

Observer statement concerning Slovakia's implementation of the UNECE decision VI/8i.

Dear Ladies and Sirs at the UNECE,

I would like to provide you with my observer statement concerning Slovakia's implementation of the UNECE decision VI/8i, respectively with my comments related to the Slovakia's breach of the Aarhus Convention, which I understand to be in particular and only with regard to the access to information concerning commercial nuclear sector.

In this area, I perceive these three different issues, which are all formally independent from each other:

1. Long-term systematic attempts of the Slovak public authorities to bypass the Aarhus Convention in particular and only with regard to the access to information concerning commercial nuclear sector, which have been in my opinion very professionally and correctly dealt with in the UNECE proceedings under the reference ACCC/C/2009/41 Slovakia¹. These systematic attempts, de facto, introduced in the Slovak laws a system of "lump sum" non-transparency of whole documents (i.e. instead of blacking out confidential information), as well as the institute of the so called "sensitive information" (and, in my opinion, rather very controversial reasons not to disclose formally sensitive information at all, despite prevailing public interests and the tenor of the Aarhus information in this regard).

2. The 'bizarre' amendment of the relevant Slovak laws, which concern the postal/telecommunication secrets. If I understand correctly, unlike with regard to the issues dealt with in the point 1. above and the point 3 below, this is the only exception in which the Slovak Authorities, after the change of the Government in March 2020, started to realise the breach of the Aarhus Convention (also therefore this can be perceived as a separate issue, independent from the two issues outlined below and above). While I am disappointed with the way this has been dealt with formally, i.e. via amendment of the Act on the Geology (i.e. not a relevant Act), I can respect this, as I respect that such indirect amendments of one Act via amendment of a rather irrelevant Act are still legal in Slovakia (which I consider unfortunate).

3. The 'entrustment' of a for-profit company JAVYS (Jadrová a vyrad'ovacia spoločnosť = nuclear and decommissioning company) with legal rights to act as a public authority for radioactive wastes related issues. To me, this 'entrusting' of a for-profit company has been intentional in particular as "a legal trick" to ensure that the public would have as weak rights to access the information concerning radioactive wastes as can be justified by a for-profit nature of a legal entity of JAVYS.

In my opinion, the approach taken by the Slovak authorities towards the UNECE since December 2009, i.e. for more than 11 years already, can be best characterised as the so called UNCLE (i.e. Unlimited Consultations Leading to Exhaustion), i.e. an intentional approach aimed at making both the UNECE staff and the interested civil society exhausted from dealing with '11 years of attempts of a very large number of different legal tricks' instead of any honest attempt to amend the Slovak laws in order to respect the Aarhus Convention in full also with regard to the access to information concerning commercial nuclear sector. For example, a part of the 'UNCLE tactics', instead of the focus on transparency and public participation related issues, the Slovak authorities have a tendency to include a huge amount of technical sector information in the documents which should concern only interpretation of the Aarhus Convention and its transposition into the Slovak laws².

Moreover, I perceive the above outlined attempts of the Slovak authorities to breach the Aarhus Convention (also) in its second pillar, as dealt with in the EU infringement proceedings against Slovakia for breaching of the EIA Directive. I deal with this aspect in my two peer-reviewed articles, which are available at <https://doi.org/10.1057/kmrp.2011.22> and <https://doi.org/10.1016/j.pnucene.2019.103192>.

¹ https://unece.org/env/pp/cc/accc.c.2009.41_slovakia.

² Note: see for example how exhaustive, and full of information that I consider unrelated to the issues of transparency and/or public participation, was the first Slovakia's 'Letter from the Party concerned', dated 02.12.2009, available at: https://unece.org/DAM/env/pp/compliance/C2009-41/Correspondence/FrSKC41_Reply_2Dec2009.pdf

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In these two articles, I tried to explain the link between Slovakia's intentional breach of the public participant related rights of the public under the EIA laws on the one side, and the amendments to the Slovak Freedom of Information Act from 2009 on dealt with in the UNECE proceedings under the reference ACCC/C/2009/41 Slovakia on the other side.

I would also like to share with you the 'overview of [the Slovak] activists' submissions addressing lack of public access to nuclear sector information in Slovakia' that I prepared for the Nuclear Transparency Watch network in the autumn 2020, available at:

<http://www.nuclear-transparency-watch.eu/category/activities/transparency-and-public-participation>

I understand that a holistic approach to deal with the three above outlined different issues is not legally possible for the UNECE, and that the currently ongoing procedures related to the UNECE decision VI/8i concern only the issues outlined by me in the point 2 above.

Given my health issues, resulting from exhaustion, I will not be able to provide more information/statements/feedback to the UNECE in the coming weeks/months. Under ideal circumstances (the CoViD situation, my health and employment/vacation situation, etc.), I might be able to participate in person at the upcoming "ACN Round Table on EP&R" planned in November 2021, where I assume to be able to also meet with someone from the UNECE, to whom I could explain this statement in more details, respectively answer any potential questions, etc.

Thank you very much in advance for all your upcoming work on this unfortunate issue, which is making many of us exhausted and afraid about an undermining of international transparency and public participation standards by the relevant Slovakia's authorities for more than a decade!

Written in Banská Bystrica (Slovakia) on 24 May 2021 in a form of email (edited 28 May 2021).



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