

REPUBLIC OF BULGARIA

Ministry of Environment and Water

14 March 2019

Subject: Statement of Bulgaria on First 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 First progress review of the implementation of decision VI/8d on compliance by Bulgaria with its obligations under the Convention.

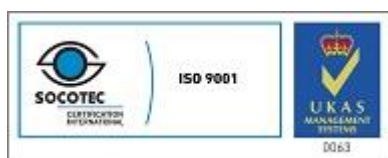
Bulgaria regards as unfounded the allegations of the Committee that there is “notable failure by Bulgaria to report on paragraphs 3 (a) and (b) of decision VI/8d” (paragraphs 12 and 25 of the review). Paragraph 5 (b) of decision VI/8d clearly states “That the caution will be lifted on 1 October 2019 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”. The requirements under paragraph 3 of decision VI/8d reaffirm the recommendations with regard to communication ACCC/C/2011/58, which are set out in the previous decision V/9d.

According to paragraph 9 (a) of decision VI/8d, Bulgaria is requested 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”. Given the content of decision VI/8d, Bulgaria interprets “above recommendations” (paragraphs 7 and 8) as such referring to communication ACCC/C/2012/76, considering also the fact that the texts in paragraphs 6-10 only, are applicable to communication ACCC/C/2012/76.

According to paragraph 9 (a) of decision VI/8d, Bulgaria submitted a first progress report containing information on the implementation of the recommendations in communication ACCC/C/2012/76.

Enforcing paragraph 5 (b) of decision VI/8d, Bulgaria, by 1 October 2019, will inform the Committee for the implementation of the requirements in paragraph 3 of decision VI/8d concerning communication ACCC/C/2011/58.

Bulgaria regards as unacceptable the Committee to apply identical approach on reporting on Bulgaria's progress in meeting the **requirements** of paragraph 3 of decision VI/8d (in relation to communication ACCC/C/2011/58) and the **recommendations** set out in paragraphs 7 and 8 of decision VI/8d (regarding communication ACCC/C/2012/76). We believe that in decision VI/8d the Party's commitments and the deadlines to undertake the relevant actions and reporting are clearly distinguished (paragraphs 5 and 9). The terms “requirements” and “recommendations”, apart from the different content in terminological point of view, are also relevant to different phases of handling of the two communications. The stage of reporting on the implementation of the recommendations of the Committee on communication ACCC/C/2011/58 is finished, according to paragraph 6 of the first decision V/9d, and with the second decision VI/8d, on Bulgaria has been imposed “caution” and, in this relation, is expected to be taken urgent measures to implement the relevant requirements by 1 October 2019. On the other hand, with regard to communication ACCC/C/2012/76, the proceeding is at stage – reporting on the



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meeting of the recommendations of the Committee, since decision VI/8d is the first decision referring on this communication.

Reaffirming our unconditional position that Bulgaria has fulfilled the reporting requirements of decision VI/8d, and in the light of the opportunity provided, and in spirit of cooperation, we would like to announce that the information provided in the third progress report on the implementation of decision V/9d from 28.10.2016 (with the additional clarifications from 26.01.2017), is up to date.

In addition, with respect to the Committee's conclusions in the Progress review on the recommendations in paragraphs 8 (a), (b) and (c) of Decision VI / 8d, in conjunction with communication ACCC/C/2012/76, Bulgaria presents the following:

- We believe that the actions taken (getting acquainted the Bulgarian judges with the Committee's recommendations and thematic trainings) by the competent authorities (Ministry of Justice and National Institute of Justice) are appropriate practical measures to implement the recommendations.
- We believe that such practical measures (trainings and dissemination of information) could influence the approach of the courts in their practice towards implementation of the recommendations set out in paragraphs 8 (a) and (b) of decision VI/8d.

In this regard, it is not acceptable for us that the Committee gives non-essential importance of these actions. We regret that the government's efforts to implement the recommendations in paragraphs 8 (a), (b) and (c) of decision VI/8d are neglected by the Committee, and at the same time, obviously, a disproportionately high value is given to the communicants's comments on Bulgaria's first progress report. In this respect, we note that on the basis of the analysis of the case-law of the communicant, exposed in its comments, any conclusions regarding the current approach of the courts in Bulgaria regarding the appeals under article 60, paragraph 4 of the Administrative Procedure Code definitely could not be made. The communicant himself claims that the case-law is "highly contradictory" – in some cases the court has not taken into account the public interest in the protection of the environment, but in other cases the court has applied the precautionary principle to prevent environmental damage.

Again, we would like to emphasize that the judiciary in our country is fully independent – it is impossible and unacceptable the public administration to influence the approach of the courts, incl. as regards the handling of appeals under article 60, paragraph 4 of the Administrative Procedure Code. National legislation and in particular article 60, paragraph 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, paragraph 4 of the Aarhus Convention. Thereafter, whether the court makes its own assessment of the risk of environmental damage and whether in reasoning is taken account the balance of interests, on a case-by-case basis, is entirely within the jurisdiction of the court and could not be imposed to the court by administrative or regulatory means any objective and unified criteria to be kept.

Given the above, Bulgaria expresses confidence that the Committee will take into account the above considerations when finalizing the First progress review of the implementation of decision VI/8d.

Bulgaria would like to kindly ask the Committee, in cases where the Committee has any remarks on the information provided by the Party on the communications concerning it, this to be notified at the earliest possible stage in order to be ensured prompt response and to be avoided possible difficulties in handling the communications.
