



**REPUBLIC OF BULGARIA  
MINISTRY OF ENVIRONMENT AND WATER**

99-00 - 384 16.08  
Outgoing № ..... / ..... 2011 r.

**TO**

**MS APHRODITE SMAGADI  
SECRETARY TO THE AARHUS  
CONVENTION COMPLIANCE COMMITTEE**

**SUBJECT:** Communication (Ref. № ACCC/C/2011/58) from the Convention Compliance Committee on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) with regard to Bulgaria's compliance with the Convention's provisions connected with access to review procedures regarding spatial planning

**DEAR MS SMAGADI,**

In the statement of facts and the nature of the alleged non-compliance with the Aarhus Convention in the communication from Balkani Wildlife Society there is repeated confusion in the reference to non-compliance with certain articles of the Convention. For example, article 6 of the Convention refers to Environmental Impact Assessment (EIA) and not to strategic assessment of plans and programs as stated in the communication; article 7 of the Convention refers to strategic assessment of plans and programs and not to EIA etc. Part of the claims of the communication are not concrete; at various points it is not stated which provision of the Aarhus Convention is violated; there are numerous unclearly formulated texts etc. All of the above make answering the complaint very difficult.

In this respect we would like to provide some clarifications regarding the conformity between the Aarhus Convention and the Bulgarian legislation:

- article 6 of the Aarhus Convention regarding the procedure of EIA corresponds to section III of the Environmental Protection Act (EPA) and the Regulation on the terms and conditions for carrying out Environmental Impact Assessment;
- article 7 of the Aarhus Convention regarding strategic assessment of plans and programs corresponds to section II of the Environmental Protection Act and the Regulation on the Conditions, Procedure and Methods for Environmental Assessment of Plans and Programs;
- article 9, paragraph 2 of the Aarhus Convention on Access to Justice in cases of EIA corresponds to the Environmental Protection Act and the Administrative Procedure Code (APC).

### ***Alleged non-compliance with article 9, paragraph 2 of the Aarhus Convention***

The right of the public to appeal EIA is regulated by the EPA. According to article 99, paragraph 6 of the law the stakeholders may appeal a decision on EIA under the APC in a 14-day period from the public disclosure of the EIA decision.

**In this regard we believe that Bulgaria does not violate the requirements under article 9, paragraph 2 of the Convention related to Access to Justice connected with EIA.**

### ***Alleged non-compliance with article 9, paragraph 3 of the Aarhus Convention***

1. Article 9, paragraph 3 of the Convention refers to a great variety of cases but not to the possibility to appeal a decision on EIA, which is defined in article 9, paragraph 2 of the Convention.

In the EPA and the Regulation on the Conditions, Procedure and Methods for Environmental Assessment of Plans and Programs there is neither explicit text governing the appeal of positions and decisions on EA, nor an explicit prohibition to appeal. The general line of the APC is fully applicable to the appeal of EA positions and decisions.

The concrete examples provided by the Balkani Wildlife Society are acts of the relevant court or authority, issued mainly in the period 2003 – 2009 (and two decisions from 2010). Therefore, we find that the recent judicial practice associated with the appeal of acts of the environmental authorities should be considered, such as Determination № 10129 from 28.07.2009 on administrative case № 9127/2009 of the Supreme Administrative Court of Republic of Bulgaria – five-member staff. According to the afore-mentioned Determination a position on EA (respectively a decision on EA) has independent legal significance and is subject to judicial review. **We find the communication of the Balkani Wildlife Society with regard to the appeal of EA acts of the environmental authorities obsolete by 2011. We believe that Bulgaria does not violate the requirements under article 9, paragraph 3 of the Convention related to Access to Justice connected with EA.**

2. In article 9, paragraph 3 of the Convention the possibility for the public to access administrative or judicial procedures in order to appeal decisions or permits for private companies, individuals and public authorities, which violate the national environmental legislation, is defined. In this regard we think that the reference of the Balkani Wildlife Society to non-compliance with article 9, paragraph 3 of the Convention is irrelevant and inapplicable to contestations of spatial planning acts. Article 9, paragraph 3 of the Convention is not clear and detailed enough to allow the impossibility to appeal decisions of the Ministry of Regional Development and Public Works and the municipalities related to spatial planning to be treated as a violation of the given article of the Convention.

The General Spatial Plan (GSP) is approved under the Spatial Development Act and not under the Environmental Protection Act. The GSP has no direct investment application but only defines the predominant purpose and organization of the separate structural parts of the territories affected by the Act's provisions. The Spatial Development Act (SDA) introduces a "non-appeal ability" of acts of adoption and amendments of the General Spatial Plan. At the same time under article 127, paragraph 1 of SDA, the regulatory procedure on elaboration and coordination of projects for the adoption and amendments of the GSP includes mandatory public consultations under article 121, paragraph 1 of SDA, with the participation of all relevant stakeholders under its provision. This is also the legally guaranteed possibility for public organizations to express their standpoints on the proposed project and to participate in the procedure of its adoption.

With the purpose of ensuring a public relations balance in the field of spatial planning and construction the SDA establishes the right to contest administrative acts in the sphere only to persons with direct and immediate legal interest. Article 131, paragraph 1 of the SDA provides an

imperative and exhaustive list of the stakeholders who can contest the Detailed Spatial Plans (DSP) and these are the owners and the holders of the limited real rights, according to the Land Registry, whose real estates are directly affected by the provisions of the DSP. In accordance with the legislative approach adopted by the SDA the right to appeal is bound in any case, without exceptions, to the direct and immediate effect on property rights or other limited real rights.

**In relation to the stated above we believe that the Balkani Wildlife Society's reference to non-compliance with the Convention's article 9, paragraph 3 is irrelevant and inapplicable in the area of contestations of spatial planning acts.**

In conclusion we would like to express our willingness to cooperate with the Convention Compliance Committee with regard to communication ref. № ACCC/C/2011/58.

Yours faithfully,



**EVDOKIYA MANEVA**

DEPUTY MINISTER