II.

According to Section 25 (1) of the Act of the National Council of the Slovak Republic 38/1993 on the Organization Structure of the Constitutional Court of the Slovak Republic and on the Proceedings Brought to the Court and on the Position of its Judges as amended ("the Act on the Constitutional Court") the Constitutional Court shall discuss the proposal preliminarily in closed session without the complainant present, unless this Act provides otherwise.

According to Section 25 (2) of the Act on the Constitutional Court, motions in matters for which the Constitutional Court does not have jurisdiction, motions that do not have the requisites prescribed by law, inadmissible motions or motions submitted by someone manifestly unauthorized, as well as motions submitted late, may be rejected by the Constitutional Court at a preliminarily hearing by a resolution without an oral hearing.

According to Art. 44 (1) of the Constitution, everyone has the right to a favourable environment.

According to Section 8 of the Aarhus Convention, each Party seeks, while opportunities are still open, to promote effective public participation at the appropriate level during the preparation of implementing regulations and other generally applicable legally binding rules by public authorities that may have a significant effect on the environment.

To this end, the following steps should be taken:

a) Sufficient time frames for effective participation should be set;

b) Draft regulations should be published or otherwise made publicly available; and

c) The public should be given the opportunity to comment, either directly or through representative advisory bodies.

The results of public participation shall be taken into account as much as possible.

In the complaint, the complainants claimed a violation of their fundamental right under Art. 44 (1) of the Constitution and the law according to Art. 8 of the Aarhus Convention by the procedure of the Government and the Ministry of Agriculture and Rural Development as the submitter in the preparation and approval of the Forest Act draft submitted to the inter-ministerial comment procedure on May 10, 2013 under the ministerial number 2752/2013-410 and approved on September 26, 2013. The claimed violation of the above-mentioned rights of the applicants was due to the fact that the Government approved the draft amendment to the Forest Act without taking into account the fundamental comments of the public, in relation to which the discrepancy persisted in the comment procedure. The submitter intervened in the complainants' rights by his procedure, by which he submitted material to the Legislative Council and to the 39th Government meeting, ignoring the materiality of the public's comments (comments No. 2, 3, 12 and 15), which in the framework of the submitted documents (submission report and evaluation of the comment procedure) was assessed as ordinary, although the comments were fundamental and the disagreement about them persisted even after the carried out controversial procedure, and also because the new text of the provision of Section 30 (3) of the proposed Forest Act, on which both parties to the dispute proceedings agreed, when discussing the public comment no. 11, was changed without the consent of the public, and/or without discussing this change with a member of the public.

In that regard, reference should be made to the case-law of the Court of Justice of the European Union ("the Court of Justice"), in which it has already considered the direct application of the provisions of the Aarhus Convention and referred to its case-law in which it stated that, in that regard, a provision of an agreement concluded with the European Union and its Member States and non-member countries must be regarded as having direct effect if, in view of its wording and the subject matter and nature of this agreement, it contains a clear and precise obligation, the fulfilment or effects of which do not depend on the adoption of any other act. (see, in particular judgements of April 12, 2005, Case C-265-3 Simutenkov ECR I-2579, (21); and of December 13, 2007 Case C-372/06 Asda Stores ECR I-2579, (21)).

Subsequently, the Court of Justice in its judgement Case C-240/09 of March 8, 201, 1 stated, in particular, that the questions referred by the Supreme Court for a preliminary ruling concerning the sphere of European Union law *"must be answered by answering the first and second questions in such a way that Art. 9 (3) of the Aarhus Convention has no direct effect in Union law. However, it is for the national court to provide an interpretation of procedural law concerning the conditions which must be satisfied in order to bring an administrative appeal or an action which is, as far as possible, consistent with the objectives of Article 9 (3) of this Convention, as well as for the purpose of effective judicial protection of the rights conferred by Union law, so that an environmental organization such as Group V may challenge in court a decision taken in administrative proceedings which could be contrary to Union law in in the field of the environment. "*

From the wording used in Article 8 of the Aarhus Convention "each party seeks to promote, while options are still open, effective public participation in the drafting of legislation", it can be stated that the public's right to participate in drafting legislation is least strictly regulated in this Convention, but notwithstanding the above statement, Art. 8 of this Convention determines the responsibility of public administration bodies to take the necessary means for the effective participation of the public in the preparation of generally binding regulations. It follows that, even from the point of view of its implementation or its effects, that provision of the Aarhus Convention is also subject to the adoption of subsequent acts at national level to ensure its implementation.

In order to implement Art. 8 of the Aarhus Convention, no legal regulation has yet been adopted in the Slovak Republic. Public participation in the preparation of legal regulations is regulated only by an internal normative governing act of the government marked as legislative rules, and the means of ensuring this participation is a comment procedure.

The minimum standard established by the Aarhus Convention to ensure public participation in the preparation of legislation must meet in particular three criteria:

- Providing a sufficient time frame for effective public participation;
- Publishing or otherwise making the proposal available to the public;
- Providing an opportunity for the public to comment directly or through representative bodies.

The stated standards for ensuring public participation in the preparation of legal regulations in the Slovak Republic are regulated only within the framework of legislative rules, which are an internal normative governing act of the government. According to Art. 13 of these legislative rules, the submitter of the draft law is obliged to discuss it with the relevant authorities and institutions in the comment procedure, and for this purpose there is an obligation to publish the draft law on the legal portal.

The deadline for sending comments is set out generally in Art. 13 (6) of the legislative rules for 15 working days and begins on the day of publication of the draft law for comments on the portal of legal regulations. The time period may be extended by the submitter. The public may submit their comments pursuant to Art. 13 (9) of the last sentence of the legislative rules to be sent either in electronic form via the portal of legal regulations in electronic form to the specified electronic address, or in paper form.

According to the legislative rules, comments are divided into general and comments on individual provisions of the Act (Article 14 (2)), as well as fundamental and “ordinary” comments. It is the last breakdown of comments that is crucial for implementation

of the dispute procedure, as only a fundamental comment, if the submitter does not comply with it, becomes the subject of a dispute procedure (Article 14 (3)). If the submitter does not comply with the other so-called "ordinary" comments from the commenting authorities, they are not considered to be inconsistent.

A fundamental comment according to Art. 14 (4) of the first sentence of the legislative rules means a categorical disagreement of the body that applied it and indicates that without accepting this comment, a member of the government is unlikely to vote for a draft law at a government meeting, or a person who made a fundamental comment if present at a government meeting will also be raised at this meeting.

According to Art. 14 (6) of the Legislative rules, the submitter has an obligation to conduct a dispute procedure with a public representative, if he did not comply with a collective comment with which at least 500 natural persons or legal entities identified. However, if the collective comment was submitted in electronic form via the legal portal, the list of natural persons and legal entities who identified with the collective comment may also be sent to the submitter in another way than via the said portal.

It is the duty of the submitter to draw up minutes of the dispute proceedings, which will be signed by the representatives of both parties to the dispute (Article 14 (7) of the Legislative rules).

According to Art. 14 (9) of the legislative rules, comments on the draft law, which were sent in electronic form via the portal, will be included in the evaluation of the comment procedure [Art. 18 (2) e)] together with an indication of whether it is a fundamental comment and, in the case of non-accepted comments, the reasons for the non-acceptance; this applies equally to the comments of the mandatory commenting authorities as well as to the comments of the optional commenting authorities and the public. Comments that were not sent in electronic form via the portal and written, grammatical and stylistic comments are not stated in the evaluation of the comments procedure [Art. 18 (2) e)]; this is without prejudice to the submitter's obligation to evaluate such comments.

According to Art. 18 (1) of the legislative rules, a draft law amended according to the results of the comment procedure shall be submitted to the Legislative Council for discussion by the submitter of the proposal for the Government's deliberations. After submitting the draft law to the Legislative Council, the submitter may submit the draft law to the Government according to the first sentence. The Legislative Council shall deliver its opinion on the said draft law usually within 30 days. Part of the material by which the draft law is submitted to the Government deliberations and the Legislative Council is a statement of the submitter on the indisputability of the submitted draft law or on what contradictions (Article 14 (5)) the draft law is submitted, including conflicts with a public representative (Art. 14 (6), and the reasons why the inconsistencies could not be resolved [Article. 18 (2) d) 1], as well as the evaluation of the comment procedure and the evaluation of the intra-Community comment procedure [Art. 18 (2) e)].

According to Art. 18 (4) h) of the legislative rules, the submission report to the draft law contains, in particular, a collective comment of the public or a summary of a number of substantively related comments of the public, if they have been applied.

The content of the complaint and its annexes shows the following course of the comment procedure in the present motion:

- On May 10, 2013, a draft amendment to the Forest Act was published on the legal portal under departmental number 2752/2013-410;

- On May 27, 2013, a public comment was submitted in writing, containing 17 comments marked as fundamental, which were supported by more than 9062 citizens through the legal portal until the end of the comment procedure;

- On May 31, 2013, the inter-ministerial comment procedure was closed;

- On June 10, 2013, a dispute procedure was held with the submitter of the draft Forest Act, at which the wording of Section 30 (3) of this Act (acceptance of fundamental comment no. 11) and no fundamental comments no. 2, 3, 12 and no. 15, were accepted, i.e. the contradiction with regard to these fundamental comments persisted;

- On June 19, 2013, the complainant, as a representative of the public, requested in writing to take part in the 39th session of the Legislative Council, while drawing attention to the persisting inconsistencies in four fundamental comments;

- On July 12, 2013, by submission of that date, the Director of the Legislative Department of the Government Legislation Section, responded to the complainant's request of June 19, 2013, informing him that the assessment of the comment procedure would also include inconsistencies which had not been resolved in the legislative procedure;

- On September 25, 2013, a note was sent electronically to the Prime Minister in which the complainant (another 20 citizens supporting a mass comment sent the Prime Minister electronic letters of similar content) alerted him to the fact that the materials published on this draft law on the government's website were
"erroneous and misleading", and in this context pointed out the inaccuracy of the information provided in the evaluation of the comments procedure, to comments number 2, 3, 11, 12 and 15;

- On September 26, 2013, the draft of Forest Act was submitted to the Government, which approved it at this meeting by Resolution no. 560.

From the above, it is clear that the minimum procedural requirements for respecting the public right arising from Art. 8 of the Aarhus Convention is the provision of sufficient, and/or reasonable opportunities to comment on the generally binding legislation draft, both in terms of time and the scope of accessibility of the content of the proposed generally binding legislation to the public, as well as taking into account the comments submitted to the public in the preparation of the generally binding legislation.

In the above case, it is not disputed that the public was given sufficient time by the submitter to submit comments and that the public had full access to the submitted Forest Act draft and the opportunity to comment, and/or to submit their observations against that proposal.

The essence of the complainants' objections is the fact that the fundamental comments of the public represented by the complainants were not sufficiently taken into account in the preparation of the Forest Act by the submitter and the Government.

It is clear from the course of the comment procedure in the present motion already described, that the comments from the public were made by the competent authorities, i.e. submitted by the submitter. Comments from the public with regard to their fundamental nature, and/or that these were comments of the public marked as fundamental (a total of 17 comments), were discussed by the submitter together with the representative of the public within the so-called dispute procedure, at which both parties agreed only in connection with comment no. 11 (by settling the wording of Section 30 (3) of the proposed Forest Act), and four other comments of the public raised as fundamental (comments no. 2, 3, 12 and 15) remained unaccepted.

In the document marked as Evaluation of the interdepartmental comment procedure, these comments are on the one hand within their specification, and/or justifications for their content, marked as fundamental, but on the other hand they were marked with the letter "O" in the special table column by the submitter (or according to the submitter by the automatic electronic system of the portal), i.e. as the so-called "Ordinary" comments, to which it is no longer necessary to attach a justification for not accepting them when submitting the material to the Legislative Council and to the Government's deliberations.

Requirement of Art. 8 of the Aarhus Convention to ensure that the results of public participation are duly taken into account is transposed within the Slovak legal system by providing the public with the opportunity to submit comments in which it expresses its opinion on the wording of the Act submitted by the submitter. An important provision in this regard is the obligation of the competent authority to carry out a dispute procedure, as well as to draw the attention of the government to the reasons for possible non-acceptance of fundamental comments, which approves the draft law prepared by the submitter by its resolution.

Despite the fact that the submitter's procedure in question violated legislative rules, it is indisputable that as a result of the activity of the complainant in particular as a representative of the public as a legislative council, and/or its director, as well as the prime minister himself, were alerted about the specific shortcomings of the submitted material (by written submissions of the complainant(s)), even before the legislative council and the government meeting took place. One of the aims of marking a comment as fundamental, is to warn the submitter that without accepting this comment, and/or due to the fundamental reservations about the submitted draft law, a member of the Government is unlikely to vote for this draft at a government meeting or the one who made a fundamental comment, if present at the government meeting, will raise it at this meeting as well (Article 14 (4) of Legislative rules). In this sense, the comments of the public are of a consultative nature only and can have a decisive influence only if they are identified by the submitter himself or by one of the entities that have the right to vote at the meeting of the Legislative Council, and/or at a government meeting.

Although in the present case it can be stated that the procedure, especially of the submitter of the draft Forest Act, was not fully in accordance with the legislative rules, as in the material submitted to the Legislative Council and the Government insufficiently, and/or confusingly pointed to the persistent discrepancies in comments no. 2, 3, 12 and 15 and did not draw attention to the reformulated wording of Section 30 (3) of the Forest Act, which was originally established in another wording in the framework of a dispute procedure with a representative of the public. On the other hand, in the opinion of the Constitutional Court, the government is an executive body of state power, which is responsible for exercising its powers, it is responsible for the content of the submitted draft law, and therefore it cannot be denied the right, after reasonable consideration and/or independent consideration of the submitted comments, reject them, and/or not to accept them.

In the opinion of the Constitutional Court in the present motion, it cannot be concluded that the procedure of the submitter and the government was influenced by shortcomings of such intensity that it could be described as a procedure by which sufficient public information and consultative democracy wasn’t guaranteed and/or enabling public participation in the preparation of generally binding legislation. It follows from the content of the complainants'

complaint that their aim was not only to submit comments in the process of drafting the Forest Act, but also to try to accept their fundamental comments, which is natural but, according to the Constitutional Court, the right to take comments in absolute form, and/or unconditional acceptance of comments from the public is not part of the right arising from Art. 8 of the Aarhus Convention.

In the complaint, the complainants also alleged a violation of their fundamental right to a favourable environment pursuant to Art. 44 (1) of the Constitution.

In this connection, the Constitutional Court refers to its previous case law, in which it has already stated that the content of a positive obligation of the state in relation to the rights and freedoms of a citizen is the obligation to take measures to protect the rights which the Constitution has granted to a citizen, but part of a positive commitment is not the obligation to achieve the result that the citizen requests from the state (m. m. II. ÚS 8/96, I. ÚS 4/02). At the same time, however, there are also positive obligations of the state, which result from the interest in the effective protection of rights. Such a special category of positive obligations of the state is represented by the obligations of the state consisting in ensuring the effective protection of rights guaranteed by international treaties through the existence of a certain (legally regulated) process.

The aim of the positive commitment of the state resulting from Art. 8 of the Aarhus Convention is to ensure, through the law of the State concerned, the protection of public participation in the preparation of generally binding legislation having a significant effect on the environment, i.e. the initial phase of the entire legislative process - in the preparation and discussion of a draft law before its submission to the National Council. The legislative process itself continues in the National Council, discussing the draft law in committees and plenary, voting on the draft law, signalling the law and ending with the publication of the approved law in the collection of laws. The result of the legislative process is a law regulating not only the rights and obligations of the entities to which it is addressed, but also ensuring their rights, end/or protection of their rights and the interests protected by law.

It is clear from the above stated that the insufficient provision of this positive obligation of

the state does not automatically in itself mean a violation of the law in the interest of protection of which the relevant obligation is to be implemented, i.e. the right to a favourable environment, because the said right of the public corresponds to the content of the same obligation of the state, and/or competent public authorities to protect the rights granted to individuals, and also because only the final outcome of the legislative process, i.e. the published law is binding on the entities concerned. Violation or restriction of the fundamental right to a favourable environment could occur only on the basis of a law published in the Collection of Laws, either by the provision of the relevant law itself or by the application of that law by the competent public authorities.

On the basis of the above, the Constitutional Court states that among the grounds on which the complainants base the alleged violation of the fundamental right to a favourable environment pursuant to Art. 44 (1) of the Constitution, and the procedure objected by the submitter and the government in ensuring public participation in the preparation of the draft Forest Act, there is no direct causal link.

With regard to the above, the Constitutional Court rejected complaint of the complainants during its preliminary hearing pursuant to Section 25 (1) of the Act on the Constitutional Court as manifestly unfounded.

In addition to the above, the Constitutional Court points to the fact that the complainants identified in the Annex to this resolution to the complaint did not submit a power of attorney for their representation to lawyers, and therefore their complaint could be rejected on the grounds of non-compliance with statutory requirements.

Guidance: No appeal shall be logged against this decision.

In Košice on March 5th, 2014