REPUBLIC OF BULGARIA

Ministry of Environment and Water

5 November 2018

Subject: Statement on preliminary admissibility of PRE/ACCC/C/2018/161

Bulgaria regards Communication PRE/ACCC/C/2018/161 as manifestly unreasonable, which is why we believe that the notification should not be recognized as a preliminary admissible one. This Communication is an abuse of the right to notify the Aarhus Convention Compliance Committee and, furthermore, misleads the Committee regarding the nature of the acts described therein (called restrictions of environmental rights).
We have ascertained a lack of commitment to the provisions of the Aarhus Convention (AC), a lack of evidence, a speculative and one-sided interpretation of the communicant claims concerning the facts quoted in the notification.

In particular, the pleas of inadmissibility of the facts stated are as follows:

1. As regards the amendments to the Environmental Protection Act of 2017:
   - It is incorrectly referred to Art. 8 of the AC (these amendments have been submitted for approval to the National Assembly by a group of its members, whereas AC Art. 8 refers only the participation of the public in preparation of legislative acts with immediate executive regulations by the public authorities);
   - Art. 9, para. 2, 3 and 4 of the AC do not require court procedures to include cassation control at second instance, incl. in case of a judicial appeal of refusal to grant access to public information. The communicant unreasonable and unmotivated considers that the removal of cassation control in court procedures to challenge decisions of competent authorities on environmental impact assessment (EIA)/ environmental assessment (EA) of investment proposals/ plans and programmes, related to objects of national importance, is a restriction of the principles of fairness and equitability of the remedies provided in Art. 9, para. 4;
   - We assert that with the one-instance appeal in the cited cases, citizens and NGOs are not deprived of access to justice, and the communicant has not put forward any arguments in support of the opposite;
   - The communicant presents subjective and hypothetical conclusions creating unproven and speculative statements about the effect on the judicial system and the work of the courts by implementing a 6-month deadline for the completion of the proceedings in court appeals against EIA/EA decisions in the cases described above.
2. As regards the amendments to the Administrative Procedure Code of 2018:
   - The communicant claims without any arguments and evidence that the increased state fees for cassation appeal make court proceedings prohibitively expensive for environmental NGOs, under Art. 9, para. 4 of the AC;
   - Apparently purposefully, the communicant does not account the fact that the amount of state fees for appeal at first instance remains at the same extremely low, even symbolic level as it has been so far;
   - Although the communicant informs about a constitutional case for declaring unconstitutionality of the cited provisions of the Administrative Procedure Code, it seems, quite by accident, he has failed to clarify that if the Constitutional Court of the

Sofia 1000, 22 „Princes Maria-Luisa" Blvd

Tel: +359 2 940 6194, Fax:+359 2 986 25 33

Republic of Bulgaria declares unconstitutionality of these provisions, these will not be applied in judicial field of action (the provision of Art. 22 para. 2 of the Constitutional Court Act states that acts declared unconstitutional do not apply);

- Key note: the above-mentioned constitutional case argues that there are remedies at national level to ensure the rights of the parties concerned, i.e. in practice the communicant misleads the Committee, arguing that all remedies at national level have been exhausted.

3. Disregarding public statements by senior officials regarding environmental NGOs and hints about their involvement in illegal activities:

- There is an absolute inapplicability of Art. 3, para. 8 of the Aarhus Convention – Members of Parliament' statements cannot be regarded as penalizing, persecuting or harassing members of the public who exercise their rights under the AC.

4. Case law rejecting the legal standing of individuals and environmental NGOs to challenge municipal air quality programmes:

- The so-called "case law" quoted by the communicant consists of a single court decision - Ruling No 13138 of 01.11.2017 of the Supreme Administrative Court, and only on the basis of it, we consider it groundless and misleading to draw conclusions for a comprehensive and consistent approach of the Bulgarian courts;
- Moreover, the communicant tendentiously interprets the Court's argument of the Ruling No 13138 - the reasoning of the court concerns not the fact that citizens and NGOs lack legal standing to appeal municipal air quality programmes, but that the programme in question, given its explicit content, is not an administrative act, as it does not represent a unilateral statement of will or an act or omission voiced by an administrative authority that would create rights or obligations or directly affect the rights, freedoms or legitimate interests of individual citizens or organizations (the abovementioned definition does not justify a lack of legal standing or a right of citizens to appeal against an administrative act, since legal standing is an absolute procedural prerequisite for the initiation of administrative judicial proceedings);
- It should be born in mind that the cited "case law" is not a mandatory practice that obliges the courts to resolve similar court cases in the same way – the assessment of whether a municipal air quality programme is subject to a judicial control depends on the specific content of the municipal programme and whether it creates rights and obligations for citizens and organizations;
- Furthermore, it is considered necessary to note that the communicant did not fully analyse the applicable legal framework – the possibilities for appealing acts of the municipal council for approval of air quality programmes under the Local Government and Local Administration Act (Art. 45) are not presented by the communicant and for us it is another serious manipulation tool applied by the communicant in order to motivate the Communication through incomplete and unfounded argumentation.

Concluding, expressing our belief in the Compliance Committee's neutrality and expertise, we expect our opinion to be taken into account when assessing the preliminary admissibility of PRE/ ACCC/C/2018/161.