



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

**Re: Decision V/9d on Convention compliance by Bulgaria referring to communication  
ACCC/C/2010/58**

Dear Mrs Marshall,

We would like to provide you with our comments on the second progress report submitted by Bulgaria in implementing the recommendations of the Committee on communication ACCC/C/2011/58.

On the first place, we confirm that the Party concerned has adopted an amendment of the Environmental Protection Act in par. 3 of Article 88 which allows the public concerned to challenge the statements/decisions on Strategic Environmental Assessments (SEA). The amendment was proposed by NGOs during the public consultation process concerning the Act, which started on 28.01.2015.

On the second place, we have to admit that no information is available for any efforts undertaken by the Party concerned in the last year to meet the requirements of the Convention concerning the access to justice with respect to spatial plans, as well as construction and exploitation permits, which contravene the environmental legislation. Such measures are neither presented in the second progress report. We remind, however, that with the amendment of the Spatial Planning Act in 2012 (SG, No. 82 of 2012, in force by 26.11.2012) the restrictions on the access to justice were reinforced: Article 215, par. 6 was amended so that "The General Spatial Plans, as well as their amendments, are not subject to appeal procedures" and Article 131 (1) and (2) restricted the interested persons having the right to express an opinion on and have access to judicial review on Detailed Spatial Plans are the owners of the plot regulated by the Detailed Spatial Plan, the owners of the

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Reg 5150/1992 in SCC, BULSTAT 831467860  
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neighboring real estate (directly affected by the provisions of the Detailed Spatial Plan), the owners of real estate in hygiene or cultural heritage-protection zones, if any.

On the third place, we consider that the second progress report clearly indicates that the Party concerned is still not respecting the findings and the recommendations of the Committee on communication ACCC/C/2011/58 and the requirements of the Meeting of the Parties in decision V/9d. In this report are raised mainly issues which have already been discussed in the findings and the recommendations of the Committee on communication ACCC/C/2011/58. Presumably the aim is to postpone the implementation of decision V/9d.

For instance, the Party concerned still argues that the administrative acts issued under the Spatial Planning Act on spatial plans or development permits do not directly address issues related to the environment and thus they should not be subject to the Convention. However, this issue has already been discussed in par. 64, 69 and 73-75 of the Findings where the Committee found that the acts under the Spatial Planning Act have the legal nature of acts of administrative authorities which may contravene provisions of national law related to the environment and the Committee reviews access to justice in respect to these acts in the light of article 9, paragraph 3, of the Convention. Curiously, the court rulings cited by the Party concerned in maintenance of its opinion - Ruling No. 2345/2015 of AC-Sofia (att.1) and Ruling No. 1079/2015 of AC-Plovdiv (att.2) confirmed by Ruling No. 9280/2015 of SAC (att.3), concern namely two cases of spatial plans for urbanization adopted by the authorities under the Spatial Planning Act without a prior SEA procedure, i.e. in full contradiction with the provisions of national law related to the environment. In all these rulings as well in another Ruling No. 3297/2015 of SAC (att.4), forming altogether the most recent judicial case-law on the access to justice in spatial planning, the court holds that the restrictions on the access to justice in the Spatial Planning Act have higher priority with respect to the access to justice provisions in the Convention. Evidently, these rulings once again demonstrate the need for due legislative measures and clear interpretation of the Committee recommendations on the implementation of the requirements of the Convention with respect to the spatial planning procedures under the Spatial Planning Act.

Further, the Party concerned repeats its opinion (maintained by citing contradictory court practice) that the access to justice with respect to spatial plans and construction permits should be restricted to the range of persons defined in national law. This opinion is grounded by the reasoning that the investment process should not be delayed. However, this issues have been also discussed in the Findings of the Committee (par. 65, 70 and 75-78) and it was already explained that the Parties may not take the clause “where they meet the criteria, if any, laid down in its national law” as an excuse for introducing or maintaining such strict criteria that they effectively bar all or almost all members of the public, especially environmental organizations, from challenging acts or omissions that contravene national law relating to the environment. The Committee has also found that each Party has certain discretion as to which decisions, issued in the tiered decision-making process, shall be

subject to judicial review as long as the review procedures provide adequate and effective remedies as required by article 9, par. 4 of the Convention.

With regard to the information that the Council of Ministers has assigned a task to working groups to specify measures for improvement of the investment climate and that draft laws will be provided in November 2015, we express our concern that these draft laws not only foresee any legal measures which take into account the requirements of decision V/9d, but even put further restrictions.

At last, we would like to note that concrete proposals for amendment of the Spatial Planning Act aimed at implementation the requirements of decision V/9d were prepared by NGOs and provided to the authorities periodically. Recently, such a proposal (att.5) was provided to the Environmental Minister and the Minister of Regional Development during a meeting on the 3rd of November, 2015, requested by NGOs in connection with the recommendation in the first progress review of the implementation of decision V/9d of the Committee that by 31 December 2015 the Party concerned should provide the draft texts of the specific legislative, regulatory or administrative measures in order to ensure the implementation of paragraph 2 of decision V/9d. The proposed texts foresee that the public concerned as defined in the Environmental Protection Act has access to justice to the final acts for the adoption of spatial plans and building permits only if these acts are adopted without prior SEA/EIA procedure or when the conditions of the SEA/EIA decisions are not respected.

With regard to the above, we hope that the Party concerned will provide the Committee with concrete draft texts of specific legislative measures to ensure the implementation of decision V/9d so that no further measures would be needed to bring about full compliance with Convention.

Yours faithfully,



Alexander Dountchev,

On behalf of the Balkani Wildlife Society

Date: 27.11.2015

Attachments:

Att. 1. Ruling No. 2345/2015 on case 11003/2014 of AC-Sofia

Att. 2. Ruling No. 1079/2015 on case 930/2015 of AC-Plovdiv

Att. 3. Final ruling No. 9280/2015 on case 7777/2015 of SAC

Att. 4. Final decision No. 3297/2015 on case 3323/2015 of SAC

Att. 5. Proposal for amendments of the Spatial Planning Act of 03.11.2015