



99-00-252  
30.09.2020

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

***Ref.: Decision VI/8d of the Meeting of the Parties on compliance by Bulgaria with its obligations under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention)***

***Dear Ms Marshall,***

In accordance with paragraph 9 (a) of Decision VI/8d of the Meeting of the Parties to the Aarhus Convention, I bring to your attention third progress report of Bulgaria on the measures taken, and the results achieved, to implement the recommendations in paragraphs 3 and 8 of the same decision:

1. On paragraph 3 (a) и (b), with regard Communication ACCC/C/2011/58 related to restricted access to review procedures in spatial planning and construction permitting

We pay attention again that taking actions to ensure access of the public to appeal spatial plans and construction/exploitation permits will lead to duplication of review procedures on environmental issues, which have already been the subject of separate independent administrative and judicial procedures for issuing statements/decisions on environmental assessment of plans and programmes – strategic environmental assessment (SEA) and environmental impact assessment of investment proposals (EIA) and will create prerequisites for delay and deterring the investment activities in the country. At the same time, improving investment policy in Bulgaria, through better regulation of the investment process, remains a priority for the government.

We adhere to the view that public interests and relationships should be decisive in the enforcement of the relevant procedural rules in order to bring administrative or judicial proceedings in accordance with article 9, paragraph 2 and 3 of the Convention (in order to provide the members of the public with the opportunity to challenge before a court administrative decision). The main determinant element in this direction should be the type of the contested administrative act and is it with crucial importance in the field of environmental protection. In spatial planning and construction permits proceedings, the acts which are crucial for the environment are the SEA/EIA statements/decisions – subject to judicial review within separate judicial-administrative proceedings as administrative decisions relevant to the environmental issues, with applicability of article 9, paragraph 2 and 3 of the Aarhus Convention, concerning the range of appellants. The access to justice in respect of spatial planning and construction permitting on environmental issues is exercised by challenging the SEA/EIA statement/decision.

**Fiona Marshall**  
**Secretary to the Aarhus Convention**  
**Compliance Committee**  
**United Nations**  
**Economic Commission for Europe**  
**Palais des Nations, Room 429-4**  
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We emphasize once again that the national legislation in the field of environment fully provides the opportunity for the members of the public to appeal before a court SEA/EIA statements/decisions, the existence of which is an absolute prerequisite for the approval of spatial development plans and construction permits which allow the implementation of investment proposals with an impact on the environment. The SEA/EIA statement/decision is subject to appeal under the Administrative Procedure Code (APC), as § 1, item 25 of the Additional Provisions of the Environmental Protection Act defines the interested parties ("the affected public"), who have the right to appeal, which is in accordance with the provisions of Art. 9 (2) and (3) of the Aarhus Convention.

Regarding the essential characteristics of the general spatial development plans (GSDP) as acts for territorial governance, we draw attention that the GSDP protects the interests of society and they guarantee values that are constitutionally protected – protection and reproduction of the environment (Art. 15 of the Constitution), development of the different regions (Art. 20 of the Constitution), the right to a favourable environment (Art. 55 of the Constitution). The legislator has excluded the judicial review with regard to the GSDP precisely in view of the protection of the public interest and the priority protection of the listed constitutional values.

Consultation regimes in the adoption of spatial development plans and issuance of construction/exploitation permits allow a wide range of supervision bodies and competent authorities to carry out administrative control at various stages and provide members of the public, including environmental organizations, the opportunity by submitting objections and alerts the relevant authorities to help prevent omissions and violations within the procedure. The opportunities to participate in the mandatory public consultations of the spatial development plans and the SEA, transparency and public awareness in the course of the SEA procedure, as well as the SEA statement/decision and approved spatial development plans, are prerequisites to prevent omissions and violations of administrative bodies in spatial planning procedures.

2. On paragraph 8, with regard Communication ACCC/C/2012/76 concerning injunctive relief in procedures of reviewing environmental permits

2.1. 8 (a)

In addition to the exposed in the second progress report, we emphasize that in accordance with the principle of separation of powers, regulated in Art. 8 of the Constitution, the principle of independence of the judiciary has been proclaimed as well.

According to Art. 117, para. 2 of the Constitution and on the arguments of Art. 1a, para. 2, Art. 3, 4 and 155 of the Judiciary Act, the judges are independent in issuing their acts, and in their actions and in decreeing their acts, they are based on the law and the evidence gathered in the case, assessed according to their conscience and free internal conviction. This guarantees the possibility for the courts to exercise their powers in the conditions of independence, in order to form their internal conviction freely, with the aim to ensure the disclosure of the objective truth and to guarantee the exercise of the rights of the citizens.

In accordance with the constitutional principles, Chapter Two of the APC proclaims the basic principles of work of administrative bodies and courts, which are analogous – lawfulness, application of the normative act of higher rank, commensurability, truthfulness, equality, ex officio principle, independence and objectivity, promptness and procedural economy.

In view of the above principles, it is clear that the court in challenging SEA/EIA statements/decisions is obliged to assess all the evidence in the case and the arguments of the parties, given the fact that the SEA/EIA procedure is complex, public and involves broad public



participation, and there is no obstacle the court to appoint, on its discretion and internal conviction, an independent expertize through the experts appointed by the court, to clarify the objective truth.

Pursuant to the provisions of Art. 60, para. 1, in connection with Art. 166, para. 2 of the APC, the reasons of the request for suspension of the allowed preliminary enforcement under the law is assessed by the court by comparing a particularly important interest for the complainant, with the interest in whose protection the preliminary enforcement is allowed.

However, it could not be imposed on the court as an obligation (much less by law) to ignore the conclusions of the contested decision or to appoint its own assessment of the risk of environmental damage, as this would mean to be ignored and violated the basic fundamentals of the justice and the functioning of the judiciary in Bulgaria.

### 2.2. 8 (b)

The reasons for the court's judgement are a manifestation of the principle of the internal conviction of the court. They indicate the requests and objections of the parties, the assessment of the evidence, the factual findings and the legal conclusions of the court (Art. 236, para. 2 of the Code of Civil Procedure).

In view of the above, we consider that the Committee's recommendations in paragraph 8 (a) and (b) of Decision VI/8d cannot be implemented by undertaking legislative measures, as such measures would come into contradiction to the principle of the independence of the judiciary, regulated in Art. 117, para. 2 of the Constitution, which ensures the free and independent formation of the internal conviction of the court in revealing the truth in the course of a case.

We also note that in its statement on the Second progress review of the Committee of the implementation of Decision VI/8d, Bulgaria requested the Committee for clarifications on what should be the legislative and/or practical measures that have to be taken by the Party to meet the requirements of paragraphs 8 (a) and (b) of Decision VI/8d. No reply has been received from the Committee so far, but the consultations on these issues at national level continue, covering the judiciary as far as possible, given its independent nature – the Supreme Judicial Council has requested an opinion from the Chair of the Supreme Administrative Court on the Committee's recommendations in paragraph 8 (a) and (b) of Decision VI/8d. The Supreme Administrative Court has not yet presented such.

### 2.3. 8 (c)

Within the obligatory current qualification of the administrative judges, training modules on the topics "Environmental Protection Act" and "Waste Management Act" have been developed and are regularly conducted by the National Institute of Justice (NIJ). The issues related to the assessment of the risk of damage to the environment, the motivation of the court decisions and the balance of interests when considering the complaints by the order of Art. 60, para. 5 of the APC, as a key requirement of the Aarhus Convention, are covered in the practical classes and discussion modules in the trainings.

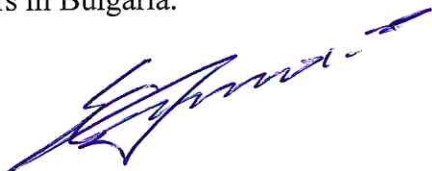
As part of the ongoing training of magistrates, in the period 5-19.11.2019, the NIJ conducted e-distance training on "Challenges of the Aarhus Convention in law enforcement." The need for own assessment of the risk of environmental damage, taking into account the particularly important public interest in the protection of the environment and the corresponding motivation of judicial acts are the main highlights in the curriculum of the training.

In parallel with the trainings, the development of self-training resources - manuals, guidelines, handbooks, easily accessible in electronic and paper format, is a priority that the NIJ successfully imposes in all areas of judicial training. These resources provide conditions for the formation and upgrading of the knowledge and skills of magistrates and judicial officers outside the formal training environment. In 2019, the NIJ developed and published a handbook on "Administrative Courts and EU Law", including a systematic review of the European legal framework – EU acts in the field of environment, the relevant case law of the EU Court of Justice and the Bulgarian courts. The authors of the handbook are leading judicial trainers in the NIJ - judges and experts in EU law. A special section of the handbook includes the Aarhus Convention and practical issues of its application by the administrative courts. The manual is published in electronic format and is available on the NIJ e-learning portal ([www.nij.bg](http://www.nij.bg)). The users of the e-learning portal as of 18.09.2020 are 4130. 500 book editions of the developed resource have been distributed among the judicial authorities in the country. In addition to being a self-learning resource, the handbook is used as a training material in the learning process as part of the ongoing training of administrative court judges.

In view of the constructive dialogue and fruitful cooperation, established between the Government of Bulgaria and the Committee over the years, I would like to express my confidence that the Committee will take into account, along with the progress achieved, the presented in this report facts, conditions and circumstances, which outline the framework at national level (political, institutional and regulatory) for the implementation of the recommendations in paragraphs 3 and 8 of Decision VI/8d, as well as the exposed in the report fundamental principles of the legal order and separation of powers in Bulgaria.

*Yours sincerely,*

*Emil Dimitrov*



*Minister of Environment  
and Water*