



TO

Ms Aphrodite Smagadi
Secretary to the Århus Convention Compliance Committee
United Nations Economic Commission for Europe
Environment and Human Settlement Division
Room 332, Palais des Nations
CH-1211 Geneva 10
Switzerland

Re: Follow-up on communication ACCC/C/2010/58

Dear Ms Smagadi,

We would like to submit our opinion on the progress made by Bulgaria in implementing the recommendations of the Committee on communication ACCC/C/2011/58 published on 24.08.2013 and 11.01.2013.

I. Legislation amendments:

We are not aware of any administrative or legislative measures taken by the state authorities in implementing the recommendations of the Committee on communication ACCC/C/2011/58.

What is more, the national Spatial Development Act (SDA), as being the main legislative act in concern, has been meanwhile amended in a way that worsens by far the gravity of the situation in Bulgaria. As imposing further obstacles before the public participation and access to justice in the national construction permitting proceedings, the legislation drifted away from the recommendations of the Århus Convention Compliance Committee. To be more precise, those amendments in concern provided for extreme limitation of the government control over the municipal authorities on construction and spatial planning proceedings. The entire control of construction categorised by the national law¹ in categories from 4th to 6th (including factories, installations, resort villages and hotels and other environmentally sensitive projects)² was ceded to the municipal control authorities. Thus, the municipal officials are expected to control their own superiors as mayors and chief

¹ Art. 137 of the SDA.

² Art. 147 of the SDA.

Balkani Wildlife Society

Reg 5150/1992 in SCC, BULSTAT 831467860
Address: 8, Dragan Tsankov Blvd., 1164 Sofia
Tel/Fax: +359 2 9631470, e-mail: office@balkani.org
<http://www.balkani.org>

architects, who adopt spatial plans and permit construction. Such logical absurd, as well as being widely criticised in public for lack of any reason or common sense, was also publicly reproached by various experts as further diminishing already small opportunities of the citizens to oppose against illegal construction (including in environmental cases). In other words, not only the citizens and their organisation are banned from any public participation and access to justice by art. 131 and art. 149 of the SDA, but now they even cannot report the violations before the state control authorities.

The legislation amendments in concern were put under final Parliament vote and adopted on 11.10.2012, promulgated by the President and published in the State Gazette on 26.10.2012. As you may notice, it happened after the advanced unedited copy of the ACCC findings was sent to the government on 04.10.2012. However the government failed to inform the members of the Parliament or to revise their bill-proposal for amendments in the SDA.

II. Public discussion and public awareness:

Meanwhile, the authorities, including the Parliament, as well as the public in general, were informed about the Compliance Committee findings by the NGOs. The public campaign included:

1.) On 16.10.2012 the 'For the Nature' coalition of environmental organisations (incl. Balkani Wildlife Society, WWF and others) publicly insisted that the President veto the controversial amendments in the SPA. That effort was widely covered in the media.³ The letter to the President, again published widely, informed about the Compliance Committee findings.⁴ Nonetheless, no veto was imposed and the bill was promulgated.

2) The Coalition of environmental organisations published an official translation⁵ of the Findings and Recommendations of the Committee, so that the findings could be used by the general public in access to justice efforts (see below) and in order to generate public awareness and to incite a public discussion on the issues addressed by the Committee.

3.) On 06.01.2013 representatives of the environmental NGOs met with the prime-minister and key ministers as the minister of regional development, minister of environment and waters and minister of agriculture and food (resp. for forestry too), again informing them on the setbacks of the national legislation and in particular the contradiction between the SDA and the Århus Convention, established in the findings of the ACCC.^{6,7} That particular meeting again received wide media coverage, including a fact shared by the prime-minister

³ <http://www.mediapool.bg/grazhdanski-organizatsii-nastoyavat-za-veto-na-zakona-za-ustroistvo-na-teritoriyata-news198452.html>

⁴ http://forthenature.org/upload/documents/2012/10/Pismo_do_Plevneliev_veto_ZUT.pdf

⁵ <http://forthenature.org/upload/documents/2013/06/Reshenie%20Orhuska%20Konvencia%20ZUT%202012.pdf>

⁶ Minutes of the meeting, distributed to the media by the cabinet press-secretary: <http://www.burgasnews.com/vazhni-novini/malka-novina/67553-stenograma-ot-sreshtata-v-ms-za-stroezha-na-dyunite-v-nesebar>

⁷ Public report of the NGOs' lawyers about the meeting with the cabinet and its outcome: <http://ecopravo.blogspot.com/2013/01/blog-post.html>

himself that he personally suffered from the limited rights of neighbours to express opinion or address illegalities of construction developments in directly adjacent neighbouring plots.⁸

4.) On 17.01.2013⁹ and 24.01.2013¹⁰ representatives of the environmental NGOs participated at sessions of the Parliamentary commission for regional policy concerning amendments to the Black Sea Coast Spatial Development Act (BSCSDA) and the SDA in order to inform the members of Parliament (MPs) for the findings of the Committee on ACCC/C/2011/58 and to propose adequate legal measures to comply with the referred recommendations. During the discussion the environmental coalition of NGOs 'For the Nature' prepared and sent proposals¹¹ to the Parliament for amendment to the Development laws (enclosed to the present letter as Att. 1) by referring to the Findings and Recommendations of the Committee on communication ACCC/C/2011/58:

- a) *To make available for public discussions all projects and maps of the spatial plans under the Spatial Development Act (p. 1 and 8 of the NGO proposal);*
- b) *Strict notification of the public concerned under Art. 2 (5) of the Convention for the authorization of construction projects and plans (p. 7 of the NGO proposal);*
- c) *Access to justice with respect to building permits and detailed spatial plans (i.e. development permits in general) to members of the public having legal interest (locus standi) under Art. 2(5) and Art. 9 (2-4) of the Convention. (p. 5 of the proposal);*
- d) *Access to justice with respect to general spatial plans (p. 6 of the proposal).*

As result of the public campaign and the lobbying efforts of the environmental NGOs, the proposals for enhanced publicity of the projects and permits under the Spatial Development Act were partly adopted in the amendment to the SDA and the BSCSDA. However, the access to justice proposals were completely rejected by the MPs on the basis of two arguments:

- access to justice has already been provided to environmental decisions (SEA, EIA, AA) under the Environmental Protection Act;
- any broader access to justice with respect to projects and plans under the SPA would affect negatively the investment process.

The MPs refused to take into account the arguments of NGOs that the implementation of the findings of the recommendations of the Committee on communication ACCC/C/2011/58 does not aim to hamper the investment process rather aims to guarantee the balance of investors and public interests in the sphere of spatial development, in particular when access to justice is needed to challenge acts of the authorities which contravene provisions of the environmental legislation.

⁸ <http://www.mediapool.bg/i-premierat-potarpevsh-ot-zakonno-stroitelstvo-news201380.html>

⁹ <http://www.parliament.bg/bg/parliamentarycommittees/members/227/steno/ID/2766>

¹⁰ <http://www.parliament.bg/bg/parliamentarycommittees/members/227/steno/ID/2771>

¹¹ <http://forthenature.org/news/2573>

In order to further facilitate the implementation of the recommendations of the Committee on communication ACCC/C/2011/58, in the last 6 months numerous public discussions were organized by Mr. Svilen Ovcharov and Mr. Alexander Dountchev among various stakeholders - architects, lawyers and environmental organisations.

III. Case-law development:

In addition, we would like to provide examples of case-law of 2013 which concerns the implementation of the recommendations of the Committee on communication ACCC/C/2011/58:

1/ Access to justice with respect to SEA statements

So far, no legal measures have been undertaken so that Bulgarian law distinguishes fully clear whether judicial review of SEA statements as such is admissible or not. However, in recent case-law¹² the court more often than not accepts the SEA statements as general administrative acts under the APC which are subject to judicial review procedures despite the lack of such provisions in the EPA.

2/ Access to justice with respect to General Spatial Plans (GSP)

In the last year the legal restrictions and the case-law concerning the access to justice with respect to GSP remained unchanged. In general, the court¹³ declares as inadmissible any complaint against orders for the adoption of GSP referring to the clear restriction of art. 215 (6) of the SDA¹⁴ and the constant jurisprudence of the court on the application of that particular article of law. In some cases, the arguments of the court are identical with the arguments of the State party concerning communication ACCC/C/2011/58. Further, it is worth to note that in cases 3226/2013 (att. 2) and 9460/2013 (att. 3) of SAC, the court indeed considered the access to justice provisions of the Convention, however, it dismissed the applications from public concerned against general spatial plans on the basis of frivolous and vague interpretation of the access to justice provisions of the Convention and the recommendations of the Committee.

The only exception of this case-law is the last decision No.9482/25.06.2013 of the Supreme administrative court on adm. case No. 14767/2008 (att. 4), referred in the main communication under chapter 3.1 "*Case-law regarding the adoption of General Spatial Plans*", subchapter e) "*administrative case No 14767/2008*" (par. 26-29 of the communication). In this case, however, this decision of the court was partly predetermined by the findings and the recommendations of the Committee on communication ACCC/C/2011/58.

3/ Access to justice with respect to detailed spatial plans and construction permits

¹² e.g. cases 5502/2010, 6224/2012, 7155/2012, 13548/2012 of SAC and 863/2011 of Adm. court Pazardzik

¹³ e.g. cases 3226/2013, 4131/2013, 2821/2013, 9460/2013 of SAC

¹⁴ **Art. 215 (6) of the SPA:** *General spatial plans, as well as their amendments, are not subject to a review procedure.*

During the last year, the legal restrictions in the SDA and the case-law (e.g. case 5023/2013 of SAC, case 311/2013 of Adm. court Plovdiv, case 623/2012 of Adm. court Blagoevgrad) concerning the access to justice with respect to **detailed spatial plans and construction permits** remained unchanged. Even though in those cases the complainants pleaded legal interest with the court by referring to Art. 9 (3) of the Convention and the recommendations of the Committee on communication ACCC/C/2011/58, the court dismissed the complaints on the basis of free interpretation of the access to justice provisions of the Convention and the recommendations of the Committee.

In conclusion, we consider that the implementation of the recommendations of the Committee on communication ACCC/C/2011/58 has been compromised as result of:

- the lack of administrative and legal measures on behalf of the government for informing the public, courts and authorities and implementation of the recommendations of the Committee;
- free interpretation of the Convention and the recommendations of the Committee by the national courts.

With regard to the above, we consider that the State party should initiate public and expert discussions on the access to justice issues referred in the recommendations of the Committee and take legal measures in order to provide clear access to justice provisions in the Spatial Development Act with regard to acts which contravene provisions of the environmental law.

Yours faithfully,



Alexander Dountchev,

On behalf of the Balkani Wildlife Society

Date: 19.09.2013

Attachments:

Att.1. Excerpt of the Proposals for amendments to the Spatial Development Act of the NPO Coalition "Let Nature Remain in Bulgaria" of 08.01.2013

Att. 2. Ruling No. 6851/2013 on case 3226/2013 of SAC

Att. 3. Ruling No. 11242/2013 on case 9460/2013 of SAC

Att. 4. Ruling No. 9482/2013 on case 14767/2008 of SAC