



**REPUBLIC OF BULGARIA**  
**MINISTRY OF ENVIRONMENT AND WATER**

*Ref.: Invitation to hearing to discuss substance of Communication to the Aarhus Convention Compliance Committee concerning compliance by Bulgaria with provisions of the Convention concerning public participation, access to justice and protection against penalization, persecution and harassment (ACCC/C/2018/161)*

*Sofia, November 2023*

*Dear Ms. Marshall,*

With regard your letter of 31 October 2023 with an invitation to the Party concerned to hearing to discuss substance of Communication ACCC/C/2018/161 we present to your attention additional information incl. for some recent developments concerning the communication:

I. Amendments to the Environmental Protection Act of 2017 – limiting court review of Environmental Impact Assessment (EIA) appeals against objects of national importance to one court instance only.

With amendments to the Environmental Protection Act from 2022 (promulgated in State Gazette No. 42/2022, effective 7.06.2022) some of the provisions of the act concerning the procedures of judicial review of strategic environmental assessment of plans and programmes (SEA)/environmental impact assessment of investment proposals (EIA) decisions have been redacted as follows:

“Article 88

(4) The judgments of the court of first instance on appeals **lodged by 1 July 2024** against statements and decisions referred to in Paragraph 1 [strategic environmental assessment (SEA) statements/decisions], relating to the implementation of objects which have been designated as objects of national importance by an act of the Council of Ministers and which are objects of strategic importance, shall be final.

(5) The appeals referred to in Paragraph 4 **shall be reviewed by the Supreme Administrative Court**, and the proceedings shall be concluded within six months from the lodgement of the said appeals. The court shall make public the judgment within one month from the hearing at which the examination of the case was concluded.”

“Article 93

(10) The decisions under Paragraph 6 [decisions on the need of EIA] shall be appealable according to the procedure established by the Administrative Procedure Code. The judgments of the court of first instance on appeals **lodged by 1 July 2024** against decisions of the Minister of Environment and Water on development proposals, any extensions or modifications thereof, which have been

designated as objects of national importance by an act of the Council of Ministers and which are objects of strategic importance, shall be final.

(11) The court shall examine the appeals referred to in the second subparagraph of Paragraph 10 and shall render judgment, and the proceedings shall be concluded within six months from the lodgement of the said appeals. The court shall make public the judgment within one month from the hearing at which the examination of the case was concluded”.

#### “Article 99

(9) The judgments of the court of first instance on appeals against decisions of the Minister of Environment and Water [EIA decisions] on development proposals, any extensions or modifications thereof, which have been designated as objects of national importance by an act of the Council of Ministers and which are objects of strategic importance, as well as against decisions of the Minister of Environment and Water on the procedure referred to in Item 9 of Article 94 (1) herein [subject to a common EIA procedure and at least one of the procedures – control of major-accident hazards involving dangerous substances (Seveso) and integrated permit (integrated pollution prevention and control)], **filed no later than 1 July 2024**, shall be final.

(10) The **Supreme Administrative Court** shall examine the appeals referred to in Paragraph 9 and shall render judgment, and the proceedings shall be concluded within six months from the lodgement of the said appeals. The court shall make public the judgment within one month from the hearing at which the examination of the case was concluded.”

According to these amendments, the cassation judicial review at second instance for EIA/SEA decisions, respectively of investment proposals/plans and programmes relating to objects of national significance, shall be restored in 2024. The judicial control over these EIA/SEA decisions shall be exercised by the Supreme Administrative Court, which is the highest court in the administrative court proceedings with the best authority, experience and capacity, and by this way in an even higher degree has been guaranteed the objectivity and lawfulness of the court decisions.

#### II. Amendments to the Administrative Procedure Code (APC) of 2018 - increasing the court fees for cassation appeal for NGOs and for EIA cases

In connection with the assertions of the communicant in p. 2.2., para. 18 of the provided to the Committee additional information regarding communication ACCC/C/2018/161, should be clarified that according to Art. 212, para. 2 of the APC, the cassation appeal, with the exception of cases pursuant to the Administrative Violations and Sanctions Act, cases related to pension, health and social insurance, cases in which the appellant's obligation to pay state fee has been waived, or in which the appellant is a person deprived of his or her liberty by an enforceable sentence, shall be countersigned by a lawyer or legal adviser, unless where the appellant or the appellant's representative is licensed to practice law. A power of attorney for re-signing shall be attached to the motion, and when the appellant or his representative has legal capacity – a certificate of legal capacity.

So, the information provided by the communicant is incomplete, since, as can be seen from the cited provision, the cassation appeal can also be signed by a legal adviser or a person with legal capacity, and in these cases no attorney's fee is due. Such remuneration is not paid in cases where the court proceedings are single-instance. In some cases, lawyers of non-governmental environmental organizations do not claim attorney's fees. And when such is paid to a lawyer, the same is subject to reimbursement from the body's budget in the event of cancellation by the court of the appealed administrative act, according to Art. 142, para. 1 of the APC. From the foregoing, it is

clear that the claim of additional limitation of the rights of non-governmental environmental organizations, in connection with the requirement to sign the cassation appeal, is unfounded.

III. Availability of judicial practice, which rejects the procedural legal standing (right of appeal) of citizens and environmental NGOs with respect to the appeal of municipal programmes for ambient air quality

The Council of Ministers proposed to the National Assembly a bill for amending and supplementing the Clean Ambient Air Act which is aimed, among others, to provide the members of the public with the possibility to appeal the municipal programmes for ambient air quality. The programmes shall be challenged in the order of the APC. The court shall consider the complaint, issue the ruling and announce it in one month from the session in which the consideration of the case has been completed. The proceedings on the complaint shall be completed within six months of its submission.

The possibility to be challenged by the order of the APC acts concerning the environment and the legal standing in such cases has been explained in detail in the response of the Party concerned to communication ACCC/C/2018/161 – p. I. 4. These rules are applicable to the appealing many acts for the environment, incl. SEA/EIA decisions, integrated permits, Seveso decisions, etc. Crucial here is the defined broad range of interested persons which can appeal the administrative acts in the field of environment according to the definitions in § 1, items 24 and 25 of the Additional Provisions of the Environmental Protection Act.

In conclusion, we point out that the presented information is only intended the Committee to be acquainted with some new developments and to acquire more comprehensive picture of the situation and it does not affect in any way our statements with regard the admissibility and merits of the different points of Communication ACCC/C/2018/161.

Kind regards,

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Hristo Stoev  
National Focal Point for the Aarhus Convent...