

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 V/9d
on compliance by Bulgaria with its
obligations under the Convention**

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I. Introduction

1. At its fifth session (Maastricht, 30 June–1 July 2014), 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 V/9d on compliance by Bulgaria with its obligations under the Convention (see ECE/MP.PP/2014/2/Add.1).

II. Summary of follow-up action with decision V/9d

2. By letter of 28 November 2014, the Committee sent a reminder to the Party concerned of the request by the Meeting of the Parties to provide its first detailed progress report to the Committee by 31 December 2014 on the measures taken and the results achieved thus far in implementation of the recommendations set out in decision V/9d.

3. On 31 December 2014, prior to the receipt of the Party concerned's first progress report, the communicant of communication ACCC/C/2011/58 provided comments on the implementation of decision V/9d by the Party concerned.

4. The Party concerned provided its first progress report on the implementation of decision V/9d on 6 January 2015.

5. At the Committee's request, on 6 January 2015 the secretariat forwarded the Party concerned's first progress report to the communicant of communication ACCC/C/2011/58, inviting it to provide its comments by 27 January 2015.

6. On 30 January 2015, the communicant re-submitted its comments of 31 December 2014 which it stated had been revised to take into account the Party concerned's first progress report.

Party concerned's first progress report

7. In its first progress report, the Party concerned stated that the information it had submitted on 19 September 2013 in the context of the Committee's review of the implementation of its findings and recommendations on communication ACCC/C/2011/58 showed that its legislation in the field of the environment completely provided for members of the public to appeal/challenge statements/decisions on strategic environmental impact (SEA) and environmental impact assessment (EIA) issued under the Environmental Protection Act (EPA). Since under the Spatial Planning Act (SPA) orders for approval of spatial plans and construction permits could be issued only if the SEA/EIA statements and decisions were available and had entered into force, it was not necessary to provide opportunities for NGOs or other members of the public to challenge spatial plans or construction permits on the grounds of protection of the environment. The Party concerned submitted that the lack of direct access for members of the public, including environmental organizations, to procedures for appealing spatial plans and construction permits is fully compensated by the Party concerned's effective means of control over the investment process. Mechanisms provided by the SPA to stop construction and to eliminate the effects of illegal construction carried out in violation of environmental legislation included:

- Stopping the execution and prohibition for access to the construction or part of the construction that was carried out without complying with the specific requirements and/or without the necessary administrative acts;
- Construction or part of it was illegal when performed in the presence of an effective refusal for issuing a necessary administrative act or in violation of the requirements

for construction in the territories with special territorial protection or with preventive territorial protection.

8. The Party concerns added that if at any stage of the investment process an administrative act was issued under the SPA in violation of the EPA, compulsory/coercive administrative measures for suspending the implementation of spatial plans and investment projects may be imposed. Such measures might be implemented on the initiative of the public concerned. The Party concerned submitted that these remedies guaranteed that a spatial plan or investment project could not be implemented when there was an imminent danger of pollution or damage to health or property.

Comments on the Party concerned's first progress report

9. In its comments on the Party concerned's first progress report, the communicant of communication ACCC/C/2011/58 noted that the Party had not undertaken any legislative or other measures to meet the requirements of the Convention concerning access to justice with respect to spatial plans or construction or exploitation permits which contravened national environmental legislation. The lack of legislative measures had resulted in contradictory court practice regarding the implementation of article 9, paragraphs 2 and 3 of the Convention. The communicant provided a brief survey of relevant case-law since the adoption of the Committee's findings on communication ACCC/C/2011/58 in September 2012. Its survey included three rulings in which the court held that a general spatial plan could be subject to a review procedure under article 9, paragraph 2 of the Convention. However, in another six cases, the courts had denied access to review a general or detailed spatial plan or a construction permit. The communicant submitted that such decisions reflected the position of the Party concerned that implementing the Committee's recommendations was not required for the Party's full compliance with article 9, paragraphs 2 and 3 of the Convention. The communicant submitted that the case-law clearly demonstrated that the access to justice provisions in the Environmental Protection Act could not, as the Party concerned asserted, guarantee that administrative acts issued under the Spatial Development Act were adopted in full compliance with environmental legislation.

10. At its forty-eighth meeting (Geneva, 24-27 March 2015), the Committee reviewed the implementation of decision V/9d in open session with the participation by audio conference of the Party concerned and the communicant and taking into account the comments received from observers present. Following the discussion in open session, the Committee commenced the preparation of its first progress review on the implementation of decision V/9d in closed session. The Committee adopted its first progress review at its fiftieth meeting (Geneva, 6-9 October 2015) and instructed the secretariat to thereafter send it to the Party concerned and the communicant of communication ACCC/C/2011/58.

III. Considerations and evaluation by the Committee

11. In order to fulfil the requirements of the decision V/9d, the Party concerned would need to provide the Committee with evidence that:

(a) Members of the public, including environmental organizations, have access to justice with respect to General Spatial Plans, Detailed Spatial Plans and (either in the scope of review of the spatial plans or separately) also with respect to the relevant strategic environmental assessment statements;

(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

12. The Committee welcomes the first progress report of the Party concerned, while expressing its concern that it was submitted after the deadline of 31 December 2014.

13. Having examined the first progress report, the Committee expresses its serious concern that none of the legislative measures described in that report appear to have been taken to address the recommendations set out in paragraph 2 of decision V/9d. Rather it appears that the legislation described in the report appears in substance the same as that examined by the Committee in its findings on communication ACCC/C/2011/58 and which the Committee found not to comply with the Convention. The Committee reiterates its concerns that the Party concerned seems to maintain the position that implementing the recommendations of the Committee is not required for its full compliance with article 9, paragraph 2 and 3 of the Convention. The Committee finds that the Party concerned has not made adequate progress yet in fulfilling the requirements of decision V/9d nor has taken any significant steps in that direction.

14. The Committee invites the Party concerned together with its second progress report or otherwise by 31 December 2015 to provide the draft texts of the specific legislative, regulatory or administrative measures it proposes to adopt to ensure the implementation of paragraph 2 of decision V/9d, together with English translations thereof, as well as a timeline for the various stages of its internal procedures leading up to the final adoption of the proposed measures.

IV. Conclusions

15. The Committee finds that the Party concerned has not yet fulfilled the requirements of decision V/9d nor has taken any significant steps in that direction. Rather the legislation described in the Party concerned's report appears in substance the same as that examined by the Committee in its findings on communication ACCC/C/2011/58 and which the Committee found not to comply with the Convention.

16. The Committee invites the Party concerned, together with its second progress report or otherwise by 31 December 2015 to provide the draft texts of the specific legislative, regulatory or administrative measures it proposes to adopt to ensure the implementation of paragraph 2 of decision V/9d, together with English translations thereof, as well as a timeline for the various stages of its internal procedures leading up to the final adoption of the proposed measures.

17. The Committee reminds the Party concerned that the Meeting of the Parties have undertaken to review decision V/9d at its sixth session.

18. The Meeting of the Parties at its sixth session may, upon consideration of a report and any recommendations of the Committee, decide upon appropriate measures to bring about full compliance with the Convention in accordance with paragraph 37 of Decision I/7. The Meeting of the Parties may, depending on the particular question before it and taking into account the cause, degree and frequency of the non-compliance, decide upon one or more of the following measures:

- (a) Provide advice and facilitate assistance to the Party concerned regarding the implementation of the Convention;
- (b) Make recommendations to the Party concerned;

- (c) Request the Party concerned to submit a strategy, including a time schedule, to the Compliance Committee regarding the achievement of compliance with the Convention and to report on the implementation of this strategy;
 - (d) In cases of communications from the public, make recommendations to the Party concerned on specific measures to address the matter raised by the member of the public;
 - (e) Issue declarations of non-compliance;
 - (f) Issue cautions;
 - (g) Suspend, in accordance with the applicable rules of international law concerning the suspension of the operation of a treaty, the special rights and privileges accorded to the Party concerned under the Convention;
 - (h) Take such other non-confrontational, non-judicial and consultative measures as may be appropriate.
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