Compliance Committee to the Convention on
Access to Information, Public Participation
in Decision-making and Access to Justice
in Environmental Matters (Aarhus Convention)

Second progress review of the implementation of decision V/9d on compliance by Bulgaria with its obligations under the Convention

Contents

I. Introduction

1. At its fifth session (Maastricht, 30 June–1 July 2014), 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 V/9d on compliance by Bulgaria with its obligations under the Convention (see ECE/MP.PP/2014/2/Add.1).

II. Summary of follow–up action with decision V/9d since the Committee's first progress review

2. By letter of 20 October 2015, the secretariat sent the Committee's first progress review on the implementation of decision V/9d to the Party concerned together with a reminder of the request by the Meeting of the Parties to provide its second progress report to the Committee by 31 October 2015, or otherwise by 31 December 2015, on the measures taken and the results achieved thus far in implementation of the recommendations set out in decision V/9d.

3. On 28 October 2015, the Party concerned provided its second progress report on the implementation of decision V/9d.

4. At the Committee's request, on 6 November 2015 the Party concerned's second progress report was forwarded to the communicant of communication ACCC/C/2011/58, inviting it to provide its comments by 27 November 2015. The communicant provided its comments on 27 November 2015.

5. At its fifty-second meeting (Geneva, 7-11 March 2016), the Committee reviewed the implementation of decision V/9d in open session taking into account the Party concerned's second progress report and written comments received from the communicant of communication ACCC/C/2011/58 as well as the statements made by the Party concerned and the communicant by audio conference during the session. Following the discussion in open session, the Committee commenced the preparation of its second progress review on the implementation of decision V/9d in closed session.

6. On 16 April 2016, the secretariat invited the Party concerned to submit by 25 April 2016 the comments made during the open session at the Committee's fifty-second meeting in writing, together with replies to the questions posed during the open session and texts of any legislative or administrative proposals to improve the investment climate prepared. The Party concerned provided additional information on 26 April 2016.

7. On 27 April 2016, the secretariat invited the communicant of communication ACCC/C/2011/58 to submit its comments on the additional information provided by the Party concerned by 3 May 2016. The communicant provided comments on 29 April 2016.

8. The Committee continued the preparation of its second progress review at its virtual meeting on 13 May 2016, taking into account the further written comments provided by the Party concerned on 26 April 2016 and the communicant of communication ACCC/C/2011/58 on 29 April 2016.

9. On 28 October 2016, the Party concerned provided its third progress report and on 17 November 2016, the communicant of communication ACCC/C/2011/58 provided its comments thereon.

10. At its fifty-fifth meeting (Geneva, 6-9 December 2016), the Committee held an open session on the implementation of decision V/9d, in which a representative of the Party

concerned participated in person and a representative of the communicant took part by audio conference.

11. After taking into account the Party concerned's third progress report, the communicant's comments of 17 November 2016 and the information provided during the open session at its fifty-fifth meeting, the Committee adopted its second progress review at its fifty-fifth meeting and requested the secretariat to forward it to the Party concerned and the communicant of communication ACCC/C/2011/58.

Party concerned's second progress report

12. In its second progress report submitted on 28 October 2015, the Party concerned reported that legislative amendments had been introduced in order to secure the right of the public concerned to challenge statements/decisions on strategic environmental assessment (SEA) as independent and separate administrative acts falling within the scope of the provision of article 9, paragraph 3 of the Convention. These amendments were intended to overcome the legal uncertainty about whether the SEA statement/decision, in cases where it is an element of a General Spatial Plan or Detailed Spatial Plan, is subject to separate appeal. The Party concerned submitted that in particular the new article 88, paragraph 3 of the Act for Amendment of the Environmental Protection Act (promulgated State Gazette No. 62 of 14 August 2015, effective from 14 August 2015) states that:

> "The persons concerned may appeal against the statement or decision on paragraph 1 (statement/decision SEA) according to the procedure established by the Administrative Procedure Code within fourteen days after its announcement".

13. The Party concerned submitted that, prior to the above amendments, national law had already ensured members of the public the right to seek to challenge SEA statements/decisions that were an essential condition for approval of spatial plans through the courts as well as appeal under the Administrative Procedure Code. The new provisions provided additional protection of the right of access to judicial and administrative review procedures, where the adoption of the SEA statement/decision represents a stage of the procedure to issue final administrative acts, including the approval of General Spatial Plans or Detailed Spatial Plans.

14. The Party concerned submitted that spatial plans and construction permits identify the purpose and the manner of development of the separate structural parts of the territory not only from the perspective of environmental protection, i.e. the authority adopting the plan/construction permit acts in terms of circumscribed powers and competence. At the same time, according to the Party concerned, environmental considerations are a separate subject of the SEA/EIA statements/decisions regarding investment proposals and, therefore, precisely these statements/decisions fall directly within the scope of the Convention. The Party concerned referred to recent case law in order to support its position.[1] For instance, in Ruling No. 1079/30.04.2015 on administrative case No. 930/2105 with respect to an appeal against an amendment of the General Spatial Plan (GSP), the Administrative Court of Plovdiv stated:

> "Within the proceedings for approval of the amendment of GSP, the administrative act which is essential for the environment is this one stipulated under article 82 of the Environmental Protection Act – statements/decisions on SEA which is subject to

[1] Ruling N 2345/04.05.2015 of the Administrative Court - Sofia on administrative case N 11003/2014, Ruling N 1079/30.04.2015 of the Administrative Court - Plovdiv on administrative case N2 930/2015.

judicial review in separate proceedings and with applicability of the provision of article 9, paragraph 3 of the Aarhus Convention concerning the range of appellants. The appeal is inadmissible because the processed amendment to GSP does not contain an environmental component and determines the manner of development and the purpose of the territory of a particular spatial area. The administrative act dealing with environmental considerations is subject to its own, separate challenge and judicial review".

15. The Party concerned states that it is important to consider whether and to what extent the references to national law in article 9, paragraphs 2 and 3 of the Convention allow the possibility to restrict the range of persons concerned with access to administrative and judicial appeal procedures in complex proceedings covered simultaneously by different legal acts apart from environmental legislation, which is the case with spatial planning and authorization of construction activities. In this regard, it cited the judgment of the Supreme Administrative Court in Decision No. 542/15.01.2014 on administrative case No. 14767/2008, which held, inter alia:

> "In article 9, paragraph 2 of the Convention is regulated…the right of challenge of the members of the public of decisions, acts or omissions in accordance with article 6 of the Convention and in cases where so provided for under national law. In the next paragraph the Convention refers again to the national legislation about what constitutes a sufficient interest and impairment of a right. I.e. when the court appeal of an act is precluded for all persons regarding an explicit national legal rule, in accordance with the Constitution of the Republic of Bulgaria, as in this case, the text of the Convention may not be interpreted as a reason for derogating from national provisions in view of the cited cumulatively required prerequisite in article 9, paragraph 2 (b) of the Convention that provides for compliance with the national law."[2]

16. The Party concerned reiterated the view stated in its first progress report that the issue of providing access to members of the public, including environmental organizations, to review procedures concerning spatial plans and construction permits cannot be considered one-sided only in terms of protecting the environment, since it raises a number of significant socio-economic facts requiring comprehensive consideration and balancing of public and private interests. It was essential not to delay and hinder the investment process in the country by the inclusion in administrative and judicial proceedings under article 131 of the Spatial Planning Act of persons other than those having a direct and immediate legal interest.

17. In this regard, the Party concerned reported that Decision No. 617 of 12 August 2015 of the Council of Ministers had adopted an analysis of the problems hindering the growth of investment in the country and had approved a list of the main problem areas and proposals for measures thereto. The problems identified included the large number of procedures on issuing construction permits and significant time for their execution and accordingly measures were proposed to, inter alia, streamline the timing and number of procedures for issuing construction permits; strengthen control over the implementation of statutory time limits for issuing construction permits; and review all regulatory regimes in the area of construction permits established by a special law. The Party concerned reported that interdepartmental working groups had been created to convert the above measures, by 31 January 2015, into concrete legislative and administrative proposals to improve the investment climate. To support their work, in November 2015 the working groups were to

[2] Findings of the Supreme Administrative Court in its Decision N2543/15.01.2014 on administrative case N2 13729/2013.

be provided with draft laws aimed at alleviating the regulatory burden on businesses and citizens in the investment process elaborated within a project "Improvement of the investment policy in Bulgaria through better regulation of the investment process and the development of e-government" of the Council of Ministers Administration, co-financed by the Funds of the European Union. These draft laws would, inter alia, affect the determination of the range of persons concerned in proceedings on issuing administrative decisions and enforcement of regulatory regimes in the areas of spatial planning and construction.

18. In its additional information provided on 26 April 2016, the Party concerned reiterated that improvement of the investment policy, through better regulation of the investment process, is a priority for the Government. In this context, providing access to the public to appeal procedures concerning spatial plans and constructions permits would lead to delays and would impede the investment process. This could lead to a duplication of procedures for examining environmental issues which would have already been addressed in the separate independent administrative and judicial procedures for issuing the EIA and SEA decisions on the investment proposals. The Party concerned emphasized that the EIA and SEA decisions were conditions *sine qua non* for the approval of spatial plans and construction permits.

19. With respect to the Committee's request during the open session at the fifty-second meeting for the Party concerned to provide the text of any legislative or administrative proposals to improve the investment climate that may impact on the range of persons concerned in proceedings regarding the issue of decisions and regulatory enforcement in the areas of spatial planning and construction, the Party concerned reported that the interagency working groups (paragraph 17 above) had concluded their task and made their proposals. These included: optimization of administrative regulatory regimes for adoption of General and Detailed Spatial Plans, issuing construction permits with shorter deadlines, simplification and combination of the procedures, provision of more transparency and public access to information concerning spatial plans, and improvement of control. It stated that the proposed new rules would not affect the range of stakeholders in the administrative and judicial appealing procedures.

20. With respect to the Committee's question as to whether the public had the right to appeal (i) the General or Spatial Plan itself; (ii) the decision adopting the General or Spatial Plan; or (iii) only the EIA or SEA decision regarding the General or Detailed Spatial Plan, the Party concerned stated that its environmental legislation provided the full right to the public concerned (including NGOs) to appeal the SEA and EIA decision. According to article 99, paragraph 6 of the Environmental Protection Act (EPA), the public concerned might appeal against the EIA decision according to the procedure established by the Administrative Procedures Code within fourteen days of the decision's announcement. The Party concerned stated that in accordance with article 82, paragraph 5 of the EPA, a final decision on the necessity of an EIA or the issuance of an EIA decision was *conditio sine qua non* for approval/authorization of the investment proposal. The Party concerned stated that, according to article 82, paragraph 4 of the EPA, an opinion or a decision that had entered into force for SEA was *conditio sine qua non* for a subsequent plan or programme.

21. The Party concerned stated that the acts for approval of spatial plans and construction permits were issued under the Spatial Planning Act only when the statements and decisions had entered into force (subject to appeal in accordance with the above), and thereby the provisions of the Spatial Planning Act were applied in closest interaction with the provisions of the EPA.

22. The Party concerned stated that the Spatial Planning Act established the right to appeal the administrative acts for approval of the Detailed Spatial Plans and the construction permits only for those persons who had a direct and immediate legal interest in

administrative and legal procedures (article 131) and construction permits (article 149, paragraph 2). The Party concerned stated that participation of third parties (e.g. public, including environmental NGOs) in proceedings for issuing or appealing administrative acts under the SPA, other than as legally provided, was unacceptable.

23. The Party concerned stated that according to article 124b, paragraph 5 of the Spatial Planning Act, a refusal to issue a permit for a spatial plan was to be issued with a motivated decision or order of the competent authorities within one month after the application. It noted that the refusals were notified in accordance with the Administrative Procedure Code and could be appealed in accordance with article 215. The Party concerned stated that according to article 215, paragraph 1 of the Spatial Planning Act, the individual administrative acts related to that Act, refusals to issue permission and administrative acts for abolishment or leaving in force, with the exception of those under article 216, paragraph 1, could be appealed to the regional administrative court where the property is located. It added that according to article 2l5, paragraph 6 of the Spatial Planning Act, the General Spatial Plan and amendments to it could not be appealed, however they were subject to SEA, and the environmental acts issued according to environmental legislation could be appealed under the EPA.

24. With respect to the Committee's question as to whether a member of the public could appeal a refusal to impose administrative measures under article 158 of the EPA, the Party concerned stated that in its essence the imposition of coercive administrative measures was a form of state coercion and was implemented within the specific administrative proceedings developed between the implementing authorities and its controlled entities. It noted that the application of coercive administrative measures was the final stage of control and was an optional, not obligatory, instrument. It noted that the competent authority had the right to start the procedure on its own initiative or refuse to start administrative proceedings.

Comments on the second progress report

25. In its comments of 27 November 2015 on the Party concerned's second progress report submitted, the communicant of communication ACCC/C/2011/58 confirmed that the Party concerned had adopted an amendment to article 88, paragraph 3 of the EPA which allows the public concerned to challenge SEA decisions.

26. The communicant submitted that there is no available information, including in the second progress report, about the efforts undertaken by the Party concerned in that year to meet the requirements concerning access to justice with respect to spatial plans, as well as construction and exploitation permits, which contravene environmental legislation. The communicant recalled that the 2012 amendment of the Spatial Planning Act (SG, No.82 of 2012, in force 26 November 2012) amended article 215(6) of that Act to state: "The General Spatial Plans, as well as their amendments, are not subject to appeal procedures". Likewise, article 131(1) and (2) of that Act restricts those having the right to express an opinion on and have access to judicial review on Detailed Spatial Plans to the owners of the plots regulated by the Plan, the owners of neighbouring real estate and the owners of real estate in hygiene or cultural heritage protection zones, if any.

27. The communicant submitted that the second progress report clearly indicated that the Party concerned was still not respecting the Committee's findings and recommendations on communication ACCC/C/2011/58 and decision V/9d. For instance, in contradiction with paragraphs 64, 69, 73-75, of the findings, the Party concerned still argued that

administrative acts regarding spatial plans and developments permits issued under the SPA do not directly address issues related to the environment and are thus not subject to the Convention. The communicant referred to the rulings[3] cited by the Party concerned in its second progress report noting that they concerned two cases of spatial plans for urbanization adopted by the authorities under the SPA without a prior SEA procedure, i.e. in full contradiction with the provisions of national law related to the environment. The communicant added that in both these cases as well as in another recent case[4] the court had held that the restrictions on access to justice in the SPA have higher priority than the access to justice provisions in the Convention. The communicant submitted that these rulings once again demonstrated the need for legislative measures and a clear interpretation of the Committee's recommendations on the implementation of the requirements of the Convention with respect to spatial planning procedures under the SPA.

28. The communicant also questioned the Party concerned's opinion that access to justice with respect to spatial plans and construction permits should be restricted to the range of persons defined in national law. The communicant noted that this issue had already been discussed by the Committee at paragraphs 65, 70 and 75-78 of its findings on communication ACCC/C/2011/58, including that Parties may not take the clause "where they meet the criteria, if any, laid down in national law" as an excuse for maintaining such strict criteria as to effectively bar all or almost all members of the public, especially environmental organizations, from challenging acts or omissions that contract national law relating to the environment.

29. With respect to the information provided by the Party concerned that the Council of Ministers had assigned a task to working groups to specify measures for improvement of the investment climate, the communicant expressed concern that the draft laws proposed by the working groups not only did not foresee any legal measures which would take into account the requirements of decision V/9d, but would introduce further restrictions.

30. The communicant stated that NGOs had prepared concrete proposals for amendment of the SPA and had provided these to authorities on a number of occasions, including to the Minister of Environment and the Minister of Regional Development during a meeting on 3 November 2015. This meeting was requested by NGOs in connection with the recommendation in paragraph 16 of the Committee's first progress review that the Party concerned should provide the draft texts of the legislative or other measures to implement paragraph 2 of decision V/9d by 31 December 2015.

31. In its comments of 29 April 2016 concerning the additional information of the Party concerned of 26 April 2016, the communicant submitted that it was obvious that the Party concerned maintained its position that the improvement of its investment policy was of higher priority for the Government than compliance with the Convention. The communicant disagreed with the Party concern's position that access to justice as required by the Convention would impact the investment policy in Bulgaria. In contrast, the lack of a reformed judicial system, as well as the lack of transparency and effective public participation (including access to justice) in the development process allows high levels of corruption and legal violations and discourages foreign investment in Bulgaria.

32. The communicant noted that the NGOs' proposals for amendment of the SPA in the light of the requirements of the decision V/9d foresaw that the public concerned would have access to justice regarding the final acts for the adoption of spatial plans and building permits only if these acts were adopted without a prior SEA/EIA procedure or when the

[3] Ruling No. 2345/2015 , Ruling No. 1079/2015 , Ruling No. 9280/2015.
[4] Ruling No. 3297/2015.

conditions of the SEA/EIA decisions were not respected. This meant that the participation of third parties, e.g. the public, including environmental NGOs, other than persons covered by article 131 of the SPA, would be limited only to challenging acts of the public authorities which contravened provisions of national law relating to the environment (i.e. article 9 paragraph 3 of the Convention).

33. The communicant noted the Party concerned's acknowledgment that members of the public were not allowed to appeal a refusal of the competent authorities to impose compulsory administrative measures under article 158 of the EPA. It submitted that this acknowledgment supported its view that any legislative measures which focused on the further improvement of the administrative control on spatial planning and construction suggested by the Party concerned (including the amendment of article 127, paragraph 6 of the SPA from 19 September 2013 allowing the regional governor to challenge acts under the SPA) would not be able to provide access to justice to members of the public with respect to spatial development acts which contravene environmental legislation.

34. The communicant expressed concern that six months after its second progress report the Party concerned had neither provided the drafts of specific legislative measures which would ensure the implementation of paragraph 2 of the decision V/9d, nor any legislative proposals for improvement of the investment climate which might impact the range of public concerned in proceedings concerning spatial planning and construction.

35. The communicant submitted that, in accordance with paragraph 37 of the annex to decision I/7, further appropriate measures were needed to bring about full compliance with the Convention.

Party concerned's third progress report

36. In its third progress report dated 28 October 2016, the Party concerned submitted that a draft act to amend and supplement the SPA had been developed and published for public consultation. The Party concerned submitted that the draft act foresaw that the responsible public authorities would maintain public registers and publish approved drafts of spatial plans on their website. The Party concerned further submitted that the draft act introduces further deadlines, inter alia for the announcement of draft spatial plans to stakeholders and the public and for their consideration by the municipal expert council before their announcement. It further noted that the draft act provides for clearer responsibilities of specific authorities in verifying the compliance of spatial plans with legal requirements as well as criteria to assess the compliance of certain decisions with environmental protection regulations. The draft act further provides for new specific rules on the situation when a new General Spatial Plan supersedes Detailed Spatial Plans in force.

37. The Party concerned further submitted that a draft Ordinance amending and supplementing Ordinance No 8 of 2001 on the scope and content of spatial plans was envisaged to better synchronize the implementation of spatial planning legislation and environmental protection regulations. The Party concerned submitted that further provisions on environmental assessment in the context of SEA had been added. In this regard, provision had been made to accumulate data on existing Detailed Spatial Plans that would be used in the preparation of new spatial plans.

38. The Party concerned submitted that the aforementioned proposals would contribute to the implementation of decision V/9d by, firstly, providing for greater supervision of the administrative process by supervisory authorities, the competent institutions and NGOs. The public, including environmental organizations, would have a greater possibility to submit objections and other signals to the authorities to prevent omissions and violations. Secondly, according to the Party concerned, the draft act to amend the SPA would serve to

give additional tools to prevent corrupt and illegal practices in the context of spatial planning by providing for:

- greater transparency and more timely notification of the public;

- strict regulation of the terms of public consultation and the procedural steps in elaborating spatial plans; and

- additional criteria as to the legal effect of building permits and spatial plans as well as requirements as to the compliance of spatial plans with environmental legislation.

39. The Party concerned reiterated its concerns that allowing review procedures for spatial plans and construction permits would lead to delays and deter investments including funding received via the European Structural and Investment Funds. The Party concerned further submitted that under these circumstances the courts and administrative authorities should interpret the applicable procedural rules as far as possible in line with article 9, paragraph 2 and 3 of the Convention while also balancing the public interests at stake. It further submitted that in this assessment, the main determinant should be the type of administrative act in question and its importance for environmental protection. The Party concerned alleged that in the context of spatial planning and construction permits, this test would point to review of the EIA and SEA decisions only.

40. The Party concerned further recalled the legislative amendments referred to in its second progress review which served to enlarge the possibility of appeals in the context of SEA, including as regards decisions not to conduct an SEA.

Comments on the third progress report

41. In its comments of 16 November 2016, the communicant of communication ACCC/C/2011/58 submitted that the third progress report of the Party concerned did not address decision V/9d in any way. In addition, the communicant stated that the administrative procedures adopted by the Party concerned to improve its investment policy did not provide the public with access to justice concerning spatial planning.

42. The communicant further alleged that the mentioned improvements to administrative control (see paragraph 38 above) do not replace access to justice and cannot guarantee the legality of administrative acts under the Spatial Planning Act because of the absence of mechanisms for public control. The communicant referred in that regard to two examples of complaints which it submitted its thesis that administrative control is insufficient:

(a) In response to a complaint by the NGO "Civil control – protection of animals" regarding an order of a municipal council amending a General Spatial Plan, the regional governor allegedly stated that he cannot judge on the legality of acts of the municipal councils, despite being empowered to do by article 127(6) of the Spatial Planning Act. The governor allegedly further recommended the NGO to appeal the act of the municipal council to the courts, despite being the only legal person with standing to do so in accordance with article 127 Spatial Planning Act.

(b) In response to a complaint by the NGO "Civil control – protection of animals" to the Ministry of Environment and Waters concerning the same amendment, the Ministry refused to apply a Compulsory Administrative Measure under article 158 EPA, which would permit it to suspend the implementation of an illegal spatial plan (see also paragraph 33 above). The Ministry allegedly stated that this measure was not applicable because the decision of the first instance court to cancel the SEA for the General Spatial Plan concerned had been appealed. The communicant submits that the Ministry's decision concealed the fact that, according to article 166 of the Administrative Procedure Code, the appeal of an administrative

act stops its execution, which means that the General Spatial Plan was adopted without a valid SEA screening decision in violation of article 82(4) EPA.

43. The communicant points out that neither of the above answers of the competent authorities are subject to administrative or judicial review. It submits that this means that authorities feel free to use illegal arguments in order to reject NGOs' complaints against illegal acts under the SPA knowing that the general public is not able to appeal.

III. Considerations and evaluation by the Committee

44. In order to fulfil the requirements of the decision V/9d, the Party concerned would need to provide the Committee with evidence that:

(a) Members of the public, including environmental organizations, have access to justice with respect to General Spatial Plans, Detailed Spatial Plans and (either in the scope of review of the spatial plans or separately) also with respect to the relevant strategic environmental assessment statements;

(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

45. In its first progress review, the Committee invited the Party concerned together with its second progress report or otherwise by 31 December 2015 to provide the draft texts of the specific legislative, regulatory or administrative measures it proposes to adopt to ensure the implementation of paragraph 2 of decision V/9d, together with English translations thereof, as well as a timeline for the various stages of its internal procedures leading up to the final adoption of the proposed measures.

46. The Committee welcomes the second and third progress report of the Party concerned, which were both submitted on time, and the information contained therein.

47. At the outset, the Committee emphasises that Parties are fully entitled to regulate to promote investment, just not in a way that will interfere with the rights set out in the Convention.

48. With respect to paragraph 2(a) of decision V/9d, the Committee welcomes the adoption of article 88, paragraph 3 of the Environmental Protection Act, which allows the public concerned to challenge SEA statements/decisions.

49. It also welcomes the information provided in the Party concerned's third progress report concerning the draft act to amend and supplement the Spatial Planning Act and the draft Ordinance amending and supplementing Ordinance No 8 of 2001 on the scope and content of spatial plans and the Party concerned's statement that these measures will provide greater possibility for members of the public, including environmental organizations, to submit objections and other signals to the authorities to prevent omissions and violations.

50. However, the Committee expresses its serious concern that none of the measures described in either the Party concerned's second or third progress report appear to give access to justice for members of the public, including environmental NGOs, with respect to General and Detailed Spatial Plans, as explicitly required in the wording of paragraph 2(a) of decision V/9d. The Committee notes that, pursuant to article 215, paragraph 6, of the Spatial Planning Act, General Spatial Plans are still not subject to appeal. The Committee further notes that under article 131, paragraphs 1 and 2 of the Spatial Planning Act, Detailed Spatial Plans are only subject to challenge by persons having a direct and immediate legal interest.

51. Regarding the type of acts and omissions covered by article 9, paragraph 3, the Committee emphasises that article 9, paragraph 3, requires the Party concerned to ensure that members of the public have access to administrative or judicial procedures to challenge *any* acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment. The Committee points out that, in the context of General and Detailed Spatial Plans, this means that access to justice under article 9, paragraph 3 is not limited to a right to challenge the SEA statement/decision, but also includes a right to challenge the decision approving a General or Detailed Spatial plan as well as the plan itself.

52. With respect to who may challenge acts or omissions under article 9, paragraph 3, that provision gives the Party concerned the right to lay down criteria in its national law as to which members of the public have the right to make such a challenge. However, the Committee reiterates paragraph 65 of its findings on communication ACCC/C/2010/58 where it held that:

> "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 phrase "the criteria, if any, laid down in national law" indicates that the Party concerned should exercise self-restraint not to set too strict criteria. Access to such procedures should thus be the presumption, not the exception" (cf. findings on communication ACCC/C/2005/11 concerning Belgium, paras. 34–36)."

53. While welcoming the adoption of article 88, paragraph 3 of the Environmental Protection Act allowing the public concerned to challenge SEA statements/decisions, and the information provided regarding the draft legislative measures (see paras. 36-38 above), the Committee finds that since none of the measures described in the Party concerned's second or third progress reports give access to justice for members of the public, including environmental NGOs, with respect to General and Detailed Spatial Plans, the Party concerned has not yet fulfilled paragraph 2(a) of decision V/9d.

54. Regarding paragraph 2(b) of decision V/9d, the Committee expresses its concern that none of the measures described by the Party concerned provide members of the public concerned, including environmental NGOs, with access to review procedures to challenge construction and exploitation permits for the activities listed in annex I to the Convention. The Committee accordingly finds that the Party concerned has not yet fulfilled paragraph 2(b) of decision V/9d.

55. The Committee expresses its serious concern that, notwithstanding paragraph 5 of decision V/9d of the Meeting of the Parties, the Party concerned still appears to maintain the position that fully implementing the recommendations of the Committee is not required for its compliance with article 9, paragraph 2 and 3, of the Convention.

56. The Committee notes that in both its second and third progress reports, the Party concerned states that the issue of providing access to members of the public, including NGOs, to review procedures concerning spatial plans cannot be considered only in terms of protecting the environment as it also raises a number of significant socio-economic factors (see paragraphs 16 and 39 above). The Committee points out to the Party concerned that the requirements set out in the Convention are legally binding minimum standards. Whatever other considerations, socio-economic or otherwise, may also need to be taken into account, the Convention's legally binding requirements must be ensured as a minimum.

57. In this regard, the Committee notes that, in its second progress report, the Party concerned refers to the intended adoption of legislative and administrative proposals to

streamline the timing and number of procedures for issuing construction permits; strengthen control over the implementation of statutory time limits for issuing construction permits and review the regulatory regimes in the area of construction permits. Without having seen the text of the proposals, the Committee notes that such measures could potentially affect the range of persons who may participate in procedures to issue or challenge construction permits. The Committee emphasizes that Parties are free to take measures as they deem fit to promote their socio-economic development so long as they simultaneously fully meet their obligations under the Convention.

58. In the light of the above, the Committee finds that the Party concerned has not yet fulfilled the requirements of decision V/9d. The Committee regrets the approach taken by the Party concerned as set out in paragraph 55 above and, in light of it, the Committee may consider, unless the Party demonstrates a clear intention to address the outstanding issues, to recommend to the sixth session of the Meeting of the Parties that a caution be issued.

IV. Conclusions

59. The Committee finds that the Party concerned has not yet fulfilled all the requirements of decision V/9d. The Committee regrets the approach taken by the Party concerned as set out in paragraph 55 above and, in light of it, the Committee may consider, unless the Party demonstrates a clear intention to address the outstanding issues, to recommend to the sixth session of the Meeting of the Parties that a caution be issued.

60. In order for the Committee to prepare its report to the sixth session of the Meeting of the Parties on the implementation of decision V/9d, the Committee invites the Party concerned to provide by 31 January 2017:

(a) The texts, together with an English translation thereof, of any legislative, regulatory or administrative measures it has by then adopted to implement paragraph 2(a) of decision V/9d, in particular to ensure that members of the public, including environmental organizations, have access to justice with respect to General Spatial Plans and Detailed Spatial Plans and not only with regard to the SEA statement/decision;

(b) The texts, together with an English translation thereof, of any legislative, regulatory or administrative measures it has by then adopted to ensure the implementation of paragraph 2(b) of decision V/9d; and

(c) The texts, together with an English translation thereof, of any legislative and administrative proposals intended to:

- streamline the timing and number of procedures for issuing construction permits;
- strengthen control over the implementation of statutory time limits for issuing construction permits; or
- otherwise review the regulatory regime in the area of construction permits,

that may affect the access for members of the public concerned, including environmental NGOs, to review procedures to challenge construction and exploitation permits for the activities listed in annex I of the Convention; as well as an explanation of how these proposals may indeed affect such access.

61. The Committee informs the Party concerned that all measures necessary to implement decision V/9d must be completed by, and reported upon, by no later than 31 January 2017, as that will be the final opportunity for the Party concerned to demonstrate to the Committee that it has fully met the requirements of decision V/9d.