

**The Presentation by the Slovak republic as the Party concerned
for the Aarhus Convention Compliance Committee 54th meeting
28 September 2016
Communication ACCC/C/2014/120/Slovakia**

Dear Mr. Chairman, Mr. Vice Chairman, Compliance Committee members and participants,

I am speaking on behalf of the Slovak Republic.

I would like to thank the Aarhus Convention Compliance Committee for the invitation to discussion of the communication ACCC/C/2014/120/Slovakia. The Slovak Republic welcomes and appreciates the opportunity to participate in this discussion and to defend the statement of the Slovak Republic against the claims included in the mentioned communication.

At the beginning, we state that we fully insist on our statement sent earlier to the Compliance Committee.

I would like to provide you with and also summarize the following substantive points related to the communication ACCC/C/2014/120/Slovakia.

1. The Communication is aimed against the legislative proceedings on the draft act which amends the Act no. 326/2005 Coll. on forests, specifically against the process of evaluating the public or collective comments raised to the draft. The submitter of the act was the Ministry of Agriculture and Rural Development. According to the Communicant, the submitter's process should breach the Aarhus Convention.
2. The draft of the act amending the act on forests was published on the "Portal of legislation" from May 10th 2013 to May 30th 2013 for the purpose of the public or interdepartmental discussion. The communicant who was the public representative applied 17 public comments the web portal.
3. The public comment is applied validly if it is supported by at least 500 persons. Then it automatically it becomes the essential comment. In case of not accepting such a comment, the submitter must conduct the contradictory negotiation with the public representative.
4. The public comments to the draft concerned, applied by the public representative were supported on the portal by only 62 persons. It means they were not supported by more than 500 persons and were not applied validly.
5. The public representative applied the same public comments also in a written form. These written comments were supported by more than 9000 persons. These public comments were therefore applied validly. And the public comment applied invalidly through the portal, became irrelevant.
6. Therefore the submitter evaluated the public comments applied invalidly through the portal only as "not taken into account". As the public representative applied parallel the valid written version of the same comments, the submitter evaluated only these validly applied public comments.

7. There was not any intent of the submitter to ignore or to elude the public comments applied by the public representative. Nor there was any intent to change the status of the public comments applied on the portal, because such a thing is not possible.
8. Under the Legislative Rules, the comments applied in a written form are not listed in the evaluation of the public discussion. However, the submitter is always required to take these comments into account and to evaluate them and discuss them with the commenting person.
9. This obligation of the submitter had been fulfilled. The submitter considered the public comments applied in a written form, evaluated them and discussed them with the public representative in the contradictory negotiation under the Legislative Rules. This contradictory negotiation was held on May 10th 2013. The result was the acceptance of 13 from the 17 public comments, what means 75 % acceptance. Such a high rate of acceptance is unusual even in case of the state bodies.
10. Thus, it is not true that the public was not given the opportunity to discuss the applied public comments with the submitter or that the submitter had unreasonably refused the collective comments.
11. After the contradictory negotiation the public representative was given the record of the negotiation signed by all parties. It contained the evaluation of all the public comments applied in a written form. The record was sent to the public representative via email.
12. The form of the record is not stated by the Legislative Rules. The electronic form of the record send by email with all the comments and evaluation is considered as the regular written form.
13. Therefore it is not true that the public representative was not given a standard report or record form the contradictory negotiation in a written form and signed by the parties, because the opposite is true.
14. After the contradictory negotiation, the draft was submitted to the Legislative Council of the Government and then to the Government of the Slovak Republic. The material contained the submission report including information of persisting contradictions with all of the commenting entities. This information was very brief and not detailed. Nevertheless, this does not mean that the Legislative Council and the Government were not aware of the remaining contradictions with the public representative and could not take a position on them.
15. The material contained also the list and evaluation of all the comments applied through the portal, including the public comments applied invalidly by the public representative through the portal and evaluated as “not taken into account”. It means that the Legislative Council and the Government were well informed about all of the public comments and could in any time during their proceedings and meetings ask the submitter for explanation of such an evaluation of the public comments.
16. The Government is the authority that finally decides on all of the persisting contradictions. The government decided on them in a way of approving the draft in the wording as it was submitted. Any comment has for the government only consultative

and not binding character. No commenting subject – regardless if the state body or the public – has the title to have its comment accepted.

17. One of the public comments regarded the provision on the right to organize physical education, sport or tourist competitions and events or to carry out commercial activities on forest land. The submitter accepted this public comment.
18. During the meeting of the Legislative Council this provision was discussed and the wording of this provision was changed. The Legislative Council has the right to comment any provision and to bind the submitter to change the wording. The Legislative Council is not bound by any of the accepted essential comments or agreements of the submitter and the commenting subject.
19. Nevertheless, the changed wording does not change the content and the meaning of the provision. The aim of the public comment remained preserved and even in a more benevolent extent than the public comment required.
20. Therefore, there was no reason to inform the public representative about the changing of the provision. The wording was different, but the meaning was the same. However, no commenting subject – regardless if the state body or the public – has the title to have its comment preserved in the next stages of the legislative procedure.
21. The communication is also aimed against the alleged failure of Slovak Republic to “ensure that the public have access to administrative procedures to challenge acts of the national law relating to the environment” arising from the Article 9 of the Aarhus Convention. This claim is untrue and misleading.
22. The Communicant used only the highest level of protection of the public rights, namely the proceedings before the Constitutional Court and he did not succeed. But this does not mean that this highest level procedure is the only one. The Communicant did not use other means of protection and enforcement of the rights raising from the Aarhus Convention and guaranteed by the Slovak Constitution. Among these possibilities is
 - a) a complaint under the Act on complaints,
 - b) a proposal for the prosecutor's protest,
 - c) a complaint under the Act the Public Defender of Rights (it means Ombudsman)
 - d) and an action on an administrative court under the Civil Procedure Code.
23. On this basis we strongly declare that the Aarhus Convention was not violated in the case concerned, because all of the requirements raising from the Aarhus Convention were respected, namely
 - a) the sufficient time-frames for effective participation of the public,
 - b) publishing the draft,
 - c) an opportunity to comment the draft,
 - d) taking the public comments into account as far as possible,
 - e) and several legal measures for the protection and enforcement of the rights provided by the Aarhus Convention.
24. We hold that the communication of the communicant with regard to the application of the communicant to the Constitutional Court of the Slovak Republic as the highest body of

protection of rights and legitimate interests should be evaluated in accordance with point 21 of the Decision I/7 on Review of Compliance. We hold the compliance of the communicant in this part as unsupported and completely untrue under the paragraph 19 and 21 of the Decision I/7 on Review of Compliance.

Even more, I would like to notice that since the 2013 when the legislative process considered was realized, the Slovak Republic strengthened the position of the public in participation, preparing and commenting on legislative and non-legislative drafts.

1. From 1 October 2015 the “Uniform methodology for assessing selected influences” is applied, by which the legislative process shall be preceded by at least 4 weeks consultation with business and other entities. This process is fully public and is not restricted as to form of commenting or the number of persons or type of entities that may be included.
2. Before the consultation, any legislative and non-legislative draft being prepared by the state body, shall be published in a form a so-called “preliminary information” which contains a basic points of the planned draft. The “preliminary information” has to be published in the same way as any draft in the public or interdepartmental discussion.
3. Every legislative and non-legislative draft must contain “the Information on the Participation of the Public”. The participation of the public has 4 levels - from the pure informative participation to the compulsory participation of the public organizations.
4. On 1 April 2016 “the Act No. 400/2015 Coll. on the Making of the Act and on the Collection of the Acts” entered into force. This Act provides the rules of the legislative process including the right of the public to apply comments. Together with the Legislative Rules this Act covers the legal frame for the legislative process and participation of the public.

Dear Mr. Chairman, Mr. Vice Chairman, Compliance Committee members and participants,

At the end of our Presentation I would like to express willingness of the Slovak Republic to respond any additional questions, clarify all non-compliances and prove all statements related to the fact that the public participation was fully guaranteed.

I would like to thank you for your attention.