COMMUNICATION

Concerning violation of article 8 of Convention on Access to information, public participation in decision-making and Access to justice in environmental matters („Aarhus Convention")

I.
Information on correspondent submitting the communication:

Full name of submitting organization and person:

1. **VIA IURIS**

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II. State concerned:

SLOVAK REPUBLIC

III. Facts of the communication:

1. **Factual background**

Róbert Oružinský, residing at Krajné No. 268, postal code No. 916 16 (hereinafter „representative of the public") has initiated and represented the public in submission of a collective comment to a draft law which amends the law no. 326/2005 Coll. on forests (hereinafter „the Forest Act"). Draft of the Forest Act was submitted to a public interdepartmental discussion by the Ministry of agriculture and rural development (hereinafter „submitter") on 10th of May 2013 under no. 2752/2013-410 and published on the Portal of legislation. The public interdepartmental discussion represents a stage where one of materially competent governmental bodies (ministries) prepares draft law before it is submitted to an approval by the Government of the Slovak Republic. In the framework of this discussion other governmental bodies as well as other entities, including the public, can submit their comments on draft law. After the draft law is being approved by government, it is submitted to the National Council of the Slovak Republic, where its deputies discuss it. This interdepartmental discussion is regulated by the governmental legislative rules, which has

been ratified by a resolution of government. Governmental legislative rules are not a generally binding regulation, but only an intern directing act of the government.

Proof:
Introductory page of the document „Draft of the Forest Act" – published on the Portal of legislation, on URL: https://lt.justice.gov.sk/Material/MaterialHome.aspx?instEID=-1&matEID=6173&langEID=1&tStamp=20130531074422807

Collective comment of the public to the draft of the Forest Act contained 17 so-called **essential** comments.

Proof:
Text of the collective comment, letter from 27th of May 2013

Collective comments were submitted through "the Portal of legislation" and at the same time by mean of a letter from 27 of May 2013.

Until the day of 30th of May 2013, i.e. the day when the public interdepartmental discussion on the draft of the Forest Act was over, the collective observation had been **supported by 9062 supporters**. This action took place on the web site www.ekoforum.sk/peticia/lesny-zakon, where also the text of collective comment was published (there was also a link to the published draft of the Forest Act and a link to URL of the detail of the collective comment).

Even during few following days after the public interdepartmental discussion was over, other 4 500 citizens supported the collective comments. So totally there has been a support of **more than 13 000 citizens.**

Proof:
- *Detail of the collective comment to the document " draft of the Forest Act" published on the Portal of legislation on URL: https://lt.justice.gov.sk/Public/MassReviewSupportByUser.aspx?instEID=191&matEID=6173&mrEID=307516*
- *Wording of the draft of the Forest Act published in the Portal of legislation on URL: https://lt.justice.gov.sk/Attachment/vlastnymat_doc.pdf?instEID=191&attEID=54242&docEID=304496&matEID=6173&langEID=1&tStamp=20130510151604613*
  Display of comments to the document „draft of the Forest Act" – a part related to the collective comment of the public represented by Róbert Oružinským – published on URL: https://lt.justice.gov.sk/Document/DocumentDetailsReviewEvaluation.aspx?instEID=52&matEID=6173&drCommentDocFREID=-1&langEID=1&tStamp=20130828144643160
- *Text addressed to supporters of collective comment, together with relevant links to the Portal of legislation and text of the collective comment and application form used for collection of signatures of collective comment´s supporters – published on URL: http://www.ekoforum.sk/peticia/lesny-zakon*
- *Annex to the letter containing the text of collective comment sent to the submitter 30th of May 2013*
- *Document in legislative process – overview of legislative process related to the draft of the Forest Act – published on URL: https://lt.justice.gov.sk/Material/MaterialWorkflow.aspx?instEID=-1&matEID=6173&langEID=1&tStamp=20130531074422807*

Collective comments has been applied in accordance with the Legislative rules of government of the Slovak Republic (hereinafter" the legislative rules"), specifically in accordance with requirements according to the article 2, 6 and 7 of the legislative rules and also in accordance with procedure in terms of article 14 of the legislative rules.

According to the article 14 paragraph 6 second sentence of the legislative rules *„Negotiation procedure on contradictions with a representative of the public shall always take place if the submitter did not satisfy the collective comment, supported by at least 500 natural or legal persons.“*

The submitter shall convoke first negotiation on contradictions in matter of the collective comment to the draft of the Forest Act through an electronic invitation of the representative of the public. Negotiation on contradiction between the submitter and the representative of the public took place 10th of June 2013 in the building of the submitter (the Ministry of agriculture and rural development of the Slovak Republic).

This negotiation on contradictions resulted into an agreement on several of essential comments between the submitter and the representative of the public. Nevertheless it mainly concerned the essential comment no. 11, which was entirely accepted by the submitter.

It was the comment to the point 54 of the draft of the Forest Act, which was stating:
„In section 30, the paragraph 3 states as follows: „(3) Organizing of physical education, sport or hiking competitions and events or carrying out of commercial activities on forest lands requires a previous written agreement of forest operator.“.“

The intention of the essential comment formulated by the public under no.11 and included into the collective comment was to avoid a possible abuse of proposed provision through an arbitrary interpretation by competent public authorities. Its purpose was also to harmonize draft law with natural needs and traditions of population within the Slovak territory, because the wording of section 30, paragraph 3 such as suggested by submitter, unreasonably infringed upon the fundamental rights and freedoms of citizens of the Slovak Republic which are guaranteed under article 23 of the Constitution of the Slovak Republic. The suggested version of the provision which the comment has contested could be interpreted in a way to complicate the entry of the public to the forests, which would be in contradiction with an old tradition consisting in a minimal limitation of the entries of the public to the forests.

The public´s essential comment, no. 11 stated as follows:
„We require amending of the point no. 54 as follows:
In Section 30 the paragraph 3 states:
„Organizing of physical education, sport or hiking events on forest lands is possible only in accordance with particular regulations[XY)]“
Footnote in respect to note XY states:
„[XY]) law no. 479/2008 Coll. on organizing of physical education, sport and hiking events of public character“

The comment was followed by a rather extensive argumentation which figures in the text of the collective comment and at the end of the argumentation figured a highlighted text stating that it was an essential comment. It is very important when a comment is labelled as essential, because such a comment has to be subject to negotiation on contradictions between the one who submitted the comment and the ministry who submitted the draft law into the

interdepartmental discussion. The Legislative rules of the government define an essential comment in its article 14 paragraph 4 in the following manner: "*An essential comment represents a categorical dissent by a body who applied it and who signalize that in case where the comment was not accepted it is probable that a member of the government would not vote in favour during the governmental negotiation or the one who applied the essential comment, if he/she is present during the governmental negotiation, would raise it even during this negotiation.".*

Proofs:

- *E-mail, sent by submitter to the representative of the public*
- *Annex of the above mentioned e-mail: evaluation of the interdepartmental discussion with the representative of the public on matters of the collective comment on the draft of the Forest Act*
- *Press release made by submitter, published by SITA on 10th of June 2013, i.e. immediately after the negotiation on contradictions was over – published on various web portals, e.g. on URL: http://www.lesnickenoviny.sk/spravy/470-ministerstvo-prepracuje-novelu-zakona-o-lesoch*
- *Text of the collective comment*

The reason why the public applied an essential comment in respect to the provision of section 30 paragraph 3 of the Forest Act was a real threat that citizens could face various problems and ambiguities in application of proposed provision in practice.

As previously stated, essential comment no. 11 related to the provision of section 30 paragraph 3 of draft of the Forest Act, **has been entirely accepted by the submitter.**

During the negotiation on contradictions **other 4 essential comments were not accepted by the submitter** and thus in their respect **there has persisted a contradiction** between the representative and the submitter in matters of collective comment to draft of the Forest Act. It concerns essentials comments no. 2, 3, 12 and 15.

Proofs:

- *E-mail sent by the submitter to the representative of the public*
- *Annex of the above mentioned e-mail, which was the evaluation of the interdepartmental discussion with the representative of the public in matter of the collective comment on the draft of the Forest Act*

The negotiation on contradictions on the collective comment between the submitter and the representative of the public **did not result into a standard report**, i.e. a report in a written form on paper containing authentic signatures of participants, but only into a record in electronic form.

Nevertheless even on the basis of such a record from negotiation on contradictions which was made in form of electronic document (including the evaluation of the interdepartmental discussions) and sent by the submitter to the representative of the public, it can be concluded **that submitter during the negotiation on contradictions the day of 10th of June 2013 did not accept 4 essential comments formulated by the public in respect to the draft of the Forest Act.**

Despite of the fact that the above mentioned essential comment no. 11 (related to the provision of section 30 paragraph 3 of the Forest Act) was accepted by the submitter during

the negotiation on contradictions, for a posterior negotiation of consultative bodies of government, namely Legislative committee of the Government of the Slovak Republic (hereinafter "legislative committee") (the legislative committee has an obligation to discuss all proposed laws, submitted for a negotiation of government) **was submitted other proposed version of section 30 paragraph 3 of the Forest Act than it had been agreed on during the negotiation on contradictions** with the submitter the day of 10th of June 2013, (which figures in the record of the negotiation on contradictions and a press release made by the submitter also confirms it).

For the negotiation of the legislative committee there was submitted following version of the section 30 paragraph 3 of the Forest Act:
"(3) Organizing of public physical education events, sport or hiking events or carrying out of activities with lucrative purpose on forest lands is possible only in accordance with particular regulations.45c)".
Footnote of the note 45c states:
„45c) section 3 paragraph 4 of the law no. 479/2008 Coll. on organizing of public physical education events, sport and hiking events, section 126 of Civil code."

From mentioned version of the provision it stems that in comparison to the original one, which had been agreed on during the negotiation on contradictions with the submitter, this posterior proposal has been changed. Into this posterior proposal there has been again reincorporated the obligation to receive an authorization for organizing of public physical education events, sport or hiking events on forest lands. Further, in this version of proposal there has emerged a new obligation to receive an authorization for performing activities with lucrative purpose on forest lands, in dissent with version agreed during the negotiation on contradictions with the submitter.

Proofs:
- *39th negotiation of the legislative committee, where the 4th point of programme was the draft of the Forest Act– published on URL: http://lrv.rokovania.sk/141737/39-/*
- *Draft of Forest Act submitted on 39th negotiation of the legislative committee, particularly point no. 57, which changed the agreed version of the section 30 paragraph 3– published on URL: http://lrv.rokovania.sk/data/att/141744_subor.rtf*

Within the 39th negotiation of the legislative committee the submitter presented also the evaluation of the interdepartmental discussions related to the draft of the Forest Act. This evaluation includes all comments contained in the collective comment of the public on the draft of the Forest Act. **However all these comments are labelled as "ordinary", meanwhile in terms of legislative rules they were supposed to be labelled as "essential" ones.**
Probably in reason of arbitrary change in categorization of "essential" comments into "ordinary" ones by the submitter, **the evaluation does not mention persisting contradictions in respect to four essential comments**. The evaluation does not take into account the outputs of the negotiation on contradictions from 10th of June 2013 but it mechanically classifies all 17 comments made by the public as "ordinary-O". In respect to the manner of their evaluation it mentions "not to be taken into account-N". In this manner the submitter disregarded the essentiality of comments and four persisting contradictions.

We consider submitter´s proceeding in regards to the evaluation of the interdepartmental discussions as inadmissible given the fact that within the evaluation of those discussions he

stated untrue facts which consequently engendered disinformation on the side of the legislative committee and the government of the Slovak Republic. Proceeding of the submitter in this matter did not comply with the legislative rules.

Proof:
Evaluation of the interdepartmental discussions on draft of the Forest Act submitted on the 39th negotiation of the legislative committee (annex no.14)

Before the 39th negotiation of the legislative committee the representative of the public addressed a letter dating from 19th of June 2013 to the legislative committee, where he requested a participation within the 39th negotiation of the legislative committee in matter of the collective comment on the draft of the Forest Act. At the same time he drove their attention to the persistence of contradictions over four essential comments and to the seriousness of issues that comments were dealing with.

Proof:
Letter dating from 19th of June 2013 – Request for participation in negotiation of the legislative committee (annex no. 15)

Director of the legislative department within the section of governmental legislation sent an answer to the representative of the public informing him that *"if contradiction could not be solved out within the legislative proceeding, this fact will figure in the evaluation of the interdepartmental discussion".*

Proof:
Letter dating from 12 of July 2013 – request for a participation in the negotiation of the Legislative committee of the government of the Slovak Republic – answer.

However, the fact that contradictions over 4 essential comments of the public were not solved out did not finally figure in the evaluation of the interdepartmental discussion presented within the legislative committee´s negotiation on draft law.

Draft of the Forest Act was submitted for the governmental negotiation on 26th of September 2013.

Proof:
Governmental negotiation, Programme of the negotiation, 16th point of the programme: Draft of the Forest Act – published on URL:
http://www.rokovania.sk/Rokovanie.aspx/BodRokovaniaDetail?idMaterial=22884

For the governmental negotiation there was finally submitted **completely different version of the provision** of section 30 paragraph 3 of the Forest Act **than the one that submitter and the representative of the public agreed on,** but also different to the version that submitter presented during the negotiation of the legislative committee**.**

Wording of the provision submitted to the governmental negotiation was as follows:
„In section 30, the paragraph 3 states: "(3) Organizing or performing activities with purpose of acquiring a profit on forest lands requires an authorization of the owner or an operator. Use of forests by the public does not refer to closed and fenced forest lands in army´s forests."."

Beside we would like to underline that the right to use forest, even for commercial purposes which do not damage or do not have an undesirable impact on the environment, respects absolutely the right to a favourable environment and the duty of everyone to protect and enhance it in terms of the article 44 paragraph 2 of the Constitution of the Slovak Republic.

Proof:
Draft of the Forest Act submitted for governmental negotiation, particularly point no. 55, which modified the agreed version of section 30 paragraph 3 – published on URL: http://www.rokovania.sk/File.aspx/Index/Mater-Dokum-159890 (annex no. 18)

At the same time in the evaluation of the interdepartmental discussion which formed part of the draft law submitted for the governmental negotiation, **were other four essential comments of the public, untruly labelled as "ordinary comments."**

The government of the Slovak Republic was not informed at all that these four essential comments were not accepted and that there were unresolved contradictions in respect to them, which is inconsistent with the legislative rules**.**

In the submission report which forms part of the document containing draft law was stated: *„Document was subjected to interdepartmental discussion whose evaluation formed part of the document. A contradiction persists in the case of an essential comment formulated by the plenipotentiary for the civil society, concerning the elimination of the provision related to the authorization by the owner of the forest land for an event organizing on his/her land. Other contradictions appeared in respect to the definition of the party to an administrative proceeding.* ***Contradiction continues also in case of an essential comment expressed by the public in respect to the authorization of the forest land owner for an entry into its property.*** *The draft was subjected to negotiation of the Legislative committee of the government of the Slovak Republic whose comments have been incorporated into it."*

Submission report did not contain any information about other 4 essential comments which formed part of the collective comment of the public and which were the reason of persisting contradictions.

Proof:
Submission report to the Draft of Forest Act submitted for the governmental negotiation – published on URL: http://www.rokovania.sk/File.aspx/Index/Mater-Dokum-159887 (annex no. 19)

Submission report contained untrue and misleading information in respect to the collective comment of the public to the draft of the Forest Act. First of all it concerned an untrue fact that the contradiction continues in case of a public´s essential comment concerning the authorization of the forest land owner to enter to his/her property. Nevertheless any such a contradiction did not emerge either from the negotiation on contradictions which took place day of 10th of June 2013 between the submitter and the representative of the public or from records obtained from it. At contrary, in the case of this particular essential comment the submitter has accepted it, which consequently leaded to a mutual agreement. Secondly, the submission report does not make any reference to contradictions that resulted from the negotiation in respect to four essential comments of the public.

In the evaluation of the interdepartmental discussion submitted to the governmental negotiation, equally as in the case of the evaluation submitted to legislative committee, all 17 comments of the public were classified as "ordinary – O" with a manner of evaluation "not to be taken into account". However in the evaluation there should have figured that there were persisting contradiction over four comments.

Proof:
Evaluation of the interdepartmental discussion on the draft of the Forest Act submitted for governmental negotiation –published on URL: www.rokovania.sk/File.aspx/Index/Mater-Dokum-159217

The representative of the public realized on the website of the Government office that for the governmental negotiation there had been submitted completely different version of section 30 paragraph 3 of the draft of the Forest act than the one it had been agreed during the negotiation on contradictions with the submitter. At the same time he realized that contrary to the legislative rules, the government was not informed at all about other essential comments, contained in collective comment, which were not accepted and either was not informed about the persisting contradictions in this respect.

This was an impulse for the representative of the public to publish the day of 25 of September 2013 his blog where he called upon citizens to address a request to the Prime Minister with a warning about the violation of the legislative rules and a petition for its reparation. 25th of September 2013 he also sent an e-mail to the Government Office of the Slovak Republic**, concretely to the office of the Prime Minister of the Slovak Republic** (on e-mail address premier@vlada.gov.sk with a copy to podatelna@vlada.gov.sk). He did so before the governmental negotiation on the draft of Forest Act took place. The Government Office sent to the representative of the public a letter in matter of the collective comment answering him and ensuring him that his letter would constitute an instigation for a further investigation. Petition for reparation was also sent by other 20 citizens.

Proof:
- *Róbert Oružinský´s blog, published on URL: http://oruzinsky.blog.sme.sk/c/338336/Dodrzi-premier-Fico-svoje-vlastne-pravidla.html*
- *E-mail sent to the Government Office of the Slovak Republic*
- *Letter to the Prime minister from 26 of September 2013*
- *E-mail from the Government Office of the Slovak Republic – delegation of investigation of instigation*

Submitter sent to the citizens who sent the instigation to the Government Office of the Slovak Republic an answer (a letter) dating from 22 of October 2013 (so nearly one month after the governmental negotiation on the draft law) with the following containing:

„By mean of an electronic mail, you sent to the Prime Minister of the Slovak Republic a request to not to discuss the draft of law no.326/2005 Coll. on forests. In respect to every point you have mentioned in your instigation we would like to note the following:

1. *Comment classification is generated by the Portal of the legislation which is also used for an automatic processing of submitted comments to documents submitted for the interdepartmental discussions and consequently for the governmental negotiation. A*

collective comment of the public would be classified as essential in case where on the Portal of the legal regulations the comment was supported by more than 500 citizens.

2. *Ministry of agriculture and rural development of the Slovak Republic for the negotiation of consultative bodies of the government of the Slovak Republic submitted proposal of section 30 paragraph 3 in version agreed on during the interdepartmental discussion. The legislative committee of the government of the Slovak Republic which is a permanent consultative and coordination body of the government of the Slovak Republic in matters of legislation, recommended to adopt the version of mentioned provision which had been presented in the document submitted for negotiation of the government of the Slovak Republic.*

   On the basis of above stated facts we can conclude that the submission of the draft of the Forest Act for the governmental negotiation did not violate any legislative rules of the government of the Slovak Republic."

   In this letter the submitter did not mention anything in relation to the persisting contradictions over four essential comments of the public. The submitter did not either explain the fact why the government had not been informed on the existence of the persisting contradictions over four essential comments of the public. The submitter in his letter only pointed out to the fact, that the Portal of legislative regulations had automatically classified comments contained in the collective comment of the public as ordinary instead of essential ones (and that despite the fact that collective comment was supported by more than 9 thousands citizens through www.ekoforum.sk, what violates article 14 paragraph 6 last sentence of the Legislative rules of the government, which states: *„If a collective comment took place through an electronic form on a portal, the list of natural and legal persons who had supported the collective comment could be sent to the submitter also by other mean that by portal.")*.

   Proof:
   Submitter´s letter from 22 of October 2013 „Suspension of negotiation on draft of the Forest Act"

   Day of 26th of September 2013 during the 75th meeting of the government of the Slovak Republic under point 16 was discussed a draft law which amends law no. 326/2005 Coll. on forests (document no.: UV-23637/2013). By r**esolution no. 560 from 26 of September 2013 the government adopted the draft law which amends law no. 326/2005 Coll. on forests.**

   Proof:
   Resolution of the government of the Slovak Republic no. 560 from 26th of September 2013 – published on URL: http://www.rokovania.sk/File.aspx/Index/Uznesenie-13678

   Draft of the Forest Act was discussed and adopted by the government despite the fact that wording of the provision of section 30 paragraph 3 of the Forest Act had been changed in violation of the agreement concluded during the negotiation on contradictions (without any possibility for the representative of the public Róbert Oružinský to discuss this modified version with the submitter or with the legislative committee), and also the fact that the government was not informed by competent state bodies (submitter and the legislative committee) in matter of persisting contradictions over four other comments of the public on the draft of the Forest Act.

As it stems from above stated facts, the representative of the public made a maximal effort to bring to the attention of competent state bodies the violation of the legislative rules on all levels of the legislative process in the framework of the preparation and adoption of the draft of the Forest Act.

2. Concerning violations of the Legislative rules of the government

Procedure for the preparation of draft laws and procedure for their negotiation in the interdepartmental discussions and in the government of the Slovak Republic, and also the status and rights of the public within this process are regulated by **the Legislative rules of the government.**

In terms of the article 14 paragraph 7 of the Legislative rules of the government *„On the basis of the negotiation on contradictions the submitter will prepare a* ***report*** *which shall be signed by the representatives of both sides of the contradiction.“.*

According to the article 14 paragraph 6 second and third sentence of the Legislative rules of the government *„There shall always be a negotiation on contradictions with the representative of the public if the submitter does not accept a collective comment which is supported by at least 500 natural or legal persons. If the collective comment was carried out in electronic way through a portal,* ***list of natural and legal persons who supported the collective comment can be sent to the submitter also by other mean that by portal.****“*

According to the article 14 paragraph 9 of the legislative rules of the government *„Comments to the draft law which were sent in electronic form through the portal will figure in the evaluation of the interdepartmental discussion [art. 18 par. 2 letter e)]* ***including at label whether it is an essential comment*** *and in case where comments were not accepted, there shall also figure a reason why it was so; it applies equally in the case of comments made by obliged authority, and also when comments are formulated by non-obliged authorities and by the public.“*

According to the article 18 paragraph 2 letter d) point 1 of the Legislative rules of the government *„Document through which a draft law is submitted to a negotiation of the government and of the legislative committee (paragraph 1) in addition to the draft law should contain especially...* ***declaration of the submitter*** *...* ***stating absence of non-contradictory character of the draft law or indicating which contradictions (art. 14 paragraph 5) has the draft law including contradictions with the representative of the public (art. 14 par. 6)*** *and mentioning reasons why it was not possible to overcome these contradictions,...“.*

In terms of article 18 par. 4 letter h) of the Legislative rules of the government *„Submission report of draft law contains mainly…public´s collective comment or a summary of other materially similar comments of the pubic, if they were applied“.*

Stemming from the factual background and from the above mentioned provisions of the Legislative rules of the government, the Ministry of the agriculture and rural development of the Slovak Republic and the Government of the Slovak Republic have violated the Legislative rules of the government in the following manner:

2.1.

After the negotiation on contradictions, the submitter (Ministry of agriculture and rural development) did not make a regular report which violates the legislative rules.

2.2.
In the evaluation of the interdepartmental discussion which had been submitted by the Ministry of agriculture and rural development of the Slovak Republic to the Government of the Slovak Republic, all essential comments (including those where contradictions were persisting) were labelled as ordinary comments.

2.3.
For the negotiation of the government there was submitted a proposal of version of section 30 paragraph 3 of the Forest Act which was inconsistent with the version agreed on with the representative of the public Róbert Oružinský during the negotiation on contradictions. The submission report was stating that there was a persisting contradiction in relation to the provision of section 30 paragraph 3 of the Forest Act. However it was the only comment that has been accepted by the Ministry of agriculture and rural development during the negotiation on contradictions.
In contradiction with the agreement concluded between the Ministry and the representative of the public Róbert Oružinský during the negotiation on contradictions, this accepted comment was reclassified to a non-accepted one. Moreover for the negotiation of the government there was submitted different version of the provision of section 30 paragraph 3 of the Forest Act than the one which had been agreed on during the negotiation on contradictions.
Either Ministry of agriculture and rural development of the Slovak Republic or the legislative committee of the government did not inform the representative of the public Róbert Oružinský about changes in the version of the provision agreed on during the negotiation on contradictions and did not allow Robért Oružinský to discuss and reason on the new version of the provision. Even if was true the information stated in the letter of Ministry of agriculture and rural development from day of 22th of October 2013 that the provision had been changed by the legislative committee of the government, it does not change the fact that the representative of the public Róbert Oružinský was told that the Ministry of the Agriculture and rural development of the Slovak Republic had accepted his essential comment. Then he simply was not informed that this essential comment was not finally accepted and thus he could not discuss anymore with the submitter or with the legislative committee of the government at this respect. Such a proceeding evidently avoids an effective public participation in legislative process. If this kind of proceeding was considered correct, submitters of drafts of legislative regulations could easily avoid negotiation with representatives of the public during the negotiation on contradictions. So first they would say to representatives of the public they accept all their essential comment and consequently during the negotiation of the legislative committee of the government they would reject all of them.

2.4.
Document submitted for the negotiation of the government day of 26th of September 2013 did not state there was a persisting contradiction with the representative of the public concerning other essential comments of the public. And thus during its negotiation and decision-making on the draft of the Forest Act, the government of the Slovak Republic could not take into account these public´s essential comments. As it was previously mentioned, the submission report which is a part of a whole document containing draft law stated the following: *"Document was subject to an interdepartmental discussion whose evaluation figures in this*

document. ***A contradiction persists*** *over an essential comment of the plenipotentiary of the government for the civil society concerning the authorization of a forest land owner for organizing of the events on her/his land and over a definition of a party to a proceeding in an administrative proceeding and* ***over an essential comment of the public concerning the authorization of the forest land owner to enter her/his land.*** *The draft law was subject to negotiation of the legislative committee of the government of the Slovak Republic, whose comments are included in it."* The submission report thus does not contain any information in respect to other comments which were part of the collective comment of the public. The fact that the Portal of the legislation automatically labelled essential comments of the public as "ordinary" cannot be a reason for not submitting information about persisting contradictions over the public´s essential comments to the government. The comment of the public were in fact essential comments (in spite of being automatically labelled as ordinary by the portal of legislation), given that they were sent to the submitter through the portal, they were labelled as "essential comments" and on the web site www.ekoforum.sk they were supported by more than 13 000 citizens. These citizens´ votes were sent to the submitter in a different way. Such a proceeding is explicitly allowed by the article 14 paragraph 6 third sentence of the Legislative rules of the Government which states: *„If a collective comment was applied in an electronic way through the portal, list of natural or legal persons who identified themselves with the collective comment can be sent to the submitter also in other way than through the portal. "***.** In accordance with this provision the collective comment labelled as "essential" and applied through the Portal of the legislation, supported by more than 13 00 citizens on the website www.ekoforum.sk, whose list was sent to submitter "in other way than through the portal", shall be considered as essential collective comment of the public. In case where this essential collective comment is not accepted there is a need to organize a negotiation on contradictions (and the Government of the Slovak Republic has to be informed on a persisting contradiction over this collective essential comment).

3. Concerning the violation of the article 8 of the Aarhus Convention

Above mentioned violations of the Legislatives rules of the government constitute a serious violation of the right of the public to participate in the process of creation of generally binding legal regulations in matters of the environment which are guaranteed by the Aarhus Convention.

Public authority bodies have thus a duty to comply with provisions of this Convention and interpret and implement national legislation and other administrative measures in a manner compatible with the purpose of this Convention and also in manner that provisions of this Convention are not violated.

Article 8 of the Aarhus Convention is entitled: *„Participation of the public during the preparation of executing regulations and/or generally applicable legally binding normative instruments".*
According to article 8 of the Aarhus Convention *„Each Party shall strive to promote* ***effective public participation*** *at an appropriate stage, and while options are still open, during the preparation by public authorities of executive regulations and* ***other generally applicable legally binding rules*** *that may have a significant effect on the environment. To this end, the following steps should be taken:*
(a) Time-frames sufficient for effective participation should be fixed;
(b) Draft rules should be published or otherwise made publicly available; and

(c) ***The public should be given the opportunity to comment****, directly or through representative consultative bodies.*
The result of the public participation shall be taken into account as far as possible*."*

In respect to the requirement that the outcome of public participation is taken into account as far as possible the Implementation guide of the Aarhus Convention (2nd edition) states on its page 192: *„…it is mandatory for the Parties to ensure that the outcome of public participation is taken into account as far as possible. (...) this provision establishes a relatively high burden of proof for public authorities to demonstrate that they have taken into account public comments in processes under article 8. As a practical matter, the final document adopting the legislation or rules should explain the public participation process and how the results of the public participation was taken into account. (...)In the preparation of the final documents relating to adoption of the legislation or rules, the public authority responsible for the public participation should provide a full picture of the public participation, including outlining the process itself, the public input received and how that input has been taken into account in the final result. In a particular case it might be proved that a given public authority did not meet minimum procedural requirements, if it can be shown that the public was not consulted or that the public's comments were not taken into account at all.".*

Containing of article 8 of the Aarhus Convention relates to the rights of the public (natural and legal persons) to participate during the preparation of *„generally applicable legally binding rules by public authority bodies which might have a considerable impact on the environment"*– so it concerns also participation in a preparation of generally binding legal regulations (laws) in matters of the environment.
Article 8 of the Aarhus Convention provides a basis for the right of persons (members of the public) for an effective participation of the public in the preparation of generally binding legal regulations and the right to have taken into account the outcome of the public´s participation as far as possible.

The Forest Act is without any doubt a "generally applicable legally binding rule", which might have a considerable impact on the environment.

According to the article 3 paragraph 1 of the Aarhus Convention (article 3 is entitled „General provisions") *„Each Party shall take the necessary legislative, regulatory and other measures, including measures to achieve compatibility between the provisions implementing the information, public participation and access-to-justice provisions in this Convention, as well* ***as proper enforcement measures, to establish and maintain a clear, transparent and consistent framework to implement the provisions of this Convention."***

To administrative and other measures which enforce provisions of the Aarhus Convention related to the participation of the public in the preparation of generally binding legal regulations pertain without a doubt also the Legislative rules of the Government adopted through a resolution of the government.

The Legislative rules of the government specifically regulate and specify rights of the public to participate within the legislative process. These rights are granted to the public by the article 8 of the Aarhus Convention.

As the government of the Slovak Republic and the Ministry of agriculture and rural development of the Slovak Republic have violated the Legislative rules of the government in

a manner described above there was a violaion of the right of the public to ***"an effective participation of the pubic"*** *... during the preparation of generally applicable legally binding rules by public authority bodies, which might have a considerable impact on the environment".*

As previously mentioned the representative of the public was not given an opportunity to discuss with the submitter a provision in respect to which there had been raised an essential comment of the public. In consequence the Government of the Slovak republic could not take in account this public´s essential comment on the provision. Such a proceeding cannot be in any case considered as an "effective participation" of the public in the preparation of the legislation. As state above, if such a proceeding was admissible, it could be used by submitters of drafts of legislative regulations to avoid negotiations with the representatives of the public within the negotiations on contradictions. So they could first inform the representatives of the public that all their essential comments had been accepted and later on during the following stages of the legislative process (during a negotiation of the Legislative committee of the government or during a negotiation of the government of the Slovak Republic) they would achieve rejection of all public´s essential comments. That would completely negate the essence of the negotiation on contradictions which provides to the representatives of the public an opportunity to discuss with the submitter of legal regulations on the public´s comments.
Such a proceeding represents rather than an effective participation of the public an avoiding of the public´s participation in the preparation of the legislation.

The Government of the Slovak Republic was not either informed about 4 essential comments of the public which were at core of persisting contradiction. Consequently the government could not take in account these essential comments of the public within its decision-making on the draft law.

In this respect it can be concluded that the requirement stating that „ ***The result of the public participation shall be taken into account as far as possible****",* was not fulfilled.

It stems from previously mentioned facts that proceeding of the government of the Slovak Republic and of the Ministry of agriculture constitutes a violation of rights guaranteed by the article 8 of the Aarhus Convention.

4. Concerning the lack of legal regulation

It is to be underlined again that the preparation of legislative (laws and other hierarchically lower regulations) and non-legislative documents by central state administration bodies of executive power before their approval by the Government and following submission to the legislative process in the National Council of the Slovak Republic, is regulated by the Legislative rules of the Government. These rules regulate also a possibility of the public for a qualified participation in the preparation of legislative (and also non-legislative) documents, including an opportunity to comment drafts of those documents. Process of the public´s participation in the preparation of legislative (and also non-legislative) documents is described

in details in above mentioned factual background, on a concrete case which is the subject of this communication.

Briefly resuming, every document of legislative or non-legislative nature which is being approved on the governmental level (e.g. draft laws, drafts of governmental regulations) or on the level of central state administration bodies (e.g. executing ordinance of ministries on the basis of a legal delegation) has to be subject to interdepartmental discussion. Every such document has to be published on the Portal of Legislation (web portal administered by the Government Office – https://lt.justice.gov.sk/) for a period of at least 15 days, when it is possible to comment the document by other central state administration bodies on the one hand and by other entities, including the public on the other. In case when the public´s comments labelled as essential are supported by a certain qualified number of supporters (500 of supporters in case of legislative documents, 300 of supporters in case of non-legislative documents) the designated representative of the public has a right to discuss comments, and this even with the political representative in chief of the competent central state administration body. In case where any agreement in respect to the comments is not achieved, this fact has to be communicated to every member of the government (if it concerns a document to be approved by the government) by intermediate of the document´s submission report.

According to the opinion of communicant, the above described regulation is compatible with the article 8 of the Aarhus Convention when it concerns a sufficient participation of the public in the legislative process in case when is approved a generally binding regulation related to the environment. Nevertheless there is a problem of a weak (in some cases none) possibility to claim effectively the observance of public´s rights to participate in legislative process according to the legislative rules of the government and enforce them.

In practice it often happens, that rights of the public stipulated in the legislative rules of the government are being violated during the process of interdepartmental discussions. It occurs that some draft laws are not published on the Portal of legislation and so the public does not even know they could comment them. It also happens that the period for sending comments is arbitrarily shortened into a period which does not allow the public to prepare elaborated comments on the document. It equally occurs that the submitter of the document manipulates the process of interdepartmental discussions, for example in a way described above in the description of factual background.

In case when some of mentioned (or other) violations of the legislative rules of the government occur, the public does not dispose of any appropriate and effective instruments in order to obtain a remedy.

The Legislative rules of the government of the Slovak Republic have been adopted through a resolution of the Government of the Slovak Republic, under no. 352 and dating from 25th of May 2010. It is not a legal either hierarchically lower regulation but rather an intern directing act of the government binding for central state bodies which are subordinated to the government (especially particular ministries). However it does not have a generally binding legal character. This is the reason why the public does not have a possibility to turn to bodies instituted for protection of the rights and legally protected interests of natural and legal persons. Such bodies are for example courts, which are however in terms of section 7 paragraph 2 of the law no. 99/1963 Coll. of the Code of Civil procedure, bound by legal regulation (*„…courts review also the **legality** of decisions of public administration bodies and **legality** of decisions, measures or other interventions by public authority bodies...“)*. Equally

the bodies of the Prosecution supervise the observance of the legality. (In terms of section 3 par. 2 of the law no. 153/2001 Coll. on the public prosecution *„In public interest the Prosecutor´s Office within the scope of its competence is obliged to carry out measures necessary to avoid* ***legality*** *violation, to investigate and eliminate* ***legality*** *violations, further measures for restoration of violated rights and responsibility attribution for their violations.")*. Mentioned bodies designated for the protection of rights of natural and legal persons do not dispose of authority to review violations of rules which are not adopted in form of generally binding legal regulation.

Considering that the Legislative rules of the Government are not a generally binding regulation and do not have force of law, bodies supervising observance of the legality do not dispose of an authority to review their eventual violation and so they reject all instigations requesting them to review the compliance with legal rules of the government. An example is a decision of the Supreme Court of the Slovak Republic, no. 9 Sžz 5/2013, from 27th of November 2013, which concerned a complaint made by a member of the public (civil association), where there was objected a violation of rights of the public, stipulated in the legislative rules of the government, committed by the Ministry of the Environment of the Slovak Republic during the preparation of draft law on nature protection. The Supreme Court stated lack of authority to decide in this matter and considered it as a major impediment in the proceeding due to the fact that it does not concern a legal regulation. On this basis the Supreme Court suspended the proceeding. Civil Association contested mentioned decision before the Constitutional Court of the Slovak Republic which dismissed this constitutional complaint in its resolution I. ÚS 112/2014, stating at the same time that proceeding of the Supreme Court had been correct.

In this case a remedy might be a filing of complaint on the basis of the law no. 9/2010 Coll. on complaints. However such a complaint would be reviewed by the same body who impaired the right or by its superior body and so it would not be an independent body (revision would not be "fair"). Through the proceeding on a complaint it is impossible to achieve an effective remedy to a proceeding which would be inconsistent with the legislative rules of the government.

Equally the Constitutional Court in its previous cases always dismissed constitutional complaints which were claiming the violation of the legislative rules of the Government (in connection with the violation of a constitutional right to participate in the exercise of public affairs). For an illustration it was for example a decision of the Constitutional Court no. III. US 4/08, where complainants were challenging a proceeding of a competent ministry, who submitted a draft law for a governmental negotiation without having negotiated with a representative of the public, despite the fact that they had raised essential comment to the draft law, supported by a qualified number of supporters. In its resolution no. II. ÚS 514/2012 the Constitutional Court equally dismissed a constitutional complaint of a complainant, a member of the public, was challenging a proceeding of a competent ministry who had violated the legislative rules of the government and had not published the draft law on the Portal of legislation. The draft law was sent for comments only to a selected group of ministries and thus the public had lost an opportunity to express their opinion and make comments on that draft law.

In its previous decision-making the Constitutional Court has been dismissing also complaints where complainants, members of the public, were objecting violations of the legislative rules of the government in connection with a violation of the article 8 of the Aarhus Convention. It

concerns for example a decision of the Constitutional Court related to the case which is the object of the present communication (see point VI of this Communication). There can be also mentioned a decision of the Constitutional Court in affair III. ÚS 102/08 and also already mentioned resolution of the Constitutional Court I. ÚS 112/2014.

Moreover the Constitutional Court in its decision-making is materially competent to review only constitutionality and thus can state only violation of constitutional rights. That restrains considerably its scope of review.

As it stems from the description of the factual background of the case which is the object of present communication and also from the description figuring in this point of the communication, the legislative rules cannot be considered as a form of compliance with the obligation instituted by the article 8 of the Aarhus Convention. Communicant are convinced that in case when the State adopts rules which regulate the process of preparation of the legal regulations, it has also a duty to provide an effective instrument to ensure the enforcement of those rules.

In terms of the first sentence of the article 8 of the Aarhus Convention *„ Each Party shall strive to promote* ***effective public participation*** *at an appropriate stage, and while options are still open, during the preparation by public authorities of executive regulations and other generally applicable legally binding rules that may have a significant effect on the environment.“.*

Communicant are convinced that in order to achieve an effective participation of the public in the preparation of generally applicable legal rules, it is necessary to adopt such measures which:
a) guarantee in a sufficient manner rights instituted by the article 8 of the Aarhus Convention
b) are enforceable in case of their violation

Establishment of rules in itself, no matter how good these rules are, is not sufficient if there is no possibility to enforce them. In the context of the Slovak Republic the requirements of the Article 8 of the Aarhus Convention are reflected in the legislative rules, however the public does not dispose of any effective instruments how to enforce them. The communicant are convinced that one of the effective instruments which should be at disposition of the public and which could guarantee the compliance with the legislative rules of government might be a possibility to object violations of the legislative rules of the government before an independent and impartial body. Such a body might dispose of an authority to review a compliance with legislative rules of the government and to enforce them. In the context of the Slovak Republic only court meet such criteria. Court is impartial and independent body and also the only one which disposes of authority to review legality of proceedings and of decisions of public administration bodies.

According to the opinion of the communicant, it stems from the Aarhus Convention itself that in order to guarantee rights granted by the Aarhus Convention, there has to exist also a possibility to have an access to court. Preamble of the Aarhus Convention states that *“effective judicial mechanisms should be accessible to the public, including organizations, so that its legitimate interests are protected and the law is enforced“*. Whole third pillar of the Aarhus Convention (article 9) is based on the idea of effective and sufficient access to court for the public in order to guarantee a protection of rights stipulated in the first pillar (access to information on the environment) and in the second pillar (participation in decision-making

process in matters of the environment). According to the opinion of the communicant, it is a matter of fact that the third pillar of the Aarhus Convention refers also to the protection of the rights arising from the article 8 of the Aarhus Convention, given that an effective implementation of these rights requires their judicial protection. Evidently also the acts and proceedings carried out by the competent public administration bodies during the preparation of the generally binding legal rules in matters of environment represent "acts and omissions" in terms of the article 9 paragraph 3 of the Aarhus Convention.

As it has been stated above, in the context of the Slovak Republic a violation of the legislative rules of the government cannot be challenged in itself before a court, because courts in conditions of legal order of the Slovak Republic reviews only violations of legal norms. In communicant´s opinion, due to the fact that the legislative rules of the government (especially the part which concerns the public´s participation in the preparation of the legal regulations) are adopted in form of a resolution of the government, Slovak Republic does not guarantee an effective protection of the rights arising from the article 8 of the Aarhus Convention.

Due to the lack of legal regulation, there is no possibility to challenge a violation of rights granted by the article 8 of the Aarhus Convention, reflected in the legislative rules of the government, before a court and claim their enforcement.

IV. Nature of alleged non-compliance:

This communication relates to a violation of article 8 of the Aarhus Convention by the Slovak Republic and its state bodies – government of the Slovak Republic and the Ministry of agriculture and rural development of the Slovak Republic.

Within the process of the preparation of an amendment of the Forest Act, Ministry of agriculture and rural development of the Slovak Republic and the Government of the Slovak Republic violated rights of the members of the public guaranteed by the article 8 of the Aarhus Convention.

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 which requires guaranteeing of an "effective" participation of the public in the preparation of generally binding rules. Due to the lack of legal regulation there does not exist an effective possibility (access to court) to enforce rules defining a participation of the public in the preparation of generally binding legal regulations.

V. Provisions of the Convention relevant for the communication:

Article 8
"Public participation during the preparation of executive regulations and/or generally applicable bonding normative instruments

Each Party shall strive to promote effective public participation at an appropriate stage, and while options are still open, during the preparation by public authorities of executive

regulations and other generally applicable legally binding rules that may have a significant effect on the environment.
To this end, the following steps should be taken:
(a) Time-frames sufficient for effective participation should be fixed;
(b) Draft rules should be published or otherwise made publicly available; and
(c) The public should be given the opportunity to comment, directly or through representative consultative bodies.
The result of the public participation shall be taken into account as far as possible.ô.

Article 9.3
"9.3. In addition and without prejudice to the review procedures referred to in paragraphs 1 and 2 above, each Party shall ensure that, where they meet the criteria, if any, laid down in its national law, members of the public 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.".

VI. Use of domestic remedies or other international procedures:

Day of 25th of November 2013, 424 citizens which supported collective comment of the public filed a constitutional complaint before the Constitutional Court of the Slovak Republic. They were represented by an attorney Zuzana Čaputová. In this constitutional complain they have also objected a violation of their rights guaranteed by the article 8 of the Aarhus Convention.

1st senate of the Constitutional Court of the Slovak Republic (with judges Milan Ľalík, Peter Brňák and Marianna Mochnáčová) dismissed the complaint as "unsubstantiated" by its decision no. I. ÚS 73/2014-280 from 5th of March 2014 (decision can be found in the annex).

There does not exist any possibility of a national appeal procedure against a decision of a senate of the Constitutional Court.

It is paradoxical that senate of the Constitutional Court in its decision dismissing the complaint admitted that proceeding of the Ministry of the agriculture and rural development **had in reality violated the legislative rules of the government**. Senate stated that *"objected proceeding of the submitter violated the legislative rules"*. It is thus very surprising, that in spite of this fact the senate dismissed the complaint.

Senate of the Constitutional Court to dismiss the complaint employed the following reasoning: *„The substance of complainants´ objections is the fact that during the preparation of the Forest Act, the submitter did not take into account in a sufficient manner essential comments of the public represented by the complainants.*

As it has been already described above, during the interdepartmental discussion related to present case, the public´s comments have been accepted by competent bodies, i.e. by submitter.
Due to the fundamental character of public´s comments or more precisely due to the fact that they were labelled as "essential" (in total 17 comments) submitter and the representative of the public lead in respect to them discussions in so called negotiation on contradiction. During this negotiation parties agreed only on the comment no.11 (by finalizing version of

section 30 par. 3 of draft of the Forest Act). Other four comments of the public which also figured as essentials (comment no. 2, 3, 12 and no. 15) have stayed unaccepted.

In the document entitled as the Evaluation of interdepartmental discussions these comments are on one hand in relation to their specification and especially in relation to the reasoning on their containing labelled as essential. Nevertheless, on the other hand, when type of comments were marked into particular table frames by the submitter (more precisely according to submitter it happened through an electronic portal system) they were labelled with letter „O" which means that it is co called "ordinary" comment. In case of ordinary comments when they are submitted for negotiation of the legislative committee and of the government there is no need to annex any reasoning which leaded to their rejection.

The requirement of article 8 of the Aarhus Convention to guarantee that result of the public participation is taken into account as far as possible is within Slovak legal order transposed into a possibility for the public to comment and so express its opinion on draft law proposed by a submitter.
In this regard there exist an important provision which refers to an obligation of a competent body to carry out a negotiation on contradictions and equally an obligation to draw government´s attention to reasons of an eventual non-acceptance of essential comments, as it is the government who adopts by its resolution submitter´s draft law.

Despite of the fact that described proceeding of the submitter has violated the legislative rules, *it is indisputable that mainly* ***thanks to activities of the communicant as a representative of the public the legislative committee or more precisely its director and also the Prime Minister of the government were informed about concrete contradictions related to submitted document (in a written form by communicants/-s)and that even before negotiations of the legislative committee and of the government took place.***

One of the purposes of labelling a comment as essential is to alert the submitter that in case of non-acceptance of such a comment or more precisely in reason of objections of essential character, it is probable that a member of government will not vote for such a draft law during the negotiation of the government or person who raised this essential comment, if present on the negotiation of the government, might raise it again even on this negotiation (article 14 par.4 of the legislative rules). In this respect the public´s comments have merely consultative character and they might have a decisive influence only in case when they are assimilated by the submitter or other entity disposing of a right to vote during a negotiation of the legislative committee or onegotiation of the government.

On the one hand, we could state that the proceeding of the submitter of the Forest Act draft violated the legislative rules, given that document submitted for negotiation of the legislative committee and for the negotiation of the government informed in an insufficient or more precisely in a confusedly manner about persisting contradictions in comments no. 2, 3, 12 and no. 15. Either it did not draw attention to a reformulated version of section 30 paragraph 3 of the Forest Act by legislative committee, which differed from a version which had been agreed on during the negotiations on contradictions with the representative of the public. *On the other hand, according to opinion of the Constitutional Court, the government is an executive body of the public authority which is responsible for the execution of its competencies and so it is precisely government which is responsible for the containing of draft law, and that is why the government might have a right after a reasonable taking into*

account or particular consideration of submitted comments, to reject them or not to accept them.

According to the opinion of the Constitutional Court in the present matter it cannot be concluded that proceeding of the submitter and of the government had deficiencies of such an intensity that it might be qualified as a proceeding which did not guarantee a sufficient information to the public or a consultative democracy ensuring or allowing the participation of the public in the preparation of the generally binding legal rule.

It stems from the present communication that purpose of communicant was not only to submit comments during the preparation process of the draft of the Forest Act but also an effort to have their essential comments accepted. Anyhow natural it is, the Constitutional Court consider that public´s right to have their comment completely accepted or accepted without objection does not form a part of the right constituted by the article 8 of the Aarhus Convention.

We consider this decision of the senate of the Constitutional Court and its reasoning as unconvincing, illogical, irrelevant and internally incoherent.

The Constitutional Court firstly stated that Róbert Oružinský by sending a letter to the Legislative committee of the government and also by sending an e-mail to the Prime Minister´s office one day before adoption of law, he adequately informed the legislative committee and the government on persisting contradictions over public´s essential comments and so article 8 of the Aarhus Convention was not violated. This reasoning is however illogical. The Constitutional Court completely omitted the fact that the Legislative committee of the government and the Prime Minister´s office were informed about the violation of the legislative rules of the government and on persistence of contradictions only thank to the activity of Róbert Oružinský and not thanks to the activity of employees of the Legislative committee of the government or of the Government office.

So a conclusion stating that there was no violation of public´s rights guaranteed by the article 8 of the Aarhus Convention is not a logical one.

Ministry of agriculture and rural development and the government so decidedly violated the legislative rules of the government. Fact that Róbert Oružinský has actively attempted to draw their attention to the violation of the legislative rules and achieve a remedy, does not have any impact on the fact that state bodies of the Slovak Republic unequivocally violated the legislative rules. Moreover it stems from the legislative rules that every member of the government should be informed on persisting contradictions over a public´s collective comment. Fact that Róbert Oružnský sent an e-mail to the office of the Prime Minister one day before the adoption of the Forest Act in government does not mean that this e-mail was consequently sent by the office of the Prime Minister to other members of the government or annexed to the documents submitted to the members of the government. So it cannot be stated that members of the government were informed about persisting contradictions over the public´s collective comment in a way as it require the legislative rules of the government.

The Constitutional Court further states that there was a violation of the legislative rules of the government but it notes that "*On the other hand ... the government is an executive body of the public authority which is responsible for the execution of its competencies and so it is precisely government which is responsible for the containing of draft law, and that is why the*

government should have a right after a reasonable taking into account or particular consideration of submitted comments, to reject them or not to accept them.“ This argument of the Constitutional Court is incomprehensible, irrelevant and it does not have any connection with the object of the dispute. We do not deny the government´s responsibility for the containing of draft law or its right to considerate and consequently reject or not accept comments. However to be able to considerate comments and decide if it rejects or accepts them, the government has to be firstly well informed. If the government is not well informed it cannot either considerate them or decide whether it rejects or accepts them. So, it is not clear what the Constitutional Court meant by this argument.

Constitutional Court further stated that *“in the present matter it cannot be concluded that proceeding of the submitter and of the government has deficiencies of such an intensity that it might be considered as a proceeding which did not guarantee a sufficient information to the public or a consultative democracy ensuring or allowing the participation of the public in the preparation of the generally binding legal rule”.* This is a serious but non-substantiated conclusion of the Constitutional Court. It is a mere arbitrary statement - without any detailed explanation and argumentation why violations of the legislative rules in the present case were not enough intense to violate rights according to the article 8 of the Aarhus Convention.

Given the fact that mentioned arguments of the Constitutional Court were incomprehensible or illogical, they cannot result into a conclusion that the violation of the legislative rules did not have sufficient intensity to state a violation of the article 8 of the Aarhus Convention.

Moreover we consider Constitutional Court ´s conclusion being dangerous for the participation of the public in the preparation of legal regulations in the future, because any violation of the legislative rules of the government might be then qualified as violation of a small or insufficient intensity which can lead to an arbitrary and subjective violation of the legislative rules.

In the final part of its argumentation the Constitutional Court introduces another irrelevant argument which does not have any connection with the subject of the constitutional complaint. The Constitutional court states: *„From complainants' complaint stems that their purpose was not only to submit comments during the process of the preparation of the draft of the Forest Act but equally an effort to have essential comments accepted which is on the one hand natural, however the Constitutional Court consider that public´s right to have their comment completely accepted or accepted without objection does not form a part of the right constituted by the article 8 of the Aarhus Convention.”.*

Nevertheless, citizens who filed a constitutional complaint have never claimed within this complaint that government should accept their essential comments. They only wanted to achieve that the government is duly informed, in compliance with the legislative rules about their collective comments in order to take them into account and decide whether it accepts them or rejects them.

Within the constitutional complaint citizens were objecting violation of their rights not because their comments had not been accepted but because the government was not on their collective comments and on the persisting contradictions duly informed. In this respect the last argument of the Constitutional court is also irrelevant, incomprehensible and it seems like this it is a result of a misunderstanding of the constitutional complaint.

We are convinced that if such a violation of the legislative rules of the government as occurred in present case would not be recognized as a violation of rights guaranteed by article 8 of the Aarhus Convention, the public´s participation in the preparation of legislation could be threatened and denied. We consider mentioned decision of the senate of the Constitutional Court as being dangerous for citizens´ participation in the preparation of legislation in the future.

Moreover there does not exist any other international body where a non-compliance with article 8 of the Aarhus Convention could be denounced. And that is why we come before the Aarhus Convention Compliance Committee.

VII. Confidentiality

The communicant do not ask for any information contained in this communication to be kept confidential.

VIII. Supporting documentation:

The list of documents of relevant legislation and other materials, including links to internet sources (if they are available) is mentioned in previous parts – mostly in the part related to the factual background. We would like to ask the Compliance Committee to mark those documents, which it considers important to be submitted by the communicant.

IX. Summary

The object of present communication is a violation of article 8 of the Aarhus Convention by a proceeding of the Ministry of agriculture and rural development of the Slovak Republic and also of the Government of the Slovak Republic who during the preparation of the draft of the Forest Act (which is a generally binding rule that might have a considerable impact on the environment) violated rules regulating the public´s participation in the preparation of generally binding legal regulations, in a way they made impossible an effective participation of the public in the preparation of mentioned law and did not take into account the results of the public participation as far as possible, as it requires article 8 of the Aarhus Convention.

At the same time communicant in the communication point out to a fundamental deficiency of systemic character within the regulation of article 8 of the Aarhus Convention in connection with its article 9 paragraph 3. Public´s participation in the preparation of general binding legal rules cannot be considered as effective as required by article 8 of the Aarhus Convention, if it is not possible to ensure their protection and enforce measures (the legislative rules of the government) which were adopted in the Slovak Republic in order to transpose article 8 of the Aarhus Convention.

It is indisputable that in general an adequate protection of any right can be provided by court. Access to court should be guaranteed even in case of violation of rights set up by article 8 of the Aarhus Convention. Given the fact that courts have authority to review only the legality of decisions and of proceedings of public authority bodies and they protect only rights and legally protected rights constituted by law, they do not protect rights constituted by the legislative rules of the government which were not adopted by a law or other generally binding legal regulation but only by an intern directing act of the government (a resolution of the government), which does not have a generally binding effect. The legislative rules of the

government correspond within the Slovak legal order to an act which transposes the obligations instituted by article 8 of the Aarhus Convention. However as these obligations are not transposed in form of a law what makes actually impossible judicial review of their observance, this situation cannot be considered as complying with the article 8 of the Aarhus Convention.

X. Signature

Pezinok, 8th of December 2014