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Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters

Fifth session

Maastricht, the Netherlands, 30 June and 1 July 2014

Item 5 (b) of the provisional agenda

Procedures and mechanisms facilitating the implementation of the Convention: compliance mechanism

Compliance by Bulgaria with its obligations under the Convention

Report by the Compliance Committee

Summary

The present document was prepared by the Compliance Committee pursuant to the request set out in paragraph 10 of decision IV/9 of the Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (see ECE/MP.PP/2011/2/Add.1), and in accordance with the Committee's mandate set out in paragraphs 13 (b), 14 and 35 of the annex to decision I/7 on review of compliance (ECE/MP.PP/2/Add.8).

The document reviews the progress made by Bulgaria in the intersessional period in implementing the recommendations set out in the Committee's findings on communication ACCC/C/2011/58, adopted on 28 September 2012 (ECE/MP.PP/C.1/2013/4), in particular with regard to the implementation of the Convention's provisions on access to justice with respect to strategic environmental assessment statements, spatial plans and construction and exploitation permits.

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1. Communication ACCC/C/2011/58¹ was submitted by the Balkani Wildlife Society on 9 February 2011 alleging that Bulgaria had failed to comply with its obligations under article 9, paragraphs 2 and 3, of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention).

2. The communication alleged that the Party concerned failed to implement article 9, paragraphs 2 and 3, of the Convention with respect to access to administrative or judicial review procedures for environmental non-governmental organizations (NGOs) and members of the public to challenge acts that contravene national environmental legislation. The communicant alleged it was not possible to appeal the outcomes of the strategic environmental assessment (SEA) of plans and programmes — “SEA statements” issued under the Environmental Protection Act. In addition, it alleged that members of the public did not have access to review procedures to challenge orders for the adoption of spatial plans or construction permits and exploitation permits issued under the Spatial Development Act that contravened European Union or national environmental legislation.

3. Having considered the communication in accordance with the procedure set out in section VI of the annex to decision I/7 of the Meeting of the Parties to the Convention, the Committee at its thirty-eighth meeting (Geneva, 25–28 September 2012) found that:

(a) By barring all members of the public, including environmental organizations, from access to justice with respect to General Spatial Plans, the Party concerned failed to comply with article 9, paragraph 3, of the Convention;

(b) By barring almost all members of the public, including all environmental organizations, from access to justice with respect to Detailed Spatial Plans, the Party concerned failed to comply with article 9, paragraph 3, of the Convention;

(c) By not ensuring that all members of the public concerned having sufficient interest, in particular environmental organizations, have access to review procedures to challenge the final decisions permitting activities listed in annex I to the Convention, the Party concerned failed to comply with article 9, paragraph 2, in conjunction with article 9, paragraph 4, of the Convention.

4. The Committee, pursuant to paragraph 36 (b) of the annex to decision I/7, and noting the agreement of the Party concerned that the Committee take the measures requested in paragraph 37 (b) of the same, recommended that the Party concerned undertake 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, Detailed Spatial Plans and (either in the scope of review of the spatial plans or separately) also with respect to the relevant SEA 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.

5. The Committee confirmed the adoption of the edited version of its findings and recommendations in English, as well as their translation into French and Russian at its fortieth meeting (Geneva, 25–28 March 2013), as document ECE/MP.PP/C.1/2013/4.

¹ The communication and other documents relating to it are available on the Committee’s website from <http://www.unece.org/env/pp/pubcom.html>.

6. The Committee invited the Party concerned to provide information, by no later than 16 September 2013, on its progress in implementing the recommendations of the Committee.

7. The Party concerned provided its progress report on 19 September 2013, the communicant provided comments on the Party's progress on the same date.

8. The Party concerned informed the Committee that it had adopted amendments to the Spatial Planning Act, improving administrative control of spatial planning and construction. In particular, an obligation had been imposed on the developer to agree on the draft of General Spatial Plans with the relevant central and local administrations. In addition, the Regional Governors had been given competence to challenge the legality of General Spatial Plans in the administrative courts. The Party concerned also cited some other legal instruments for controlling the legality of General and Detailed Spatial Plans, as well as building and construction permits, all of them having the character of processes initiated ex officio by competent administrative authorities.

9. The Party concerned also referred to the newly established obligation on the developer to organize public debates (hearings) before adoption of draft spatial plans. Approved spatial plans were required to be published on the websites of the respective municipalities or the Ministry of Regional Development.

10. With respect to specific recommendations of the Committee, the Party concerned stated that consultations were ongoing between the competent authorities. According to the Party concerned, the respective measures would have to take into account not only concerns related to compliance by Bulgaria with the Convention, but also "socioeconomic and administrative aspects", e.g., avoiding complications of administrative proceedings, preventing loss of economic and social benefits, etc. It also emphasized that "national legislation in the field of environment completely provides the possibility [for] the members of the public to appeal/challenge the enforced statements/decisions on Strategic Environmental Assessment (SEA) and Environmental Impact Assessment (EIA) whose presence is [an] absolutely imperative condition for approval of spatial plans and [the] issuance of construction permits, which allow the realization of investment projects affecting the environment."²

11. In its comments on the progress of the Party concerned, the communicant stated that no administrative or legislative measures had been taken to implement the Committee's recommendations. According to the communicant, the shift to give municipal authorities control over some categories of spatial plans and decisions had in fact made the situation even worse. NGOs had carried out awareness-raising activities to inform relevant authorities and bodies about the findings and recommendations of the Committee and about the related legislative proposals prepared by NGOs. The communicant reported that the NGO proposals concerning access to justice had not been accepted, on the ground that they would negatively affect investment.

12. The communicant also provided the Committee with examples of recent case-law, showing that the jurisprudence had not changed since the adoption of the Committee's findings and recommendations.

13. The Committee notes that various official bodies of the Party concerned, as well as members of the public, have been working quite extensively on the issues raised by the Committee's findings and recommendations. The Party concerned has also adopted a

² Progress report from the Party concerned, 19 September 2013. The progress report and other documents concerning the communication are available from <http://www.unece.org/env/pp/compliance/Compliancecommittee/58TableBG.html>.

number of amendments to its legislation aiming to increase the transparency and improve the controlling mechanisms with respect to spatial planning and permitting procedures (the suitability of some of these amendments is questioned by the communicant).

14. However, neither these amendments nor any other measures taken by the Party concerned specifically address the aspects of the Bulgarian legal system which the Committee has found to be in non-compliance with the requirements of the Convention — namely, the possibilities for members of the public concerned to challenge the legality of spatial plans and construction and exploitation permits. The Committee is concerned that the Party concerned seems to maintain the position that implementing the recommendations of the Committee is not required for its full compliance with article 9, paragraphs 2 and 3, of the Convention.

15. At its forty-second meeting (Geneva, 24–27 September 2013), the Committee reviewed the progress report submitted by the Party concerned and the communicant's comments prepared the draft of the present report and recommendations. The draft was then sent to the Party concerned and the communicants on 18 November 2013 for comments by 9 December 2013. No comments were received from either party despite reminders. The Committee adopted the report and recommendations at its forty-third meeting (Geneva, 17-20 December 2013) and agreed to submit it to the Meeting of the Parties at its fifth session.

16. The Committee recommends to the Meeting of the Parties, pursuant to paragraph 35 of the annex to decision I/7, and taking into account the cause and degree of non-compliance and measures taken by the Party concerned in the intercessional period, to:

(a) Endorse the findings and recommendations of the Committee as adopted at its thirty-eighth meeting;

(b) Welcome the efforts made so far by the Party concerned to the extent they meet the recommendations of the Committee;

(c) Express its concern that neither the legislative amendments adopted so far nor any other measures taken by the Party concerned specifically address the aspects of the Bulgarian legal system which the Committee has found to be in non-compliance with the requirements of the Convention — namely, the possibilities for members of the public concerned to challenge the legality of spatial plans and construction and exploitation permits;

(d) Express its concern that the Party concerned seems to maintain the position that implementing the recommendations of the Committee is not required for its full compliance with article 9, paragraphs 2 and 3, of the Convention;

(e) Invite the Party concerned to submit to the Committee periodically (on 31 December 2014, 31 October 2015 and 31 October 2016) detailed information on further progress in implementing the recommendations set out above;

(f) Undertake to review the situation at its sixth session.
