Communication to the
Aarhus Convention Compliance Committee Regarding the Republic of Bulgaria’s Series of
Failures to Comply with the Aarhus Convention

I. Information on correspondent submitting the communication

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II. Party concerned
The Republic of Bulgaria

III. Length of the Communication

This Communication constitutes 19 pages, which is more than the recommended length of 10 pages.
The reason behind this is that the Communication includes five separate, systemic failures of the
Republic of Bulgaria to comply with the Aarhus Convention.

IV. Facts of the communication

1. In the last year and half, we observe a tendency towards restriction of environmental rights of
citizens and environmental non-governmental organisations (ENGO-s) in the Republic of
Bulgaria. The following legislative acts, policies and court practice are representative of this
tendency:

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
<th>Consequence</th>
</tr>
</thead>
<tbody>
<tr>
<td>19 September 2017</td>
<td>Amendments to the Environmental Protection Act (EPA).</td>
<td>Limiting court review of Environmental Impact Assessment (EIA) appeals against objects of national importance to one court instance only. (&quot;Amendment to the EPA of 2017&quot;)¹</td>
</tr>
<tr>
<td>18 September 2018</td>
<td>Amendments to the Administrative Procedure Code (APC)</td>
<td>Significantly increasing the court fees for cassation appeal for NGOs and for EIA cases. (&quot;Amendment to the APC of 2018&quot;).²</td>
</tr>
</tbody>
</table>

¹ Law amending the Environmental Protection Act and the Biodiversity Act, Promulgated in State Gazette No.76 of 19 September 2017.
² Law amending the Administrative Procedure Code, Promulgated in State Gazette No. 77 of 18 September 2018.
2. We consider that these policies and acts shall be considered together as they constitute part of a common trend to restrict the environmental rights of citizens and ENGOs guaranteed under the Aarhus Convention. Below, we provide a brief summary of the listed facts.

1. **Amendment to the EPA of 2017: One instance court review for EIA objects of national importance**

3. In 2017, the Bulgarian Parliament adopted a law that reduced court scrutiny over environmental protection procedures for certain large-scale projects ("objects of national importance and having a strategic value", as defined below). The law applied to court procedures based on the following acts:

   (i) Strategic Environmental Assessment (SEA) - Article 88, paragraphs 4 and 5 of the EPA;
   (ii) EIA screening decisions - Article 93, paragraph 10 and 11 of the EPA;
   (iii) Decision to grant or refuse development - Article 99, paragraphs 7 and 8 of the EPA;
   (iv) Assessment under Article 6, paragraph 3 of the Habitats Directive – Article 31, paragraphs 19 and 20 of the Biodiversity Act.

4. The amendments set out the following restrictions for projects that are classified as "objects of national importance" and have strategic value:

   - decisions of the court of first instance are final (i.e. there is no possibility of appeal); and
   - any court procedure shall be terminated within six months from submission of the appeal.

5. The law entered into legal force in September 2017.

6. **Objects of national importance and strategic value**

7. The Amendment to the EPA of 2017 applies to objects that are both of national importance and have strategic value.

7. Objects of national importance are determined by a resolution of the Council of Ministers. The list of the objects of national importance as of the date of this Communication is provided in Annex No.8. There are no legal criteria on how a project is categorised as an "object of national importance". Under Bulgarian law, citizens and organisation cannot challenge such resolutions of the Council of Ministers before court.

8. **The Amendment to the EPA of 2017 provides a definition for “project of strategic value”**. Projects of strategic value are included in the Energy Strategy of the Republic of Bulgaria until 2020 for Reliable, Efficient and Cleaner Energy or in the Integrated Transport Strategy for the Period up to 2030.3 The Integrated Transport Strategy for the Period up to 2030 contains a list of 70 projects for highway, city, water and other type of transport.4 The Energy Strategy of the Republic of Bulgaria until 2020 for Reliable, Efficient and Cleaner Energy does not contain a list of projects, nor a specific criteria, which makes it questionable how specific energy project will be categorised as a project of strategic value.5

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3 Item 76 of the Supplementary Provisions of the EPA.
9. Many projects that are “objects of national importance” and “projects of strategic value” (i.e. listed both in the Resolution of the Council of Ministers and in the Energy Strategy) are infrastructure projects listed in Article 6, paragraph 1 (a) of the Aarhus Convention, such as thermal power stations and other combustion installations with a heat input of 50 megawatts.

Reasons provided for adoption of the Law

10. The key argument behind the Amendment to the EPA of 2017 is to shorten the time for execution of objects of national importance and to avoid lengthy judicial procedures. The official reasoning of the law does not address whether the law impacts the right of access to justice on environmental cases. It only states that the right to public participation will not be breached. This is only logical, as the cassation review of first instance court decision does not aim to ensure public participation, but to ensure that administrative acts comply with the law.

Flaws in the legislative process

11. No impact assessment and assessment for compatibility of the draft law with constitutional rights and environmental rights was provided.

12. The law was processed very quickly. The whole process from public announcement to adoption by the Parliament at second reading took 16 days.

- On 11 July 2017, the draft law was submitted to the National Parliament and announced to the public for the first time.
- On 19 July 2017, the draft law was adopted at first reading in plenary.
- Until 24 July 2017, members of the public were allowed to submit positions.
- On 27 July 2017, the draft law was adopted at second reading in plenary.
- On 7 August 2017, the President imposed a veto on the draft law.
- On 14 September 2017, the draft law was presented to the plenary session following the President’s veto.
- On 14 September 2017, the law was adopted with qualified majority and the President’s veto was overturned. No amendments to the draft law were made following the veto.

2. Amendment to the APC of 2018: High fees for cassation appeal and for EIA cases

13. In July 2018, the Bulgarian Parliament adopted an amendment to the Administrative Procedure Code (APC) that provided for multiple changes to the administrative process in Bulgaria. The law provided for a significant increase of the flat fees for cassation appeal payable by ENGOs and introduced proportional fees for cassation appeal in EIA cases.

14. On 7 August 2018, the President of Bulgaria vetoed the Amendment of the APC and specifically the increase of the flat cassation fees and the proportional fees arguing that they violate the rule of law, the Bulgarian Constitution, the Aarhus Convention, the Charter of Fundamental Rights of the European Union and the International Covenant on Civil and Political Rights.

15. The text returned to Parliament in September 2018. On 11 September 2018, the veto of the Amendment to the APC of 2018 was discussed in the Committee of Legal Affairs. Without any further deliberation on the veto and any amendments to the text of the law, the MPs of the ruling coalition submitted the law to plenary session.

16. On 13 September 2018, the MPs of the ruling coalition overturned the veto.

17. The law will enter into legal effect on 1 January 2019.

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7 According to the Bulgarian Constitution, the President may return a law voted by the Parliament for further deliberation (the right to veto). The veto of the President may be overturned if it is adopted with a qualified majority of the Members of the Parliament.
Flat court fees

18. Currently, the fees for appeal of all administrative acts on first and second court instance are determined by an act of the Council of Ministers. These fees apply to court challenges of all administrative acts except for those for which specific fee applies (e.g. proportional fees), as follows:

<table>
<thead>
<tr>
<th>Appellant</th>
<th>Fee for first-instance court (BGN / EUR)</th>
<th>Fee for cassation court (BGN / EUR)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Citizens and NGOs</td>
<td>10 / 5.11</td>
<td>5 / 2.55</td>
</tr>
<tr>
<td>Legal entities except from NGOs and sole proprietors</td>
<td>50 / 25.54</td>
<td>25 / 12.77</td>
</tr>
</tbody>
</table>

19. According to the Amendment to the APC of 2018, as of 1 January 2019, the flat fees for cassation appeal of all cases will increase as follows (Article 227a(1) of the APC as amended):

<table>
<thead>
<tr>
<th>Appellant</th>
<th>Fee for cassation court (BGN / EUR)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Citizens, sole proprietors, state and municipal authorities, and other entities performing public function and organizations, providing community services</td>
<td>70 / 35.75</td>
</tr>
<tr>
<td>NGOs and companies</td>
<td>370 / 188.98</td>
</tr>
</tbody>
</table>

20. The fees due before first-instance courts remain the same.

21. The Amendment to the APC of 2018 provides for a significant increase in the standard fees for cassation appeal, specifically an increase of 1300% for individual citizens and of 7300% for NGOs. It also provides that court fees shall be imposed on state and municipal authorities (which has not been the case until now).

22. The amendment thereby provides for a new differentiation between the groups of appellants. So far, the principle was that citizens and NGO-s are subject to lower fees, whereas entities engaged in commercial deeds are subject to higher fees – now NGOs are grouped together with companies in the higher fee category (BGN 370). The amendment is therefore discriminatory to NGOs. NGOs, being non-for-profit entities, are obliged to pay fees more than five times higher than budget entities and commercial entities (like sole proprietors and organizations providing community services).

23. The new fees also abandon the principle that cassation appeal fees are half of the first-instance court fees, which was presumably based on the fact that the cassation court is usually less involved in the case. The law amending the APC is based on a different principle: It aims to limit the cassation appeals by imposing higher fees.

Proportional fees

24. For appeals concerning decisions to refuse/grant development consent for a project subject to EIA (referred to below as “EIA decision”), the amendment does not provide for the flat fees discussed in the preceding paragraphs but instead for proportional fees. In these cases, the court fee for cassation appeal shall be 0.8 percent of the value of the claim, but no more than BGN 1,700 (EUR 868.96). For court cases with value of the claim above BGN 10,000,000 leva (EUR 5,111,539.09), the fee is BGN 4,500 (EUR 2,300.19).

25. In the initial version of the draft law, published on the website of the National Parliament on 1 June 2017 (“the APC Proposal”), a large group of cases was subject to proportional fees: EIA

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* Tariff No 1 on the State Fees Collected by the Courts, the Prosecutor’s Office, the Investigation Services and the Ministry of Justice, adopted by the Council of Ministers

* This and all following cost indications in Euro are based on the conversion rate at of 24 September 2018.
cases, tax disputes, public procurement and competition disputes, appeals against concessions. In the version of the law adopted by the National Parliament, ("the Final Version of the APC") only tax cases and EIA cases are subject to court fees that are proportional to the so-called "material interest" of the claim.

26. The law is unclear as to how the fee for EIA cases will be calculated. The APC Proposal specified that the fee shall be calculated as a percentage of the value of the investment proposal. However, the final version of the APC removed the initial explanation on what basis the fee shall be calculated. Instead, the calculation of fees is now regulated as follows:

"The state fee in the cassation proceedings for appeals against decisions to grant or refuse development shall be determined by the Administrative Procedure Code based on an identifiable value of the claim" (emphasis added).

27. The law does not provide a definition of "identifiable value of the claim". Investment proposals do not contain an estimate of the value of the proposal, as the aim of the documentation provided in the EIA procedure is to assess the environmental impact. Quite possibly, this was the reason why the reading of this provision has evolved as described above.

3. Amendment to the APC of 2018: One instance court review for appeals against refusals to provide access to environmental information

28. The Amendment of the APC of 2018 limited the court review of refusals for access to public information and environmental information to one instance only.

29. The mentioned amendment was made to the Law on Access to Public Information. Under Bulgarian law, the refusals to provide access to environmental information are appealed under the procedure set out in the Law on Access to Public Information as well. Thus, the restricted court review applies to refusals to provide environmental information respectively. Under the new law, appeals against refusal to access to public and environmental information shall be heard by the administrative court at the permanent address of the appellant and the decision of this court is final (may not be subjected to cassation appeal). The case will be decided by one-judge panel.

30. The APC Proposal did not include this amendment and, accordingly, it was not put to public discussion with the rest of the texts of the law.

4. Derogatory public statements of high officials with regards to ENGO-s and insinuation of ENGOs being engaged in illegal activities

31. During the discussions on the Amendments to the APC of 2018 (points 2 and 3 above), high officials repeatedly made negative public statements about ENGO-s and insinuated that ENGOs are engaged in illegal activities:

a. In the discussions in the Commission of Legal Affairs at the National Parliament, Professor Ivan Todoroff, one of the authors of the amendments, stated his opinion that 90% of the EIA appeals are blackmail to the business.

b. This accusation was repeated by Danail Kirilov, MP from the ruling coalition. In the discussion in plenary meeting, he stated that ENGOs practice "procedural blackmail" that

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10 The Proposal stated: "The state fee for cassation appeal of the decision to grant or refuse development shall be determined under the Administrative Procedure Code on the basis of the value of the investment proposal or the value of the expansion and amendment of the investment proposal for which EIA is required.", Please refer to Annex No. 4

11 Art. 99, para. 12, of the EPA

12 Articles 26 and 27 of the EPA:
Article 26. (1) Environmental information shall be provided in accordance with the procedure laid down in Chapter Three "Procedure for granting access to public information" in the Law on Access to Public Information.

Article 27. Refusals to provide information necessary for the members of public to prepare for their protection in any of the proceedings provided for in this Act or in another law, shall be appealed in accordance with the procedure provided for in Chapter IV, Section IV of the Law on Access to Public Information.
stops large infrastructure projects by simply submitting an appeal and paying a small court fee.

c. On the discussion in the plenary of the National Parliament, Hristian Mitev, MP from the United Patriots, also a party to the ruling coalition, implied that ENGOs are engaged with illegal deeds by naming them “green octopus” (allegory for mafia) that receive “quite enough overseas funding” and they may pay fees way higher than EUR 2,250.13

32. Further examples of such derogatory statements of MPs targeting NGOs are provided in Annex No. 7.

5. Court practice denying legal standing to citizens and ENGOs to challenge Air Quality Plans (AQP s)

33. On November 1, 2017, the Supreme Administrative Court of Bulgaria (SAC) ruled that residents of Sofia and non-governmental organizations have no legal standing to appeal the Air Quality Plan of Sofia for the period 2015-2020, as the latter is an internal administrative act (Annex No.9).14

34. Under the current legislation, the air quantity plan is the legal instrument to ensure that ambient air pollution levels are brought in line with the statutory limit values.15 According to the Clean Ambient Air Act, the AQP s for the respective municipality shall be drafted by the mayor and adopted by the Municipal Council.

35. Official statistics place Bulgaria at the top of Europe's regions with most polluted air.16 Excessive levels of particulate matter (PM) is a historical problem in Bulgaria and it is the only remaining EU Member State where levels of sulphur dioxide, a highly toxic gas originating from combustion in industrial plants, have still exceeded legal limits in 2016 in the town of Galabovo.17 Scientific sources are convinced that exposure to excessive air pollution results in serious impact on health and may lead to asthma, lung, respiratory and cardiovascular diseases and causes premature death.18 The European Environment Agency estimates that in 2014 alone more than 13,500 premature deaths in Bulgaria were linked to exposure to air pollution.19

36. Excessive air pollution in Bulgaria has been the subject of considerable public attention in recent years. It received official legal sanction by the ruling of the Court of Justice of the EU (CJEU) of 5 April 2017, which found Bulgaria guilty of systematically and continuously exceeding the limit values for PM10 in the territory of the whole country.

V. Provisions of the Convention alleged to be in non-compliance

37. Articles 3 (1), Article 3 (8), Article 8 and Article 9 (1), (2), (3), (4) and (5) of the Convention are alleged to have not been complied with for the following reasons:

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13 Selected citations from the discussions in the Committee of Legal Affairs at the National Parliament and the plenary sessions are provided in Annex No. 7 to this Communication.
14 Ruling No 13138 of 01.11.2017 on administrative case No. 12064/2017, SAC. Under Bulgarian law, internal administrative acts are generally excepted from administrative review, unless they affect the rights, freedoms or legitimate interests of citizens or legal entities. In this case, the court has held that AQP s simply obligate municipal authorities to take certain measures and do not affect the rights and legitimate interests of citizens.
17 http://eea.government.bg/bg/dokladi/threemonth/threemonth.02_2017/air/onsn_anm.2_17.pdf
18 World Health Organization "Ambient air pollution: A global assessment of exposure and burden of disease (2016)" p.39 at 40;
1. The Amendments to the EPA of 2017

38. The Amendment to the EPA of 2017 was adopted in violation of Article 8 of the Aarhus Convention.

39. The limitation of court review over EIA appeals against objects of national importance and having strategic value fails to comply with Article 9 (2), (3) and (4) of the Aarhus Convention.

2. Amendments to the APC of 2018: High fees for cassation appeal for ENGOs and for EIA cases

40. The increase of flat fees for cassation appeal for NGOs fails to comply with Article 9 (4) of the Aarhus Convention and particularly with the requirements to provide fair and not prohibitively expensive proceedings.

41. Subjecting EIA appeals to fees that are percentage of the value of the claim, up to BGN 4,500 (approximately EUR 2,250) fails to comply with Articles 3 (1) and 9 (4) of the Aarhus Convention and particularly with the requirements to provide a fair and transparent framework and fair and not prohibitively expensive proceedings.

3. Amendment to the APC of 2018: One instance court review for appeals against refusals to provide access to environmental information

42. The Amendment to the APC of 2018 was adopted in violation of Article 8 of the Aarhus Convention.

43. Limiting the court review of appeals for access to environmental information to one court instance only fails to comply with Article 9 (1) of the Aarhus Convention.

4. Derogatory public statements of high officials with regards to ENGO-s and insinuation of ENGO-s being engaged in illegal activities

44. The derogatory public statements of high officials with regards to ENGO-s made during the course of the legislative process for adoption of the Amendments to the APC of the 2018 fail to comply with Article 3 (8) of the Aarhus convention. Particularly the obligation to ensure that persons exercising their rights in conformity with the provisions of this Convention shall not be penalized and harassed in any way for their involvement.

5. Court practice denying legal standing to citizens and ENGOs to challenge AQPs

45. Court practice denying legal standing to citizens and ENGOs to challenge AQPs fails to comply with Articles 9 (3) and 9 (4) of the Aarhus Convention.

VI. Nature of alleged non-compliance

1. Amendments to the EPA of 2017

Adoption of the 2017 EPA amendment (Article 8 of the Convention)

46. The Amendment to the EPA of 2017 was adopted in violation of Article 8 of the Convention.

47. The EPA is a generally applicable legally binding normative instruments and the 2017 amendment to the EPA is therefore to be considered of equal nature. The amendment therefore falls under the scope of Article 8 of the Convention.

48. Firstly, Article 8 requires that Parties shall “strive to promote effective public participation at an appropriate stage, and while options are still open, during the preparation” of a given act. Contrary to this requirement, the draft amendment was made available to the public at the same time as it was submitted to the National Parliament (i.e. on 11 July 2017). Before the public participation phase for the public had ended (24 July 2017), the Parliament had therefore already adopted the law on first reading (on 19 July 2017). The Convention envisages participation in the preparation of an act. While this will usually be during the preparation of a draft prepared by a Ministry, in the present case the draft was submitted to Parliament by a group of Members of Parliament. The draft was not subject to participation before submission to Parliament, which contradicts the requirement that all legislative
proposals shall be subjected to public discussion. While it may have been theoretically possible to compensate for this absence of participation by ensuring that the Parliament instead take account of the public participation, this was in practice not ensured either (see para. 51 below). Under these circumstances it cannot be said that any effort was made to provide for participation at an “appropriate stage” and while options were still open.

49. Secondly, Article 8(a) requires that time-frames sufficient for effective participation should be fixed. Contrary to this requirement, the public was only given 9 working days to familiarize themselves with the draft and formulate and submit their comments on the extensive changes proposed by the amendment, having been given no time to consult the draft prior to the start of the participation phase. Moreover, the participation phase (11 – 24 July) lay in the summer holiday season (the entire period fell within the 2017 summer school holidays). As the Committee held in its findings on communication ACCC/C/2013/88 (Kazakhstan), when the period to get acquainted with the documentation “partially or fully overlaps with the days of major religious festivals, national days or, to a certain extent, the main summer or winter holidays, the actual time frames envisaged for the public to prepare to participate are automatically shortened.” This statement applies with arguably even greater force where the period both to get acquainted and to comment falls in its entirety in the summer holiday period.

50. Thirdly, the draft law was uploaded on the website of the National Assembly on 11 July 2017 but it was not announced to the public in any other way. If a draft law is prepared by the responsible Ministry, it will be published for participation on a specially designated participation website (strategy.bg) but this is not the case if an amendment is proposed by a group of Members of Parliament. Accordingly, to become aware of a proposed amendment, members of the public must constantly track the National Parliament website searching for amendments where a possibility to participate may exist. This contravenes the requirement of Article 8 that Parties shall “strive to promote effective public participation”.

51. Fourthly, Article 8 states that “the result of the public participation shall be taken into account as far as possible.” Contrary to this requirement, the public participation phase was organized in a way that made it impossible to take the results of the participation into account. As already mentioned, the law was adopted on first reading before the deadline for submission of comments from the public (on 19 July 2017). The law was then adopted on a second reading three days following the deadline for submission of comments from the public (on 27 July 2017). This timeline shows that any positions of the public were not taken into account in the decision-making process. This is also supported by the fact that the minutes from the meetings of the Committee of Legal Affairs of the Parliament do not note consideration of any positions of the public.

52. Finally, the Committee has previously recommended “that that the final version of a normative instrument be in practice accompanied by an explanation of the public participation process and how the results of the public participation were taken into account.” No such explanation was provided with the final version of the amendment.

53. In the reasoning provided with the (later overturned) veto, the President concurred that the process was flawed: “The Law on amendment and supplement to the Environmental Protection Act was adopted for 16 days as of the legislative initiative of the Members of Parliament, with shortened time for proposals between the two votes, with substantial amendments made after the second ballot. Such deviations from the normal course of the legislative process should not

20 The Law on the Normative Acts requires public consultations to be carried out in the course of drafting a normative act (e.g. law).

Article 26 (1) The drafting of a normative act shall be carried out in compliance with the principles of necessity, justifiability, predictability, openness, coherence, subsidiarity, proportionality and stability.

(2) Public consultations with citizens and legal entities shall take place in the process of drafting a normative act.

In the case of the Amendment to EPA of 2017, this requirement was not complied with as public consultation was carried out after the proposal was submitted to the National Parliament and in between the plenary sessions.

21 ECE/MP.PB/C.1/2017/12, para. 105.

22 ACCC/A/2014/1 (Belarus), ECE/MP.PP/C.1/2017/11, para. 53.
be allowed, especially when dealing with legal mechanisms for environmental protection.”

The veto by the President was reasoned with arguments for violation of the constitutional rights under Article 15 and Article 55 of the Bulgarian Constitution and Article 8 of the Aarhus Convention. (Annex No. 3).

54. In light of all the foregoing, the procedure for the adoption of the 2017 EPA amendment violated Article 8 of the Aarhus Convention.

Content of the EPA amendment: Decisions of the court of first instance are final (Article 9(2), (3) and (4) of the Convention)

55. As discussed in paragraphs 3-8 above, the amendment applies to permitting decisions (including EIA and decisions under the Habitats Directive) for projects and decisions on plans and programmes (including SEA) for certain “objects of national importance and having strategic value”.

For the purpose of this communication, it is sufficient to state that these court proceedings will therefore fall mostly under Article 9(2) of the Convention while others are covered by Article 9(3) of the Convention. Both Article 9(2) and (3) of the Convention require access to review procedures and Article 9(4) of the Convention requires that either procedure provide for “adequate and effective remedies” and be fair and equitable.

56. The Bulgarian administrative court system is based on the principle of two-instance court proceedings. The first instance court reviews the validity of an administrative act and its compliance with the law. The cassation court ensures that the decision of the first-instance court complies with the law and is also responsible for unification of the court practice.

57. As a result of the amendment, EIA appeals against large projects, which by definition may have substantial environmental consequences, will be subjected to less stringent scrutiny. One-instance court review may not guarantee that the administrative acts adopted in the course of the environmental protection procedures impacted by the, are issued in compliance with the law. The amendment therefore prevents the overarching goal of providing access to justice under both Article 9(2) and (3), namely to “contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being” (Article 1 of the Convention). Moreover, the amendment thereby seriously inhibits the provision of adequate and effective remedies as required by Article 9(4).

58. Furthermore, court scrutiny is significantly reduced. The Committee has already recognized in its findings on communication ACCC/C/2008/33 that the Convention requires an adequate standard of review. While these findings concerned the level of scrutiny applied by the judge, the same applies in the present situation where a given case is only presented to one instance of review.

59. In addition, the amendment significantly increases the powers of the Government to decide whether certain projects will be subjected to a procedure of weakened control for enforcement of the environmental standards by the court and the public. The amendment thereby permits the Government to exclude certain decisions falling under Article 9(2) or acts falling under Article 9(3) from full compliance with the requirements of the Convention.

60. The impact of the Amendment of the EPA of 2017 in view of the Bulgarian administrative court system is very well articulated in the reasoning behind the President’s veto: “I do not share the approach taken by the legislator to speeding up the EIA procedure at the expense of reducing judicial scrutiny, because the good affected by this amendment is the environment. (...) Cassation court proceedings are an effective barrier against void, inadmissible or inappropriate first instance decisions. The abolition of cassation court review in the Environmental Protection Act and in the Biodiversity Act reduces the intensity of protection required to ensure the environment as a constitutionally established value. It is also difficult to fulfill the function of the Supreme Administrative Court under Article 125, para. 1 of the Constitution "to exercise supreme judicial supervision for the correct and uniform application...
of the laws in the administrative jurisdiction". This function protects both the rights and legitimate interests of the persons concerned as well as the public interest.”

61. In the meantime the amendment is already applied in practice, for instance in the Kresna Gorge case, an appeal against the decision of the Minister of Environment and Waters to grant approval to the investment proposal for Lot 3.2 of the Struma Motorway, was reviewed by one court instance only.26

62. Based on the above, the Amendment of the EPA of 2017 violates Article 9, paragraphs 2, 3 and 4 of the Aarhus Convention.

Six-month time limit for the court proceedings (Arts. 9(2), (3) and (4) of the Convention)

63. The amendment to the EPA of 2017 envisages the court proceedings for objects of national importance to terminate within a six-month period.

64. While Article 9(4) of the Convention states that review procedures shall be “timely” this requirement is qualified by the fact that the procedure must also provide “adequate and effective remedies”. This is not ensured by this amendment.

65. In Bulgaria, EIA cases usually take a year and a half to two years before the court of first instance. Considering the case load of the courts and the complexity of EIA cases, this time is necessary for the court to reach a reasoned decision. While it may in theory be possible to achieve processing times at the Court of First Instance of six months, this would have required that the capacity of the courts is simultaneously increased in order to permit them to deal with cases in a more expedient manner. This could have been done by allocating greater funds to employ further judges and clerks, providing for quicker and easier access to expert testimony, etc. However, no such changes have been introduced. In the absence of any such investments, the principles of lawfulness and truthfulness in administrative court proceedings is under serious risk to be undermined.

66. Another factor to consider in this context is that in EIA litigation, if the court decides to check the findings of the EIA or reports under Article 6 of Habitats Directive, necessary data collection often can only be collected at certain times of the year. For example, migration of birds can only be observed and studied in spring and in late summer; research of whether plant species are available at a site can only be done in the vegetation period of the species in question (spring and early summer); air pollution in winter (especially in places where temperature inversions are observed) can only be established in the cold months of the year. In many instances, the requirement to terminate the procedure within six months from submission of the appeal will have the consequence that authorities and courts cannot base their decisions on the appropriate information and will therefore not be able to provide adequate and effective remedies as required by Article 9(4) of the Convention.

67. Due to the fact that the changes are only applied to challenges of certain projects (i.e. objects of national importance), the amendment also violates the requirement in Article 9(4) that procedures shall be “fair”. Firstly, in order for review procedures to be “fair”, they must be applied without discrimination between different groups of applicants.27 Contrary to this requirement, while challenges by other actors will continue to be allocated sufficient time, citizens and NGOs seeking to challenge specific development consents are effectively discriminated against as they are provided with a less effective procedure to obtain remedies. Secondly, in its findings on communication ACCC/C/2004/06 (Kazakhstan), the Committee has emphasized that for procedure to be “fair”, the review body must address all relevant claims raised by the applicant.28 By limiting the time for the judge to consider relevant claims, there is a real and serious risk that not all claims by the applicant will be given due consideration.

68. Failure to comply with the obligation to close the proceedings within six months may pose a risk of sanction for the judge. Thus, judges will have to choose between the risk of disciplinary sanction and the adhering to the principles of lawfulness and truthfulness in deciding the case.

26 Kresna Gorge is an area of outstanding importance to European wildlife and ecology – Bulgaria’s single richest biodiversity site.


69. The limitation of the court instances and the deadline for closure of proceedings will significantly diminish the court scrutiny over environmental procedures for large objects of national importance and will create exception for such projects only. This will significantly limit the possibilities for enforcement of environmental rights and based on the same logic as in paragraph 65 above, it also contradicts Article 9(2) and (3) of the Convention.

70. In light of all the foregoing, this amendment will violate Article 9(2), (3) and (4) of the Aarhus Convention.

2. Amendments to the APC of 2018: High fees for cassation appeal for ENGOs and for EIA cases

Conclusions applicable to both flat and proportional fees (Article 9(4) of the Convention)

71. Following the Amendment of the APC in 2018, increased flat fees (see para. 19 above) apply to all appeals of administrative to which no specific regulation (lex specialis) applies. This includes appeals against court of first instance judgements concerning EIA screening decisions (which fall under Article 9(2) of the Convention) or concerning challenges of administrative acts contravening Bulgarian law related to the environment (which fall under Article 9(3) of the Convention). The new system of proportional fees applies in appeals against court of first instance judgements concerning EIA decisions (which fall under Article 9(2) of the Convention). Article 9(4) of the Convention is accordingly applicable to a range of cases covered by the flat fee system and to all cases covered by the new proportional fee system.

72. However, both the new flat and the proportional fees for cassation appeal in EIA cases fail to fulfil the requirement that procedures are “fair” and “not prohibitively expensive” according to Article 9(4) of the Aarhus Convention.

73. While the increased fees for cassation appeals apply only to appeal proceedings, they nonetheless constitute a substantial barrier to appeal administrative acts, which inhibits access to justice. Although the fees for first instance court appeal remain low, citizens and organisations will be prevented from challenging acts at the very beginning because of the risk of being awarded high cassation fees as adverse costs.

74. In Bulgarian administrative process, the losing party bears the adverse costs, including court fees, attorney’s remuneration and other court-related expenses incurred throughout the proceedings.29 Whether the case would go to cassation appeal is not at the discretion of the appellant. The first instance court decision may be appealed by any of the parties to the case, for whom the decision is unfavourable. This cannot be predicted at the submission of appeal before the court of first instance. This would naturally deter citizens and organisations from challenging administrative acts at the first instance.

75. When assessing whether a fee regime is “prohibitively expensive”, the Aarhus Convention Compliance Committee (in its findings in ACCC/C/2011/57 (Denmark)) held that: “the following aspects of the system as a whole to be particularly relevant: a) the contribution made by appeals by NGOs to improving environmental protection and the effective implementation of the Danish Livestock Act; b) the expected result of the introduction of the new fee on the number of appeals by NGOs to the NEAB; and c) the fees for access to justice in environmental matters as compared with fees for access to justice in other matters in Denmark.” (Para.48)

76. None of the legislative proposals were preceded by an assessment as to whether the new fees regime would be “prohibitively expensive” in light of the criteria formulated by the Aarhus Convention Compliance Committee in ACCC/C/2011/57 (Denmark).

77. In line with the formula outlined above, firstly, Bulgarian environmental NGOs (ENGOs) have contributed to improving environmental protection on countless occasions. Over the past ten years since Bulgaria became member of the EU a number of violations of the environmental acquis communautaire have been brought to the attention of European and international authorities by ENGOs. The successful lawsuit of the European Commission in Case C-141/14

29 Art. 78 of the Civil Procedure Code in conjunction with Art. 144 of the Administrative Procedure Code
of the CJEU was triggered by a complaint of the Bulgarian Society for the Protection of Birds. Similarly Bulgarian ENGOs succeeded to prove that Bulgarian authorities failed to comply with a number of provisions of the Aarhus Convention.\(^{30}\) In 2018, the Supreme Administrative Court repealed the new plan for management of Pirin Mountain that was appealed by WWF-Bulgaria and the Association of the Parks in Bulgaria with argument the plan was not subject to SEA.

78. Secondly, authors of the APC Proposal have declared, in their justification to the legislative proposal, that the aim for increasing court fees is to reduce the number of cases brought before the Supreme Administrative Court by ENGOs. One of the main arguments for increasing the value of cassation court fees is stated to be that:

"Introduction of higher court fees will prevent [claimants] from misusing their right to appeal and from asking the cassation court many times to deal with the same subject and in contradiction to the res judicata principle."

"Considering the risk of bearing court expenses proportional to the rejected part of the appeal, the parties will refrain from submitting appeals in the cases, where they clearly understand that they do not have valid arguments. This would result in decrease of the redundant cassation appeals before the Supreme Administrative Court, which is one extremely overloaded court at the moment. This would allow cases to be scheduled in shorter time-frames."\(^{31}\)

79. No evidence has been provided that any EIA cassation court appeal has misused the right to appeal, nor is there any evidence of a situation where the cassation court has dealt with the same subject in violation of the res judicata principle. The idea that a correct implementation of the principle of res judicata can be achieved via introduction of prohibitively high court fees is objectionable. The outspoken reasoning of these fees is to restrict EIA appeals and to speed up projects. This is clearly contrary to the logic of environmental rights.

80. Thirdly, the fees for EIA appeals are much higher than fees payable upon appeal for breach of other rights, including commercial rights.

81. The Amendment to the APC of 2018 increased the fees for cassation appeal of public procurement acts and competition. Still, these fees, though related to commercial rights, are considerably lower than the fees for EIA appeals:

a. Fees for cassation appeals of public procurement acts are up to BGN 2,250 (approximately EUR 1,125).\(^{32}\)
b. Fees for appeals related to competition are up to BGN 2,000 (approximately EUR 1,000).\(^{33}\)

82. Thus, a court fee in cases where only private interests are involved is lower than a court fee in EIA cases where a variety of interests of the public concerned are at stake. Furthermore, only EIA disputes out of all disputes for protection non-pecuniary rights are subjected to proportional fee of up to BGN 4,500. Cassation appeals for consumer rights, personal data and discrimination disputes, patent rights, appeals against acts related to planning, etc. are subject to flat fees (BGN 70 (EUR 35.75) for individuals and public entities and BGN 370 (EUR 188.98) for NGOs and companies. This comparison shows that the Amendment of the APC of 2018 is aimed to limit the access to court particularly for environmental cases.

83. There are three groups of stakeholders in EIA cases: the investor, the public body issuing the EIA resolutions and third parties (individuals, environmental NGOs). Practice shows that only investors will be able to afford court fees at the increased rate. The public bodies responsible for EIA have limited budgets and often face difficulties securing court expenses. The general public and non-for-profit organizations, whose budgets are based on donations and project funds, would struggle to afford the increased fee. It should also be considered that court related

\(^{30}\) See the findings of the Aarhus Convention Compliance Committee in C-58/Bulgaria and in C-76/Bulgaria; the findings in C-58/Bulgaria have been supported by MOP decision V/96.

\(^{31}\) Parts of the official reasoning of the legislative proposal. Selected extracts from the official reasoning behind the Proposal for Amendment of APC are provided in Annex No. 4

\(^{32}\) Art. 2 of the Tariff for the Fees Collected for Proceedings under Chapter Twenty-Seven of the Public Procurement Act before the Commission for the Protection of Competition and the Supreme Administrative Court, provides that fees for cassation appeals shall be half of the fees for appeals before the Commission for Protection of the Competition, the highest of which is BGN 4,500 (approximately EUR 2,250).

\(^{33}\) Tariff for fees collected by the Commission for Protection of Competition under the Law on Protection of Competition
expenses for environmental cases are not limited to court fees only. As the Committee has previously held, "in determining whether the cost of judicial proceedings is prohibitively expensive the costs borne by the party concerned as a whole must be assessed." 34 EIA cases are fact-intensive and usually require court-appointed experts. Under the Bulgarian legal system, the party who requests the appointment of the expert have to deposit their remuneration. The budget for experts for two court instances may vary between EUR 500 to EUR 1,000. Furthermore, the losing party may be awarded the remuneration for legal representation of the other party. Thus, the total risk of adverse costs that the appellant is indeed facing when starting a case is much higher than the court fees.

84. Another indication for the prohibitive nature of the claim is that the minimum monthly wage in Bulgaria is BGN 510 (approximately EUR 255). It is determined by an act of the Council of Ministers. Employees shall not be paid lower than the minimum monthly wage for full time employment. According to the National Statistics Institute, for January 2018, the average monthly wage in the country is BGN 1 075 (approximately EUR 537). 35

85. Compared to these levels of income, the fees of EUR 188.98 and EUR 2,250[and an additional 500-1000 Euro are to be considered prohibitively expensive.

86. In light of all the foregoing, the 2018 APC amendment raising the flat fees and introducing proportional fees for some cases violates the requirement that procedures are "fair" and not "prohibitively expensive" in Article 9(4) of the Convention.

Failure to ensure that procedures are "fair" – discrimination against NGOs

87. As mentioned above (see para. 67 above), in order for review procedures to be "fair", they must be applied without discrimination between different groups of applicants. 36 Contrary to this requirement, the Amendment to the APC of 2018 increases the flat fees to appeal court decision for NGOs 74 times – from BGN 5 to BGN 370. This is discriminatory to NGOs, as only NGOs and companies will be liable for these fees. In comparison, state and municipal authorities, sole proprietors and organisations providing community services (such as water supply, heat supply, power supply companies) will be subject to fees more than five times lower (BGN 70).

88. Moreover, the Amendment to the APC of 2018 provides mechanism for waiver of the fee for cassation appeal only for individuals. This means that environmental NGOs will be fully exposed to the risk of being awarded prohibitively high court expenses. This is contrary to the Aarhus Convention, which provides for facilitated access to justice to environmental NGOs as representatives of public interest on environmental cases.

89. NGOs fund their activities through membership fees, donations and project funding. There is no sound argument why they should be subjected to court fees more than five times higher than state and municipal organisation, which are funded through the state and municipal budget, and organisations engaged in commercial deeds such as organisations rendering community services.

90. Imposing flat fees that are more than 7 times higher for NGOs and percentage fees in amount that can be reasonably borne by business only, will result in unequal footing of the parties before the court. Private individuals and ENGOs who rely on donations and project funding will be at disadvantage to pay fees in such an amount compared to commercial organisation. This is violation of the principle of equality of the parties in the process and violates Article 9 (4) of the Aarhus convention and in particular the rule the procedures shall be “fair”.

34 ACC/C/2012/77 (UK), ECE/MP.PP/C.1/2015/3, para. 72.
35 The National Statistics Institute: http://www.nsi.bg/bg/content/3928/%D0%BD%D0%B0%D1%86%D0%B8%D0%BE%D0%BD%D0%B0%D0%BD%D0%B8%D0%B4%ED%D0%B4%D0%BE-%D0%BD%D0%B8%D0%BE%D0%B2%D0%BE
36 See in this regard Aarhus Convention Implementation Guide, p. 201.
Uncertainty in application of the proportional fee requirement (Article 3(1) and 9(4) AC)

91. The proportional fee system will also lead to considerable uncertainty and may lead to costly satellite proceedings. The increased fee for cassation appeal of certain acts of the administration will be calculated on the so-called value of the claim (in Bulgarian: материален интерес).

92. The Amendments of the APC of 2018 provides no indication how the value of the claim in EIA appeals will be determined. With the removal of the clarification that the fee shall be calculated based on the value of the investment, this question is left entirely to the discretion of the court. While the principle to take a percentage of the value claimed is well-established in civil proceedings and for instance in tax case (where tax liability determined with the tax audit act), it is unclear how the judge is to determine the value of the claim.

93. The question how the fee for EIA appeals will be calculated was repeatedly posed in the course of the legislative process, but the supporters of the law did not provide a sufficient answer (Please refer to Annex No. 7). In practice, it will be at the discretion of the court.

94. The amendment may lead to both arbitrary decisions and uncertainty for the claimant on the amount of the fee and therefore fails to establish a “clear, transparent and consistent framework to implement the provisions of the Convention” as required by Art 3(1) of the Convention.

95. In light of the foregoing, the Amendment to the APC of 2018 as regards proportional fees also fails to meet the standards of Article 3(1) and 9(4) of the Aarhus Convention by failing to provide for certainty of costs to the applicant prior to initiating proceedings.

3. The Amendment to the APC of 2018: One-instance court review for appeals against refusals to provide access to environmental information

Adoption of the Amendment to the APC of 2018 (Article 8 of the Convention)

96. As noted in paragraph 48-49 above, the proposal for this amendment to the Law on Access to Public Information was made between the first and second vote of the APC in plenary. The amendment was therefore not subjected to public participation at all. Technically, this proposal should have been a separate proposal subjected to legislative procedure on its own grounds, as it is not presupposed by any of the Amendments to the APC of 2017. The practice to include a new legislative amendment after closure of the formal public participation and first voting in plenary circumvents and diminishes the stages of the formal legislative process.

97. This complete failure to provide for public participation does not comply with the requirement of Article 8 of the Convention that the Parties “shall strive to promote effective public participation”.

Substance of Amendment to the APC of 2018: Limitation to one-instance review in access to information cases (Article 9(1) and (4) of the Convention)

98. Under the Amendment to the APC of 2018, appeals against refusals to provide access to information will be reviewed by the administrative court at the permanent address of appellant and the decision of this court is final. The case will be heard by one judge only. There are 28 administrative courts in Bulgaria. Abolishing the cassation review that ensures unification of the court practice of the administrative courts would lead to different interpretations and would significantly diminish the role of the court review in such cases. As for the amendment removing the possibility to appeal court decision regarding EIA projects, the amendment thereby seriously inhibits the provision of adequate and effective remedies as required by Article 9(4).

99. The main reasoning provided for the amendment was to reduce the caseload of the Supreme Administrative Court. The supporters of the law claim that such cases have less intensive impact over the rights and freedoms of the citizens and organizations. The amendment is not supported by analysis of the number of access to information appeals submitted to the court nor an expected decrease of cases. In addition, no analysis on the impact of the right to public information and environmental information was conducted.
100. The supporters of the law suggested that the rights of citizens and organisations are not violated, as they may submit another request for information if the authority has initially rejected access (Please refer to statement of Danail Kirilov at the meeting of the Commission of Legal Affairs of 11 September 2018, Annex No. 7). However, this is an inadequate remedy as the authority may refuse access to information again. Article 9(1) of the Convention clearly recognizes that there is a need for an independent and impartial body, which checks compliance with the legal requirements.

The arguments provided by the President with his veto again support this argumentation: “Abolishing the cassation review of judgments related to access to public information diminishes the guarantees of the right to information, which is the basis of all other rights. Apart from constitutional recognition, this right is part of the rights under the Charter of Fundamental Rights of the European Union (Article 11), the Covenant on Civil and Political Rights (Article 10) and the International Covenant on Civil and Political Rights (Article 19). The importance of the right to information, which is part of the communication rights, has also been taken into account by the Constitutional Court. According to Decision No 7 of 1996, this right is at the heart of the democratic process and assists in the control of the activities of the state authorities.”

101. The amendment is therefore in violation of Article 9 (1) and (4) of the Aarhus Convention, as it would substantially weaken the control mechanism over refusals to provide access to environmental information.

4. Derogatory public statements of high officials with regards to ENGO-s and insinuation of ENGO-s being engaged in illegal activities

102. Article 3(9) of the Convention provides that members of the public shall not be penalized, harassed or persecuted for the relying on their rights under the Convention. The provision also clarifies that this shall not “affect the powers of national courts to award reasonable costs in judicial proceedings.”

103. During the adoption of the Amendments to the EPA of 2018, Members of Parliament made derogatory statements against ENGOs, based on false assertions and drew comparisons to organized crime. The Committee held in its findings on communication ACCC/C/2009/36 (Spain), that public officials insulting a member of the public for their concern in harm to the environmental and health amounted to non-compliance of Article 3(8) of the Convention. By openly stating that ENGOs, which are in reality seeking to protect the environment and health of the public, are instead engaging in illegal activities, seeking to disrupt public life and financed by foreign agents, the same considerations apply in the present case.

104. The negative public statements of high officials with regards to ENGO-s that were made in the course of the legislative process for adoption of the Amendments to the APC of the 2018, therefore, fail to comply with Article 3 (8) of the Aarhus Convention and particularly the obligation to ensure that persons exercising their rights in conformity with the provisions of this Convention shall not be harassed in any way for their involvement.

105. In addition, the statements of public officials substantiate that the imposition of excessive costs seek to penalise NGOs relying on their rights under Article 9 of the Convention, which goes beyond the discretion of national courts to impose “reasonable costs”. Members of Parliament made clear that the changes were introduced specifically to penalize NGOs trying to access the courts. The introduction of the new cost rules discussed in section 2 above therefore also constitutes a case of non-compliance with Article 3 (8) of the Convention.

5. Court practice denying legal standing to citizens and ENGOs to challenge AQPs

106. As the ACCC has consistently held, Article 9(3) “is applicable to all acts and omissions by private persons and public authorities contravening national law relating to the environment”.37

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37 ACCC/2005/11 (Belgium), ECE/MP.PP/C.1/2006/4/Add.2, para. 28. See also European Union, ACCC/C/2008/32 (Part II), paras. 98-99 stating that the requirement of Article 9(3) “is to provide a right of challenge where an act or omission - any act or omission whatsoever by a Community institution or body, including any act implementing any policy or any act under any law – contravenes law relating to the environment”
107. Article 13(1) Directive 2008/50/EC of 21 May 2008 on ambient air quality and cleaner air for Europe provides that the Member States must ensure that, throughout their zones and agglomerations, levels of pollutants in ambient air do not exceed maximum concentrations ("limit values"). The deadlines for compliance with limit values have expired since many years. For example, the limit values for particulate matter (PM\textsubscript{10} and sulphur dioxide (SO\textsubscript{2}) are in force since 1 January 2005.\textsuperscript{38}

108. Article 23 of Directive 2008/50/EC imposes a clear obligation on Member States to establish an air quality plan that complies with certain requirements if levels of air pollutants exceed any limit values. In the event of exceedance of limit values for which the attainment deadline has already expired, the air quality plans shall set out appropriate measures, so that the exceedance period can be kept as short as possible.

109. The CJEU has consistently held that the "natural or legal persons directly concerned by the limit values being exceeded [...] must be in a position to require the competent authorities, if necessary by bringing an action before the courts having jurisdiction, to establish an air quality plan."\textsuperscript{39} The CJEU has also clarified that there are limits to the exercise of discretion by Member States as to the content of air quality plans, which may be relied upon before the national courts, relating to the adequacy of the measures which must be included in the plan.\textsuperscript{40}

110. AQPs are the main instrument to ensure compliance with ambient air limit values. AQPs that do not comply with the requirements set out under Directive 2008/50/EC are therefore acts by public authorities "which contravene provisions of its national law relating to the environment" in the sense of Article 9 (3) of the Aarhus Convention and failure to adopt an AQP equally constitutes an omission in the sense of Article 9(3) of the Convention.

111. The Bulgarian Supreme Administrative Court denied the applicant legal standing based on the fact that the AQP was an "internal act" and does not affect the rights and interests of citizens and organisations. Based on this, the Court concluded that the AQP was not an act of a public authority that could be challenged by members of the public. As the Committee has previously held, it does not comply with Article 9(3) of the Convention if "all NGOs acting solely for the purposes of promoting environmental protection are excluded" from obtaining redress,\textsuperscript{41} nor is it permissible to exclude all natural persons from challenging an act/omission.\textsuperscript{42} The Committee has also clarified that while Article 9(3) gives Parties some discretion as to criteria that they may impose, it "does not allow Parties any discretion as to the acts or omissions that may be excluded from implementing laws".\textsuperscript{43} By effectively excluding all members of the public from challenging an AQP or the failure to adopt an AQP, Article 9(3) of the Convention is therefore violated.

112. To explain the legal situation in some more detail, there are no specific provisions that would give an applicant access to the courts to demand the public authorities to draw up an adequate AQP. The Environmental Protection Act gives natural and legal persons the right to challenge specific decisions, such as strategic environmental assessment (SEA) decisions (Article 88(3)) and environmental impact assessment (EIA) decisions (Article 99(6)). However, no similar provision exists to require the creation of AQPs or challenge the legality of adopted AQPs. Similarly, certain sectoral Bulgarian environmental laws provide for specific provisions on legal standing, such as Article 202(1) of the Water Act. However, again no such provision exist in the Clean Air Act for AQPs.

113. Due to the absence of such a specific provision, an applicant seeking to challenge a AQP needs to rely on the general provisions for standing to challenge administrative acts under the Administrative Procedure Code. The Administrative Procedure Code provides for a number of different provisions for standing of individuals and organizations (see specifically Articles 21, 65 and 75 of the Code). However, Article 2(2)(3) of the Administrative Procedure Code

\textsuperscript{38} Directive 2008/50/EC, Annex XI.
\textsuperscript{39} Case C-404/13 ClientEarth, ECLI:EU:C:2014:2382, para. 56; see also Case C-237/07 Janecek, para. 39.
\textsuperscript{40} See Case C-237/07 Janecek, para. 46, and Case C-404/13 ClientEarth, para. 57.
\textsuperscript{41} ACCC/C/2005/11 (Belgium) (ECE/MPP/PC.1/2006/4/Add.2), paras. 35 and 39 and ACCC/C/2008/32 (European Union) (Part II), ECE/MPP/PC.1/2017/7, para. 73.
\textsuperscript{42} ACCC/C/2008/32 (European Union) (Part II), ECE/MPP/PC.1/2017/7, para. 93.
\textsuperscript{43} ACCC/C/2008/32 (European Union), Part II), paras. 52 and 101.
provides that the Code is not applicable to “internal acts” – i.e. acts which create rights or obligations for bodies or organizations subordinate to the body which has issued the act unless they affect the rights, freedoms or legitimate interests of citizens or legal entities. This requirement is reflected not only in Article 2(2)(3) but also in the specific provisions defining both individual and general administrative acts (Articles 21 and 65 of the Administrative Procedure Code).

114. Based on the judgement of the Bulgarian Supreme Administrative Court, AQPs are to be considered as internal acts that create obligations for subordinate bodies only. Under Bulgarian law, AQPs are adopted under Article 21(1)(8) and Article 21(2)(12) of the Law for Local Government and Administration (see above) in conjunction with Article 27(1) of the Clean Air Act (see above). Article 21(1)(8) of the Law for Local Government and Administration is considered as a legal basis for Municipal Council to create obligations on mayors.

115. Moreover, and despite the clear and consistent case law of the CJEU, the Bulgarian Supreme Administrative Court held that AQPs do not affect the rights, freedoms or legitimate interests of citizens or legal entities. Accordingly, AQPs are considered by their very nature to fall outside the application of the Administrative Procedure Code. There is therefore no avenue left open to either natural or legal persons to access Bulgarian courts in order to require the national authorities to establish an AQP or to challenge the legality of an AQP.

116. This issue is also of systemic nature, as the decisions of the Supreme Administrative Court, albeit not binding on other courts, are in practice standard for interpretation of the law and courts aim to streamline their findings with the case-law of the Supreme Administrative Court. Accordingly, the Supreme Administrative Court’s denial of legal standing to citizens and NGOs to challenge AQPs constitutes a violation of Article 9 (3) of the Aarhus Convention.

VII. Use of domestic remedies

117. The allegations (1)-(4) concern amendments introduced by legislative act of Parliament and statements made in this context. Za Zemiata has taken every effort to influence the legislative procedure in the adoption of these acts. However, under the Bulgarian legal system, individuals or NGOs have no legal standing to challenge such an amendment in the courts.

118. The Amendments to the APC of 2018 and particularly the increase of the flat fees for cassation appeal, the proportional fees for EIA appeals and the limitation of appeals against refusals for access to environmental information, have been challenged before the Constitutional Court by the President and a group of MPs.

119. Since members of the public have no standing to initiate such a case, the proceedings before the Constitutional Court may not be considered domestic remedies.

120. It is important to note that a lot more provisions than the ones referred in this Communication are challenged before the Constitutional Court. In view of the volume of the challenged provisions and the importance of the issues of the Bulgarian court system, it may be expected that the decision of the Constitutional Court may be expected after more than a year from the date of this Communication.

121. In the context of allegation (5), the Supreme Administrative Court (as the final appeal instance) has issued a final judgement upholding the interpretation of the law that there is no legal standing for individuals or organizations to challenge an Air Quality Plan. While there is no formal system of precedent under the Bulgarian legal system, other courts will in practice follow the interpretation set out by the Supreme Administrative Court. There is therefore no real possibility at present to obtain a domestic remedy in this context either.

VIII. Use of other international procedures

122. As of the date of this Communication, there is no pending international procedure regarding the failures of Bulgaria to comply with Aarhus Convention.

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44 Case C-404/13 ClientEarth, ECLI:EU:C:2014:2382, para. 56; see also Case C-237/07 Janecek, para. 39.
IX. Confidentiality

123. This communication may be published and made publicly available.

X. Supporting documentation (copies, not originals)

124. The following documents are attached in support of this communication:

Annex No. 1: Selected parts of the Proposal to Amendment of the EPA of 2017 submitted to the National Parliament on 11 July 2017
Annex No. 2: Selected parts of the Environmental Protection Act following the Amendment to the EPA of 2017 (as adopted by the Parliament)
Annex No 3: Arguments of the President veto on the EPA Proposal
Annex No 4: Selected parts of the APC Proposal submitted to the National Parliament on 1 June 2017
Annex No. 5: Selected parts of the Amendments to the Administrative Procedure Code of 2017 adopted by the Parliament
Annex No. 6: Selected parts of the arguments of the President’s veto on the APC Proposal
Annex No 7: Selected parts of the minutes of the discussions in the legislative process for adoption of the Amendments to the APC of 2018
Annex No. 8: List of objects of national importance
Annex No. 9: Ruling No 13138 of 01.11.2017 of the Supreme Administrative Court of Republic of Bulgaria

XI. Signature

I confirm that I am authorised to sign this communication on behalf of ClientEarth.

[Signature]

Genady Kondarev, Member of the Managing Board of Environmental organisation Za Zemiata

Dated: 1 October 2018
XII. Sending the communication

Send the communication by e-mail and by registered post to the following address:

Secretary to the Aarhus Convention Compliance Committee
United Nations Economic Commission for Europe
Environment Division
Palais des Nations
CH-1211 Geneva 10, Switzerland

E-mail: aarhus.compliance@unece.org

Clearly indicate:
“Communication to the Aarhus Convention Compliance Committee”