

***Statement of Bulgaria on Second progress review of the implementation of decision VI/8d on compliance by Bulgaria with its obligations under the Convention***

Bulgaria would like to express its gratitude for the opportunity provided by the Committee to present comments on the Second progress review of the implementation of decision VI/8d on compliance by Bulgaria with its obligations under the Convention.

With regard the ascertained by the Committee lack of any progress to date towards putting in place any legislative, regulatory or administrative measures to fulfil the requirements of paragraph 3(a) and (b) of decision VI/8d in connection with Communication № ACCC/C/2011/58, we would like to emphasize again one, indeed, repeatedly declared to the Committee by us, but a very substantial circumstance that cannot be ignored – the balance of public interests and relations in bringing the administrative or judicial proceedings in accordance with Art. 9, para. 2 and 3 of the Convention. In our view, the main determinant element when make this discretion should be the type of the contested administrative act and is it with crucial importance in the field of environmental protection. In the complex and multi-stage spatial planning and construction permits proceedings, the acts, which are crucial for the environment, are the strategic environmental assessment (SEA)/environmental impact assessment (EIA) statements/decisions. They, exactly, should and are subject to judicial review within separate judicial-administrative proceedings as administrative decisions relevant to the environmental issues, with applicability of article 9, para. 2 and 3 of the Aarhus Convention. On this basis, we find as reasonable and appropriate, the access to justice in respect of spatial planning and construction permitting on environmental issues to be exercised precisely by challenging the SEA/EIA statement/decision.

With regard the conclusions of the Committee that the Party concerned has failed to demonstrate that it has yet taken any practical or legislative measures to fulfill the requirements of paragraph 8(a) and (b) of decision VI/8d related to Communication № ACCC/C/2012/76, we pay attention, that according to the principle of separation of powers, the court should review the legality of administrative acts of the authorities of the executive power, in the context of an independent procedure. It is not admissible the court to be entrusted with duplicate functions inherent in such bodies, such as carrying out an assessment of the significance of the environmental impacts and the risk of environmental damage, which is the responsibility of the authorities with competence in the implementation of the environmental legislation. In the administrative judiciary, the court does not seek a balance of interests, but is strictly governed by the legal norm, bringing under the hypothesis of the norm the facts established in due process in the course of the court proceedings. The significance of the impacts on the environment, respectively the risk of damaging it, is subject to establishing and proving in the course of the court proceedings of the contestation of the SEA/EIA statement/decision by itself.

We believe that the national legislation and in particular Article 60, para. 1 of the Administrative Procedure Code, sets out a clear, objective and measurable standard regarding the admission of preliminary enforcement, which gives the courts an imperative indication of how to proceed in such cases and with this Bulgaria implements Article 9, para. 4 of the Aarhus Convention.

Given the foregoing, and in view of the preparedness for assistance expressed by the Committee in para. 29 of the Second Progress Review, for which we are very grateful, we will welcome and appreciate any Committee's clarifications on what should be the legislative and/or practical measures that have to be taken by Bulgaria to meet the requirements of paragraphs 8 (a) and (b) of decision VI/8d related to Communication № ACCC/C/2012/76 – concrete suggestions for such measures will be very useful to us.

Bulgaria also kindly ask the Committee for more information about the measure referred to in paragraph 60 of the Second Progress Review: „suspending the special rights and privileges accorded to the Party concerned under the Convention“ – what exactly consists of and what could be the consequences for the country it may lead.

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