



Министерство на околната среда и водите

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REPUBLIC OF BULGARIA
MINISTRY OF ENVIRONMENT AND WATER

Ref.: Decision VII/8d concerning compliance by Bulgaria with its obligations under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention)

Dear Ms Marshall,

In accordance with paragraph 7 (b) of decision VII/8d of the Meeting of the Parties to the Aarhus Convention, we bring to your attention the second progress report of Bulgaria on the measures taken and the results achieved in the implementation of the plan of action for decision VII/8d and the recommendations in paragraphs 2 and 6 of the same decision:

1. On paragraph 2 (a) (i) and (ii), with regard Communication ACCC/C/2011/58 related to restricted access to review procedures in spatial planning and construction permitting

Bulgaria continues to support the position that taking actions to ensure access of the public to appeal spatial development plans and construction/exploitation permits will lead to duplication of review procedures on environmental issues, which have already been the subject of separate independent administrative and judicial procedures for issuing statements/decisions on environmental assessment of plans and programmes – strategic environmental assessment (SEA) and environmental impact assessment of investment proposals (EIA) and will create prerequisites for delay and deterring the investment activities in the country.

In this respect, has been taken into account that the public interests and relationships should be decisive in the enforcement of the relevant procedural rules in order to bring administrative or judicial proceedings in accordance with article 9, paragraph 2 and 3 of the Convention (in order to provide the members of the public with the opportunity to challenge before a court administrative decision). The main determinant element in this direction should be the type of the contested administrative act and is it with crucial importance in the field of environmental protection. In spatial planning and construction permits proceedings, the acts which are crucial for the environment are the SEA/EIA statements/decisions – subject to judicial review within separate judicial-administrative proceedings as administrative decisions relevant to the environmental issues, with applicability of article 9, paragraph 2 and 3 of the Aarhus Convention, concerning the range of appellants. Therefore, the access to justice in respect of spatial planning and construction permitting on environmental issues is exercised by challenging the SEA/EIA statement/decision.

Fiona Marshall
Secretary to the Aarhus Convention
Compliance Committee
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Economic Commission for Europe
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2. On paragraph 2 (b) (i) and (ii), with regard Communication ACCC/C/2012/76 concerning injunctive relief in procedures of reviewing environmental permits

Bulgaria continues to support the position that the recommendations in paragraph 2 (b) (i) and (ii) cannot be implemented by undertaking 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.

With regard the alternative practical measure – the General Assembly of the collegium/s of the Supreme Administrative Court to be requested to adopt an interpretative judgement for handling the appeals, under Art. 60, para. 5 (previous para. 4) of the Administrative Procedure Code, of orders for preliminary enforcement, we inform the Committee that there is no response to the letter of the Ministry of Justice to the Supreme Administrative Court from 21.09.2023 with a request for assistance in assessing and analyzing the existence of controversial case-law with the aim of taking follow-up actions for adoption of an interpretative judgement.

In this regard, contrary to what has been claimed by the Communicant, on the basis of the available information for the recent relevant cases, we are at the view that it is not possible to sufficiently substantiate controversial case-law, since there is not the necessary similarity between the individual cases from the factual and legal side, which would create conditions for different law enforcement in identical situations. In principle, it should be noted that in these cases the possibility of determine both conflicting and uniform case-law is greatly limited, since in each individual case there are sufficient differences and peculiarities from the factual and legal side, which does not allow their routine handling in the judicial process.

Each plan or programme, as well as each investment proposal, subject to SEA/EIA procedures, has a specific factual and legal profile, insofar as it concerns different activities, with different scale and method of implementation, with different social significance, impact on the environment, location and features of the respective region, incl. of an ecological, socio-economic, cultural-historical, infrastructural and demographic nature. Therefore, any order under Art. 60 or ruling under Art. 167 of the Administrative Procedure Code for allowing preliminary enforcement of a SEA/EIA statement/decision, is considered and assessed independently in view of the circumstances specific to the case. In particular, all these circumstances that should be taken into account when issuing the orders under Art. 60 and the rulings under Art. 167 of the Administrative Procedure Code for allowing preliminary enforcement of SEA/EIA statements/decisions, as well as in the assessment of their legality by the court, imply an extreme degree of specificity of each individual case, which greatly complicates the possibility of formation of contradictory case-law, which can only be obtained in cases with the relevant degree or elements of similarity.

3. On paragraph 2 (b) (iii), with regard Communication ACCC/C/2012/76 concerning injunctive relief in procedures of reviewing environmental permits

At this stage some initiatives concerning the training of the Bulgarian magistrates for the implementation of the Aarhus Convention in a broader context have been undertaken, including:

- Guidelines "Administrative Courts and EU Law" has been elaborated and published in the e-Learning Portal of the National Institute of Justice (NIJ). The topics of the access to information, public participation in decision-making and access to justice in environmental matters are included in Part IV Environment, in a separate chapter.
- In 2025, the self-learning resource "Manual of the administrative judge - general and special parts. Book two" will be also published by NIJ. It will include the topic "Protection of the environment. Proceedings before the court under the Administrative Procedure Code". The edition will be in 1000 copies and will be made available to all judges of the administrative

courts, and access to its electronic version will be provided to all registered users in the e-Learning Portal of the NIJ.

4. On paragraph 6, with regard Communication ACCC/C/2016/144 in connection with public participation and access to justice in relation to an amendment of the General Spatial Development Plan of Plovdiv

The recommendation in paragraph 6 (a) refers to the recommendation in paragraph 2 (a) (i) of decision VII/8d, the situation with respect to which is presented in item 1 of the report.

With regard the recommendations in paragraph 6 (b) – (e) has been not initiated any amendments of the provisions in the Spatial Planning Act which regulate the procedure for public hearing of general spatial development plans (GSDP) (Art. 127, para. 1). We do not consider it expedient to be undertaken such amendments, given that the public hearing of the GSDP is compatible with and is part of the procedure for conducting consultations on the SEA, which the project assignor organizes and conducts according to the Environmental Protection Act.

In this regard, in the response of the Party concerned to the communication has been already explained to the Committee that for some GSDP/GSDP amendments the SEA is obligatory and all others are subject to an SEA screening procedure. This means that all GSDP/GSDP amendments, which could have any environmental impacts, should be put through SEA and accordingly – public participation under the SEA with the respective strict criteria for public participation, according to Environment Protection Act and the Ordinance on the conditions and order for implementation of environmental assessment of plans and programmes. These requirements for public participation within the SEA procedure are in full compliance with Art. 7, in connection with Art. 6, para. 3, 4 and 8 of the Aarhus Convention.

Yours sincerely,

Petar Dimitrov
Minister of Environment and Water



