

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 VI/8d
on compliance by Bulgaria with its
obligations under the Convention**

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I. Introduction

1. At its sixth session (Budva, Montenegro, 11-13 September 2017), 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 VI/8d on compliance by Bulgaria with its obligations under the Convention (see ECE/MP.PP/2017/2/Add.1).

II. Summary of follow-up

2. On 21 July 2018, prior to the adoption of decision VI/8d, the communicant of communications ACCC/C/2011/58 and ACCC/C/2012/76 submitted information on proposed legislative amendments. The communicant was informed by the secretariat that this information would be considered in the follow up procedure for the implementation of decision VI/8d.

3. At its sixtieth meeting (Geneva, 12-15 March 2018), the Committee reviewed the implementation of decision VI/8d in open session with the participation by audio conference of representatives of the Party concerned and the communicant of communications ACCC/C/2011/58 and ACCC/C/2012/76. Observer European ECO Forum also took part in the open session.

4. On 21 March 2018, the communicant of communications ACCC/C/2011/58 and ACCC/C/2012/76 submitted a written statement (dated 19 March 2018).

5. On 1 October 2018, the Party concerned submitted its first progress report on decision VI/8d on time.

6. On 5 October 2018, the secretariat forwarded the first progress report to the communicant of communications ACCC/C/2011/58 and ACCC/C/2012/76, inviting its comments by 1 November 2018.

7. On 1 November 2018, the communicant of communications ACCC/C/2011/58 and ACCC/C/2012/76 submitted its comments (dated 31 January 2018) on the first progress report of the Party concerned.

8. After taking into account the information received from the Party concerned and the communicant, the Committee prepared its first progress review and adopted it through its electronic decision-making procedure on 18 February 2019.

9. On 25 February 2019, the secretariat forwarded the Committee's first progress review to the Party concerned and the communicant of communications ACCC/C/2011/58 and ACCC/C/2012/76.

10. At its sixty-third meeting (Geneva, 11-15 March 2019), the Committee reviewed the implementation of decision VI/8d in open session, with the participation by audio conference of a representative of the Party concerned. Though invited, the communicant of communications ACCC/C/2011/58 and ACCC/C/2012/76 had not taken part in the open session.

11. On 14 March 2019, the Party concerned provided a written version of the statement it had delivered during the open session on decision VI/8d held during the Committee's sixty-third meeting.

12. On 9 August 2019, the UNECE Executive Secretary wrote to the Deputy Prime Minister of Foreign Affairs of the Party concerned to remind it of the deadline of 1 October 2019 set out in paragraph 9(a) of decision VI/8d for the Party concerned to provide its second progress report on the measures it has by that date taken, and the results achieved, to implement the recommendations in paragraphs 3 and 8 of the decision.

13. On 30 September 2019, the Party concerned submitted its second progress report on decision VI/8d, on time.

14. On 2 October 2019, the secretariat forwarded the second progress report to the communicant of communications ACCC/C/2011/58 and ACCC/C/2012/76, inviting its comments thereon.

15. On 29 October 2019, the communicant of communication ACCC/C/2011/58 and ACCC/C/2012/76 provided its comments on the second progress report by the Party concerned.

16. After taking into account the information received, the Committee prepared its second progress review and adopted it through its electronic decision-making procedure on 4 March 2020. The Committee thereafter requested the secretariat to forward the second progress review to the Party concerned and the communicant of communication ACCC/C/2011/58 and ACCC/C/2012/76.

III. Considerations and evaluation by the Committee

17. In order to fulfil the requirements of paragraph 3 of decision VI/8d, the Party concerned would need to, as a matter of urgency, take the necessary legislative, regulatory and administrative measures to ensure that:

- (a) Members of the public, including environmental organizations, have access to justice with respect to General Spatial Plans and Detailed Spatial Plans;
- (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.

18. In paragraph 5 of decision VI/8d, the sixth session of the Meeting of the Parties decided:

- (a) To issue a caution to the Party concerned;
- (b) That the caution will be lifted on 1 October 2019 if the Party concerned has fully met the requirements in paragraph 3 of this decision and has notified the secretariat of this fact, providing evidence, by the same date.

19. In order to fulfil the requirements of paragraph 8 of decision VI/8d, the Party concerned would need to review the approach of its courts to appeals under article 60(4) of the Administrative Procedure Code of orders for preliminary enforcement challenged on the ground of potential environmental damage, and to undertake practical and/or legislative measures to ensure that:

- (a) Instead of relying on the conclusions of the contested EIA/SEA decision, the courts in such appeals 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;
- (b) The courts in their decisions on such appeals set out their reasoning to clearly show how they have balanced the interests, including the assessment they have undertaken 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;
- (c) Training and guidance is provided for judges and public officials in relation to how to carry out the above-mentioned balancing of interests in environmental cases, including on how to properly reflect that balancing in their reasoning.

20. In accordance with paragraph 9(a) of decision VI/8d, the Party concerned is required to submit to the Committee detailed progress reports on 1 October 2018, 1 October 2019 and

1 October 2020 on the measures taken and the results achieved in the implementation of the above recommendations.

Reporting requirements in paragraph 9(a) of decision VI/8d

21. In its first progress review on decision VI/8d, the Committee had expressed serious concern at the failure by the Party concerned to report on paragraphs 3(a) and (b) of decision VI/8d.¹ The Committee stressed to the Party concerned the importance of including in its second progress report detailed information on the progress it had made by that date to fulfil each of the recommendations in paragraphs 3 and 8 of decision VI/8d.²

22. The Committee accordingly appreciates the written statement of the Party concerned of 14 March 2019, as it has served to identify an important misunderstanding regarding the reporting requirements of decision VI/8d. In its statement, the Party concerned explains that it understood the reporting requirement in paragraph 9(a) of VI/8d to relate only to the recommendations in paragraph 8, which stem from communication ACCC/C/2012/76, and not paragraph 3, which relates to the follow-up on communication ACCC/C/2011/58.³ On its reading, its only reporting obligation regarding paragraph 3 is in paragraph 5(b), namely to meet the requirements in paragraph 3 and to have “notified the secretariat of this fact”, by 1 October 2019.⁴

23. The Committee welcomes the opportunity to clarify the misunderstanding of the Party concerned on this point. All ten decisions⁵ concerning the compliance of individual Parties adopted by the Meeting of the Parties at its sixth session request the Parties concerned to submit progress reports on 1 October 2018, 1 October 2019 and 1 October 2020 with respect to the measures they have by then taken, and the results achieved, to implement each of the recommendations in the decision. Bulgaria was the only Party of the ten Parties subject to decisions on compliance to which the Meeting of the Parties issued a caution. Its reporting obligations are certainly not less than the other nine Parties subject to decisions on compliance. Rather, the purpose of paragraph 5(b) was to provide Bulgaria with a possibility to have the caution lifted by the Committee if Bulgaria had by 1 October 2019 demonstrated that it had fully met the requirements of paragraph 3. This does not in any way affect Bulgaria’s obligation under paragraph 9 to report on all recommendations in the decision.

24. The Committee points out that, in paragraph 2 of decision VI/8d, the Meeting of the Parties “reaffirms its decision V/9d, and in particular reiterates paragraphs 2 and 5 of that decision in their entirety”. Paragraph 2 of decision V/9d “welcomes the recommendations made by the Committee” in its findings on communication ACCC/C/2011/58, namely the recommendations which are reiterated in paragraph 3 of decision VI/8d.

25. The Committee appreciates that the misunderstanding may have arisen due to the fact that paragraph 3 of decision VI/8d “requests” the Party concerned to take the necessary measures, whereas paragraph 8 refers to “recommendations”. The verb “requests” reflects the Meeting of the Parties’ intention that the Party concerned take the necessary measures to implement paragraph 3 “as a matter of urgency”. However, in accordance with paragraphs 37(b) and (d) of the annex to decision I/7, the legal nature of paragraph 3 is a recommendation.

26. The Committee points out that the opportunity provided to the Party concerned through paragraph 9 of decision VI/8d to report on its progress to implement paragraphs 3 and 8 on 1 October 2018, 1 October 2019 and 1 October 2020 is very much in the interest of

¹ Committee’s first progress review, 18 February 2019, para. 12.

² Committee’s first progress review, 18 February 2019, para. 12.

³ Party’s statement delivered at the open session on decision VI/8d at the Committee’s 63rd meeting, 14 March 2019, pp. 1-2.

⁴ Party’s statement delivered at the open session on decision VI/8d at the Committee’s 63rd meeting, 14 March 2019, p. 1.

⁵ Decisions VI/8a-e, g-k of the Meeting of the Parties.

the Party concerned as it means that it still has until 1 October 2020 to take the necessary measures to address paragraph 3.

Committee's approach to the information provided

27. In its statement of 14 March 2019, the Party concerned complains that the Committee in its first progress review gave, in its view, "non-essential importance" to its efforts to implement paragraphs 8(a), (b) and (c) of decision VI/8d. In this regard, it submits that the Committee has, by contrast, given "disproportionately high value" to the comments on its first progress report by the communicant of communications ACCC/C/2011/58 and ACCC/C/2012/76.⁶

28. The Committee expresses serious concern that the Party concerned takes such a view. The Committee's role in reviewing the implementation of decisions of the Meeting of the Parties on the compliance of individual Parties flows from paragraphs 13(b), 14 and 36(a) and (b) of the annex to decision I/7. This includes, pursuant to paragraph 36(a), providing advice and assistance to individual Parties regarding the implementation of the Convention. The Committee carefully examines all information put before it by the Party concerned, communicants and observers, in order to assess whether that information demonstrates that the Party concerned has yet taken the necessary measures to fulfil the requirements of the decision concerning its compliance. Thus, the Committee makes clear that the assertion by the Party concerned is entirely unfounded.

Advisory assistance to the Party concerned

29. As noted in the preceding paragraph, the Committee's role in reviewing the implementation of decisions of the Meeting of the Parties on the compliance of individual Parties includes paragraph 36(a) on providing advice and assistance to individual Parties regarding the implementation of the Convention. In addition to the advice provided in its second progress review, the Committee stands ready to answer any questions that the Party concerned may have regarding the measures to be taken to fulfil the requirements of decision VI/8d at the open session on decision VI/8d to be held during the Committee's sixty-sixth meeting (Geneva, 9-13 March 2020). Moreover, should the Party concerned ask it to do so, the Committee expresses its willingness to provide further detailed written advice or to undertake a mission to the Party concerned to meet with senior officials in order to assist them to better understand what will be required in order to fully meet the requirements of decision VI/8d. If the Party concerned may be interested to seek such advice or assistance from the Committee, it is encouraged to do so as soon as possible bearing in mind the deadline of 1 October 2020 for the Party concerned to submit its final progress report.

Paragraph 3(a) of decision VI/8d

30. With respect to paragraph 3(a), the Party concerned states that access to justice on environmental issues regarding spatial planning is exercised by challenging the SEA statement/decision. It submits that, therefore, to allow members of the public, including environmental nongovernmental organizations (NGOs), to challenge spatial plans on issues related to the environment would mean that the court would reconsider, again, issues on which it had already ruled on when the SEA statement/decision was itself contested.⁷

31. In support of its view, the Party concerned states that article 125(7) of the Spatial Planning Act provides that the SEA is part of the spatial plan. The SEA statement/decision contains mandatory conditions, measures and restrictions in respect of spatial planning and they constitute the environmental component of the spatial plan. It submits that an SEA

⁶ Party's statement delivered at the open session on decision VI/8d at the Committee's 63rd meeting, 14 March 2019, p. 2.

⁷ Party's second progress report, 30 September 2019, p. 2.

statement or decision that has entered into force is a prerequisite for the subsequent approval of the plan and the authorities responsible for approving and implementing the plan shall comply with the SEA statement or decision and the conditions, measures and restrictions laid down therein pursuant to article 82(4) of the Environmental Protection Act.⁸

32. The Party concerned in its second progress report reiterates its view that providing access for the public to appeal spatial plans will lead to a duplication of review procedures on environmental issues and will create delay thereby deterring investment in the country. It states that this will be in discrepancy with the leading priority of the government, to improve investment policy through the better regulation of the investment process.⁹

33. The communicant in communications ACCC/C/2011/58 and ACCC/C/2012/76 submits that it has provided plenty of evidence that the lack of access to justice to challenge spatial plans when these acts are adopted either without a prior SEA procedure, or when the conditions of the SEA decisions are not respected, has generated a regular practice in which plans are adopted in violation of environmental law.¹⁰ It submits that such practices discourage foreign investment in the Party concerned rather than encouraging them. The communicant states that there is presently an ongoing public consultation on an amendment to the Spatial Planning Act that was proposed by the Parliament on 25 September 2019, and that NGOs have made submissions in that context on how the requirements of decision VI/8d could be addressed.¹¹

34. At the outset, the Committee makes clear to the Party concerned that its policies on investment, development or economic growth are not a justification not to comply with its binding obligations under the Convention. Rather, as reflected in the fifth paragraph of the Convention's preamble, the obligations in the Convention are important tools to ensure each Party's sustainable and environmentally sound development.

35. The Committee moreover expresses its serious disappointment that in its second progress report the Party concerned once again re-states arguments that it has made on numerous occasions during the Committee's review of decisions V/9d and VI/8d as to why, in its view, access to justice with respect to spatial plans would be inappropriate and why providing access to justice with respect to SEA decisions and statements is sufficient.¹² The Committee makes clear that it already considered these arguments in its report to the sixth session of the Meeting of the Parties and concluded that, despite the legislative reform to provide for access to justice for SEA statements/decisions, the Party concerned, in failing to provide access to justice with respect to spatial plans, still failed to comply with paragraph 2(a) of decision V/9d.¹³

36. Regarding the submission by the Party concerned that providing access to justice regarding spatial plans will lead to a duplication of review procedures, the Committee clarifies that neither its findings on communication ACCC/C/2011/58 nor decision VI/8d require the Party concerned to "duplicate" review procedures to challenge issues that could be raised in the context of review procedures on the SEA decision/statement. However, the Party concerned must take the necessary measures to ensure that members of the public, including environmental organizations, have access to justice regarding General Spatial Plans and Detailed Spatial Plans not only for contraventions of national law that can be addressed through review procedures on the SEA decision/statement. Rather members of the public

⁸ Party's second progress report, 30 September 2019, p. 2.

⁹ Party's second progress report, 30 September 2019, p. 1.

¹⁰ Comments on the Party's second progress report from the communicant of communications ACCC/C/2011/58 and ACCC/C/2012/76, 29 October 2019, p. 1.

¹¹ Comments on the Party's second progress report from the communicant of communications ACCC/C/2011/58 and ACCC/C/2012/76, 29 October 2019, p. 2.

¹² Party's first progress report on the implementation of decision V/9d, 1 June 2015, pp. 1-3;

Party's second progress report on the implementation of decision V/9d, 28 October 2015, pp. 1-4;

Party's third progress report on the implementation of decision V/9d, 28 October 2016, pp. 1 and 3-4.

¹³ ECE//MP.PP/2017/36, paras. 23-26.

must also be able to challenge contraventions of national law regarding General and Detailed Spatial Plans that cannot be addressed through contesting the SEA decision/statement itself.

37. For example, the Committee points out to the Party concerned that neither of the scenarios described by the communicant of communications ACCC/C/2011/58 and ACCC/C/2012/76 in paragraph 33 above are addressed by providing access to justice only on the SEA decision/statement itself. In its findings on communication ACCC/C/2011/58, the Committee already made clear that the failure to provide the possibility for environmental NGOs and other members of the public to challenge a spatial plan that was not subject to a prior SEA procedure or which does not respect the conditions of the SEA decision/statement constitutes noncompliance with article 9(3) of the Convention.¹⁴ The Committee considers that the same applies when an SEA decision/statement is successfully challenged but the related spatial plan remains in force. The Committee accepts the submission of the Party concerned that in each of these scenarios the spatial plan would be illegal. However, if the spatial plan remains in force, albeit illegally, there is currently no possibility for members of the public, including environmental NGOs, to challenge that.

38. The Committee notes that, if there is indeed currently a pending parliamentary proposal to amend the Spatial Planning Act, this would seem a timely opportunity for the Party concerned to introduce legislative measures to provide access to justice for members of the public, including environmental NGOs, to challenge a spatial plan that contravenes national law relating to that environment when that contravention could not be addressed through contesting the SEA decision/statement itself. The Committee indicates that it stands ready to provide advice and assistance to the Party concerned in this regard.

39. Based on the above, the Committee considers that the Party concerned has not demonstrated that it has to date made any progress towards putting in place any legislative, regulatory or administrative measures to fulfil the requirements of paragraph 3(a) of decision VI/8d. The Committee moreover expresses its serious concern at the lack of any apparent intention by the Party concerned to take any steps in that direction.

Paragraph 3(b) of decision VI/8d

40. With respect to paragraph 3(b), the Party concerned in its second progress report states that access to justice on environmental issues regarding construction permits is exercised by challenging the EIA statement/decision. As for paragraph 3(a) of decision VI/8d, the Party concerned submits that providing access for the public to appeal construction and exploitation permits will lead to a duplication of review procedures and will create delay thereby deterring investment in the country. It submits that to allow members of the public, including environmental NGOs, to challenge construction and exploitation permits on issues related to the environment would mean that the court would reconsider, again, issues on which it had already ruled on when the EIA statement/decision was itself contested.¹⁵

41. In support of its view, the Party concerned states that pursuant to article 148(8) of the Spatial Planning Act, a valid EIA decision is an annex to, and integral part of, a construction permit. In addition, article 82(5) of the Environmental Protection Act provides that the approving authority shall approve the investment proposal taking into account the conditions, measures and restrictions laid down in the EIA decision.¹⁶

42. The communicant of communications ACCC/C/2011/58 and ACCC/C/2012/76 submits that it has provided plenty of evidence that the lack of access to justice to challenge construction permits when these are adopted either without a prior EIA procedure, or when the conditions of the EIA decisions are not respected, generates a regular practice in which

¹⁴ ECE//MP.PP/C.1/2013/4, para. 70.

¹⁵ Party's second progress report, 30 September 2019, p. 2.

¹⁶ Party's second progress report, 30 September 2019, p. 2.

permits are adopted in violation of environmental law.¹⁷ With respect to the parliamentary proposal to amend the Spatial Planning Act, the communicant states that the NGO Za Zemiata has called for an amendment to permit environmental NGOs to challenge construction and exploitation permits for those activities listed in annex I of the Convention.¹⁸

43. Regarding the assertion by the Party concerned that providing access to justice regarding construction and exploitation permits will lead to a duplication of review procedures, the Committee clarifies that, as for spatial plans above, neither its findings on communication ACCC/C/2011/58 nor decision VI/8d require the Party concerned to “duplicate” review procedures to challenge issues that could be raised in the context of review procedures on the EIA decision. However, the Party concerned must ensure that members of the public, including environmental organizations, have access to justice to challenge not only those aspects of the procedural and substantive legality of construction and exploitation permits that can be addressed through review procedures on the EIA decision. Rather, the Party concerned must put in place the necessary measures to ensure that members of the public are also able to address any aspects of the procedural and substantive legality of construction and exploitation permits that cannot be addressed through review procedures on the EIA decision itself.

44. For example, with respect to the two scenarios described by the communicant of communication ACCC/C/2011/58 and ACCC/C/2012/76 in paragraph 42 above, namely a construction or exploitation permit adopted without an EIA procedure, or where the permit is not in conformity with the conditions in the EIA decision, the Committee recalls that in its findings on communication ACCC/C/2011/58 it already made clear that both these situations would constitute non-compliance with article 9(2) of the Convention.¹⁹ The Committee considers that the same applies when an EIA decision is successfully challenged but the related permit is not annulled. The Committee again accepts the submission of the Party concerned that in each of these scenarios the permit would be illegal. However, if the developer proceeds to use the permit, albeit illegally, there is currently no possibility for members of the public, including environmental NGOs, to challenge the use of the permit.

45. The Committee points out that, if a parliamentary proposal to amend the Spatial Planning Act is indeed pending, this would seem a timely opportunity for the Party concerned to introduce legislative measures to provide access to justice for members of the public, including environmental NGOs to challenge any aspects of the procedural and substantive legality of construction and exploitation permits that cannot be addressed through review procedures on the EIA decision itself. The Committee indicates that it stands ready to provide advice and assistance to the Party concerned in this regard.

46. In light of the above, the Committee considers that the Party concerned has not demonstrated that it has to date taken any steps towards putting in place any legislative, regulatory or administrative measures to fulfil the requirements of paragraph 3(b) of decision VI/8d. The Committee furthermore expresses its serious concern at the lack of any apparent intention by the Party concerned to take steps in that direction.

Paragraphs 8(a) and (b) of decision VI/8d

47. In its second progress report, the Party concerned provides a legal analysis of the provisions of its Administrative Procedure Code and Civil Procedure Code relevant to challenging orders for preliminary enforcement.²⁰

48. While the Committee considers this to be a succinct and helpful summary of the relevant legislative provisions, it points out that these provisions were already examined by

¹⁷ Comments on the Party’s second progress report from the communicant of communications ACCC/C/2011/58 and ACCC/C/2012/76, 29 October 2019, p. 1.

¹⁸ Comments on the Party’s second progress report from the communicant of communications ACCC/C/2011/58 and ACCC/C/2012/76, 29 October 2019, p. 2.

¹⁹ ECE/MP.PP/C.1/2013/4, paras. 79-80.

²⁰ Party’s second progress report, 30 September 2019, pp. 2-3.

the Committee in the course of preparing its findings on communication ACCC/C/2012/76. As the Committee noted in those findings, even the communicant acknowledged that there was room for the courts to interpret the existing legislation in a way that would be consistent with the Convention.²¹ The problem was that, in four of the five cases examined by the Committee in those findings, while it was open for the courts to form their own view, they did not do so.²²

49. Accordingly, the Committee found the Party concerned in non-compliance due to the courts' actual practice. Thus, even if the legislative provisions that would enable the courts to comply with article 9(4) of the Convention in practice are in place, the fact that the courts more often than not do not do so, requires the Party concerned to take practical and/or legislative measures to ensure that the courts in practice do so. Hence the recommendations in paragraphs 8(a) and (b) of decision VI/8d.

50. In its first progress report, the Party concerned stated that it had sent the Committee's findings to the authorities competent for implementation, namely the Supreme Judicial Council and the Ministry of Justice, with a request for an opinion and suggestions for their implementation.²³ In its second progress report, however, the Party concerned makes no reference to the outcomes of this review. Noting that paragraph 8 of decision VI/8d expressly calls upon the Party concerned to undertake such a review, the Committee invites the Party concerned, together with its final progress report, to provide the outcomes of the review, together with the text of any practical and/or legislative measures it has by then taken, or proposes to take, to address to meet the requirements of paragraphs 8(a) and (b) of decision VI/8d.

51. In its comments on the second progress report by the Party concerned, the communicant of communications ACCC/C/2011/58 and ACCC/C/2012/76 confirms that the Party concerned has failed to amend its legislation to address the Committee's findings on communication ACCC/C/2012/76. It states that the courts still systematically fail to balance the interests at stake and to make an objective assessment of the risk of environmental damage in 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.²⁴

52. Based on the above, the Committee considers that the Party concerned has failed to demonstrate that it has yet taken any practical or legislative measures to fulfil the requirements of paragraph 8(a) and (b) of decision VI/8d. The Committee moreover expresses concern that the Party concerned appears to hold the view that, despite the Committee's findings on communication ACCC/C/2012/76, endorsed by the Meeting of the Parties through paragraph 7 of decision VI/8d, it has no need to do so.

Paragraph 8(c) of decision VI/8d

53. With regard to paragraph 8(c) of decision VI/8d, in its second progress report the Party concerned reports that the National Institute of Justice has carried out one electronic training session on "Challenges of the Aarhus Convention in Law Enforcement" lasting from 3 to 13 December 2018, in which twelve judges, three registry judges, four prosecutors and eight other court staff took part. The background information for the training addressed the application of remedies, including injunctive relief, under article 9(4) of the Convention. The Party concerned planned to conduct a second such session from 5 to 19 November 2019.²⁵ The Party concerned also reiterates the information contained in its first progress report that

²¹ ECE/MP.PP/C.1/2016/3, para. 26.

²² ECE/MP.PP/C.1/2016/3, paras. 74-77.

²³ Party's first progress report, 1 October 2018, p. 1.

²⁴ Comments on the Party's second progress report from the communicant of communications ACCC/C/2011/58 and ACCC/C/2012/76, 29 October 2019, p. 2.

²⁵ Party's second progress report, 30 September 2019, pp. 3-4.

magistrates have been provided with access to the recommendations in paragraph 8 of decision VI/8d through the internal electronic network of the National Institute of Justice.²⁶

54. While welcoming the electronic training session held on 3 to 13 December 2018 as a helpful tool to further the implementation of article 9(4) more generally, the Committee underlines that it had already made clear in its first progress review on paragraph 8(c) that “given that the training will need to train judges and public officials about the practical and/or legislative measures that Bulgaria puts in place to implement paragraphs 8(a) and (b) of the decision, it goes without saying that the training should be organized after the measures to implement paragraph 8(a) and (b) have in fact been taken”.²⁷ That observation remains fully valid today.

55. Secondly, even if the training sessions had indeed taken place after the measures designed to implement paragraphs 8(a) and (b) had been taken (*quod non*), the type of information provided by the Party concerned in its second progress report would not have been sufficient for the Committee to assess whether the electronic training sessions had contributed to the fulfilment of paragraph 8(c) or not. As explained in the Committee’s first progress review, in order to assess whether such training sessions would fulfil the requirements of paragraph 8(c), the Party concerned would need to provide the Committee with:

“(a) the specific content of the trainings, including the detailed programme with the titles of the presentations deliver, (b) the organizers of the trainings and the profession and relevant experience of each trainer and speaker, and (c) the number of judges, judicial candidates and public officials who have attended the trainings and in which court and town or region each judge or public official sits.”²⁸

56. Of the above details, in its second progress report the Party concerned has only informed the Committee of the number and professions of participants. While the Committee welcomes this information, it stresses that it does not fulfil the three criteria set out above. Moreover, meeting the requirement of paragraph 8(c) will require a much larger proportion of serving judges and public officials to undergo the relevant training. However, the Committee points out once again that in order to fulfil paragraph 8(c) the training programme will need to take place after the measures required to address paragraph 8(a) and (b) have been taken.

57. In the light of the above, while welcoming the electronic training session of 3 to 13 November 2018 as a helpful tool to further the implementation of article 9(4) more generally, the Committee considers that the Party concerned has not yet met the requirements of paragraph 8(c) of decision VI/8d.

IV. Conclusions

58. The Committee welcomes the second progress report of the Party concerned, which was received on time.

59. The Committee considers however that the Party concerned has not demonstrated that it has to date made any progress towards putting in place any legislative, regulatory or administrative measures to fulfil the requirements of paragraph 3(a) and (b) of decision VI/8d. The Committee moreover expresses its serious concern at the lack of any apparent intention by the Party concerned to take any steps in that direction.

60. The Committee points out that this failure is all the more grave given that the Party concerned is already under a caution from the Meeting of the Parties with respect to the content of the recommendations in paragraphs 3(a) and (b) of the decision. The Committee warns the Party concerned that, should the Party concerned by the date of its final progress

²⁶ Party’s second progress report, 30 September 2019, p. 4.

²⁷ Committee’s first progress review, 1 October 2018, para 21.

²⁸ Committee’s first progress review, 18 February 2019, para. 22.

report still not have taken any steps to implement the recommendations in paragraphs 3(a) and (b), the Committee may recommend to the seventh session of the Meeting of the Parties that it consider suspending the special rights and privileges accorded to the Party concerned under the Convention, a serious step which the Committee has to date never taken.

61. The Committee moreover considers that the Party concerned has failed to demonstrate that it has yet taken any practical or legislative measures to fulfil the requirements of paragraph 8(a) and (b) of decision VI/8d. The Committee moreover expresses concern that the Party concerned appears to hold the view that, despite the Committee's findings on communication ACCC/C/2012/76, endorsed by the Meeting of the Parties through paragraph 7 of decision VI/8d, it has no need to do so.

62. Finally, while welcoming the electronic training session of 3 to 13 November 2018 as a helpful tool to further the implementation of article 9(4) more generally, the Committee considers that the Party concerned has not yet met the requirements of paragraph 8(c) of decision VI/8d.

63. The Committee invites the Party concerned together with its final progress report due on 1 October 2020 to provide the text of any legislative, regulatory and administrative measures, together with English translation thereof, and information concerning any practical arrangements, it has by that date put in place to meet each of the recommendations in paragraphs 3(a) and (b) and 8(a), (b) and (c) of decision VI/8d.

64. The Committee reminds the Party concerned that all measures necessary to implement decision VI/8d must be completed by, and reported upon, by no later than 1 October 2020, 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 VI/8d.
