



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: First progress report of Bulgaria on ref. ACCC/C/2012/76

Dear Mrs Marshall,

With regard to the first progress report of Bulgaria on the actions taken in implementation of the recommendations of the Compliance Committee to the Party related to communication ACCC/C/2012/76 we would like to provide you with the following comments:

In order to assess the effectiveness of the actions taken by the Member state, namely providing training and guidance for judges and public officials, we analysed recent administrative practice and case-law concerning injunctive relief in procedures of reviewing environmental permits:

- In all recent orders for preliminary enforcement of EIA/SEA decisions the environmental authorities (i.e. MoEW and RIEW) do not consider the protection of the environment as a particularly important State or public interest. The orders examine solely the developers' interests or public interests such as increasing the employment, enhancing public safety or making use of EU funds, concession taxes, etc. (app. 1-4). In only one single case the environmental authority has rejected the developer's request for preliminary enforcement of the EIA decision (app. 5), however, even in this case any environmental concerns were taken into consideration when balancing the interests.
- Most of the recent proceedings concerning complaints against orders for preliminary enforcement of EIA/SEA decisions the court is highly contradictory.

On the one hand, most judges do not assess on the basis of the available facts if there is any potential risk of irreversible effects on the environment. In this way, the court also **doesn't take account of the public interest in the protection of the environment** and the need for precaution with respect to preventing environmental harm (app. 6-9).

Balkani Wildlife Society

Reg 5150/1992 in SCC, BULSTAT 831467860
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Any facts raised by the complainants concerning the potential risk of irreversible environmental impacts are rejected by the court on the basis of the arguments that the complaints do not prove that “the public effect of the environmental harms would be larger than the public benefits of the projects”. Moreover, in those cases the court admits that art. 60 of APC does not require assessment of the scale and intensity of the impacts since those are subject of the main proceedings concerning the review of the EIA/SEA decision.

On the other hand, and in total contradiction to the above case-law, some judges have dismissed the orders for preliminary enforcement of EIA decisions as result of balancing the public interests – economic vs. environmental interests (app. 10-12). In those single cases, the court argues that it has to simply apply the precautionary principle with respect to preventing environmental harm since the assessment of the environmental impacts is subject of the main proceedings concerning the review of the EIA/SEA decision.

In view of the above, it is clear that all environmental authorities and most judges still do not 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. Therefore, we suppose that legislative amendments are highly needed to provide clear guidance for authorities and courts to interpret the existing legislation in a way that the protection of the environment is recognized as a particularly important State or public interest.

Yours faithfully,

Andrey Kovatchev,

On behalf of the Balkani Wildlife Society

Date: 31.01.2018



Appendices:

- app. 1. EIA decision OBOC 3-3 2017_MOEW_Struma highway
- app. 2. Order_104-02.08.2017_MOEW_Jadenica dam
- app. 3. EIA decision_4-4_OVOS_2018_RIEW Ruse_Kaolin mining concession
- app. 4. Order_PI-2-2018_RIEW Varna_port Beloslav
- app. 5. SZ-61-1-PR_10.09.2018_RIEW Stara Zagora_Brikel power station
- app. 6. Ruling_29.11.2017_SAC_Struma highway
- app. 7. Ruling_1566_08.02.2018_SAC_Struma highway
- app. 8. Ruling_2023_26.03.2018_SAC_power plant
- app. 9. Ruling_2291_20.02.2018_SAC_Midjur ski resort
- app. 10. Ruling_7928_30.06.2015_SAC_mHPP Svoge
- app. 11. Ruling_2980_09.03.2018_SAC_Krichim recycling
- app. 12. Ruling_10864_17.09.2018_SAC_Kozlodui nuclear plant