admissibility of the requests and the legal possibilities for protection against illegal administrative acts in the course of construction.

(b) From 5–19 November 2019, a second edition of the e-leaming "Challenges of the Aarhus Convention in law enforcement" was held. It included an updated lecture on "Challenges of the Aarhus Convention" and a new practical case study, which raised issues of "the applicant's legal interest, the challenge of acts, the stages of the proceedings at which the challenge takes place [and] the admissibility of the claims".[35] As part of the training materials, the report on Bulgaria's progress in implementing the Aarhus Convention was provided, as well as a brief roadmap of the relevant documents. [36]

71. The Party concerned also reports that, by the end of 2021, the NIJ will conduct two further electronic training sessions. The first will analyse caselaw related to the Convention and the second will be a webinar on environmental legislation, which will cover issues related to the assessment of the risk of environmental damage and the motivation of court decisions, taking into account the public interest in environmental protection and the need for precautions to prevent environmental damage. [37]

72. The Committee welcomes the efforts by the Party concerned to inform members of the judiciary about the principles of the Aarhus Convention. The 2018 and 2019 training sessions and the two proposed training sessions for 2021, as well as the handbook for administrative courts would each appear to usefully contribute to the Party concerned's fulfilment of paragraph 8 (c) of decision VI/8d. However, as the Committee made clear in its first and second progress reviews, it will require the Party concerned to provide more detailed information regarding each of these initiatives in order to be in a position to assess whether they indeed fulfil the requirements of paragraph 8 (c). With respect to the judicial training sessions, as the Committee explained in both its first and second progress review, such information would need to include:

> (a) The specific content of the trainings, including the detailed programme with the titles of the presentations deliver, (b) the organizers of the trainings and the profession and relevant experience of each trainer and speaker, and (c) the number of judges, judicial candidates and public officials who have attended the trainings and in which court and town or region each judge or public official sits.[38]

73. In this regard, the Committee points out that, in order to fulfil the requirements of paragraph 8 (c) of decision VI/8d, a significant proportion of its judiciary dealing with matters within the scope of the Convention will need to undergo such training.

74. Regarding the chapter of the handbook referred to by the Party concerned, the Committee considers that in order to assess whether this could indeed contribute to the

[34] Party's final progress report, 30 September 2020, p. 3.
[35] Party's comments on the Committee's draft report, p. 2.
[36] Ibid.
[37] Ibid.
[38] Committee's first progress review, 18 February 2019, para. 22; Committee's second progress review, 4 March 2020, para. 55.

fulfilment of paragraph 8 (c), the Committee would need to be provided with an English translation of the text of the chapter on the Convention. It would also need to receive information on whether the handbook is being used as part of any obligatory training of judges, judicial candidates and public officials, and if so, the number of judges, judicial candidates and public officials who have attended such trainings and in which court and town or region each judge or public official sits.

75. Finally, the Committee reminds the Party concerned that paragraph 8 (c) of decision VI/8c also requires training and guidance to be provided for public officials other than judges on how to carry out balancing of interests in environmental cases, including on how to properly reflect that balancing in their reasoning. The Party concerned has not to date reported upon any trainings or guidance that it has provided for public officials engaged in carrying out the balancing of interests in environmental cases.

76. In light of the above, the Committee finds that, while welcoming the steps made in that direction, the Party concerned has not yet met the requirements of paragraph 8 (c) of decision VI/8d.

Position of the Party concerned with regards to its continuing non-compliance with paragraphs 3 (a) and (b) of decision VI/8d

77. At its sixth session, the Meeting of the Parties of the Convention decided, in the light of the position of the Party concerned that implementing paragraphs 2 (a) and (b) of decision V/9d was not required for its full compliance with article 9 (2) and (3) of the Convention, to issue a caution to the Party concerned. At that same session, the Meeting of the Parties decided that this caution would be lifted on 1 October 2019 if the Party concerned were to fully meet the requirements in paragraph 3 of decision VI/8d and to notify the secretariat of this fact.[39]

78. Based on the information received from the Party concerned to date, the Committee does not consider that the Party concerned has provided any evidence to establish that the conditions for lifting the caution issued at the sixth session of the Meeting of the Parties are fulfilled as of yet. What is more, the Party concerned appears to continue to maintain that fully implementing paragraph 3 (a) and (b) of decision VI/8d is not required for its compliance with article 9 (2) and (3) of the Convention.

79. The Committee makes clear that, by maintaining its position that it is not required to implement paragraph 3 (a) and (b) of decision VI/9d to comply with article 9 (2) and (3) of the Convention, the Party concerned is acting in bad faith towards the Meeting of the Parties, which adopted that decision.

80. In light of the Party's position and its failure to take any steps to implement paragraph 3 (a) and (b) of decision VI/8d, the Committee recommends to the seventh session of the Meeting of the Parties that the caution be maintained.

81. The Committee reiterates its willingness to provide advisory assistance to the Party concerned regarding the implementation of paragraph 3 (a) and (b) of decision VI/8d.[40] This might usefully be in the form of a mission to the Party concerned to meet with senior officials in order to assist them to better understand what will be required in order to fully meet the requirements of decision VI/8d.

IV. Conclusions and recommendations

82. The Committee finds that the Party concerned has not yet met the requirements of paragraphs 3 (a) or (b) of decision VI/8d, nor made any progress in that direction.

83. The Committee finds that, while welcoming the steps made in that direction, the Party concerned has not yet met the requirements of paragraphs 8 (a), (b) or (c) of decision VI/8d.

[39] Decision VI/8d, para. 5.

[40] Committee's second progress review, 4 March 2020, para. 29.

84. The Committee recommends to the Meeting of the Parties that it reaffirm decision VI/8d and request the Party concerned, as a matter of urgency, to:

(a) Take the necessary legislative, regulatory and administrative measures to ensure that:

(i) Members of the public, including environmental organizations, have access to justice with respect to General Spatial Plans and Detailed Spatial Plans;

(ii) Members of the public concerned, including environmental organizations, have access to review procedures to challenge construction and exploitation permits for the activities listed in annex I to the Convention.

(b) Review the approach of its courts to appeals under article 60 (4) of the Administrative Procedure Code of orders for preliminary enforcement challenged on the ground of potential environmental damage, and to undertake practical and/or legislative measures to ensure that:

(i) Instead of relying on the conclusions of the contested EIA/SEA decision, the courts in such appeals make their own assessment of the risk of environmental damage in the light of all the facts and arguments significant to the case, taking into account the particularly important public interest in the protection of the environment and the need for precaution with respect to preventing environmental harm;

(ii) The courts in their decisions on such appeals set out their reasoning to clearly show how they have balanced the interests, including the assessment they have undertaken of the risk of environmental damage in the light of all the facts and arguments significant to the case, taking into account the particularly important public interest in the protection of the environment and the need for precaution with respect to preventing environmental harm;

(iii) Training and guidance is provided for judges and public officials in relation to how to carry out the above-mentioned balancing of interests in environmental cases, including on how to properly reflect that balancing in their reasoning.

85. The Committee recommends to the Meeting of the Parties that it call upon all relevant ministries of the Party concerned, including the Ministry of Economy and the Ministry of Justice, to work together to ensure the successful fulfilment of the above recommendations.

86. The Committee also recommends to the Meeting of the Parties that it request the Party concerned to:

(a) Submit a plan of action, including a time schedule, to the Committee by 1 July 2022 regarding the implementation of the recommendations in paragraph 84 and 85 above;

(b) Provide detailed progress reports to the Committee by 1 October 2023 and 1 October 2024 on the measures taken and the results achieved in the implementation of the plan of action and the above recommendations;

(c) Provide such additional information as the Committee may request in between the above reporting dates in order to assist the Committee to review the progress by the Party concerned in implementing the above recommendations;

(d) Participate (either in person or by virtual means) in the meetings of the Committee at which the progress of the Party concerned in implementing the above recommendations is to be considered.

87. The Committee further recommends that, in the light of the ongoing position of the Party concerned that implementing paragraph 3 (a) and (b) of decision VI/8d is not required for its full compliance with article 9 (2) and (3) of the Convention, the Meeting of the Parties maintain the caution issued to the Party concerned at its sixth session.

88. The Committee also recommends to the Meeting of the Parties that it decide that the caution will be lifted on 1 October 2023 if the Party concerned has fully met the requirements set out in paragraph 84 (a) of this report and has notified the secretariat of this fact, providing evidence, by the same date.

89. The Committee recommends that the Meeting of the Parties request the Committee to establish the successful fulfilment of paragraph 88 above.