

Compliance Committee to the Convention on
Access to Information, Public Participation
in Decision-making and Access to Justice
in Environmental Matters (Aarhus Convention)

**First progress review of the implementation of decision VI/8d
on compliance by Bulgaria with its
obligations under the Convention**

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I. Introduction

1. At its sixth session (Budva, Montenegro, 11-13 September 2017), the Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) adopted decision VI/8d on compliance by Bulgaria with its obligations under the Convention (see ECE/MP.PP/2017/2/Add.1).

II. Summary of follow-up

2. On 21 July 2018, prior to the adoption of decision VI/8d, the communicant of communications ACCC/C/2011/58 and ACCC/C/2012/76 submitted information on proposed legislative amendments. The communicant was informed by the secretariat that this information would be considered in the follow up procedure for the implementation of decision VI/8d.

3. At its sixtieth meeting (Geneva, 12-15 March 2018), the Committee reviewed the implementation of decision VI/8d in open session with the participation by audio conference of representatives of Bulgaria and the communicant of communications ACCC/C/2011/58 and ACCC/C/2012/76. Observer ECO Forum also took part in the open session.

4. On 21 March 2018, the communicant of communications ACCC/C/2011/58 and ACCC/C/2012/76 submitted a written statement (dated 19 March 2018).

5. On 1 October 2018, Bulgaria submitted its first progress report on decision VI/8d on time.

6. On 5 October 2018, the secretariat forwarded the first progress report to the communicant of communications ACCC/C/2011/58 and ACCC/C/2012/76, inviting its comments by 1 November 2018.

7. On 1 November 2018, the communicant of communications ACCC/C/2011/58 and ACCC/C/2012/76 submitted its comments (dated 31 January 2018) on Bulgaria's first progress report.

8. After taking into account the information received from Bulgaria and the communicant, the Committee prepared its first progress review and adopted it through its electronic decision-making procedure on 18 February 2019. The Committee thereafter requested the secretariat to forward the first progress review to Bulgaria and the communicant of communications ACCC/C/2011/58 and ACCC/C/2012/76.

III. Considerations and evaluation by the Committee

9. In order to fulfil the requirements of paragraph 3 of decision VI/8d, Bulgaria would need to take the necessary legislative, regulatory and administrative measures as a matter of urgency to ensure that:

(a) Members of the public, including environmental organizations, have access to justice with respect to General Spatial Plans and Detailed Spatial Plans;

(b) Members of the public concerned, including environmental organizations, have access to review procedures to challenge construction and exploitation permits for the activities listed in annex I to the Convention.

10. In order to fulfil the requirements of paragraph 8 of decision VI/8d, Bulgaria would need to demonstrate that it has reviewed the approach of its courts to appeals under article 60(4) of the Administrative Procedure Code of orders for preliminary enforcement

challenged on the ground of potential environmental damage, and undertaken practical and/or legislative measures to ensure that:

(a) Instead of relying on the conclusions of the contested EIA/SEA decision, the courts in such appeals make their own assessment of the risk of environmental damage in the light of all the facts and arguments significant to the case, taking into account the particularly important public interest in the protection of the environment and the need for precaution with respect to preventing environmental harm;

(b) The courts in their decisions on such appeals set out their reasoning to clearly show how they have balanced the interests, including the assessment they have undertaken of the risk of environmental damage in the light of all the facts and arguments significant to the case, taking into account the particularly important public interest in the protection of the environment and the need for precaution with respect to preventing environmental harm;

(c) Training and guidance are provided for judges and public officials on how to carry out the above-mentioned balancing of interests in environmental cases, including on how to properly reflect that balancing in their reasoning.

General observations

11. Under paragraph 9(a) of decision VI/8d, the Meeting of the Parties has requested Bulgaria to submit to the Committee on 1 October 2018, 1 October 2019 and 1 October 2020, detailed progress reports on the measures taken and the results achieved in the implementation of the recommendations in paragraphs 3 and 8 of that decision.

12. The Committee expresses its serious concern that, despite the Meeting of the Parties' clear request, Bulgaria in its first progress report has entirely failed to report on its implementation of paragraph 3(a) and (b) of decision VI/8d. This failure is all the more grave given that Bulgaria is presently under a caution from the Meeting of the Parties in the light of its position that implementing the equivalent paragraphs of decision V/9d was not required. The Committee considers Bulgaria's failure to report on paragraph 3(a) and (b) in its first progress report while under a caution to be a serious omission. It will thus be particularly important for Bulgaria to provide clear and detailed information in its second progress report on the measures it has by then taken to address both paragraphs 3 and 8 of the decision.

13. In this regard, the Committee reminds Bulgaria that, under paragraph 5(b) of decision VI/8d, the caution issued by the Meeting of the Parties can be lifted on 1 October 2019 if Bulgaria has fully met the requirements in paragraph 3 of the decision and has notified the secretariat of this fact, providing evidence, by the same date. Under paragraph 5(c) of the decision, it is for the Committee to establish whether paragraph 5(b) has been successfully fulfilled.

Paragraph 3(a) of decision VI/8d

14. As noted above, Bulgaria fails in its first progress report to report on its implementation of paragraph 3(a) of decision VI/8d and the Committee has no evidence before it showing that any steps have been taken to address these matters. The Committee thus finds that Bulgaria has not demonstrated any progress in meeting the requirements of paragraph 3(a) of decision VI/8d.

Paragraph 3(b) of decision VI/8d

15. Bulgaria's first progress report likewise fails to report on its implementation of paragraph 3(b) of decision VI/8d. The Committee accordingly finds that Bulgaria has not demonstrated any progress in fulfilling the requirements of paragraph 3(b) of decision VI/8d.

Paragraphs 8(a) and (b) of decision VI/8d

16. In its first progress report, Bulgaria provides no information on having undertaken a review of the approach of its courts to appeals under article 60(4) of the Administrative Procedure Code, as required by paragraph 8 of decision VI/8d.

17. Regarding paragraph 8(a) and (b), Bulgaria states in its first progress report that it has sent the recommendations made by the Committee in its findings on communication

ACCC/C/2012/76 and related documentation and information to the authorities competent for implementation, namely the Supreme Judicial Council (SJC) and the Ministry of Justice, with a request to the SJC for an opinion and suggestions for their implementation.¹ Bulgaria reports that the SJC in turn notified the Commission on Legal Affairs to the National Assembly, the Supreme Administrative Court and the National Institute of Justice (NIJ).² It is not clear from this report whether the SJC has to date provided its opinion or suggestions for implementation. Accordingly, while taking note of the initial steps described above, the Committee considers that Bulgaria has provided no evidence that it has yet taken practical and/or legislative measures to meet the requirements of paragraph 8(a) and (b) of decision VI/8d.

18. Moreover, the Committee takes note of the statement by the communicant of communication ACCC/C/2012/76 that all environmental authorities and most courts are still failing to make their own assessment of the risk of environmental damage in the light of all the facts and arguments significant to the case.³ The communicant submits that this demonstrates that legislative measures are needed to provide clear guidance for authorities and courts to interpret the existing legislation in a way that the protection of the environment is recognized as a particularly important state or public interest.

19. In light of the above, the Committee finds Bulgaria has not yet fulfilled the requirements of paragraph 8(a) and (b) of decision VI/8d.

Paragraph 8(c) of decision VI/8d

20. With regard to paragraph 8(c) of decision VI/8d, in its first progress review Bulgaria claims that it is currently implementing this recommendation.⁴ Specifically, it claims that the NIJ considers the recommendations made by the Committee in its findings on communication ACCC/C/2012/76 to be one of the priority topics on which the NIJ develops training programmes for the judges from the administrative courts, and that the NIJ foresees the development of an “e-learning” on the basics of the Convention, including the recommendations, to be conducted by the end of 2018.⁵ Bulgaria also reports that magistrates have access to the Committee’s recommendations in a virtual “reading room” and that the NIJ is prepared to include training on the Convention in its training activities plan for the next year.⁶

21. While welcoming NIJ’s intention to develop training on the basics of the Convention for administrative judges, the Committee points out that the recommendation in paragraph 8(c) of decision VI/8d specifically requires training and guidance on how to carry out the balancing of interests in environmental cases required by paragraphs 8(a) and (b) of decision VI/8d. The Committee also points out that paragraph 8(c) requires that the training is given to both judges and public officials. Moreover, given that the training will need to train judges and public officials about the practical and/or legislative measures that Bulgaria puts in place to implement paragraphs 8(a) and (b) of the decision, it goes without saying that the training should be organized after the measures to implement paragraph 8(a) and (b) have in fact been taken.

22. Once the measures to implement paragraphs 8(a) and (b) have been taken, the Committee will invite Bulgaria to provide it with detailed information on the training for judges and public officials carried out regarding those measures. Such information should include (a) the specific content of the trainings, including the detailed programme with the titles of the presentations delivered, (b) the organizers of the trainings and the profession and relevant experience of each trainer and speaker, and (c) the number of judges, judicial

¹ Party’s first progress report, 1 October 2018, p. 1.

² Ibid.

³ Comments on the Party’s first progress report by the communicant of communications ACCC/C/2011/58 and ACCC/C/2012/76, 1 November 2018, pp. 1-2.

⁴ Party’s first progress report, 1 October 2018, p. 2.

⁵ Ibid., p. 1.

⁶ Ibid.

candidates and public officials who have attended the trainings and in which court and town or region each judge or public official sits.

23. With respect to Bulgaria's invitation in its first progress report for the Committee to take into account the fact that, according to its Constitution, Bulgaria's judiciary is independent,⁷ the Committee welcomes this constitutional rule. However, it does not absolve Bulgaria from complying with its international obligations.

24. In the light of the above, the Committee does not find that any concrete progress has yet been made in implementing paragraph 8(c) of decision VI/8d either.

IV. Conclusions

25. While thanking Bulgaria for submitting its first progress report on time, the Committee expresses serious concern at the notable failure by Bulgaria to report on paragraphs 3 (a) and (b) of decision VI/8d. This omission is all the more grave given that since the sixth session, Bulgaria has been under a caution from the Meeting of the Parties with respect to the content of the recommendations in paragraphs 3 (a) and (b) of the decision. The Committee accordingly stresses to Bulgaria the importance of including in its second progress report, due on 1 October 2019, detailed information on the progress it has by that date made to fulfil each of the recommendations in paragraphs 3 and 8 of decision VI/8d.

26. The Committee finds that Bulgaria has not yet fulfilled the requirements of paragraphs 3(a) and (b), and 8(a), (b) and (c) of decision VI/8d and expresses its disappointment at the lack of any concrete progress to date in that direction.

⁷ Ibid., p. 2.