VIA IURIS
CENTRUM PRE PRÁVA OBČANA

Alternative report
on the implementation of the Aarhus Convention
in Slovakia

VIA IURIS has decided to submit an alternative ("shadow") report on the implementation of the Aarhus Convention in Slovakia. Our reasoning is that many parts of the report submitted by the Slovak government are **unclear and confused**, some information is **incomplete, untrue,** and the text of the report is **not clearly arranged**.

In our alternative report we will focus on the issues that we consider to be the most serious and important at the present time. This report does not reflect on all the issues covered by the Aarhus Convention, but only on those areas where the biggest deficits in implementation exist in Slovakia.

We are submitting the Alternative report also due to deficiencies of the process of the NIR preparation, mainly concerning the public participation. Ministry of Environment did not meet requirements set by the decision I/8 of the Meeting of the Parties to the Aarhus Convention. In accordance with the document ECE/MP.PP/WG.1/2007/L.4 adopted by the Working Group of the Parties to the Convention in May 2007 in Geneva, 30-60 days are set for the public consultation of the NIR draft. Draft of the NIR 2011 prepared by the Slovak Ministry of Environment has been made public on May 6th 2011 and public had 9 days to submit comments. Since the information on public consultation has not been available on the main web page of the Ministry of Environment, members of the public were not properly informed about a possibility to comment the draft. Moreover, the 2011 NIR by Slovakia, presented on the official web page of the UNCE http://www.unece.org/env/pp/reports_implementation_2011.htm, is dated March 11th 2011 (posted March 15th, 2011), which leads us to serious doubts concerning transparency of the process as well as genuine interest of the Ministry of Environment to incorporate public comments.

Therefore the process of preparation of the National Implementation Report, as administered by the Slovak Ministry of Environment, did not allow for a meaningful consultation process with the public and other state agencies and organizations. Serious flaws of the process must be stated despite the fact that, due to individual initiative of the VIA IURIS, our organization had a NIR working draft available before the official day for public consultation.

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Biggest problems in the implementation of the Aarhus Convention in Slovakia

Article 4
Access to information

The National Implementation Report fails to mention a total ban on access to documentation from permitting of installments in accordance with the nuclear law. Such information, listed in the Annex 1 and 2 of the nuclear law, is classified both for public requesting such information based on FOIA as well as for public concerned, participating on proceedings concerning nuclear installments.
This total ban on information from nuclear proceedings has been passed in March 2010 by the amendment to the law No 541/2004 C.c. (Nuclear Act) and law No 50/1976 C.c. (Construction Code). Documentation is classified since it can "negatively influence public safety", however such disproportional ban is contravening Art. 4, Art. 6, (2) and (3), and Art. 9, (2) of the Aarhus Convention. Documentation available for licensing of nuclear installments contains thousands pages of documents including for example public evacuation plan. It is obvious that documentation contains also information, which – if made public – can not negatively influence public safety.

Article 6
Public participation

Violation of Article 6 paragraph 1 b) and paragraph 8:

Slovak legislation does not contain provisions implementing the Article 6 (1) b) and Article 6 (8) of the Convention: *"in the decision due account is taken of the outcome of the public participation."* Slovak government failed to determine activities (not listed in the Annex I) which may have a significant effect on the environment. Such activities and related permitting proceedings are in Slovakia regulated by several laws, for example Water Act, Mining Act, Forest Act etc. and above all the Nature Protection Act.

Until the year 2007 the Nature Protection Act allowed environmental NGOs to become "parties to the proceeding" with regards to permitting activities subject to this act – for example, killing protected species, mining wood in protected forest, using chemicals and pesticides in protected areas. Amendment to the Nature protection Act in year 2007 restricted participation rights of environmental NGOs with the effect that right to access court of law (access to justice) to review decisions made in accordance with the Nature Protection Act was abolished. Since the year 2007 public authorities do not have to take comments of environmental NGOs into account, in fact such comments may be totally ignored.

Therefore in cases of permitting activities that may have a significant effect on the environment (which are those, falling mainly under the Nature Protection Act, but also several other laws as mentioned above), environmental NGOs have no rights guaranteed under Article 6, paragraph 8.

In this context we should also mention the recent Supreme Court decision (as of April 2011). The Supreme Court of Slovakia, based on decision on preliminary question of the Court of

European Union, adjudicated rights of environmental organizations to participate in proceedings under review regardless of legislative shortcomings. However the impact of this decision on further decision-making of authorities and other courts is not clear.

Article 9
Access to justice

Violation of article 9 (2)

Members of public concerned do not have the right to request a court review (no access to justice) in cases, where the EIA was concluded before the 1st of September 2009.

As of May 2010, amendment to the EIA Act broadened categories of public concerned and granted them rights in compliance with the Convention. However position of members of public concerned in permitting proceedings subject to EIA procedures (activities listed in Annex I), finished before 1st of September 2009, continues to be a „participating person" and not „party to the proceeding". In the Slovak legal system only a person having the position of "party to the proceeding" in the previous administrative permitting has the right to challenge unlawful administrative decision.

Violation of article 9 (3)

According to Article 9, paragraph 3, the Slovak Republic must determine certain members of the public meeting the criteria laid down in national law (if any) that will have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment. Such procedures must fulfill the requirements of Article 9, paragraph 4.

There is no subject determined by the Slovak legal order that has the right to challenge any (every) act or omission which contravenes provisions of its national law relating to the environment in the procedure that fulfils the requirements of Article 9, paragraph 4 – fairness (including independence and impartiality), timeliness, equity, adequate, and effective remedies, or the possibility of issuing injunctive relief.

Only a court review could potentially fulfill the requirements of Article 9, paragraph 4. Under the Slovak legal system, persons have access to courts to challenge acts and omissions by private persons only if their rights have been impaired. A person has a right to access courts in order to challenge any unlawful act of the public authorities only if the person was recognized as a "party to the administrative proceeding" in the previous administrative proceeding and if his/her rights were impaired by the administrative decision. Under the Slovak legal system, no member of the public has the right to challenge every act or omission that contravenes the provisions of national law relating to the environment before the court.

Members of the public also have the right to submit petitions and submissions to the public prosecutor's office, but these procedures obviously do not fulfill the requirements of fairness, adequacy and efficiency. Therefore Article 9, paragraph 3 has not been implemented at all.

In this context the recent Supreme Court decision (as of April 2011), as described in the section dealing with the violation of Article 6 above, is also relevant.

Violation of Article 9 (4):

Timely and effective remedies regarding access to information:

Under Article 9, paragraph 4 of the Convention, court review procedures referred to in Article 9, paragraph 1 shall provide adequate and effective remedies – including injunctive relief as appropriate – and be fair, equitable, timely, and not prohibitively expensive. In Slovakia a review procedure before the courts regarding access to environmental information is neither "timely" nor "effective."

Court proceedings regarding the review of administrative decisions (including administrative decisions refusing access to environmental information) last approximately one year (according to official statistics). The opposing party can appeal the court's judgment and the proceedings can therefore be even longer. Because of this fact, the system of court review cannot be considered as "timely".

Timely remedies regarding permit procedures:

Court proceedings regarding permit procedures are lengthy (see above) and a complaint filed in the court against an unlawful decision does not suspend the effect of the decision. Therefore an activity permitted by administrative authorities is being implemented despite pending court review, which may declare stated decision unlawful. Due to the length of court proceeding a project is often completed before the final decision of the court (e. g. a factory or highway is already built).

Injunctive relief:

The conditions for issuing preliminary injunctive relief in a procedure of court review of administrative (permits) decisions are very vague. Court does not have any obligation to issue a reasoned decision on the question of whether to issue injunctive relief or not. Applicant requesting injunctive relief does not have the right to appeal the decision of the court on rejection of injunctive relief. In practice courts issue injunctive relieves very rarely, so legislation as well as the court practice make this instrument ineffective.

Pezinok, Slovakia, May 10, 2011

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