

Communicant statement: Ref. PRE/C/227 (Bosnia and Herzegovina)

I. Introduction: The Core of the Violation

This communication addresses a systemic failure by Bosnia and Herzegovina (BiH) to comply with **Article 7 (Public Participation Concerning Plans Relating to the Environment)** and **Article 9 (Access to Justice)**. The state, its entities (RS and FBiH), and Brčko District have practically created a "*planning vacuum*" where public resources are managed without democratic consensus or environmental oversight.

II. Violation of Article 7: Planning Without the Public

- **The "Missing" Plans:** Although legally mandated, the Concession-granting Plans are practically missing. Namely, on State/RS level these plans have not been updated for two decades (since 2006), whereas on FBiH/Brčko level since 2011. The legislation on all levels of governance prescribes the plan as integral part for management of commons—especially in RS, where it stipulates mandatory participation and updating of the plan every three years. However, such inclusive planning duties were so far ignored.
- **The "Unsolicited Bid" Loophole:** In the absence of legitimate, updated plans, authorities open space for private initiatives—creating an “unsolicited-bid” loophole. This bypasses the strategic assessment of environmental impact and excludes the public from the most critical stage: deciding *if, what* and *how* should be mined, built or exploited. This also often results in approving projects without EIA’s as well. Freedom of entrepreneurship (if applicable in given context) should not be able to override participatory rights of the public concerned.
- **Substantive Misuse:** For example, in RS, coal concessions are being granted, without mandated participation, in municipalities for which the original (and outdated) plan from 2006 strictly limited concessions to building stone, bauxite, clay and mineral water. This is a direct violation of the Convention’s objective to ensure "*all options are open*" during initial decision-making. Due to this, the “Bukova kosa” coal mine was recently highlighted by Ms. Marry Lawlor, UN SR on human rights defenders, as environmental and human rights hotspot that should be urgently addressed.

III. Violation of Article 9: The Judicial Wall

- **Denial of Standing:** Despite initiating 12 court procedures in respect to concession-granting, the Communicant (acting as regional “Aarhus Centre” and legal-aid organisation) has faced systematic rejection and denial of standing in matters that substantially relate to the environment. The Administrative Court in Banja Luka consistently dismissed Communicants lawsuits as “unauthorized” or unfounded (including requests for injunctive measure)—even when lawsuit was filed jointly with members of affected community. All available remedies were utilised without positive outcome, effectively stripping an representative NGO (and the public) of its right to challenge relevant maladministration in relation to the environment.
- **The Supreme Court Precedent:** A recent ruling (passed by the RS Supreme Court in Nov 2024) upheld these limitations without addressing the legal substance in relation to "Bukova kosa" mine. While other projects are still pending before the Supreme Court, this ruling sets a unfavourable legal standard that is already implemented by lower courts. This ultimately renders available remedies and environmental justice as futile in BiH.

- **Time as a Barrier:** While the “Bukova kosa” case was brought before the Constitutional Court of BiH, where it is currently pending, the extreme duration of these extraordinary proceedings (often lasting several years) can not serve justice. Namely, since submission of the communication, exploitation of also disputed “Bistrica” coal mine is completed, whereas concession for coal prospectation for a new (“Devetaci”) deposit has been officially awarded—proving RS authorities resolution to continue with evident non-compliance. Additionally, number of concessions are in various of stages of approval and realisation through out the country, with no plans, as legally mandated preconditions.

IV. Conclusion: A Request for Compliance Review

The current situation is one of a **chronic non-compliance without effective judicial protection that would compensate the failure**. The lack of planning is not an administrative oversight—it is a tool for centralised, non-transparent and opportunistic decision-making (by giving priority to private over public interest). This significantly affects substantive right to a healthy environment (including right to property) of the general public and it severely impairs the procedural rights of the Communicant.

- Thus, we ask the Committee to find BiH in violation of **Articles 7 and Article 9**, and to **recommend immediate practical and legislative reforms** to ensure that concession-granting is brought back within a democratic, plan-based and controllable framework.

Banja Luka, 23rd February 2026

Redzib Skomorac, LLB
Senior Legal Advisor
Aarhus Center Banja Luka Co-ordinator
Center for Environment, Bosnia and Herzegovina