

**The Statement of the Slovak republic as the Party concerned
for the preliminary admissibility of a communication concerning
Slovakia PRE/ACCC/C/2015/120
at the Aarhus Convention Compliance Committee 48th meeting
24 - 27 March 2015**

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

I am speaking on behalf of the Slovak Republic.

First of all I would like to thank the Aarhus Convention Compliance Committee for the opportunity to discuss the preliminary admissibility of a communication concerning Slovakia PRE/ACCC/C/2015/120.

The Slovak Republic welcomes and appreciates the opportunity of participating in this discussion via audio-conference. Unfortunately, we failed to get connection with the meeting room. Therefore, we send this written statement to the communication concerned.

I would like to provide you with the following substantive arguments related to the recent communication PRE/ACCC/C/2015/120/Slovakia. This communication was initiated by the submission of the Slovak non-governmental organisation VIA IURIS from 8 December 2014 whereby allegedly the Slovak Republic does not comply with its obligation stated in the article 8 of the Aarhus Convention in connection with the article 9 paragraph 3 of the Aarhus Convention due to a violation in the legislative process with respect to the amendment of the Act no. 326/2005 Coll. on Forests, in the process of evaluating the collective comments, which were raised to the draft in 2013.

The Slovak Republic in accordance with paragraphs **19, 20 and 21 of Decision I/7 Review of Compliance** would like to draw your attention to relevant facts which are important to take into account during the consideration of the preliminary admissibility of a communication concerning Slovakia PRE/ACCC/C/2015/120:

1. The claim of the communicant:

Communicant claims that the comments of the public, which were applied by the public representative electronically through the online portal of the laws, are not in the evaluation of the interdepartmental discussion identified as essential, despite the fact that the public representative stated these comments on the online portal as essential.

Statement of the Slovak Republic:

The public representative has under our Legislative rules right to apply public comments through the online portal. The public comments have the character of the collective comments under the condition that the comments are supported through the online portal by 500 physical or legal persons at least. In this case the public representative may label the comments as essential.

These public comments, however, were not supported through the online portal by more than 500 persons, so they were not effectively applied as collective comments

through the online portal. Therefore, these comments are automatically labelled as the ordinary comments.

If the collective comments on the online portal were supported by more than 500 persons, the public representative could use the option to label the comments as essential or let them labelled as ordinary.

Under the Legislative rules, the evaluation of the interdepartmental discussion always contains the comments with that labelling as it was applied on the online portal.

Therefore we suppose that the public participation was secured in accordance with the article 8 of the Aarhus Convention as well as in terms of the article 14 of the Legislative rules.

We hold the compliance of the communicant in this part as manifestly unreasonable under the paragraph 20 point c) of the Decision I/7 on Review of Compliance.

2. The claim of the communicant:

Communicant claims, that the comments of the public raised by the public representative electronically through the online portal, are evaluated in the evaluation of the interdepartmental discussion as the comments, which are not taken into account, by what the submitter of the draft has unreasonably refused the collective comments.

Statement of the Slovak Republic:

For the reasons set out in point 1, the public comments were not applied through the portal as the collective comments.

However, the communicant applied the same public comments without using the online portal, **in written form**, where he showed **support of the 9062 persons**. Thus, the communicant applied validly the collective comments in written form, under the Legislative rules.

Under the Legislative rules, **the comments applied in written form** are not mentioned in the evaluation of the interdepartmental discussion. The submitter of the draft is, however, always **required to take these comments into account and to evaluate them and discuss them with the commenting person**.

The submitter of the draft has fulfilled this obligation and considered **the collective comments applied in written form**, evaluated them and discussed them with the public representatives under the Legislative rules.

Therefore we suppose that the public participation was secured in accordance with the article 8 of the Aarhus Convention as well as in terms of the article 14 of the Legislative rules.

We hold the compliance of the communicant in this part as manifestly unreasonable under the paragraph 20 point c) of the Decision I/7 on Review of Compliance.

3. The claim of the communicant:

The communicant suspects the Ministry of Agriculture and Rural Development of Slovak Republic of arbitrary interference in the labelling of the public comments applied through the online portal from the label “essential” to the label “ordinary”.

Statement of the Slovak Republic:

Labelling of the comment as “ordinary” or “essential” may make only **that one who applies the comment**. The arbitrary interference of the submitter of the draft is not possible.

We hold the compliance of the communicant in this part as unsupported and completely untrue under the paragraph 19 of the Decision I/7 on Review of Compliance.

4. The claim of the communicant:

The communicant claims that the public was not given the opportunity to discuss the applied collective comments with the submitter of the draft.

Statement of the Slovak Republic:

The submitter of the draft realised with the public representative the contradictory negotiation on **the collective comments applied by the complainant in written form**. The negotiation was held on May 10th 2013 at level of the minister under the leadership of the ministry's employee, who was empowered by the minister. The public representative was informed about the higher level of the negotiation.

The results and conclusions of the contradictory negotiation were resumed in report and subsequently consulted with the public representative via email.

Therefore we suppose that the public participation was secured in accordance with the article 8 of the Aarhus Convention as well as in terms of the article 14 of the Legislative rules.

We hold the compliance of the communicant in this part as unsupported and completely untrue under the paragraph 19 of the Decision I/7 on Review of Compliance.

5. The claim of the communicant:

The communicant claims, that he was not given a standard report or record form the contradictory negotiation in written form and signed by the parties, but only in the electronic version.

Statement of the Slovak Republic:

According to the Legislative rules the result of the contradictory negotiation shall be resumed in a record signed by the parties. However, the Legislative rules do not provide a form of the record.

The record was completed and signed by all parties of the negotiation. It contained the evaluation of **all the collective comments of the public applied in written form**. **The record was sent to the public representative via email and subsequently consulted.**

Therefore we suppose that the public participation was secured in accordance with the article 8 of the Aarhus Convention as well as in terms of the article 14 of the Legislative rules.

We hold the compliance of the communicant in this part as manifestly unreasonable under the paragraph 20 point c) of the Decision I/7 on Review of Compliance.

6. The claim of the communicant:

The communicant claims that the material of the draft which was submitted to the Legislative Council of the Government of the Slovak Republic and to the Government of the Slovak Republic lacked the information on not accepted collective comments. Thus, the Legislative Council and the Government were not aware of remaining contradictions and could not take a position on them.

Statement of the Slovak Republic:

The material of the draft, which was submitted for discussion of the Legislative Council and the Government, contained the list and evaluation of all the comments applied **through the online portal**, including **those public comments, which were applied by the public representative in both ways, namely through the online portal and in written form**. All of these comments were kept in disposal of the Legislative Council and Government.

The material contained also the submission report containing information of remaining contradiction with the communicant as well as with the other commentating entities.

The government is the authority that decides on the remaining contradictions. The government took measure of all the not accepted comments and remaining contradictions in a way of approving the draft.

Therefore we suppose that the public participation was secured in accordance with the article 8 of the Aarhus Convention as well as in terms of the article 14 of the Legislative rules.

We hold the compliance of the communicant in this part as manifestly unreasonable under the paragraph 20 point c) of the Decision I/7 on Review of Compliance.

7. The claim of the communicant:

The communicant claims that the submitter of the draft arbitrarily and completely changed the wording of the provision of the draft, which was agreed in the contradictory negotiation based on the collective comment of the public no. 11. The communicant also alleges that he was not informed of the change.

Statement of the Slovak Republic:

The public proposed a new wording of the law provision regulating the organization of sport activities on a forest land, under the condition stated by the special act. The content of this special condition is the consent of the owner or user of the forest land to organizing the sport activities on private property. The aim of this collective comment of the public was that public input into the woods would not be limited in an inappropriate manner.

This comment was accepted in the contradictory negotiation. Without prejudice to the accepted collective comment relating to sporting activities, this provision has been extended also to the activities for profit under the same conditions of the consent of the owner or user to such activity on the forest land. The draft was in this wording submitted to the Legislative Council.

Legislative Council has the right to modify any provision of the draft, including those resulting from the contradictory negotiation. The Legislative Council has modified the provision concerned only in terms of formulation, not in terms of factual content. The condition of the consent of the owner or user of the forest land was directly stated in the provision regarding only the activities for profit. Consent of the owner or user for the purpose of sporting activities arises regardless of this provision from the special act as mentioned.

This collective comment of the public was not refused in terms of content, but only as in terms of the formulation. The goal, which the public wanted to achieve with this comment, therefore remained intact.

Therefore, it was not necessary to inform exclusively the public representative about this change, because the result of the contradictory negotiation and the factual content of the provision have not been changed.

Every entity which applied the comments is informed about the changes in the draft through the online portal, where the entire material is publicly available in every stage of the legislative process.

Therefore we suppose that the public participation was secured in accordance with the article 8 of the Aarhus Convention as well as in terms of the article 14 of the Legislative rules.

We hold the compliance of the communicant in this part as manifestly unreasonable under the paragraph 20 point c) of the Decision I/7 on Review of Compliance.

8. The claim of the communicant:

The communicant claims that the Slovak Republic does not guarantee enforcement public participation in public affairs and does not guarantee the administrative or judicial procedures for the protection of public rights under the Aarhus Convention.

Statement of the Slovak Republic:

The Constitution of the Slovak Republic in the article 1 paragraph 2 provides that the Slovak Republic recognizes and respects the general rules of international law, international treaties by which it is bound, and its other international obligations, i.e. including the Aarhus Convention. According to the article 46 paragraph 1 of the Constitution any person may claim his right to an independent and impartial court or other authority of the Slovak Republic.

The communicant did not use the opportunities of the administrative, judicial or special procedure that are guaranteed by the Constitution and other Acts, i.e. filing a complaint under the Act on complaints, proposing a protest of the prosecutor under the Act on the prosecution, filing a complaint under the Act on the Public Defender of Rights (Ombudsman) or proceedings before the Common Court.

The communicant, however, used proceedings before the Constitutional Court and challenged the legislative process, against which he filed a complaint. The Constitutional Court rejected his proposal.

Legislative Rules of the Slovak Government, although approved by the Government Resolution no. 352 of 25 May 2010, but consistently based on the National Council of the Slovak Republic Act no. 350/1996 Coll. Rules of Procedure of the National Council of the Slovak Republic. are binding for all subjects involved in the legislative process.

Therefore we suppose that Slovak Republic guarantees for the public both administrative and judicial options for enforcement of the rights arising from the Aarhus Convention in accordance with article 9 paragraph 3 of the Aarhus Convention.

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.

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

Finally, we would like to express kind confidence of the Slovak Republic that the Compliance Committee will adopt an appropriate decision in considering the preliminary admissibility of the communication concerning Slovakia PRE/ACCC/C/2015/120.