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Meeting of the Parties to the Convention on  
Access to Information, Public Participation  
in Decision-making and Access to Justice  
in Environmental Matters

### Compliance Committee

#### Fifty-eighth meeting

Budva, Montenegro, 10-13 September 2017

Item 8 of the provisional agenda

#### Communications from members of the public

### Findings and recommendations with regard to communication ACCC/C/2013/89 concerning compliance by Slovakia

Adopted by the Compliance Committee on 19 June 2017\*

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\* This document was submitted late owing to additional time required for its finalization.



## I. Introduction

1. On 10 June 2013, three non-governmental organizations (NGOs) — Greenpeace Slovakia, Via Iuris and GLOBAL 2000/Friends of the Earth Austria (the communicants) — submitted a communication to the Compliance Committee under the Convention on Access to Information Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) alleging the failure of Slovakia to comply with the Convention's provisions on public participation and access to justice.<sup>1</sup>

2. Specifically, the communicants allege that the Party concerned failed to comply with its obligations under article 3, paragraph 1, article 6, paragraph 2 (d) (vi), and article 9, paragraphs 2, 3 and 4, of the Convention in the course of decision-making on the extension to reactors 3 and 4 of the Mochovce nuclear power plant. The same factual background was also considered by the Committee (with respect to different allegations) in its findings on communication ACCC/C/2009/41 (ECE/MP.PP/2011/11/Add.3).

3. At its forty-first meeting (Geneva, 25-28 June 2013), the Committee determined on a preliminary basis that the communication was admissible.

4. Pursuant to paragraph 22 of the annex to decision I/7 of the Meeting of the Parties to the Convention, the communication was forwarded to the Party concerned on 26 July 2013.

5. The communicants provided additional information on 22 August 2013 and 19 September 2013.

6. The Party concerned responded to the allegations by letter dated 23 December 2013 (sent on 8 January 2014).

7. The Committee held a hearing to discuss the substance of the communication at its forty-sixth meeting (Geneva, 22-25 September 2014), with the participation of representatives of the communicants and the Party concerned. At the same meeting, the Committee confirmed the admissibility of the communication. During the discussion, the Committee agreed to put a number of questions to both the communicants and the Party concerned and to invite them to respond in writing after the meeting.

8. Following the discussion, the Committee sent its questions to the parties on 5 November 2014 with a deadline for their reply of 8 December 2014. The communicants provided responses on 1 and 8 December 2014 and the Party concerned provided its reply on 8 December 2014.

9. The Committee agreed its draft findings at its virtual meeting on 12 February 2016, save for some minor points which it completed through its electronic decision-making procedure on 15 June 2016. In accordance with paragraph 34 of the annex to decision I/7, the draft findings were then forwarded for comments to the Party concerned and the communicants on 27 June 2016. Both were invited to provide comments by 25 July 2016.

10. The Party concerned and the communicants provided comments on 25 July 2016.

11. On 27 February 2017, the communicants provided comments on the comments of the Party concerned of 25 July 2016. At its virtual meeting on 27 March 2017, the

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<sup>1</sup> Documents concerning this communication, including correspondence between the Committee, the communicant and the Party concerned, are available on a dedicated web page of the Committee's website (<http://www.unece.org/env/pp/compliance/compliancecommittee/89tableslovakia.html>).

Committee agreed that, owing to their very late nature, the communicants' comments of 27 February 2017 would not be taken into account and, on 30 March 2017, the secretariat informed the parties of the Committee's decision.

12. On 31 March 2017, the Party concerned provided additional comments. By email of 4 April 2017, the secretariat informed the parties that, for fairness and due process, the comments of the Party concerned of 31 March 2017 would not be taken into account either.

13. After taking into account the parties' comments of 25 July 2016 on the draft findings, the Committee agreed revised draft findings through its electronic decision-making procedure on 6 April 2017. In accordance with paragraph 34 of the annex to decision I/7, the revised draft findings were then forwarded for comments to the Party concerned and the communicants on 6 April 2017. Both were invited to provide comments by 27 April 2017.

14. On 21 April 2017, the communicants informed the Committee that they had no comments on the revised draft findings. On 27 April 2017, the Party concerned provided comments on the revised draft findings and enclosed a DVD containing licensing documentation.

15. The Committee proceeded to finalize its findings in closed session. After taking into account the comments received on the revised draft findings, the Committee agreed that, except for further clarifying the scope of its considerations, no changes to its findings were necessary. The Committee adopted its findings at its virtual meeting on 19 June 2017 and agreed that they should be published as a formal pre-session document to its fifty-eighth meeting. It requested the secretariat to send the findings to the Party concerned and the communicants.

## **II. Summary of facts, evidence and issues<sup>2</sup>**

### **A. Legal framework<sup>3</sup>**

#### **Constitutional rights and provisions**

16. Article 44 of the Constitution of the Party concerned provides for a right to a healthy environment.

17. Article 26, paragraph 1, of the Constitution guarantees the right to access to information. The right to information, however, can be limited if there is a need to protect the rights and freedom of other persons, state security, public order, public health and morality. Limitations to the right to information can only be provided by law.

18. According to article 7, paragraph 7, of the Constitution, international treaties such as the Aarhus Convention ratified by Slovakia take precedence over domestic legislation.

#### **Access to information**

19. Access to public information, including environmental information, is regulated by the Act on Free Access to Information. The active dissemination of environmental information is also regulated by the Act on Gathering, Preserving and Dissemination of Environmental Information.

<sup>2</sup> This section summarizes only the main facts, evidence and issues considered to be relevant to the question of compliance, as presented to and considered by the Committee.

<sup>3</sup> This section is based on the legal framework in force at the time the communication was submitted; due to subsequent amendments, the legislative references may since have changed.

20. With respect to access to information concerning the nuclear sector, section 8, paragraph 3, of the Nuclear Act<sup>4</sup> as amended<sup>5</sup> stipulates that the Slovak Nuclear Regulatory Authority (Nuclear Authority)<sup>6</sup> may ban access to information if in the Authority's opinion "its publication is likely to adversely affect public safety".<sup>7</sup> This limitation applies also to the public that is party to the permitting procedures for nuclear activities.

21. For the purposes of implementing the Act on Free Access to Information and section 8, paragraph 3, of the Nuclear Act,<sup>8</sup> the Nuclear Authority adopted a Directive on Identification and Removal of Sensitive Information from Documents to be Opened to the Public (Directive on Sensitive Information). Section 3.2 of the Directive on Sensitive Information provides a list of types of information deemed to be "sensitive" and thus to be withheld from disclosure.

22. Section 3, paragraph 14, of the Nuclear Act states that:

The documentation containing sensitive information shall be the documentation, the disclosure of which could be used to plan and carry out activities to cause disruption or destruction of nuclear facility and thus adversely affect the safety of the public and to cause ecological or economical damage. This documentation shall not be released according to the [Act on Free Access to Information].<sup>9</sup>

Section 3, paragraph 15, of the Nuclear Act prescribes which of the various documentation listed in annexes 1 and 2 to the Nuclear Act are deemed to include sensitive information.

#### **Standing in nuclear procedures**

23. The Administrative Procedure Act<sup>10</sup> (Administrative Code) is the general law regulating administrative proceedings in Slovak national law. Section 14 regulates who may be a party in administrative proceedings:<sup>11</sup>

(1) A party to the proceedings is the one whose rights, legitimate interests and duties are the subject matter of the proceedings or whose rights, legitimate interests or duties may be directly affected by the decision; a party to proceedings is also the one who claims that his rights, legitimate interests and duties may be directly affected by a decision, until the contrary can be proved.

(2) A party to the proceedings is also the one to whom a special law affords such status.

24. On 1 January 2015, an amendment (No. 314/2014 Coll.) to the Act on Environmental Impact Assessment entered into force. The amendment, inter alia, amends article 8, paragraph 3, of the Nuclear Act, which thereafter states: "The party to the proceedings on issuance of the permit is also a natural person or a legal entity the position of which results from a special regulation."

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<sup>4</sup> Nuclear Act No. 541/2004 Coll.

<sup>5</sup> Act No. 145/2010 Coll.

<sup>6</sup> In Slovak the Nuclear Authority is the *Úrad Jadrového Dozoru*, and is referred to by the acronym UJD in many documents.

<sup>7</sup> As amended by Act No. 145/2010 Coll.

<sup>8</sup> Directive on Sensitive Information, article 1.

<sup>9</sup> Response of the Party concerned to communication, p. 13.

<sup>10</sup> Act No. 71/1967 as amended. The Nuclear Act was amended accordingly on 23 March 2017, and the amendment will enter into force on 1 August 2017. See comments of the Party concerned on the revised draft findings, 27 April 2017, p. 2.

<sup>11</sup> Translation provided by the Party concerned in its response to the communication, p. 10.

25. Access to judicial procedures with respect to nuclear activities is regulated by the general Code of Civil Procedure.<sup>12</sup> There are no special provisions regulating judicial proceedings in nuclear cases. Section 250 stipulates who may be parties to an administrative proceeding:

- (1) The parties to the proceedings are the plaintiff and the respondent;
- (2) [The] plaintiff is a natural or legal person claiming that as a party to the administrative proceedings his or her rights were curtailed by the decision and procedure of an administrative authority. A complaint may also be filed by a natural or legal person who was not treated as a party to the administrative proceedings although such person was to be treated as a party to the proceedings.

### **Injunctive relief**

26. Section 251 of the Code of Civil Procedure allows each party to bring a motion to postpone the enforcement of the decision if justified by the possibility of serious injury to the party.<sup>13</sup>

27. Pursuant to the Administrative Code, the administrative authority that decides an administrative decision may impose provisional measures (section 43) or suspend the enforcement of the decision (section 75).

### **Suspensive effect**

28. An administrative appeal has a suspensive effect according to section 55, paragraph 1, of the Administrative Code. Section 55, paragraph 2, of the Administrative Code states: "If an urgent public interest requires so or if there is a risk that by means of suspended execution decision a party to the case or anyone else will suffer an irreplaceable harm, the administrative body may exclude suspensive effect. The urgency must be duly justified".<sup>14</sup>

## **B. Facts**

29. In 2007, the Party concerned decided to extend the existing Mochovce nuclear power plant by completing reactors 3 and 4.<sup>15</sup>

30. On 14 August 2008, three permits were approved by the Nuclear Authority regarding the Mochovce nuclear power plant, including decision 246/2008 permitting the change of construction of Mochovce Units 3 and 4.

31. On 14 November 2008, Greenpeace Slovakia sought to appeal decision 246/2008 on the ground that it was necessary to carry out an environmental impact assessment (EIA), including public participation, and to have the EIA final statement before the decision permitting the change of construction was issued by the Nuclear Authority.

32. On 28 April 2009, the appeal of Greenpeace Slovakia was dismissed by the Nuclear Authority on the ground that Greenpeace Slovakia did not have standing in the proceedings.<sup>16</sup>

<sup>12</sup> Act No. 99/1963 Coll.

<sup>13</sup> Response of the Party concerned to communication, p. 8.

<sup>14</sup> Translation provided by the communicants in annex 2 of their email of 19 September 2013, *Petition*, p. 2.

<sup>15</sup> Further background is set out in the Committee's findings on communication ACCC/C/2009/41 (ECE/MP.PP/2011/11/Add.3), paras. 23-32.

33. On 8 July 2009, Greenpeace Slovakia sought to challenge decision 246/2008 before the Bratislava Regional Court on two grounds:

- (a) There had been no opportunity for public participation;
- (b) Its rights to public participation and access to justice had been infringed.

34. On 28 July 2009, GLOBAL 2000/Friends of the Earth Austria submitted communication ACCC/C/2009/41 to the Aarhus Convention Compliance Committee alleging a failure of the Party concerned to comply with:<sup>17</sup>

(a) Article 6, paragraphs 1, 4 and 10, of the Convention by failing to provide for public participation in the decision-making process for the construction permit granted in 2008;

(b) Article 9, paragraphs 2, 3 and 4, of the Convention generally by not providing for access to justice in environmental matters in its legislation.

35. On 12 May 2011, the Compliance Committee issued its findings and recommendations with regard to communication ACCC/C/2009/41,<sup>18</sup> and the findings were subsequently endorsed by the Meeting of the Parties at its fourth session (Chisinau, 29 June-1 July 2011).<sup>19</sup> In its findings, the Committee:

(a) Found that “by failing to provide for early and effective public participation in the decision-making process leading to the 2008 [Nuclear Authority] decision ... the Party concerned failed to comply with article 6, paragraphs 4 and 10, of the Convention”;<sup>20</sup>

(b) Recommended that Slovakia “review its legal framework so as to ensure that early and effective public participation is provided for in decision-making when old permits are reconsidered or updated or the activities are changed or extended compared to previous conditions, in accordance with the Convention”;<sup>21</sup>

(c) Decided not to consider the claim that Slovakia failed to provide for access to justice as the communicants’ case was still then pending before the domestic courts.<sup>22</sup>

36. On 11 May 2012, the Bratislava Regional Court dismissed the challenge of Greenpeace Slovakia against decision 246/2008<sup>23</sup> on two grounds:

(a) The permit did not deal with any activity subject to annex I, and therefore article 6, of the Convention;

(b) Greenpeace Slovakia did not have standing.

37. On 2 July 2012, Greenpeace Slovakia filed an appeal with the Supreme Court.

38. On 27 June 2013, the Supreme Court annulled Nuclear Authority decision No. 79/2009 (the second instance (appeal) decision) and returned the case to the Nuclear

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<sup>16</sup> Annex 1 to the communication.

<sup>17</sup> Communication ACCC/C/2009/41.

<sup>18</sup> ECE/MP.PP/2011/11/Add.3.

<sup>19</sup> Decision IV/9e on compliance by Slovakia with its obligations under the Convention (ECE/MP.PP/2011/2/Add.1).

<sup>20</sup> ECE/MP.PP/2011/11/Add.3, para. 69.

<sup>21</sup> *Ibid.*, para.70 (a).

<sup>22</sup> *Ibid.*, para.47.

<sup>23</sup> Case No. 4 S 125/09 concerning the review of the 2008 decisions and procedures by an administrative body.

Authority for further action. It ordered the administrative body (i.e., the Nuclear Authority) to carry out an EIA<sup>24</sup> and to grant standing in the proceedings to Greenpeace Slovakia.

39. On 21 August 2013, the Nuclear Authority announced a recommencement of the appeal proceeding against decision 246/2008 and granted standing to the communicants. From 13 October 2013 to 30 November 2013 a Preliminary Safety Analysis Report and a Basic Design of Mochovce Units 3 and 4 were open for inspection at Mochovce in Kalna nad Hronom municipality. A repeated appeal decision No. 291/2014 was issued on 23 May 2014. The communicants did not appeal decision No. 291/2014.

40. The Nuclear Authority also issued decision No. 761/2013 excluding suspensive effect of the appeal filed by the communicants on 14 November 2008 (see para. 31 above).<sup>25</sup> Pursuant to section 55, paragraph 3, of the Administrative Code, a decision revoking suspensive effect is unappealable.

41. On 9 September 2013, the communicants filed a petition against decision No. 761/2013 with the Attorney General on the ground that the decision to exclude suspensive effect was in contradiction with the statutory provisions of section 55, paragraph 2, of the Administrative Code.<sup>26</sup> Greenpeace withdrew the petition two days prior to the hearing.

42. In October 2014, the Constitutional Court found that the rights of Slovenské elektrárne, a.s., had been violated by the judgment of the Supreme Court issued in favour of Greenpeace, but confirmed rather than cancelled that judgment because the second instance (appeal) decision No. 291/2014 had already been issued by the Nuclear Authority.<sup>27</sup>

### **C. Domestic remedies**

43. The communicants' use of domestic procedures is described in paragraphs 31-33 and 36-42 above.

### **D. Substantive issues**

44. This communication alleges non-compliance with respect to both the specific case of decision-making on the extension of the Mochovce nuclear power plant and also with regard to provisions of the applicable national legislation.

#### **Article 3, paragraph 1**

45. The communicants' allegations with respect to article 3, paragraph 1, of the Convention evolved during the course of the proceeding before the Committee. In their communication of 10 June 2013, they alleged that the Committee and the Meeting of the Parties had found the Party concerned to be in breach of article 6 with respect to communication ACCC/C/2009/41, but the Party concerned had failed to take the necessary measures and was therefore in breach of article 6, paragraphs 4 and 10, in conjunction with article 3, paragraph 1, of the Convention. This allegation was later dropped.<sup>28</sup> The communicants subsequently alleged that the Party concerned was in breach of article 3,

<sup>24</sup> Email of 22 August 2013 from the communicants.

<sup>25</sup> Ibid.

<sup>26</sup> Email of 19 September 2013 from the communicants.

<sup>27</sup> Additional comments of Party concerned, 26 June 2015.

<sup>28</sup> In its report to the fifth session, the Committee found Slovakia to be no longer in non-compliance with article 6, paras. 4 and 10, of the Convention.

paragraph 1, of the Convention because it failed to provide for a clear and consistent framework that guarantees effective enforcement measures of court decisions. Specifically, even though the Supreme Court had clarified that the Convention was applicable, “no legislative measures were taken to regulate this in general rules, in particular for cases where old permits are updated and no EIA was required.”<sup>29</sup> The communicants also submitted that the legal system of the Party concerned did not ensure “proper enforcement measures” as required by article 3, paragraph 1, in two respects. First, the fact that the Nuclear Authority was able to issue a decision excluding the suspensive effect of Greenpeace’s successful appeal to the Supreme Court. Second, the fact that the administrative appeal and court procedures took five years without any injunctive measures to halt the construction process.<sup>30</sup>

46. With respect to the communicants’ original allegation concerning article 3, paragraph 1, the Party concerned stated that the Committee’s recommendations were not for actions to remedy the incompatibility of an individual case. It submits that it fulfilled the Compliance Committee’s recommendations by amendments to its national legislation, with the active participation of a number of NGOs.<sup>31</sup>

#### **Article 6, paragraph 2 (d) (vi)**

47. The communicants allege that the Party concerned failed to ensure that the public concerned was informed of the envisaged procedure, including an indication of what environmental information relevant to the proposed activity was available.<sup>32</sup> The communicants allege that Nuclear Act No. 541/2004 Coll. as amended<sup>33</sup> (in force since May 2010) significantly limits public access to nuclear-related information by stipulating that the Nuclear Authority may ban access to information if, in the opinion of that Authority, “its publication is likely to adversely affect public safety”. In such cases the information is withheld as “sensitive information”. This limitation applies not only to the public that is party to the permission or approval proceedings concerning nuclear devices, but also to anyone who would request access to nuclear-related information under article 4 of the Convention. In addition, the communicants submit that in October and November 2013, by blacking out an important amount of the information in the Preliminary Safety Analysis Report and the Basic Design of Mochovce Units 3 and 4 as sensitive information, the Nuclear Authority acted in breach of the Convention.

48. The communicants recall that in its findings on communication ACCC/C/2005/15 (Romania), the Committee found that EIA studies in their entirety should be available and any exceptions should be based on the list of exceptions contained in article 4, paragraph 3, of the Convention and be decided in a restrictive way.<sup>34</sup> Radiation is explicitly mentioned in article 2, paragraph 3 (b), of the Convention and is thus within the scope of “environmental information”. The limitation on public access to nuclear information on the grounds of public safety set out in section 8 of the Nuclear Act<sup>35</sup> does not constitute one of the permitted exceptions. The communicants allege that therefore the Party concerned fails to comply with article 6, paragraph 2 (d) (vi), of the Convention.

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<sup>29</sup> Communicants’ reply to Committee’s questions after the hearing, 1 December 2014, p. 3.

<sup>30</sup> *Ibid.*, p. 4.

<sup>31</sup> Response of the Party concerned to communication, p. 6.

<sup>32</sup> Communication, p. 9, para. 66.

<sup>33</sup> Amended by Act No. 145/2010 Coll.

<sup>34</sup> See ECE/MP.PP/2008/5/Add.7.

<sup>35</sup> Communication, p. 9, paras. 63-64.



49. The communicants also allege that the Party concerned failed to comply with article 6, paragraph 2, of the Convention because the place (Mochovce) where the documentation was open for inspection was difficult to reach and far from Bratislava. In addition the documentation for inspection was voluminous and no electronic version of it was available to the public concerned, despite the fact that the authorities had an electronic copy of the documentation. Only one hard copy of the documentation was available for inspection at Mochovce.<sup>36</sup>

50. The Party concerned refutes the communicants' allegations. First, the Party concerned submits that it did not breach its obligation under the Convention by adjusting its legal framework for provision of environmental information.<sup>37</sup> The relevant provisions of the national law set out a framework for deciding on disclosure of information. For example, pursuant to section 3, paragraph 14, of the Nuclear Act, documentation the disclosure of which could be used to plan and carry out activities to cause disruption or destruction of a nuclear facility, and thus to adversely affect public safety and to cause ecological or economic damage, shall not be published. Infringements of the provisions concerning the right of the public to access information are addressed by the courts.<sup>38</sup> The Party concerned submits that the restricted regime for access to nuclear-related information introduced by section 8, paragraph 3, of the Nuclear Act and the subsequently adopted Directive on Sensitive Information is in full compliance with article 4 of the Convention.

51. Furthermore, the Party disputes that there is any connection between the present case and the Committee's findings on communication ACCC/C/2005/15. It asserts that the entire EIA documentation was accessible to the public and the public had complete information at its disposal. With respect to information on radiation, this was duly made available to the public during the environmental impact assessment process. The EIA documents included all significant publishable information from the preliminary safety report.

#### **Article 9, paragraph 2**

52. The communicants allege that the Party concerned does not ensure that members of the public have access to a review procedure before an independent and impartial body to challenge the legality of any decision subject to the provisions of article 6, as required by article 9, paragraph 2, of the Convention.<sup>39</sup> The communicants base their claim on the dismissal by the Bratislava Regional Court of the communicants' appeal. That appeal was dismissed on the ground that the permit did not concern a new activity, but only changes to the original permission; it therefore did not deal with an activity pursuant to annex I to the Convention and, consequently, Greenpeace Slovakia did not have standing.<sup>40</sup> For this reason, the communicants allege that the Party concerned fails to comply with article 9, paragraph 2, of the Convention.<sup>41</sup>

53. In support of their allegation, the communicants refer to the Committee's findings and recommendations on communication ACCC/C/2009/41, which found that decision 246/2008 was a decision under article 6 of the Convention.<sup>42</sup>

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<sup>36</sup> Allegation made during hearing at Committee's forty-sixth meeting.

<sup>37</sup> Response of the Party concerned to communication, p. 12, point 63.

<sup>38</sup> Ibid.

<sup>39</sup> Communication, p. 4, para. 29.

<sup>40</sup> Case No. 4 S 125/09 concerning the review of the 2008 decisions and procedures by an administrative body. See communication, p. 5, para. 31.

<sup>41</sup> Communication, p. 4, para. 29, and p. 5, para. 33.

<sup>42</sup> See communication, p. 4, para. 30.

54. The Party concerned refutes the communicants' allegation. It submits that the case was decided by impartial and independent courts,<sup>43</sup> which dealt with all substantive and procedural arguments raised by the plaintiff, therewith granting it legal protection and access to justice.<sup>44</sup> The Party contends that the court took into account the provisions of the Convention when interpreting the national legislation. In particular, the court stated that a new permit for the construction of a nuclear power plant would be subject to article 6 of the Convention and it would clearly be necessary to perform an EIA. The Party also recalls that in paragraph 66 of its findings on communication ACCC/C/2009/41, the Committee found that the decision-making for the 2008 decisions appeared to have been in accordance with Slovak law. The Party concerned contends that it is not possible to conclude that there has been a breach of article 9, paragraph 2, of the Convention on the basis of an individual case which the court dismissed on the ground that it did not accept the arguments of the plaintiff.

55. Furthermore, the Party concerned asserts that the recommendations in decision IV/9e of the Meeting of the Parties did not require it to remedy the individual case, but rather to review its legislation, which it duly did.<sup>45</sup>

### **Article 9, paragraph 3**

56. The communicants also allege that members of the public do not have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities that contravene provisions of national law relating to the environment.<sup>46</sup> The communicants claim that Slovak law entitles the public to be a party to the proceedings if the permission procedure is preceded by an environmental impact assessment. In that case, members of the public who participate in the EIA procedure have standing in the subsequent permission proceedings. If no environmental impact assessment was conducted, members of the public may derive standing only through the general provisions of the Administrative Code. The communicants allege that the Nuclear Authority, however, refuses to apply this provision to nuclear procedures. This means that, though "national law relating to the environment" is broader than the law on EIA and integrated pollution prevention and control, Slovak law provides no possibility for members of the public, including environmental NGOs, to have access to justice in environmental matters outside the scope of the EIA and integrated pollution prevention and control procedures.<sup>47</sup> The communicants express their concern that the Party concerned binds access to justice under article 9, paragraph 3, of the Convention to prior participation in administrative proceedings.<sup>48</sup>

57. With respect to the decision of the Bratislava Regional Court of 11 May 2012, the communicants submit that, even if article 6 of the Convention was not applicable, the court should have granted standing in accordance with article 9, paragraph 3. However, in that case the court held that the decision in question was not a case relating to the environment as the decision did not have an impact on the environment and was not a decision related to the release of genetically modified organisms into the environment. The communicants allege that in reading "relating to the environment" so narrowly, and thus denying standing, the Party concerned fails to comply with article 9, paragraph 3, of the Convention.

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<sup>43</sup> Response of the Party concerned to communication, p. 5, point 29.

<sup>44</sup> *Ibid.*, p. 6, point 33.

<sup>45</sup> *Ibid.*, p. 6, point 34.

<sup>46</sup> Communication, p. 7, para. 48.

<sup>47</sup> Communication, p. 9, para. 60.

<sup>48</sup> Communication, p. 8, para. 58.

58. The Party concerned refutes the communicants' allegations. First, the Party concerned submits that the communicants misinterpret article 9, paragraph 3: namely, that they confuse the right to challenge arbitrary decisions and actions of public authorities and third parties in violation of national law in the field of environment with the right of participation in any environmental proceedings.<sup>49</sup> Prior to the annulment of decision 246/2008, the claim of Greenpeace Slovakia before the Bratislava Regional Court concerned the fact that it was not accorded the status of a party to the proceedings. Greenpeace failed to present any other acts or omissions by private persons or public authorities that would be in conflict with national law relating to the environment.<sup>50</sup>

59. The Party concerned contends that the communicants' argument that they were denied participation under the Nuclear Act was false. In fact, the communicants did not demand participation in any proceedings under the Nuclear Act.<sup>51</sup>

60. In addition, the Party concerned asserts that the communicants' claim that the Nuclear Authority rejected the application of the provisions of the Administrative Code on participation in administrative proceedings is incorrect. Pursuant to section 35 of the Nuclear Act, the general regulation on administrative proceedings applies to the conduct of the Authority. Accordingly, section 14, paragraphs 1 and 2, of the Administrative Code applies, which provides for the participation in the proceedings (see para. 23 above).<sup>52</sup>

61. The Party concerned also asserts that in 2014 an amendment of article 8 of the Nuclear Act was adopted whereby the requirement to participate in the EIA procedure in order to have standing was removed from the legislation (see para. 24 above). Thus, according to the Party concerned, at the present time there can be no doubt that the communicants' allegation under article 9, paragraph 3, is unfounded.

62. Finally, the Party concerned claims that after the decision of the Court of Justice of the European Union in the *Slovak Brown Bear* case<sup>53</sup> the Slovak Ministry of Justice issued a directive that guides the authorities in granting standing to the public concerned in environmental proceedings, including in proceedings under the Nuclear Act.

#### **Article 9, paragraph 4**

63. The communicants allege that procedures did not provide adequate and effective remedies in a timely manner, including injunctive relief as appropriate, as required by article 9, paragraph 4, of the Convention.<sup>54</sup>

64. With respect to timing, the communicants allege that the Code of Civil Procedure does not set deadlines for courts to handle and decide administrative cases.<sup>55</sup> In the case of the Mochovce nuclear power plant, the court procedures for two instances took four years and in the meantime construction of the nuclear power plant was being carried out. Thus, the procedures do not provide effective remedies in a timely manner as required by article 9, paragraph 4, of the Convention.

65. The communicants also allege that the Party concerned fails to provide members of the public with the effective possibility to obtain injunctive relief in environmental matters.

<sup>49</sup> Response of the Party concerned to communication, p. 9, points 44-56.

<sup>50</sup> Ibid.

<sup>51</sup> Ibid.

<sup>52</sup> Ibid.

<sup>53</sup> Case C-240/09, *Lesoochránárske Zoskupenie VLK v. Ministerstvo životného prostredia Slovenskej republiky*, 2011 E.C.R. I-1255.

<sup>54</sup> Communication, p. 5, para. 35.

<sup>55</sup> Communication, p. 5, para. 36.

The communicants assert such relief is critical in nuclear cases since any resulting damage to health or the environment would be irreversible.<sup>56</sup> While the Civil Procedure Code provides for the possibility to obtain injunctive relief in any administrative case, including environmental cases, such relief is dependent upon the claimant proving that serious damage would be directly connected with the decision in question. In the Mochovce case, it would have been impossible to argue that serious damage was directly connected with the decision in question. Thus, Greenpeace Slovakia did not apply for such relief.

66. Moreover, the communicants allege that the courts do not necessarily address requests by the public concerned for an injunction to be granted and, moreover, that there is no clear legal requirement for courts to do so. In this regard, the communicants state that section 250c of the Civil Procedure Code stipulates that the presiding judge shall notify the applicant if their request for an injunction is refused; however, in practice the courts do not do so. The communicants provide three examples of cases in which a request for injunction was apparently ignored. Moreover, the communicants submit that a “notification” that the request for an injunction was refused cannot be challenged on appeal since it is not a decision.<sup>57</sup>

67. Finally, during the hearing of the communication at the Committee’s forty-sixth meeting, the communicants put forward a further allegation regarding article 9, paragraph 4, not included in its communication of 11 June 2013, namely that Nuclear Authority decision No. 761/2013, which excluded the suspensive effect of the appeal, was in non-compliance with the requirement in article 9, paragraph 4, of the Convention for review procedures under article 9 to be fair.

68. With respect to remedies, the Party concerned states that its legal system provides the means for an adequate and effective remedy within the meaning of article 9, paragraph 4, of the Convention.<sup>58</sup> Section 251 of the Code of Civil Procedure entitles either party to bring a motion to postpone the enforcement of the decision if justified by the possibility of serious injury to that party. Pursuant to sections 74-77a of the Code on Civil Procedure, the imposition of an interlocutory judgment must be reasonable, that is, proportionate to the interests of the other parties or the public. In addition to the imposition of provisional measures and the suspension of enforceability of the court decision, the administrative authority that decides on an administrative decision may also decide to impose provisional measures (Administrative Code, section 43) or suspend enforceability of the decision (Administrative Code, section 75).<sup>59</sup> The Party concerned submits that this is in line with article 9, paragraph 4, of the Convention.

69. The Party concerned asserts that the communicants’ claim that it is not possible to argue the possibility of serious injury under national legislation is not substantiated. The Party concerned states that article 44 of the Slovak Constitution protects the right to a favourable environment, thus if the communicants had demonstrated a real possibility of serious environmental damage in case of implementation of activities under decision 246/2008, the court could have ordered suspension of the enforceability of the decision.<sup>60</sup> The Party concerned contends that its legal system thus indeed provides means for an adequate and effective remedy within the meaning of article 9, paragraph 4, of the Convention.

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<sup>56</sup> Communication, p. 6, para. 41.

<sup>57</sup> Communicants’ reply of 1 December 2014, p. 8.

<sup>58</sup> Response of the Party concerned to communication, p. 9, points 39-42.

<sup>59</sup> *Ibid.*, p. 8, point 38.

<sup>60</sup> *Ibid.*, pp. 8-9, points 39-42.

70. Finally, the Party concerned refutes the communicants' allegation that courts do not in practice notify the applicant if the judge refuses a request for an injunction. It submits that section 250c of the Civil Procedure Code requires the court to notify the participants if the injunction is not granted and points out that the communicants were only able to point to three cases in which notification was not provided. The Party states that in any individual case where the court omitted to fulfil this obligation the party could file a complaint against idleness of the court under articles 62 to 68 of Act No. 757/2004 Coll. on Courts and, if its complaint is not then accepted, to complain to the Constitutional Court.<sup>61</sup>

### III. Consideration and evaluation by the Committee

71. Slovakia deposited its instrument of accession to the Aarhus Convention on 5 December 2005 and the Convention entered into force for Slovakia on 5 March 2006.

#### Admissibility

72. The admissibility of the communication is not contested by the Party concerned and the Committee finds the communication admissible.

#### Scope of the Committee's considerations

73. With respect to the communicants' allegation that Nuclear Authority decision No. 761/2013 excluding the suspensive effect of the appeal failed to comply with the requirement in article 9, paragraph 4, of the Convention for review procedures to be fair, the Committee notes that this allegation was made for the first time at the hearing at the Committee's forty-sixth meeting in September 2014. The Committee takes a dim view of adding a new allegation at such a late stage, particularly when decision No. 761/2013 was taken in August 2013. Rather, the communicants should have made the allegation at the time of informing the Committee of the decision in August 2013. If it had done so, the allegation could have been put to the Party concerned in sufficient time for it to have included it in its response to the communication. Introducing a new allegation at the time of the hearing neither gives the Party concerned due time to prepare a considered response nor permits the Committee to explore the allegation fully in the presence of both parties. The Committee will thus not consider this allegation further.

74. In its comments on the revised draft findings, the Party concerned informed the Committee of an amendment to the Nuclear Act adopted by the parliament on 23 March 2017 that would enter into force on 1 August 2017. While welcoming this legislative development, since it was put before the Committee after the revised draft findings were sent to the parties and, moreover, has not yet entered into force, the Committee is not in a position in the context of the present communication to examine the extent to which the amendment meets the requirements of the Convention. Rather, the Committee may examine the amendment in its review of the implementation of the present findings and recommendations and any related decision of the Meeting of the Parties on compliance.

75. In its comments on the revised draft findings, the Party concerned also informed the Committee of the measures it is presently taking to provide access to information regarding the procedure to license the commissioning of Mochovce Units 3 and 4, which commenced on 12 December 2016, and provided the Committee with a DVD of licensing documentation in that regard. While the Committee appreciates the efforts of the Party concerned to demonstrate the measures it is taking to provide the public with access to

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<sup>61</sup> Letter of the Party concerned of 8 December 2014, p. 5.

information during the current licensing procedure, it does not impact the Committee's findings on the matters examined below.

**An indication of what information relevant to the activity is to be made available – article 6, paragraph 2 (d) (v)**

76. The communicants make four allegations with respect to article 6, paragraph 2 (d) (v), of the Convention. First, they allege that Nuclear Act No. 541/2004 significantly limits public access to nuclear-related information by stipulating that the Nuclear Authority may ban access to information if, in the opinion of that authority, “its publication is likely to adversely affect public safety”. Second, they allege that in October and November 2013, by blacking out large parts of the Preliminary Safety Analysis Report and the Basic Design of Mochovce Units 3 and 4, the Party concerned acted in breach of this provision of the Convention. Third, they contend that the place (Mochovce Information Centre) where the documentation was open for inspection in October and November 2013 was difficult to reach and far from Bratislava. Finally, they assert that the documentation for inspection was voluminous and only one hard copy of the documentation was available for inspection. No electronic version of it was made available, despite the fact that the authorities possessed an electronic copy.

77. The Committee points out that article 6, paragraph 2, of the Convention sets out minimum requirements for the content of the notification regarding the environmental decision-making procedure. To this end, article 6, paragraph 2 (d) (vi), requires that the public be provided with an indication of what information relevant to the proposed activity is available. Paragraph 2 (d) (vi) does not, however, itself regulate what environmental information relevant to the proposed activity is to be made available. Rather, that is addressed in article 6, paragraph 6, which obliges the competent public authorities to give the public concerned access to all available information relevant to the decision-making process. The Committee examines article 6, paragraph 6, in more detail below (see para.79).

78. The Party concerned claims, and it is not denied by the communicants, that prior to issuing decision No. 291/2014 the public concerned was duly informed about the procedure and invited to comment. The Committee thus finds that the communicants' allegation with respect to article 6, paragraph 2 (d) (vi), is unsubstantiated.

**Access to all information relevant to the decision-making – article 6, paragraph 6, in conjunction with article 4, paragraph 4**

79. The Committee considers that the communicants' allegations regarding access to information (see para. 76 above) should be examined in the light of article 4 and article 6, paragraph 6, of the Convention. As noted above, article 6, paragraph 6, requires the competent authorities to give the public concerned access to all information relevant to the decision-making. Article 6, paragraph 6, expressly incorporates the provisions of article 4, including its requirements on how access to environmental information is to be provided, its exemptions to disclosure and how to reach a decision when competing interests are involved.

80. Neither party has disputed that nuclear-related information, and specifically the data contained in the Preliminary Safety Analysis Report and the Basic Design of Mochovce Units 3 and 4 may be environmental information. According to article 2, paragraph 3 (b), of the Convention, environmental information means “any information ... on factors, such as ... energy, noise and radiation, and activities or measures ... affecting or likely to affect the elements of the environment within the scope of subparagraph (a) above...”. The Preliminary Safety Analysis Report and the Basic Design of Mochovce Units 3 and 4

provide for activities and measures aimed at the safe operation of the nuclear facility. They thus both undoubtedly fall within the scope of article 2, paragraph 3 (b), of the Convention.

*Article 4, paragraph 4, of the Convention*

81. The Committee notes that the wording of section 3, paragraph 14, of the Nuclear Act (see para. 22 above) differs slightly from the text of article 4, paragraph 4 (b), of the Convention, which allows for information to be exempted from disclosure if “public security” would be adversely affected. As this difference has not, however, been raised by the communicant, the Committee does not consider it necessary to consider this point further.

82. More importantly, the Party concerned has not provided the Committee with any evidence to show that its legal framework requires that the exemptions on disclosure in section 3, paragraph 14 (on disclosure to the public), and section 8, paragraph 3 (on disclosure to the parties to the procedure), of the Nuclear Act, and the accompanying Directive on Sensitive Information (which implements both these provisions) are to be interpreted in a restrictive way, taking into account the public interest served by disclosure and whether the information relates to emissions into the environment, as expressly required by the final clause of article 4, paragraph 4, of the Convention. In this regard, the Committee points out that section 3, paragraph 14, of the Nuclear Act requires public authorities to take into account the public interest in withholding the information whereas the Convention requires authorities to do the opposite, i.e., to take into account the public interest in disclosure.

*Article 6, paragraph 6, in conjunction with article 4, paragraph 4, of the Convention*

83. The Committee notes that section 3.2 of the Directive on Sensitive Information contains a list of data which are to be kept confidential and for which no discretion remains with the authorities on whether to release the information to the public. The Committee finds that a number of the types of “sensitive information” listed in section 3.2 of the Directive are “environmental information” within the scope of article 2, paragraph 3, of the Convention. For example, information about facilities for the supply of raw water for a power plant, nuclear materials, radioactive waste and chemicals. Moreover, at least one item of environmental information on the list, i.e., radioactive waste, could relate to emissions into the environment. The Committee stresses that an approach where whole categories of environmental information are unconditionally declared as confidential and for which no release is possible is incompatible with article 6, paragraph 6, in conjunction with article 4, paragraph 4, of the Convention. Rather, when dealing with a request for the information to which the Directive on Sensitive Information applies, the final clause of article 4, paragraph 4, of the Convention requires that the public interest served by disclosure shall be taken into account and the grounds for refusal shall be interpreted in a restrictive way and taking into account whether the information requested relates to emissions into the environment. The Committee notes that the Directive contains no requirement for officials to interpret the grounds for refusal in a restrictive way, taking into account the public interest served by disclosure and whether the information relates to emissions into the environment.

84. For the above-mentioned reasons, the Committee finds that, in the context of a decision-making procedure subject to article 6 of the Convention and with respect to requests for information under article 4 generally, by adopting an approach in the Directive on Sensitive Information whereby whole categories of nuclear-related environmental information are unconditionally declared as confidential and for which (contrary to the general legal regulation in the Freedom of Information Act) no release is possible, and for failing to require that any grounds for refusal are interpreted in a restrictive way, taking into

account the public interest served by disclosure and whether the information relates to emissions into the environment, the Party concerned has failed to comply with article 4, paragraph 4, as well as article 6, paragraph 6, in conjunction with article 4, paragraph 4, of the Convention.

85. The Committee next turns to the communicants' allegation that the Party concerned failed to comply with article 6, paragraph 6, of the Convention because the information was only made available at the Mochovce Information Centre, a two-hour drive from Bratislava. The communicants in particular criticize the failure of the Party concerned to provide them with an electronic copy of the information. In the light of the fact that the communicants have not demonstrated to the Committee that they actually ever made a clear request for the Party concerned to provide the documentation in an electronic format, the Committee refrains from considering this allegation further.

#### **Requirement that requests for information by email have electronic signature**

86. While the communicants' email to the Nuclear Authority of 7 October 2013 does not expressly request access to the documentation in an electronic format, in its reply of 18 October, the Nuclear Authority refused access to the electronic version of the information because, among other things, the request filed by electronic mail was not accompanied by a certified electronic signature.<sup>62</sup> The Committee is of the opinion that requiring a certified electronic signature every time a request is filed by electronic mail would seriously limit access to information under article 4 of the Convention and if that were the case the Party concerned would be in non-compliance with that provision. The Committee, however, does not have any evidence before it to establish whether requiring the requester to provide a certified electronic signature is the standard practice of the authorities of the Party concerned when dealing with requests for access to information by electronic mail. Since, moreover, this point was not raised by the communicants, the Committee does not make a finding regarding compliance with the Convention in this respect.

#### **Access to justice with respect to decision 246/2008 – article 9, paragraph 2**

87. At the time when the communication was submitted, the court procedure started by the communicants against Nuclear Authority decision 246/2008 had not yet ended. After the Supreme Court took its decision on 27 June 2013 annulling the contested Nuclear Authority decision, the communicants were granted standing in the proceedings. Thus the Supreme Court of the Party concerned provided access to justice in accordance with article 9, paragraph 2, of the Convention. For this reason the Committee finds that the Party concerned is not in non-compliance with article 9, paragraph 2, of the Convention.

#### **Access to justice in nuclear-related matters – article 9, paragraph 3**

88. With respect to the communicants' allegation that the Party concerned fails to ensure that members of the public have access to administrative or judicial procedures to challenge acts and omissions that contravene national law relating to the environment, the Committee notes that the legal framework of the Party concerned on this issue has changed since the communication was submitted. In particular, on 1 January 2015, the amendment to article 8 of the Nuclear Act came into force whereby the requirement to participate in the EIA procedure in order to have standing was removed from the legislation (see para. 24 above).

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<sup>62</sup> Response of the Nuclear Authority to the request for access to information; translation provided by the communicants in their letter dated 24 September 2014.



89. In addition, the Party concerned reports that subsequent to the *Slovak Brown Bear* decision by the Court of Justice of the European Union, the Ministry for Justice issued a directive that guides the authorities to grant standing to the public concerned in environmental proceedings and such guidance is also to be applied in proceedings provided by the Nuclear Act (see para. 62 above).

90. The communicants acknowledge that neither they nor other NGOs have tried to get standing in proceedings under the Nuclear Act since article 8 of that Act was amended on 1 January 2015. In such circumstances, the Committee finds that the communicants have not sufficiently substantiated their allegation that the Party concerned is in non-compliance with article 9, paragraph 3, of the Convention.

#### **Timely review procedures – article 9, paragraph 4**

91. With respect to the communicants' allegation that the Party concerned failed to ensure that court procedures were timely in accordance with article 9, paragraph 4, of the Convention, the Committee notes that the communication substantiates this allegation by only one example — Greenpeace's court procedure against Nuclear Authority decision No. 246/2008. The communicants provided further examples of lengthy court procedures on 1 December 2014, after the hearing before the Committee. In turn, the Party concerned in its letter of 8 December 2014 provided the Committee with examples of court procedures which it submitted showed that it met the requirement in article 9, paragraph 4, for review procedures to be timely.

92. The Committee observes that the length of the procedures to which the communicants refer appears to be excessive, especially in the light of the absence of court hearings in the majority of cases. However, the evidence submitted by the communicants and the Party concerned appear to be contradictory. In some cases cited by the communicants, periods as long as two or three years passed before the court reached a decision, whereas in other cases put forward by the Party concerned the court held several hearings and reached a final decision within several months. It remains unclear to the Committee why the procedures to which the communicants refer lasted longer than those referred to by the Party concerned. Similarly, it is unclear what the causes were for the delay in providing justice in the cases cited by the communicants. However, these issues were brought to the Committee's attention only after the hearing before the Committee on 23 September 2014. The Committee therefore did not have the possibility to clarify these aspects in the presence of both the communicants and the Party concerned. Thus the Committee considers that the communicants' allegation that court procedures within the scope of article 9 are not timely has not been sufficiently substantiated.

#### **Injunctive relief as appropriate – article 9, paragraph 4**

93. The communicants make three allegations relating to the requirement in article 9, paragraph 4, of the Convention to provide adequate and effective remedies, including injunctive relief, as appropriate. First, the communicants allege that suspension of the execution of administrative decisions is not often granted by the courts and that this is a systemic problem of the legal system of the Party concerned. Second, the communicants allege that judges can choose not to address requests for injunctions. The Party concerned refutes this. Finally, the communicants allege that judges in the Party concerned are not required to provide reasons when a refusal to grant injunction is issued. This allegation is likewise refuted by the Party concerned.

94. With respect to the communicants' first allegation, the Committee notes that it is not disputed by the parties that under the law of the Party concerned an administrative appeal has suspensive effect on the execution of the administrative decision. An appeal to the court

does not, however, have suspensive effect. Rather the court may provide injunctive relief if it is satisfied that there is a threat of serious injury.

95. In the present case, Greenpeace did not try to apply for an injunction after its appeal against Nuclear Authority decision 246/2008 was found inadmissible. Furthermore, no case law was provided by the communicants to substantiate their allegation that courts systematically refuse applications for injunctive relief in cases related to the environment.

96. In the light of the above considerations, the Committee finds the communicants' allegation that the Party concerned failed to comply with the requirement in article 9, paragraph 4, of the Convention to provide effective remedies, including injunctive relief as appropriate, to be insufficiently substantiated.

97. Regarding the communicants' second and third allegations, the Committee notes that there is no clear requirement in the legal framework of the Party concerned for the judiciary to examine requests for injunctions in review procedures within the scope of article 9 or to provide reasons for refusing such requests. The Committee emphasizes that it is implicit from the wording of article 9, paragraph 4, that in a review procedure within the scope of article 9 of the Convention the courts are required to consider any application for injunctive relief to determine whether the grant of such relief would be appropriate, bearing in mind the requirement to provide fair and effective remedies. The Committee also notes the importance of court decisions being provided with supporting reasoning and in a timely manner. This is an essential part of a fair and timely procedure, not least because the reasons may be needed in order to mount an appeal. The right of a reasoned decision is also a right under the European Court of Human Rights.<sup>63</sup>

98. While drawing the attention of the Party concerned to the desirability of having a clear requirement in its legal framework for the judiciary to examine requests for injunctions in review procedures within the scope of article 9, and to provide reasons for refusing such requests, the Committee finds that the communicants have not put sufficient evidence before it to enable the Committee to conclude that there is a systemic failure by the judiciary to consider requests for injunctions and to provide reasoned decisions when refusing such requests that would amount to non-compliance with the requirements in article 9, paragraph 4, to provide injunctive relief as appropriate and to ensure a fair and timely procedure. The Committee thus finds the allegation of non-compliance under article 9, paragraph 4, to be unsubstantiated.

#### **Lack of clear and consistent framework to implement the provisions of the Convention – article 3, paragraph 1**

99. The communicants allege that the Party concerned has failed to take the necessary measures, including proper enforcement measures, to maintain a clear and consistent framework to implement the Convention as required by article 3, paragraph 1, of the Convention. The factual basis of the communicants' allegations under article 3, paragraph 1, was completed only after the Supreme Court granted Greenpeace standing in the appeal proceeding against decision 246/2008 (see para. 38 above) and the Nuclear Authority issued decision No. 761/2013 excluding suspensive effect of the appeal filed by the communicants on 14 November 2008 (see para. 40 above). The Committee notes that in support of their allegations under article 3, paragraph 1, of the Convention, the communicants refer solely to the Mochovce nuclear power plant case.

100. In order to find a Party in non-compliance with article 3, paragraph 1, of the Convention, the Committee has to identify which elements of the Party's legal system are

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<sup>63</sup> *Ruiz Torija v. Spain*, 19 Eur. H.R. Rep., 553 (1995).

either unclear or inconsistent with the Convention's requirements. In this case, the communicants allege that the legal system of the Party concerned does not ensure "proper enforcement measures" as required by article 3, paragraph 1, in two respects. First, the fact that the Nuclear Authority was able to issue a decision excluding the suspensive effect of the appeal filed by the communicants on 14 November 2008. Second, the fact that the administrative appeal and court procedures took five years without any injunctive measures to halt the construction process.

101. With respect to the first of the above points, the Committee notes that the communicants withdrew their petition to the Attorney-General against decision No. 761/2013 two days prior to the hearing (see para. 41 above). Regarding the second, the communicants did not actually seek injunctive relief in this case nor provide case law to show that injunctive relief is systematically refused in cases relating to the environment (see para. 95 above). Since the communicants did not take either of these steps, they have not demonstrated to the Committee that proper enforcement measures would not have been in place had they done so. The Committee thus finds the allegation that the Party concerned fails to comply with article 3, paragraph 1, of the Convention, and in particular to ensure proper enforcement measures, to be insufficiently substantiated.

#### **IV. Conclusions and recommendations**

102. Having considered the above, the Committee adopts the findings and recommendations set out in the following paragraphs.

##### **A. Main findings with regard to non-compliance**

103. The Committee finds that in the context of a decision-making procedure subject to article 6 of the Convention, and with respect to requests for information under article 4 generally, the Party concerned has failed to comply with article 4, paragraph 4, and also article 6, paragraph 6, in conjunction with article 4, paragraph 4, of the Convention:

(a) By adopting an approach in the Directive on Sensitive Information whereby whole categories of nuclear-related environmental information are unconditionally declared as confidential and for which (contrary to the general legal regulation in the Freedom of Information Act) no release is possible;

(b) For failing to require that any grounds for refusal are interpreted in a restrictive way, taking into account the public interest served by disclosure and whether the information relates to emissions into the environment.

##### **B. Recommendations**

104. The Committee, pursuant to paragraph 35 of the annex to decision I/7 recommends that the Meeting of the Parties, pursuant to paragraph 37 (b) of the annex to decision I/7, recommend that the Party concerned take the necessary legislative, regulatory and administrative measures and practical arrangements to ensure that when providing access to nuclear related information within the scope of article 2, paragraph 3, of the Convention, any grounds for refusal under article 4, paragraph 4, of the Convention are interpreted in a restrictive way and taking into account the public interest served by disclosure and whether the information requested relates to emissions into the environment.