Communication to
Århus Convention Compliance Committee
DG Environment of the European Commission

I. Information on correspondent submitting the communication

Full name of submitting organization or person(s): ***Balkani Wildlife Society***
Permanent address: ***8, Dragan Tsankov Blvd., Sofia 1164, Bulgaria***
Address for correspondence on this matter, if different from permanent address:
67, Tsanko Tserkovski Str., Entr.3, floor 2, apt.3, Sofia 1421, Bulgaria
Telephone: ***+359 2 963 14 70,*** *Fax:* ***+359 2 963 14 70***
E-mail: ***office@balkani.org***, ***alexdountchev@hotmail.com***
If the communication is submitted by an organization, give the following information for the contact person authorized to represent the organization in connection with this communication:
Name: ***Alexander Dountchev***
Title/Position: ***Expert***

II. State concerned

Bulgaria

III. Facts of the communication

1. **Aim of the communication**

1. The aim of the communication is to address a general failure of Bulgaria to implement Article 9, par. 2 and 3 of the Århus convention what directly affects the effective implementation and enforcement of the EU environmental legislation with respect to the assessment of plans and development projects in Bulgaria. The communication directly concerns implementation shortcomings of Art. 10a of the EIA Directive as well as the proposal of the European Commission for a Directive on access to justice in environmental matters (24 October 2003).

2. Basic facts of the communication

2. On the 31st of March, 2001 comes into force the national **Spatial Planning Act** (in Bulgarian "*Zakon za ustroisvto na teritoriata"*) which main objective is to guarantee the sustainable development of the society and the economy of Bulgaria (Art. 1 of the Act).

3. The Act regulates the public relations with respect to the **urban spatial planning** as well as the architectural design and permission procedures for **development projects**. Under the Spatial Planning Act are being issued the final decisions on *General* and *Detailed Spatial Plans* (thus plans under Art. 7 of the Convention)

and the *development projects* (including Annex I - projects of the Århus Convention and Annex I/II projects of Directive 85/337/EEC).

4. With regard to the **environmental aspects** of the spatial planning and the project development, the SPA refers to the national Environmental Protection Act (EPA) which transposes the SEA and the EIA Directives. The EPA stipulates the environmental decision-making procedure, including the public participation provisions of Article 6 and 7 of the Convention, the issuance of SEA statements/EIA decisions by the environmental authorities and the access to justice provisions of Art. 9 (2) of the Convention[1].

5. According to Art. 125 (6)[2] and. Art. 144 (1) 4.[3] of the SPA, the SEA statements, reps. the EIA decisions, are **mandatory prerequisite**[4] to the final adoption/authorization under the SPA of spatial plans and development projects relating to environment (see Table 1).

6. Since **the provisions of Art. 6, 7 and 9 (2) of the Convention** appear in the Environmental Protection Act, the legislator has never considered to implement these provisions of the Convention in the legal procedures regarding the final adoption/authorization of spatial plans and Annex I development projects under the Spatial Planning Act. The only exceptions are the provisions in the Spatial

[1] Art. 9(2) of the Convention is implemented in the EPA only with respect to EIA decisions, thus excl. SEA statements (see p. III.3.1f)

[2] Art. 125 (6) of the SPA: The planning proposal under Art. 1 should be submitted in the Ministry of Environment and Waters for a SEA procedure according to the legal order, defined in the Regulation under Art. 90 of the Environmental Protection Act. The SEA is part of the spatial plan.

[3] Art. 144 (1) p.4 of the SPA: Development projects, requiring construction permit, should be authorized after the submission of:

- the administrative acts, which depending on the type and size of the construction, are required as a pre-condition for the authorization of the construction under the Environmental Protection Act or specific law.

[4] The legal adoption/authorization procedure for all plans and projects is divided into two main stages:
(1) issuance of a SEA statement/development consent (EIA decision) under the EPA, and
(2) issuance of an order for the adoption of a spatial plan / a final construction permit under the SPA.
Both type of acts constitute separate administrative decisions. Since the SEA statements and the development consents embrace all significant environmental implications of the processed plans and projects, the national legislation requires public participation as well as access to judicial review of the SEA statements and the development consents (see Art. 99 (6) of the EPA). As noted above, the SEA statements and the development consents issued by the environmental authorities are binding on the authorities issuing orders for the adoption of spatial plans or resp. construction permits pursuant to the Spatial Planning Act.

Planning Act which foresee public consultations by the final adoption of *General Spatial Plans* and the right of owners of directly concerned land plots (e.g. the investor and the direct neighbors) to give their opinion and objection on individual *Detailed Spatial Plans* and *development projects*.

7. Besides, the existing *"access to justice"* provisions in the SPA are based on the oldest standing model - ***"legal interests standing"***. With respect to the adoption of General Spatial Plans (GSP) the SPA goes even further and excludes the final orders for the adoption of GSP from judicial review.

8. The relevant legal texts from the SPA regarding the *"access to justice"* are as follows:

- Art. 127 (6) and (10) of the SPA[5] stipulate that the orders for the final adoption of *General Spatial Plans* are final decisions and cannot be appealed before a court.

- Art. 131 of the SPA limits the number of persons (*Numerus clausus*) who have the right to express an opinion and have access to judicial review on *Detailed Spatial Plans* as follows:

- The owners of the plot under spatial planning
- The owners of the neighboring plots
- The owners of plots in the hygiene protection zones if such are planned.

- Art. 149 of the SPA limits the number of persons (*Numerus clausus*) who have the right to express an opinion and have access to judicial review on *construction permits* of development project to the investors and by reconstruction activities - the neighbors.

- Art. 213 of the SPA stipulates that the administrative acts under the SPA can be subjected to judicial review before the court of law under the conditions and the legal order of the SPA, and when such is missing under the legal order of the Administrative Procedure Code. F.e. The SPA does not mention any possibility to express an opinion and have access to a judicial review on *exploitation permits*[6]. According to the court practice[7] access to judicial review on *exploitation permits* is

[5] After the last amendment of the Spatial planning act (SJ, No. 87/2010) this legal text was moved to Art. 215 (6).

[6] According to Art. 177 (2) of the SPA *exploitation permits* for all public infrastructure projects (public roads, public buildings, industrial constructions, heat centrals, lifts, etc) are issued under Regulation No.2/31.07.2003 for putting constructions in exploitation by the National Directorate for Building Control.

[7] Definition No.949/29.01.2007 of the High Administrative court

admissible under Art. 213 of the SPA but only for the interested parties [under Art. 131 of the SPA].

9. Actually, **the general provision for standing** (*locus standi*) regarding the *"access to judical review of administrative acts"* is set in Art. 83 (1) of the Administrative Procedure Code which says that *"An appeal against an administrative act may be submitted by interested persons.*" This general provision is based on the model **"*sufficient interest standing*"** and seems to be more or less consistent with the requirements of Art. 9 par. 2.a) and Art. 9 par. 3 of the Århus Convention and with the objective of giving the public concerned wide access to justice within the scope of this Convention.

10. However, as pointed out in par.7, the "access to justice" provisions of the Administrative Procedure Code are **not directly applicable** with respect to the adoption procedures for plans and development projects under the Spatial Planning Act.

11. Further, it is worth to note that the litigation rights and interests of **the environmental NGOs** in Bulgaria with reference to Art. 2 (5) in conj. with Art. 9 (2) of the Convention are determined in §1, p. 25[8] of the Additional provisions of the Environmental Protection Act. However, these litigation rights are valid only under the EPA[9], what excludes the *"access to justice"* provisions of the Spatial Planning Act. Thus, in practice only the Environmental Protection Act can be the basis for a public interest action.

12. In the light of the foregoing, the communicant considers that the access to justice provisions of Art. 9 (2) of the Aarhus Convention are **not properly implemented** in the national legal framework with respect to the adoption/authorization of plans and Annex I development projects which are subject to Art. 6-7 of the Convention under the Environmental Protection Act but are finally being adopted/authorized under the Spatial Planning Act.

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[8] §1, p. 25 of the AP of the EPA: "Public concerned" is the public under p. 24 affected or likely to be affected by, or having an interest in the authorization procedures regarding plans, programs and investment projects, incl. **the environmental non-governmental organizations**, established in conformity with the national law.

[9] In practice, the Bulgarian NGOs have wide access to justice against SEA statements and EIA decisions issued under the EPA.

13. The requirements of Art. 9 (2) of the Convention are implemented only within the framework of the Environmental Protection Act and even only with respect to EIA decisions[10] (see p. III.3.1f), while the Spatial Planning Act includes no specific provisions implementing these requirement of the Convention.

14. Additionally, the limited access to review procedures to challenge acts and omissions under the Spatial Planning Act which contravene provisions of the national environmental laws indicates that the requirements of Art. 9 par. 3 of the Convention are neither implemented in the SPA.

15. The implication thereof is that the SPA does not allow the general public and the indirectly concerned neighbors to challenge the substantive and procedural legality of the final administrative acts issued under the SPA (e.g. orders for final adoption of spatial plans, construction permits of development projects listed in Annex I, exploitation permits, etc.) when these acts are issued in violation of the EIA/SEA procedures (e.g. final authorization of plans and projects without an EIA/SEA or public participation in the decision-making process, also known as *administrative omission*) or in violation of other provisions of the national environmental legislation.

16. In this connection and on basis of the case-law referred below, the communicant assumes that the Bulgarian state has also not properly determined the stage at what the decisions, acts or omissions may be challenged by virtue of the second paragraph of Art. 10a of the EIA Directive. Hereby, it is clear that the access to judicial preview of the preliminary administrative acts issued under the EPA can not guarantee the conformity with the law of the final administrative acts (such as the orders for the adoption of the plans and the construction permits) issued under the Spatial Planning Act.

3. Case-law demonstrating the limited access to justice under the Spatial Planning Act

17. In support of the above mentioned allegations for improper implementation of Art. 9 (2) and (3) of the Convention in the Spatial Planning Act, the communicant submits a list of exemplary court decisions discussing the judicial review of plans and projects (incl. projects not listed in Annex I) adopted or authorized under the SPA in alleged violation of the environmental legislation.

[10] According to Art. 99 (6) of the EPA only the EIA decisions can be challenged through judicial review.

3.1 Case-law regarding the adoption of General Spatial Plans

a/ Decision No.12151 dated 3 December 2007 of the Supreme Administrative Court on administrative case No 10786/2007 (Att. 1)

18. The order for the adoption of the amendment of the *General Spatial Plan* of the Perelik ski resort (Perelik Tourist Center) issued by the Municipality of Smolyan was appealed by the State Forestry Office[11] in the village of Mugla. The cassation application was dismissed by the court on basis of Art. 127 of the SPA declaring that the final decision cannot be appealed before a court and that the plaintiff has no standing (*locus standi*).

19. The amendment of the *GSP* of the Tourist Center was adopted by the Municipality of Smolyan without public participation and without having the legally required SEA Statement of the RIEW Smolyan (thus violation of Art. 6-7 of the Convention, Art. 3 of the SEA Directive and Art. 6(3) of the Habitats Directive). Only after the case was investigated by DG Environment, the Municipal council was forced to withdraw its illegal order by Decision 238/13.03.2009.

b/ Decision No.2310 of 07.03.2007 of the Supreme Administrative Court on administrative case No 1876/2007 (Att.2)

20. The order for the adoption of the amendment of the *General Spatial Plan* of the Bansko ski zone in Pirin National park of the Municipality of Bansko was appealed by the environmental NGO "Za zemyata". The cassation application was dismissed by the court on basis of Art. 127 of the SPA declaring that the final decision cannot be appealed before a court and that the plaintiff has no standing (*locus standi*).

21. The appeal of the NGO refers to violations of the *SPA*, the Concession Act and the relevant environmental legislation executed by the Municipality in the process of adoption of the amendment of the *GSP*. The substantive issues and arguments in the appeal were not discussed by the court. After 01.01.2007, similar cases in Bansko ski zone in Pirin National park are being investigated by DG Environment under infringement procedure 2008/4354.

[11] The State Forest Offices are under the control of the State Forest Agency and are entitled to manage the state-owned forests in Bulgaria.

c/ Decision No.10617 of 31.10.2006 of the Supreme Administrative Court on administrative case No 9304/2006 (Att.3)

22. The order for the adoption of the *General Spatial Plan* of the Borovets ski resort (Tourist Resort Location "Samokov-Borowets-Beli Iskur") of the Municipality of Samokov was appealed by Dimitrina Dimova Dimova and Tsvetanka Dimitrova Pophristova. The cassation application was dismissed by the court on basis of Art. 127 of the SPA declaring that the final decision cannot be appealed before a court and that the plaintiff has no standing (*locus standi*). Further details about this case are not available.

d/ Decision No.5 of 09.05.2006 of the Constitutional court of the Republic of Bulgaria on const. case No.1/2006 (Att.4)

23. Art. 127 (10) of the SPA was discussed by the Supreme Constitutional Court in constitutional case No.1/2006 regarding alleged non-compliance with the Constitution of Bulgaria. The arguments for non-compliance were based on Art. 120 (2)[12] in conjunction with Art. 17 (1)[13] and (3)[14] of the Constitution.

24. The majority of the members of the Constitutional court found that the legal restriction under Art. 127 (10) of the SPA regarding the right of natural and legal persons to appeal the orders for the adoption of *GSP* is based on the protection of constitutional rights of overriding public interest such as "the protection and reproduction of the environment" (Art. 15), "the sustainable regional development" (Art. 20) and "the right to favorable environment" (Art. 55).

25. However, the constitutional court missed to discuss how the public can protect the mentioned above constitutional rights for "environmental protection" if the public is not able to appeal the orders for the adoption of *GSP* when the last are allegedly issued in violation of the national environmental legislation (e.g. adoption of a plan without a SEA).

[12] Art. 120 (2). The natural and legal persons can appeal all administrative acts, which concern them, except the acts specified in law.

[13] Art. 17 (1) The right of property and inheritance are guaranteed and protected by law.

[14] Art. 17 (3) The private property is indefeasible.

e/ Protocol decision of 29.04.2009 of the Supreme Administrative Court on administrative case No 14767/2008 (Att.5)

26. In this single case, the Supreme Administrative Court (SAC) ruled that the Association of parks in Bulgaria has *locus standi* and the court allowed the judicial review of an administrative act issued under the SPA, namely the order for the adoption of the *General Spatial Plan* of Tsarevo Municipality in **Strandja Nature park**.

27. The order for the adoption of the *GSP* was appealed by the Association since this was the only act regarding the plan which was made available to the public. The SEA statement of the MoEW dated 07.08.2008 was kept in secret by the MoEW (in violation of the Århus convention and the SEA Directive) till the date of the publication of the order for the adoption of the GS. In such a way, the general public was deprived of the possibility to appeal the SEA statement. The case is being investigated by DG Environment of the EC (infr. procedure 2009/4244).

28. The case however has never been finished and the only available evidence for this precedent is a protocol decision of the SAC of 29.04.2009. With this protocol the court finds that the **Order for the adoption of the GSP** issued by the MRDPW (which is different from the decision on the SEA report of the plan issued by the MoEW) **is an act which (acc. to Art. 127 (1) of the SPA) is subject to the provisions of Article 6[15] within the meaning of p.20 of Annex I of the Convention**. In that regard, the court allowed the judicial review in that single case on behalf of **Art. 9, par. 2 of the Århus Convention**.

29. In this case the court concludes that with respect to the adoption of GSP the national legislation (e.g. the regimes of the SPA) contravenes the regime of Art. 9, par. 2 of the Convention and that legislative amendments are needed!

f/ Decision 79/15.03.2010 of the Ministry of Environment and Waters (Att.6)

30. The SEA statement №БД-02-ЕО/2009 of the Regional Inspectorate for Environment and Waters in Blagoevgrad approving the GSP of the Municiaplity of Blagoevgrad was appealed before the Ministry of Environment and Waters (MoEW) by the Association of parks in Bulgaria on basis of Art. 83 (1) of the APC. The application of the NGO was dismissed by the MoEW arguing that **the SEA**

[15] According ot Art. 127 (1) of the SPA "The General Spatial Plans are subject to public consultation before adoption". The public consultations of GSP (can) go apart from the public consultations of the SEA report!

statement under the EPA is not a final individual administrative act within the meaning of Art. 125 (6)[16] of the SPA.

31. This decision of the MoEW implies that the only possibility to review the SEA statement of any Spatial Plan is to challenge the order for the adoption of the Plan issued under the SPA. However, the last option is not possible by virtue of Art. 127 (6) of the SPA.

32. **Therefore, this case actually indicates that Art. 9 (2) of the Convention with respect to the judicial review of plans is not implemented not only in the Spatial Planning Act but also in the Environmental Protection Act.**

3.2. Case-law regarding the adoption of Detailed spatial plans (DSP)

a/ Decision No 218 dated 14 January 2004 of the Supreme Administrative Court on administrative case No 9773/2003 (Att.7)

33. The environmental NGO the Association of the parks in Bulgaria appealed the Order dated 25 September 2003 of the Minister of Regional Development and Public Works for approval of the *Regulation and Construction Plan* (a type of *Detailed Spatial Plan*) of Zlatni Pyasatsi Sea-side resort. The spatial plan affects the Zlatni piasatsi (Golden sands) Nature Park.

34. The cassation application was dismissed by the court on basis of Art. 131 of the SPA by arguing that the Association is not an interested party despite the fact the Zlatni Pyasatsi Nature Park Directorate managing the concerned park is a member of the Association.

35. The appeal of the NGO refers to violations of the SPA and the national Protected areas Act, namely the unallowable urbanization of protected areas. The substantive issues and arguments in the appeal were not discussed by the court.

[16] Art. 125 (6) of the SPA: The planning proposal under Art. 1 should be submitted in the Ministry of Environment and Waters for a SEA procedure according to the legal order, defined in the Regulation under Art. 90 of the Environmental Protection Act. The SEA is part of the spatial plan.

3.3. Case-law regarding construction permits

a/ Decision No 4927 dated 23 April 2008 of the Supreme Administrative Court on administrative case No 1076/2008 (Att.8)

36. In this case of civil-law the court finds on basis of Art. 149 of the SPA that the applicant as a neighbor of the investor is not among the "interested parties" who have access to a judicial review on *construction permits* of development project.

3.4. Case-law regarding exploitation permits

37. The communicant considers that the access to justice procedures with respect to exploitation permits of Annex 1 projects are covered by paragraph 3 of Article 9 of the Convention.

a/ Definition No. 949 dated 29 January 2007 of the Supreme Administrative Court on administrative case No 690/2007 (Att.9)

38. The *exploitation permit* for the "Landfill of Montana Municipality - second stage" issued by the Directorate for national building control was appealed by the Environmental national movement "Ecoglasnost". The cassation application was dismissed by the court on basis of Art. 17 (3) of the Regulation No. 2/31.07.2003 for putting constructions in exploitation saying that the *exploitation permit* is being granted to the investor and it concerns only the investor.

39. The application of the NGO refers to a violation of the Environmental Protection Act transposing the EIA Directive, namely the fact that the final adoption of the Annex I project "Landfill" was built and put in exploitation without an EIA development consent. The substantive issues and arguments in the appeal were not discussed by the court at all.

b/ *Definition No. 2397 dated 23 February 2010 of the Supreme Administrative Court on administrative case No 12463/2009 (Att. 10)* and *Definition No. 2155 dated 18 February 2010 of the Supreme Administrative Court on administrative case No 13155/2009 (Att.11)*

40. Actually, the main motive for the submission of the current communication is a case regarding the construction and exploitation of a lift (Annex II project under the EIA Directive) in the **Rila National park** (also a Natura 2000 zone) which was

built (on the place of an abandoned and not fully constructed lift of 1997) without a valid EIA and without valid construction rights (e.g. concession). The construction of the lift started in 2007 without a valid EIA and in violation of the management plan of the park. Still in the beginning of the construction process the park rangers alarmed for illegal clear cuts. In 2008, the construction of the lift even lead to a landslide in the vicinity of the lower lift station which according to the initial expert analysis endangers the integrity of the construction.

41. Despite numerous signals and complaints (incl. requests for injunctive relief) of the civil society to the national competent authorities and the European Commission, as well as a petition signed by 150 000 citizens to the European parliament, the illegal construction of the lift was not halted by the competent authorities and the lift was put in exploitation in April, 2009.

42. The *exploitation permit* of the lift was appealed by the environmental NGOs and natural persons before the national courts of law on the grounds that the lift is built (1) without an EIA, (2) without construction rights (concession) and (3) on unstabilized landslide.

43. **The cassation appeal of the NGOs and the natural persons referred to Art. 9 (3) of the Århus Convention, which should be directly applicable in the national court proceedings by virtue of Art. 5 (4)[17] of the Bulgarian Constitution.**

44. However, in two separate final definitions the Supreme Administrative Court dismissed the applications. The provisions of Art. 9 (3) of the Århus Convention were not even discussed at all and at the end the court reaffirmed the relevant judicial practice that the only party who could be considered an „interested party" to appeal an exploitation permit is the investor of the project. In all proceedings the substantive issues and arguments in the applications of the NGOs were not discussed by the court at all.

45. Lately, the Supreme Administrative Prosecutor's office and the MoEW admitted part of the allegations of the plaintiffs. All the information about this case can be provided by the communicant upon request.

[17] International treaties, ratified according to the constitutional order, published and entered in force for the Republic of Bulgaria, are part of the national law. They have priority over these provisions of the national laws which contravene them.

46. **Obviously, the restricted access to justice provisions with respect to plans and projects adopted under the SPA does not allow the national judges to fully enforce the EU environmental legislation, while the general public is not able to protect its legitimate interests provided by the Århus convention and the respective EU Directives[18]. The implication thereof is that the national SPA cannot guarantee that the objectives and obligations of the EU environmental legislation are effectively achieved in Bulgaria.**

47. **These legal issues were brought to the attention of DG Environment in three separate infringement cases – the Rila case - 2009/2301, the Strandja case - 2009/4244 and the Perelik case with ref. No. ARES(2009)72301.**

IV. Nature of alleged non-compliance

48. On 2 October 2003, the National assembly of Bulgaria ratified the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Århus, Denmark, 23 - 25 June 1998). On 16 March 2004, the Convention enters into force in Bulgaria.

49. The communication refers to a general failure of Bulgaria to implement Art. 9, par. 2 and 3 of the Convention with respect to the access to administrative or judicial review procedures in behalf of environmental NGOs to challenge acts which contravene the national environmental legislation, e.g. the Environmental Protection Act (EPA) (transposing resp. the EIA and the SEA Directives), the Biodiversity Act (BA) (transp. the Habitats Directive) and the Protected Areas Act.

50. On the one hand, the national *Environmental Protection Act* (EPA) gives access to a review procedure in accordance with Art. 9 (2) of the Convention to challenge the preliminary administrative acts issued under the *EPA* when these acts are part of an EIA procedure (thus EIA decisions for activities of Annex I p.1-20 of the convention).

51. Relevant to the communication is the fact that Art. 9 (2) of the Convention is still not implemented with respect to administrative acts which are part of a SEA procedure (thus SEA statements for plans and programs) under the *EPA*.

52. On the other hand, the national *Spatial Planning Act* does not implement **the access to justice provisions under Art. 9 (2) and (3) of the Convention** for the general public to challenge the final administrative acts issued by non-

[18] The case-law shows that most of the cases are even not covered by Art. 10a of the EIA Directive.

environmental authorities such as the Municipalities, the Building control Directorate or the Ministry of Regional Development and Public Works under the SPA concerning as well spatial plans as activities of Annex I of the Convention.

53. In other words, the national *Spatial Planning Act* restricts the access for the general public (except for the investor and the neighbors) to review procedure to challenge *orders for the adoption of spatial plans* as well as *construction permits* and *exploitation permits* (concerning Annex I activities) issued under the *SPA* by the respective public authorities (Municipalities, the Building control Directorate or the Ministry of Regional Development and public works) when these acts are considered to be **in violation** of the SEA/EIA procedures and the environmental legislation as a whole.

54. The most common and unambiguous example of such a violation (see p. III.3 of the communication) is the adoption/authorization of a plan/project pursuant to the *Spatial Planning Act* **before** an *environmental decision*[19] *(thus SEA statement, resp. development consent)* for that plan/project is issued by the environmental authorities (the Ministry of Environment and Waters or its Regional Inspectorates).

55. Another example of violation of the environmental legislation referred in p. III of the communication is the issuance of *exploitation permit* under the SPA for infrastructure objects (e.g. lifts, landfills, etc), the construction permit of which had been issued without a valid EIA decision or when the construction activities have caused environmental hazards which are not properly removed at the time of the granting of the exploitation permit.

V. Provisions of the Convention relevant for the communication

Article 9 *ACCESS TO JUSTICE*
2. *Each Party shall, within the framework of its national legislation, ensure that members of the public concerned*
(a) Having a sufficient interest
or, alternatively,
(b) Maintaining impairment of a right, where the administrative
procedural law of a Party requires this as a precondition, have access to a review procedure before a court of law and/or another independent and impartial body established by law, to challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of article 6 and, where so provided for under

[19] Acc. to Art. 81-102 of the Environment Protection Act (transposing both the SEA and the EIA legal procedures) and Art. 31 of the Biodiversity Act (transposing Art. 6 (3) of the Habitats Directive) the SEA statement/development consent is a decision on the SEA/EIA, resp. the AA report.

national law and without prejudice to paragraph 3 below, of other relevant provisions of this Convention.

What constitutes a sufficient interest and impairment of a right shall be determined in accordance with the requirements of national law and consistently with the objective of giving the public concerned wide access to justice within the scope of this Convention. To this end, the interest of any non-governmental organization meeting the requirements referred to in article 2, paragraph 5, shall be deemed sufficient for the purpose of subparagraph (a) above. Such organizations shall also be deemed to have rights capable of being impaired for the purpose of subparagraph (b) above.

The provisions of this paragraph 2 shall not exclude the possibility of a preliminary review procedure before an administrative authority and shall not affect the requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures, where such a requirement exists under national law.

***3.** In addition and without prejudice to the review procedures referred to in paragraphs 1 and 2 above, each Party shall ensure that, where they meet the criteria, if any, laid down in its national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment.*

VI. Use of domestic remedies or other international procedures

56. In the last years, some environmental NGOs, natural persons and even state authorities have appealed before the court of law a number of administrative acts issued pursuant to the Spatial Planning Act which were in violation of the Environmental Protection Act or the Biodiversity Act. Despite referring to Art. 9, par. 2-3 of the Convention the applicants' complaints were rejected in all cases except one. The only legal texts the court finds applicable in that cases are:

    - **Art. 149** and **Art. 129-131** of the Spatial Planning Act giving limited access to judicial review of *construction/exploitation permits* and *orders for the adoption of detailed spatial plans* **only** to the investors and the neighbors;

    - **Art. 127** of the SPA saying that the Orders for the adoption of General Spatial Plans cannot be appealed at all.

57. In a single case, the High Administrative Court (HAC) allowed the judicial review of an administrative act acc. to the SPA, namely the order for the adoption of the General Spatial Plan of Tsarevo Municipality in Nature Park Strandja. The case is still not finished and the only available evidence for this precedent is a protocol decision of the HAC of 29.04.2009.

58. In this case the court finds that **the Order for the adoption of the GSP issued by the MRDPW** (which is different from the decision on the SEA report of the plan issued by the MoEW) **is an act** which is **subject to the provisions of Article 6 within the meaning of p.20 of Annex I of the Convention**. In that regard, the court allowed the judicial review in that single case on behalf of **Art. 9, par. 2 of the Århus Convention**.

59. What is more, in this case the Supreme court of law concludes that the national legislation (e.g. the legal regimes of the SPA) contravenes the regime of Art. 9, par. 2 of the Convention and that legislative amendments are needed.

VII. Confidentiality

60. No.

VIII. Supporting documentation (Attachments translated in English)

1. Decision No.12151 dated 3 December 2007 of the Supreme Administrative Court on administrative case No 10786/2007
2. Decision No.2310 of 07.03.2007 of the Supreme Administrative Court on administrative case No 1876/2007
3. Decision No.10617 of 31.10.2006 of the Supreme Administrative Court on administrative case No 9304/2006
4. Decision No.5 of 09.05.2006 of the Constitutional court of the Republic of Bulgaria on const. case No.1/2006 (Bulgarian)
5. Protocol decision of 29.04.2009 of the Supreme Administrative Court on administrative case No 14767/2008
6. Decision 79/15.03.2010 of the Ministry of Environment and Waters
7. Decision No 218 dated 14 January 2004 of the Supreme Administrative Court on administrative case No 9773/2003
8. Decision No 4927 dated 23 April 2008 of the Supreme Administrative Court on administrative case No 1076/2008
9. Definition No. 949 dated 29 January 2007 of the Supreme Administrative Court on administrative case No 690/2007 (Bulgarian)
10. Definition No. 2397 dated 23 February 2010 of the Supreme Administrative Court on administrative case No 12463/2009
11. Definition No. 2155 dated 18 February 2010 of the Supreme Administrative Court on administrative case No 13155/2009

Signature:  09.02.2011

Alexander Dountchev,
On behalf of the Balkani Wildlife Society

Table 1. Legal procedures regarding the adoption of spatial plans and the authorization of development projects in Bulgaria

Project/Plan	*Decision-making stage*				
	Act of Development Consent	*Public rights*	*Act of Final Authorization*		*Public rights*
General Spatial Plans (municipal level)	SEA statement/AA decision	Public participation, access to justice	Order for adoption of the plan		Public discussions
Detailed Spatial Plans (local level)	SEA statement/AA decision	Public participation, access to justice	Order for adoption of the plan		Consultations and access to justice for neighbors only
Development projects (incl. Annex I/II projects of the EIA Directive)	EIA decision/AA decision or screening decisions	Public participation, access to justice	Construction permit	Exploitation permit	Consultations and access to justice for neighbors only
Competent Authorities	*Ministry of Environment and Waters/Regional Inspectorates (RIEW)*		*Municipalities/ Ministry of Regional Development and Public works*	*Municipalities/ Directorate for national building control*	
Relative legislation	*Environmental protection Act (EIA/SEA Directive)/Biodiversity Act (Habitats Directive)*		*Spatial Planning Act*		