

**Ms. Věra Jourová**  
**Directorate-General for Justice and Consumers**

**Ms. Corina Crețu**  
**Directorate-General for Regional and Urban Policy**

**Mr. Karmenu Vella**  
**Directorate-General for Environment**

**Regarding: Legislative proposals that restrict access to justice in environmental cases in Bulgaria**

1 September 2017

Dear Ms. Věra Jourová,  
Dear Ms. Corina Crețu,  
Dear Mr. Karmenu Vella,

We have serious concerns regarding two legislative proposals that were introduced to the Bulgarian Parliament in June and July 2017. If enacted, these proposals may significantly restrict access to justice on environmental cases and limit the tools for public control over large projects. Both proposals are expected to be put to vote in the first plenary sessions of the Bulgarian Parliament in September 2017.

It is essential that the institutions of the European Union, and in particular the European Commission, promptly enter into a dialogue with the Bulgarian Government and Parliament to ensure that they continue to uphold the rule of law. The Commission should also be ready to commence infringement proceedings if the Bulgarian authorities enact legislation that violates their obligations under EU law.

### **The legislative proposals**

The legislative proposals envisage the following key amendments:

- **Court fee of 1% of the value of the claim**, capped at 9,000 leva (EUR 4,500), for cassation appeal of certain acts of the administration, including environmental impact amendments (EIA) resolutions. In EIA cases, the court fee will be calculated based on the value of the investment proposal.
- **Single-instance court review for EIA disputes over projects of national importance**. The court procedure in these cases shall be closed within six months.

Both proposals were processed very quickly in the Parliament and were not subjected to public discussion.

### **The proposals conflict with Bulgaria's EU law and other international obligations**

If adopted, the proposals would weaken the enforcement of environmental laws and would cause contradiction with overarching principles of EU law and the Constitution of Bulgaria, as follows:

- 1. The higher court fees would be a substantial bar for members of the public, environmental organizations and public authorities, who are generally expected to represent the public interest on environmental disputes, to appeal EIA cases.**

Court expenses (including court fees for cassation appeal) are awarded against the losing party, irrespective of whether it brought the case before the court of second instance. The legislative proposal does not remedy this risk and would in practice bar court appeals at the very beginning.

- 2. The single instance court review would significantly weaken the courts' control over large-scale projects.**

In Bulgaria, projects are determined to be of national importance with a resolution of the Council of Ministers. Significant number of large investment projects have been classified as being of national importance in the recent years. No clear legislative criteria are followed in the decision-making process, and these resolutions are not subject to court review. This incentivises corruption and distorts the level playing field between public and private business.

The proposal would also result in smaller projects being subjected to more rigorous control (two court instances) than large-scale projects, which is contrary to the EIA principles.

Furthermore, this is a move in the opposite direction to the milestones set under the 'Cooperation and Verification Mechanism for Bulgaria and Romania' which promotes the independence of the judicial system.

- 3. Imposing a time limit for closure of court procedures is in conflict with the general principles of administrative law, such as the principles of lawfulness and truthfulness.**

Moreover, the proposed limit of 6 months is completely unrealistic and is not based on practice. EIA cases are usually closed within a year and a half to two years before the court of first instance. The legislative proposal will prevent proper collection of evidence and leaves uncertainty as to the liability of the judge if the case takes longer.

- 4. The proposals provide mechanism for waiver of the fee for cassation appeal only for individuals, penalising environmental NGOs.**

Environmental NGOs will be fully exposed to the risk of facing prohibitively high court expenses. This contradicts EU environmental law and the Aarhus Convention, which require facilitation of access to justice for environmental NGOs as representatives of the public interest in environmental cases.

- 5. The stated rationale for the legislative proposals is speeding up the procedures and limiting misuse of the right to appeal of administrative acts – but the proposals cannot lawfully achieve this.**

The idea that a correct implementation of the principle of *res judicata* can be achieved via introduction of prohibitively high court fees is objectionable. Furthermore, the desire to achieve fast court procedures cannot prevail over the principles of lawfulness, truth and access to justice of members of the public.

- 6. The legislative proposals infringe the right to a fair trial enshrined Article 6 of the European Convention on Human Rights (ECHR).**

They also infringe the right to an effective remedy under Article 47 of the Charter of Fundamental Rights of the European Union and Article 13 of the ECHR, and the obligation to provide remedies sufficient to ensure effective legal protection in the fields covered by Union law (Article 19 TEU).

7. **The higher fees for cassation appeal fail to meet the standard of Article 9, paragraph 4 of the Aarhus Convention with respect to costs, including court fees, not being prohibitively expensive.**
8. **The proposals infringe the Constitution of the Republic Of Bulgaria, which allows certain acts to be excluded from judicial review only *“in exceptional cases and subject to the requirements of proportionality, including international mandatory standards for access to judicial protection”*.**

If you need additional information on the matter, please feel free to contact us:

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Yours sincerely,

Genady Kondarev and Ivaylo Popov,

Members of the Board

**Environmental Association “Za Zemiata” – Friends of the Earth Bulgaria**

This letter is supported by the following non-governmental organizations:

1. Dimitar Popov, Chairman of the Board, **Green Balkans**
2. Elena Stoeva, Chairwoman of the Board, **Green Balkans – Stara Zagora**
3. Krasimira Velichkova, Director, **Bulgarian Donors Forum**
4. Dani Koleva, Programme Director, **National Network for Children**
5. Nadya Shabani, Director, **Bulgarian Centre for Not-for-Profit Law**
6. Lubomira Kolcheva, Director, **Bulgarian Environmental Partnership Foundation**
7. Vesselina Kavrakova, Country Head, **WWF Bulgaria**
8. Vera Staevska, Chairwoman of the Board, **Association for Research Practices**
9. Toma Belev, Chairman of the Board, **Association of Parks in Bulgaria**
10. Denitsa Petrova, Manager, **Greenpeace Bulgaria**

11. Iliyan Iliev, Chairman of the Board, **Public Environmental Center for Sustainable Development**
12. Bilyana Gyaurova-Wegertseder, Director, **Bulgarian Institute for Legal Initiatives**
13. Dr. Rosen Tsonev, Secretary, **Bulgarian Society of Phytocenology 2001**

Appendix No. 1 – Detailed description of the legislative proposals, their practical and legal impact

Appendix No. 2 – English translation of selected paragraphs of the legislative proposals

Appendix No. 3 – List of objects of national importance in the recent years