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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

Seventy-second meeting

Geneva, 18–21 October 2021

Item 9 of the provisional agenda

Communications from members of the public

Findings and recommendations with regard to communication ACCC/C/2014/120 concerning compliance by Slovakia*

Adopted by the Compliance Committee on 24 July 2021

I. Introduction

1. On 8 December 2014, civic association VIA IURIS (the communicant), 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 a failure by Slovakia to comply with its obligations under articles 8 and 9 (3) of the Convention in relation to legislation concerning forestry.
2. More specifically, the communicant alleges that the Party concerned failed to provide public participation to the extent required by article 8 in the preparation of an amendment to forestry legislation in 2013 and access to justice to enforce rules governing public participation in the preparation of such legislation.
3. On 7 April 2015, the Compliance Committee determined through its electronic decision-making procedure that the communication was admissible on a preliminary basis.
4. Pursuant to paragraph 22 of the annex to decision I/7 (ECE/MP.PP/2/Add.8), the communication was forwarded to the Party concerned on 28 June 2015.
5. On 27 November 2015, the Party concerned provided its response to the communication.
6. The Committee held a hearing to discuss the substance of the communication at its fifty-fourth meeting (Geneva, 27–30 September 2016), with the participation of

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



representatives of the communicant and the Party concerned. At the same meeting, the Committee confirmed the admissibility of the communication.¹

7. On 29 September 2016, the Party concerned provided a written version of the statement it had delivered at the Committee's fifty-fourth meeting.

8. On 29 April 2021, the Committee sent written questions to the Party concerned and the communicant. On 18 May 2021, the Party concerned provided its reply. The communicant did not provide a reply.

9. The Committee completed its draft findings through its electronic decision-making procedure on 13 June 2021. In accordance with paragraph 34 of the annex to decision I/7, the draft findings were then forwarded on that date to the Party concerned and the communicant for their comments by 23 July 2021.

10. On 19 July 2021, the Party concerned confirmed it had no comments on the Committee's draft findings. No comments were received from the communicant.

11. The Committee proceeded to finalize its findings in closed session and adopted its findings through its electronic decision-making procedure on 24 July 2021. The Committee agreed that the findings should be published as a formal pre-session document to its seventy-second meeting.

II. Summary of facts, evidence and issues²

A. Legal framework

Legislative rules

12. The procedure for the preparation of draft laws was regulated, at the time of the events at issue, by the Legislative Rules of the Slovak Republic, which were approved by Government Resolution No. 352 of 25 May 2010.³ These rules are based on Act. No. 350/1996 Coll. on Rules of Procedure of the National Council of the Slovak Republic.⁴ The Legislative Rules themselves, however, are not adopted in the form of a generally binding regulation but as an internal directing act.⁵

Public interdepartmental discussion

13. Under the Legislative Rules, the competent authority (the "submitter") prepares a draft law, which is subject to a public interdepartmental discussion before it is submitted for approval by the Government. In the framework of this discussion, other governmental bodies and other entities, including the public, can submit their comments on the draft law.⁶

14. If a comment is provided by a group of the public, it is called a "collective comment".⁷ Article 14 (6) of the Legislative Rules provides that the public must nominate a representative for the purposes of submitting the collective comment and for communication with the competent authority preparing the draft law. A list of the individuals supporting the collective comment must be provided to the submitter.⁸

15. Comments may be submitted via an online portal, by email or in paper form.⁹

¹ ECE/MP.PP/C.1/2016/7, para. 42.

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

³ Party's response to the communication, p. 13.

⁴ Ibid., pp. 13–14.

⁵ Communication, pp. 1–2.

⁶ Ibid., p. 10.

⁷ Party's response to the communication, p. 2.

⁸ Ibid.

⁹ Ibid.

16. Article 14 (6) of the Legislative Rules provides that, if the collective comment was provided electronically, a list of natural and legal persons who supported the comment can be sent to the submitter also by other means than via the portal.¹⁰

Negotiation on contradictions

17. Article 14 (6) of the Legislative Rules requires that a “negotiation on contradictions” take place with the representative of the public if the submitter does not accept a collective comment which is supported by at least 500 natural or legal persons.¹¹

18. Article 14 (7) of the Legislative Rules provides that, on the basis of the negotiation on contradictions, the submitter will prepare a report that shall be signed by the representatives of both sides of the contradiction.¹²

Ordinary or essential comments

19. Comments are labelled as either “ordinary” or “essential”.¹³ The public’s comments are automatically essential comments if supported by at least 500 persons. In the case of ordinary comments, when they are submitted for the negotiations of the Legislative Council and of the Government, there is no need to annex any reasoning that led to their rejection.¹⁴

Evaluation of the interdepartmental discussion

20. Article 14 (9) of the Legislative Rules provides that comments on a draft law that were sent in electronic form through the portal shall be listed in the evaluation of the interdepartmental discussion, together with the indication whether they are essential comments. In cases where comments were not accepted, the reason why they were not accepted shall also be included. These requirements apply in the case of comments made by a compulsory commenting authority, as well with respect to comments made by optional commenting authorities and the public.¹⁵

21. Article 14 (9) further provides that the public’s comments submitted in written form are not to be listed in the evaluation of the interdepartmental discussion, although it requires the submitter of the draft legislation to still evaluate them.¹⁶

Submission of draft laws and submission reports

22. Article 18 (1) of the Legislative Rules provides that the submitter shall submit the draft law, modified according to the results of the interdepartmental discussion, to the Legislative Council. The Legislative Council has the right to propose and insist on the modification of any provision of the draft, including those resulting from a contradictory negotiation. Following the submission to the Legislative Council, the submitter may submit the draft law to the Government.¹⁷

23. Article 18 (4) (h) provides that a submission report, which is to be submitted together with the draft law, shall contain any collective comment submitted by the public or a summary of other materially similar comments by the public.¹⁸

24. Article 18 (2) (d) (1) provides that, together with the draft law, the submitter must also submit a declaration declaring the absence of contradictions concerning the draft law or specifying the contradictions that persist, including any contradictions with the public representative, and the reasons that the contradictions could not be removed.¹⁹

¹⁰ Ibid.

¹¹ Party’s response to the communication, p. 2.

¹² Ibid., p. 6.

¹³ Communication, p. 5; Party’s response to the communication, p. 2.

¹⁴ Party’s opening statement for the hearing at the Committee’s fifty-fourth meeting, 29 September 2016, para. 3.

¹⁵ Party’s response to the communication, p. 4.

¹⁶ Ibid.

¹⁷ Ibid., p. 10.

¹⁸ Communication, p. 10.

¹⁹ Ibid.

Subsequent legal framework for legislative procedures

25. On 1 April 2016, Act No. 400/2015 Coll. on the Making of the Act and on the Collection of the Acts entered into force. Together with the Legislative Rules, the Act provides the legal framework for the legislative process and the participation of the public therein.²⁰

26. Section 8 of Act No. 400/2015 Coll. provides that the previous online portal is to be replaced by the so-called “Slov-lex” online portal. It does not change the rule in article 14 (9) of the Legislative Rules that only comments submitted through the online portal (now the “Slov-lex” portal) are included in the evaluation of the interdepartmental discussion to be sent to the Legislative Council and the Government.²¹

Access to justice

Relevant legislation

27. Article 1 (2) of the Constitution provides that the “Slovak Republic recognizes and respects the general rules of international law, international treaties by which it is bound, and its other international obligations.”²² In accordance with article 46 (1) of the Constitution, any person may claim his or her right to an independent and impartial court or other authority of the Party concerned.²³

28. Section 3 (1) of Act No. 9/2010 Coll. on Complaints provides that a complaint is:

A submission of a natural person or legal person ..., by which he [or she]:

(a) Seeks to protect his [or her] rights or interests protected by law, which he [or she] considers are violated by action or inaction ... [on the part of] the authority;

(b) [Identifies] specific deficiencies, in particular violating the law, if their elimination is the responsibility of the public authority.²⁴

29. Section 31 (1) of Act No. 153/2001 Coll. on the Prosecution provides that: “The prosecutor reviews the legality of the procedures and decisions of public authorities, prosecutors, investigators, police and courts within the limits set by law, also on suggestion, while he [or she] is authorized to carry out measures to eliminate the breach, if their execution is not under special laws only [under the] responsibility of other relevant bodies.”²⁵

30. Section 11 (1) of Act No. 564/2001 Coll. on the Public Defender of Rights (Ombudsman) provides that the Ombudsman may be contacted by anyone who believes that the proceedings, decisions or omissions of the public administration have “violated fundamental rights and freedoms in conflict with the laws or principles of a democratic and legal State”.²⁶

31. In accordance with section 244 (2) of the Code of Civil Procedure, administrative courts review the legality of decisions and proceedings of State administration bodies, bodies of local self-government and bodies of “interest self-government” and other legal persons, as well as natural persons, if any act confers on them the power to decide on the rights and obligations of natural and legal persons in public administration.²⁷

Relevant case law

32. The Supreme Court, in decision No. 9 Sžz 5/2013 of 27 November 2013, which concerned a complaint made by a member of the public (civil association) concerning an alleged violation of the public’s rights under the Legislative Rules during the preparation of

²⁰ Ibid.

²¹ Party’s reply to the Committee’s questions, 18 May 2021, pp. 2–3.

²² Party’s response to the communication, p. 12.

²³ Ibid.

²⁴ Ibid.

²⁵ Ibid.

²⁶ Ibid.

²⁷ Ibid.

the draft law on nature protection, ruled that it lacked competence to decide the matter as the Legislative Rules were not a legal regulation. The Constitutional Court, by decision No. I. ÚS 112/2014 dismissed the complaint, stating that the proceeding of the Supreme Court had been correct.²⁸

33. In decision No. III. ÚS 4/08, the Constitutional Court dismissed a challenge of a proceeding in which a competent ministry submitted a draft law for a governmental negotiation without having negotiated with a representative of the public, despite the fact that the public had raised essential comments to the draft law, supported by a qualified number of supporters.²⁹

34. In decision No. II. ÚS 514/2012, the Constitutional Court dismissed a challenge alleging that a competent ministry had not published a draft law on the legislation portal, but only sent it for comments to a selected group of ministries.³⁰

35. In decisions Nos. III. ÚS 102/08 and I. ÚS 112/2014, the Constitutional Court dismissed claims brought by members of the public objecting to alleged violations of the Legislative Rules and article 8 of the Convention.³¹

B. Facts

36. From 10 to 30 May 2013, draft amendments to Law No. 326/2005 Coll. on Forests (Forest Act) were submitted to a public interdepartmental discussion by the Ministry of Agriculture and Rural Development (the submitter) and published on the legislation portal.³²

37. Among the proposed amendments was a change to section 30 (3) of the Forest Act to provide: “To organize physical education, sport or tourist competitions and events or to carry out commercial activities on forest land is possible only after a written agreement with the forest manager.”³³

38. Róbert Oružinský, a member of the public, submitted 17 collective comments on the draft amendments in accordance with article 14 (6) of the Legislative Rules. He submitted the same collective comments through the legislation portal and in a letter dated 27 May 2013. Comment No. 11 objected to the proposed change of section 30 (3) of the Forest Act. This comment requested section 30 (3) be amended to read: “Organizing of physical education, sport or hiking events on forest lands is possible only in accordance with particular regulations.^{XY}”³⁴ Footnote XY stated: “Law No. 479/2008 Coll. on organizing of physical education, sport and hiking events of public character.”³⁵

39. The collective comments submitted electronically were supported on the portal by 62 persons. Evidence submitted with the comments provided in written form showed the support of 9,062 persons.³⁶

40. On 10 June 2013, a negotiation on contradictions took place between the submitter and Mr Oružinský, as a “representative of the public” pursuant to article 14 (6) of the Legislative Rules. In the course of the contradictory negotiation meeting, the submitter accepted, in whole or in part, 13 of the 17 comments submitted. Contradictions persisted with respect to 4 comments. Among the comments that the submitter accepted was comment No. 11.³⁷

²⁸ Communication, p. 16.

²⁹ Ibid.

³⁰ Ibid.

³¹ Ibid., pp. 16–17.

³² Communication, pp. 1–2.

³³ Party’s response to the communication, p. 9.

³⁴ Communication, pp. 2–3.

³⁵ Ibid.

³⁶ Party’s response to the communication, pp. 3–4, and annex 3.

³⁷ Communication, pp. 3 and 6; Party’s response to the communication, pp. 6 and 14.

41. Mr. Oružinský recorded the contradictory negotiation meeting on his mobile telephone. Following the meeting, the submitter sent the report of the meeting to Mr. Oružinský via email.³⁸

Events concerning the submission to the Legislative Council

42. On 19 June 2013, prior to the negotiation of the Legislative Council on the submitted draft amendments to the Forest Act, Mr. Oružinský wrote a letter to the Legislative Council in which he requested to participate in the negotiation regarding the collective comments he had submitted, and drawing the Council's attention to the four persisting contradictions and the seriousness of the issues that the comments raised.³⁹

43. Only a brief summary of the persisting contradictions regarding the draft amendments to the Forest Act was included in the submission report that was provided to the Legislative Council, thereby only partially fulfilling article 18 (2) (d) (1) of the Legislative Rules (see para. 24 above). The submitter evaluated the collective comments submitted by Mr Oružinský electronically as "not taken into account". However, the material the submitter provided to the Legislative Council included the content of all comments submitted via the portal.⁴⁰

44. On 3 September 2013, the Legislative Council discussed the draft amendments to the Forest Act. In response to the comments of the Legislative Council, the wording of the draft amendment to paragraph 30 (3) of the Forest Act was changed to: "To organize or carry out activities for profit on forest land is possible only with the consent of the owner or administrator. Public use of forests does not apply to closed and fenced forest land in military forests."⁴¹

45. On 12 July 2013, the Director of the Legislative Department answered Mr. Oružinský's letter of 19 June 2013, stating that "if [a] contradiction could not be solved [...] within the legislative proceeding, this fact will figure in the evaluation of the interdepartmental discussion."⁴²

Events concerning the submission to the Government

46. On 25 September 2013, Mr. Oružinský sent an email to the Government Office, specifically to the Prime Minister. In reply, the Government Office sent a letter ensuring him that his letter would lead to a further investigation. On 26 September 2013, the draft amendment to the Forest Act was submitted for governmental negotiation and was adopted the same day by Resolution No. 560.⁴³

47. Only a brief summary of the persisting contradictions regarding the draft amendments to the Forest Act was included in the submission report that was provided to the Government.⁴⁴

48. The submission report stated that: "A contradiction persists ... over an essential comment of the public concerning the authorization of the forest landowner to enter her/his land."⁴⁵

The citizens' constitutional complaint

49. On 25 November 2013, 424 citizens who had supported the collective comment submitted by Mr. Oružinský filed a complaint before the Constitutional Court, claiming that the legislative procedure concerning the draft Forest Act had violated their rights under article

³⁸ Party's response to the communication, pp. 5–6.

³⁹ Communication, p. 6.

⁴⁰ Party's response to the communication, p. 7, and annex 6.

⁴¹ Party's response to the communication, pp. 6 and 9.

⁴² Communication, p. 6.

⁴³ Ibid., pp. 6, 8 and 9.

⁴⁴ Party's response to the communication, p. 7, and annex 6.

⁴⁵ Communication, p. 12; Party's reply to the Committee's questions, 18 May 2021, annex 9.

8 of the Convention. By decision No. I. ÚS 73/2014-280 of 5 March 2014, Court dismissed the complaint as “unsubstantiated”.⁴⁶

50. The Court found that the submitter had violated the Legislative Rules, noting that, not only does a submitter have an obligation to carry out negotiations on contradictions, it equally has an obligation to draw the Government’s attention to the reasons for its non-acceptance of essential comments, as it is the Government that adopts the submitter’s draft law.⁴⁷ However, the Court determined that:

(a) The submitter complied with all requirements for public access to information, participation in decision-making and access to justice in environmental matters under the Convention;

(b) The submission of a collective comment does not entitle its acceptance or its acceptance in exactly identical wording as that comment proposes.⁴⁸

51. The Court found that it was not disputed that the public was provided with the opportunity and sufficient time to submit comments and had full access to the draft amendments. The Court found further that, based on Mr Oružinský’s activities, the Legislative Council and the Government were notified of “the specific deficiencies” of the submitted material prior to the negotiating sessions of these respective bodies.⁴⁹

52. The Court ruled that it could not be concluded that the legislative procedure was marked by deficiencies of such an intensity that it could be described as a procedure in which sufficient public awareness and consultative democracy, allowing the public to participate in the preparation of generally binding legislation, were not guaranteed.⁵⁰

53. Lastly, the Court found that the right to have comments taken into account in the form of an absolute or unconditional acceptance of those comments is not part of the right conferred by article 8 of the Convention.⁵¹

C. Domestic remedies and admissibility

54. The communicant submits that there is no possibility to appeal the decision of the Constitutional Court dismissing the citizens’ complaint against the legislative procedure concerning the draft Forest Act (see paras. 49–53 above).⁵²

55. The Party concerned does not challenge the admissibility of the communication.

D. Substantive issues

Article 8

Electronic report on negotiation on contradictions

56. The communicant alleges that, after the negotiation on contradictions, the submitter did not make a regular report but only an electronic report, which it claims violates the Legislative Rules.⁵³

57. The Party concerned submits that, according to the Legislative Rules, the result of the contradictory negotiation shall be recorded in a report signed by the parties but that article 14 (7) of the Legislative Rules does not require the record to be in a particular form. The Party concerned contends that participation in the contradictory negotiation and its results were confirmed by signatures of all participants in the meeting and that the record was

⁴⁶ Communication, p. 19.

⁴⁷ Ibid., pp. 19–20.

⁴⁸ Party’s response to the communication, p. 13.

⁴⁹ Ibid.

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² Communication, p. 19.

⁵³ Ibid., pp. 4 and 11.

completed and signed by all parties to the negotiation. The Party further submits that it was sent to the public representative via email and subsequently consulted upon.⁵⁴

Labelling of essential comments as ordinary comments

58. The communicant claims that, in the submitter's evaluation of the interdepartmental discussion, all essential comments were labelled as ordinary comments.⁵⁵

59. The communicant submits that, in spite of being automatically labelled as ordinary by the legislation portal, the comments of the public were in fact essential comments, given that on the website www.ekoforum.sk, they were supported by more than 13,000 members of the public. The communicant submits that these persons' votes were provided as a list to the submitter. The communicant claims that proving that comments are essential in nature in this way is explicitly allowed by article 14 (6) of the Legislative Rules, which provides that a list of natural and legal persons who supported the comment can be sent to the submitter also "by other means" than via the portal.⁵⁶

60. The Party concerned submits that the communicant submitted the same collective comments twice, once electronically via the portal, and once in writing. The Party concerned submits that the collective comments were supported on the portal by only 62 persons, i.e. they were not supported by more than 500 persons. The public comments submitted via the portal were therefore automatically labelled as ordinary.⁵⁷

61. The Party concerned claims that, in contrast, the comments in written form showed the support of 9,062 persons. The Party concerned states that these written comments were validly submitted and qualified as essential comments under article 14 (6) of the Legislative Rules.⁵⁸

62. The Party concerned states that the submitter fulfilled the obligations under article 14 (6) and (9) of the Legislative Rules by conducting a negotiation on the contradictions with respect to the comments submitted in written form and evaluating these.⁵⁹

63. The Party concerned states that the submitter was not obliged to conduct a contradictory negotiation on the comments provided electronically via the portal, and an evaluation of these was therefore not necessary.⁶⁰

Section 30 (3) of the draft Forest Act

64. The communicant submits that the version of section 30 (3) of the Forest Act that was submitted for the negotiation of the Government was not the version agreed with Mr. Oružinský during the negotiation on contradictions. The communicant submits that the submission report stated that there was a persisting contradiction in relation to section 30 (3) of the Forest Act, while it was in fact the only comment that the submitter accepted during the negotiation on contradictions. The communicant alleges, that contrary to the agreement concluded during the negotiation on contradictions, this comment was reclassified as a non-accepted one.⁶¹

65. The communicant further alleges that neither the submitter nor the Legislative Council informed Mr. Oružinský about changes in the version of section 30 (3) agreed on during the negotiation on contradictions and did not allow Mr. Oružinský to discuss and submit his opinion on the new version of the provision. The communicant submits that, even if it were true that section 30 (3) was changed by the Legislative Council, this would not change the fact that Mr. Oružinský had been told that the submitter had accepted his essential comment. The communicant submits that such a procedure prevents effective public participation.

⁵⁴ Party's response to the communication, p. 6.

⁵⁵ Communication, pp. 11–12.

⁵⁶ Ibid., pp. 9 and 12.

⁵⁷ Party's response to the communication, pp. 3–5.

⁵⁸ Ibid., pp. 4–5.

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ Communication, p. 11.

Specifically, the communicant claims that, if this kind of procedure is accepted, submitters of legislative drafts could easily avoid negotiation with representatives of the public during the negotiation on contradictions by first assuring the public that all their essential comments have been accepted and consequently, during the negotiation of the Legislative Council, rejecting all these comments.⁶²

66. The Party concerned submits that the version of section 30 (3) of the Forest Act submitted to the Legislative Council was the version the submitter and Mr. Oružinský agreed upon in the negotiation on contradictions. It claims that the version submitted to the Government reflected changes in wording as a result of comments from the Legislative Council, and that the Legislative Council has the power to propose and insist on changes to any provision of draft legislation, even those resulting from a contradictory negotiation.⁶³

67. The Party concerned submits that the comment regarding section 30 (3) of the Forest Act was, in any event, not refused in terms of content, but only in terms of formulation, and that the goal that the public wanted to achieve through its comment remained intact. It states that it was therefore not necessary to inform Mr. Oružinský about the changed wording of section 30 (3) of the Forest Act because the result of the contradictory negotiation and the factual content of the provision was not changed but only reformulated.⁶⁴

68. The Party concerned submits that those who submitted comments in the interdepartmental discussion, and with whom negotiations on contradictions took place, were informed about the changes in the draft through the legislation portal, where all relevant material is publicly and freely available in its current and modified version at every stage of the legislative process.⁶⁵

69. Lastly, the Party concerned states that the reference in the submission report to a persisting contradiction concerning article 30 (3) of the draft Forest Act does not refer to comment No. 11 submitted by Mr. Oružinský, but rather concerns an essential comment of the Association of Trade and Tourism.⁶⁶

Alleged failure to provide sufficient information on persisting contradictions

70. The communicant submits that the documents submitted to the Legislative Council and the Government failed to state that there were persisting contradictions concerning four essential comments of the public. Rather, the communicant claims that, in the evaluation submitted to these bodies, all 17 comments of the public represented by Mr. Oružinský were classified as “ordinary – O” which were evaluated as “not to be taken into account.”⁶⁷ The communicant submits that, accordingly, the Government could not take into account these essential comments by the public during the negotiation of, and decision-making on, the draft amended Forest Act, nor the fact of the four persisting contradictions. The communicant alleges that the requirement included in article 8 of the Convention that “the result of the public participation shall be taken into account as far as possible” has accordingly not been fulfilled.⁶⁸

71. The communicant submits that the only contradiction referred to in the documents the submitter provided concerned the amendment of section 30 (3), which the communicant claims should not have been referred to as a contradiction, given that the submitter and Mr. Oružinský had resolved the contradiction.⁶⁹

72. The Party concerned concedes that, in the submission reports to the Legislative Council and the Government, information on the persisting contradictions regarding the collective comments submitted by Mr. Oružinský was included only as a brief summary,

⁶² Ibid.

⁶³ Party’s response to the communication, pp. 9–10.

⁶⁴ Ibid., p. 11.

⁶⁵ Ibid.

⁶⁶ Ibid., p. 8.

⁶⁷ Communication, pp. 7–8.

⁶⁸ Ibid., pp. 8 and 14.

⁶⁹ Ibid., p. 11.

given the limited and informative scope of the submission report, and that accordingly, article 18 (2) (d) (1) of the Legislative Rules was only partially fulfilled.⁷⁰

73. The Party concerned claims, however, that:

The material of the draft law concerned, which was submitted for discussion of the Legislative Council and the Government, contained the list and evaluation of all the comments [submitted] via [the] portal, including those identical public comments, which were [submitted] by the public representative in both ways, namely through the portal and in written form. All of these comments were kept in [the] disposal of the Legislative Council and Government.⁷¹

74. The Party concerned submits that the Legislative Council and the Government therefore had the opportunity to study and discuss the public comments that Mr. Oružinský submitted via the portal, which were identical to those comments submitted in writing. The Party concerned claims that the Legislative Council and the Government had the opportunity to request the submitter to explain why the submitter evaluated those public comments as “not taken into account”.⁷²

75. The Party concerned submits that the purpose of the rule in article 18 (2) (e) of the Legislative Rules that the evaluation of interdepartmental discussion to be sent to the Legislative Council and the Government only include the comments submitted via the portal is “to lead and motivate all State authorities as well as natural and legal persons not to prefer the paper form of the application of comments, but the electronic form via [the] portal”.⁷³

76. The Party concerned points out that Mr. Oružinský, on his own initiative, notified the Legislative Council, as well as the Prime Minister, of his objections to the legislative process in writing and also via email on 19 June and 25 September 2013, prior to the discussions of the Legislative Council and before the discussion of the Government, respectively. The Party concerned alleges that the Legislative Council and the Government were therefore informed about the persisting contradictions on the public comments submitted by Mr. Oružinský, independently of the submitter’s procedure.⁷⁴

77. The Party concerned states that any comments, including the essential comments of the State authorities and collective comments of the public, are only consultative and do not bind the Government, even if there is a persisting contradiction about those comments. It submits that “the Government is the authority that decides on the persisting contradictions.” The Party concerned claims that the Government “took measure of all the not accepted comments to the draft act concerned, including the public comments and persisting contradictions.”⁷⁵

78. Lastly, the Party concerned states that the results of public participation were taken into account as far as possible, as the submitter conducted the contradictory negotiation with Mr. Oružinský and accepted, in whole or in part, 13 of the 17 public comments, representing a 74.5 per cent acceptance rate.⁷⁶

The citizens’ constitutional complaint

79. With respect to the citizens’ constitutional complaint challenging the legislative procedure regarding the draft amendments to the Forest Act, the communicant submits that it is paradoxical that the Constitutional Court in its decision dismissing the complaint (see paras. 49–53 above) agreed that the submitter had violated the Legislative Rules.⁷⁷ The communicant states that the Court’s finding that the public’s rights under article 8 were not violated because Mr. Oružinský informed the Legislative Council and the Government about

⁷⁰ Party’s response to the communication, p. 7.

⁷¹ Ibid.

⁷² Ibid.

⁷³ Party’s reply to the Committee’s questions, 18 May 2021, p. 1.

⁷⁴ Party’s response to the communication, p. 7.

⁷⁵ Ibid., pp. 7–8.

⁷⁶ Ibid., p. 14.

⁷⁷ Communication, p. 19.

the persisting contradictions on the public's essential comments is not logical. The communicant claims that it does not deny that the Government has the right to consider and reject comments but, to be able to consider comments and decide whether it rejects or accepts them, the Government must be well-informed. The communicant submits that the Court's conclusion regarding the deficiencies identified in the legislative procedure on the draft Forestry Act lacked any detailed explanation or argumentation and was thus not substantiated. The communicant submits that the Court's conclusion is dangerous for the participation of the public in the preparation of legislation in the future because future violations of the Legislative Rules might likewise be arbitrarily qualified as being of insufficient intensity.⁷⁸

80. The Party concerned submits that the Constitutional Court's decision was reasoned and makes clear, *inter alia*, that the submitter complied with all requirements under the Convention.⁷⁹

Article 9 (3)

81. The communicant states that it is clear that the third pillar of the Convention protects the rights arising from article 8, given that an effective implementation of these rights requires their judicial protection. The communicant submits that, therefore, acts and proceedings carried out by the competent public administration bodies during the preparation of generally binding legal rules in matters of the environment are also "acts and omissions" within the meaning of article 9 (3) of the Convention.⁸⁰

82. The Party concerned does not dispute that article 9 (3) applies to executive regulations and other generally applicable legally binding rules that may have a significant effect on the environment.

Access to justice to enforce the Legislative Rules

83. The communicant submits that the Legislative Rules are compatible with article 8 of the Convention, as regards sufficient participation of the public in the preparation of generally binding regulations related to the environment. However, the communicant submits that there are few or no possibilities to effectively enforce the Legislative Rules and accordingly the observance of the public's rights to participate.⁸¹

84. The communicant submits that, in practice, the rights of the public stipulated in the Legislative Rules are often violated during the process of interdepartmental discussions. The communicant alleges that, in the case of such violations, the public does not have any appropriate and effective instruments to obtain a remedy.⁸²

85. Specifically, the communicant submits that the Legislative Rules are an internal directing act of the Government, binding on central State bodies such as ministries that are subordinate to the Government. The communicant claims that the Legislative Rules do not, however, have a generally binding legal character, and therefore the public has neither access to courts, nor to the Public Prosecutor's office, as both of these bodies allegedly lack the competence to review violations of rules that are not adopted in the form of generally binding legal regulations. In this regard, the communicant points to Supreme Court and Constitutional Court jurisprudence (see paras. 32–35 above). The communicant claims, in particular, that the Constitutional Court has always dismissed constitutional complaints that concerned the violation of the Legislative Rules, including where the claimants invoked article 8 of the Convention. The communicant, moreover, submits that a constitutional complaint is also insufficient because the Constitutional Court is, in its decision-making, materially competent to review only constitutionality and thus can state only violation of constitutional rights. The communicant alleges that this considerably restrains its scope of review.⁸³

⁷⁸ *Ibid.*, p. 21–22.

⁷⁹ Party's response to the communication, p. 13.

⁸⁰ Communication, p. 18.

⁸¹ *Ibid.*, p. 15.

⁸² *Ibid.*

⁸³ *Ibid.*, pp. 15–17.

86. The communicant submits that one available remedy in these cases would be the filing of a complaint on the basis of law No. 9/2010 Coll. on Complaints (see para. 28 above). However, the communicant claims that such a complaint would be reviewed by the same body that allegedly impaired the right or by its superior body, rather than an independent body. The communicant claims that such a procedure would not be “fair” and therefore it is impossible to achieve an effective remedy. The communicant submits that only the courts, as impartial and independent entities, can guarantee compliance with the Legislative Rules, and that members of the public should therefore have access to the courts to bring challenges to violations of these rules.⁸⁴

87. The Party concerned submits that article 1 (2) of its Constitution recognizes and respects all international obligations, including the Convention. It further submits that, in accordance with article 46 (1) of the Constitution, any person may claim his or her right to an independent and impartial court or other authority.⁸⁵

88. The Party concerned submits that it fulfills its obligation under article 9 (3) of the Convention to ensure that members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment. Specifically, the Party concerned claims that the communicant used only the highest level for the protection of public rights, namely the Constitutional Court, and did not succeed. The Party concerned claims that there are other means to protect and enforce rights arising from the Convention, including the options to: (a) file a complaint under Act No. 9/2010 Coll. on Complaints (see para. 28 above); (b) propose that the Prosecutor review the legality of a legislative procedure (see para. 29 above); (c) file a complaint with the Ombudsman (see para. 30 above); or (d) bring an administrative court action (see para. 31 above).⁸⁶

III. Consideration and evaluation by the Committee

89. Slovakia deposited its instrument of ratification of the Convention on 5 December 2005, meaning that the Convention entered into force for Slovakia on 5 March 2006, i.e. 90 days after the date of deposit of the instrument of ratification.

Admissibility

90. Mr. Oruzinsky sought to challenge the public participation procedure on the draft Forestry Act before the Constitutional Court, the highest judicial authority in the Party concerned. Mr. Oruzinsky having done so, the Committee does not consider that the use of domestic remedies under paragraph 21 of the annex to decision I/7 would require Mr. Oruzinsky to have then turned to any other still available court procedures to challenge the Forestry Act, which was by then in force. On this point, the Committee notes that the Party concerned does not challenge the admissibility of the communication.

91. In the light of the foregoing, the Committee finds the communication to be admissible.

Article 8 and article 2 (2)

92. In reviewing whether the Party concerned failed to comply with article 8 of the Convention by not taking the outcome of the public participation into account as far as possible in the preparation of the Forest Act, the Committee first examines whether article 8 applies to that preparation. The Committee then considers whether the Government is acting in a legislative capacity under article 2 (2) of the Convention when preparing the legislation.

93. The Committee notes that, although the Party concerned disagrees with the communicant on the issue of compliance, it neither questions the application of article 8 to this preparatory process nor argues that it acted in a legislative capacity during the preparation. The Committee also notes that the Constitutional Court, when examining the

⁸⁴ Ibid., pp. 16–17.

⁸⁵ Party’s response to the communication, p. 12.

⁸⁶ Ibid., pp. 12 and 14.

preparatory practice, while dismissing the complaint, understood article 8 to include public participation in the preparation of legislation and did not consider that the Government was acting in a legislative capacity as under article 2 (2) of the Convention. According to the Constitutional Court:

The aim of the positive commitment of the State resulting from [article] 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.⁸⁷

94. The Party concerned thus does not dispute that article 8 applied to the preparation of the draft Forestry Act and that the Government did not act in a legislative capacity during its preparation.

Executive regulations and other generally applicable legally binding rules

95. The Committee considers that there is nothing in the title or text of article 8 of the Convention to suggest that it does not include the preparation of legislation by executive bodies to be adopted by national parliaments. On the contrary, although the terms “legislation” and “laws” do not appear in the provision, the wording of article 8 and the ordinary meaning given to its terms nevertheless support the inclusion of legislation and other normative instruments of a similar character.⁸⁸

96. First, article 8 refers to “generally applicable legally binding normative instruments”, which is exactly what legislation is. The Committee understands this as a generic expression intended to cover different kinds of generally applicable legally binding normative instruments, which may be referred to in different ways in different jurisdictions. In addition to draft legislation prepared by executive bodies to be adopted by national parliaments, the provision also applies to the preparation by executive bodies of other generally applicable legally binding normative instruments to be adopted by local or regional assemblies, whether or not the outcome is referred to as “legislation”.

97. Second, the term “generally applicable legally binding normative instruments” is included in addition to “executive regulations”. If article 8 was only intended to apply to such regulations by the executive branch, then there would be no reason to add the reference to generally applicable legally binding normative instruments. In this context, the Committee recalls its findings on communication ACCC/C/2009/44 (Belarus), where it stressed that “the scope of obligations under article 8 relate to any normative acts that may have a significant effect on the environment”.⁸⁹ The Committee also notes that this view is supported by the *Maastricht Recommendations on Promoting Effective Public Participation in Decision-making on Environmental Matters*, which, on several occasions refer to “executive regulation or law” or similar expressions, where “law” is shorthand for “generally applicable legally binding normative instruments”.⁹⁰ It is thus clear to the Committee that article 8 of the Convention applies also to the preparation of legislation by executive bodies to be adopted by national parliaments.

Bodies acting in a legislative capacity

98. While article 8 of the Convention is thus applicable to legislation, article 2 (2) sets out that the definition of “public authority” does not include bodies or institutions acting in a legislative capacity. The question then arises of what is covered by that provision. When do bodies or institutions of a Party act in a legislative capacity, and more specifically, when in the process starting with the preparation of legislation does a body or institution act in a legislative capacity? Although the Convention does not set out exactly when a body or

⁸⁷ Party’s reply to the Committee’s questions, 18 May 2021, annex 11, p. 28.

⁸⁸ See Vienna Convention of the Law of the Treaties, art. 31.

⁸⁹ ECE/MP.PP/C.1/2011/6/Add.1, para. 61.

⁹⁰ United Nations publication, Sales No. E.15.II.E.7, heading of section IV (“Public participation during the preparation of executive regulations and laws (article 8)”) and paras. 184–187 and 190.

institution – be it central, regional or local – acts in a legislative capacity, it is clear that the Convention only excludes the body or institution when it acts in this specific capacity. Accordingly, a parliament may act as a public authority under the Convention when it is not acting in its legislative capacity, for example when authorizing an activity or project.⁹¹ The Committee thus understands the expression “legislative capacity” to have a rather precise meaning, referring to the acts of the body when it is indeed legislating, that is to say, when it uses its legislative power, but not when it carries out other functions.

99. The understanding of “acting in legislative capacity” as having a rather strict and precise meaning implies that it only covers activities by the body or institution with the capacity and power to adopt the legislation. This understanding is also supported by the French and Russian versions of the Convention (in French “dans l'exercice de pouvoirs ... législatifs” and in Russian “действующие в законодательном качестве”). Taking into account that the legislative process is likely to differ between the Parties, the Committee also considers that this strict understanding ensures a uniform application of article 2 (2) of the Convention by the Parties.⁹² It also prevents the Parties from excluding the application of the Convention by expanding their preparatory processes so as to allow for comprehensive preparatory processes with several public authorities involved in the process without any transparency or public participation. While such comprehensive preparatory procedures are perfectly in line with the Convention, they must not be used to exclude opportunities for members of the public to request environmental information or to participate in the preparation by executive bodies of legislation to be adopted by national parliaments. Lastly, the understanding of the phrase “acting in legislative capacity” as not including executive bodies in the preparatory proceedings when drafting legislation to be adopted by the national parliament is in line with the eleventh recital of the preamble of the Convention, whereby the Parties invite the “legislative bodies to implement the principles of this Convention in their proceedings”.

100. The Committee thus concludes that the reference to bodies and institutions acting in their legislative capacity does not exclude public authorities, including the Government, when engaged in preparing laws until the draft or proposal is submitted to the body or institution that adopts the legislation.

Concluding remarks on the applicability of article 8 to the preparation of legislation

101. Based on the above, the Committee considers that article 8 of the Convention applies also to the preparation of legislation by executive bodies to be adopted by national parliaments, and that public authorities, including Governments, do not act in a legislative capacity when engaged in preparing laws until the draft or proposal is submitted to the body or institution that adopts the legislation.

102. The Committee thus confirms that, in the present case, article 8 applied to the preparation of the draft Forestry Act by the Ministry of Agriculture and Rural Development and also during the subsequent stages of its preparation by the Legislative Council of the Government.

103. In concluding that article 8 of the Convention applies also to the preparation of legislation by parliaments, the Committee notes that that article obliges the Parties to “strive to promote effective public participation at an appropriate stage”. This expresses an obligation of a somewhat “softer” nature than the obligations set out in articles 6 and 7, meaning that the Parties must show that they make efforts to provide for public participation in the preparation of legislation and other generally applicable legally binding normative instruments. In comparison with articles 6 and 7, article 8 gives the Parties greater leeway in deciding how to fulfil this obligation.

⁹¹ See the Committee’s findings on communication ACCC/C/2011/61 (United Kingdom), ECE/MP.PP/C.1/2013/13, para. 54, where the Committee held that Parliament did not act in a legislative capacity, but “rather as the ‘public authority’ authorizing a project”.

⁹² In this respect, the Committee notes that such a “functionalist interpretation” leads the Committee to a different conclusion than that of the Court of Justice of the European Union in *Flachglas Torgau GmbH v. Bundesrepublik Deutschland*, Case No. C-204/09, Judgment, 14 February 2012.

Result of the public participation shall be taken into account as far as possible

104. The communicant does not allege non-compliance with paragraphs (a)–(c) of article 8 concerning sufficient time frames, the publication of draft rules or the public’s opportunity to comment. Rather, the essence of its claim would appear to relate to the final sentence of article 8 requiring that the result of the public participation shall be taken into account as far as possible.

105. At the outset, the Committee welcomes the procedure set out in the Legislative Rules under which members of the public who have the support of more than 500 members of the public are entitled to have a meeting with the public authority that is preparing the draft legislation with a view to reaching an agreed outcome regarding how to address the public’s collective comments. The Committee also welcomes the fact that, for comments received through the portal, the Legislative Rules require that the evaluation of the commenting procedure documents the text of each comment, whether each comment was an ordinary or essential comment, how the comment was taken into account and, for any essential comments, whether a “contradiction” between those comments and the draft law as submitted in the package to the Legislative Council still persists.

106. With respect to the requirement to ensure that due account is taken of the outcome of the public participation in article 6 (8) of the Convention, in its findings on communication ACCC/C/2008/24 (Spain), the Committee held that:

The obligation to take due account in the decision of the outcome of the public participation cannot be considered as a requirement to accept all comments, reservations or opinions submitted. However, while it is impossible to accept in substance all the comments submitted, which may often be conflicting, the relevant authority must still seriously consider all the comments received.⁹³

107. The Committee considers that the above conclusion is also pertinent to the obligation in article 8 of the Convention that “the result of the public participation shall be taken into account as far as possible”.

108. In the present case, 13 out of Mr. Oruzinsky’s 17 collective comments were resolved during his contradictory negotiation meeting with the Ministry. Having read the contradictory negotiation report, the Committee considers that the report, together with the fact that 13 of his 17 comments were resolved during the contradictory negotiation meeting, demonstrates that his comments were indeed seriously considered by the Ministry. The standard required by the final sentence of article 8 was thus met.

109. The communicant alleges that, subsequent to the contradictory negotiation report, the text of article 30 (3) was changed from that agreed between Mr. Oruzinsky and the Ministry. While it accepts that draft article 30 (3) was later amended, the Party concerned submits that the change was made by the Legislative Council prior to the draft law’s submission to the Government and that the text agreed with Mr. Oruzinsky was the version that the Ministry submitted to the Legislative Council. The Committee notes that the communicant has not put any evidence before the Committee to show that this was not the case. In any event, the fact that the text was later changed does not in itself amount to a breach of the requirement to take into account the result of the public participation as far as possible.

110. Based on the foregoing, the Committee does not find the Party concerned to be in non-compliance with article 8 of the Convention in the circumstances of this case.

Article 3 (1) with regard to the implementation of article 8

Clear, transparent and consistent framework

111. The requirement in article 3 (1) of the Convention to establish and maintain a clear, transparent and consistent framework to implement the provisions of the Convention is fundamental to the Convention. As noted in paragraph 105 above, the Committee considers

⁹³ ECE/MP.PP/C.1/2009/8/Add.1, paras. 98–99; See also the Committee’s findings on communication ACCC/C/2012/68 (European Union and United Kingdom), ECE/MP.PP/C.1/2014/5, paras. 80 and 83.

that the procedure established by the Legislative Rules of the Party concerned, through which the public may participate in the preparation of draft legislation, is very advanced in several respects. However, the Committee notes that, contrary to the comments on draft legislation submitted through the portal, comments on draft legislation submitted by email or in paper form are not included in the evaluation of the commenting process.

112. Since the comments submitted by email or in paper form are not included in the evaluation of the commenting procedure, there is no public record of those comments. In the present case, Mr. Oruzinsky's collective comments were supported by 9,062 other members of the public. However, that information does not exist anywhere in the public record. In contrast, comments received from single individuals, with no other public support, are included in the evaluation of comments. This may lead to a situation where the results of the public participation are only partially reflected in the evaluation of comments.

113. While appreciating the efforts of the Party concerned to promote public participation in the preparation of legislation, the Committee is concerned about the fact that, contrary to comments submitted through the portal, comments submitted by email or in paper form are not included in the evaluation of the commenting procedure. The Committee notes that this could be easily resolved by amending this anomalous aspect of the Legislative Rules.

114. However, since the submitter of the draft legislation is still required under article 14 (9) of the Legislative Rules to take comments submitted by email or in paper form into account, and since the different treatment of comments submitted in paper form or by email as opposed to through the portal is explicitly stated in the Legislative Rules, the Committee does not go so far as to find the Party concerned in non-compliance with the requirement in article 3 (1) to establish and maintain a clear, transparent and consistent framework to implement article 8 of the Convention.

Non-binding nature of the Legislative Rules

115. Article 3 (1) of the Convention requires Parties, inter alia, to have "proper enforcement mechanisms" to establish and maintain a clear, transparent and consistent framework to implement the Convention's provisions. The communicant alleges that the fact that the Legislative Rules are non-binding does not meet the requirements of the Convention since the Legislative Rules are accordingly not enforceable.⁹⁴ The Committee points out that, so long as the measures in place in the Party concerned ensure that the requirements of article 8 are fully met in practice, there is no express requirement in the Convention that those measures be enshrined in a legally binding form.

116. In the present case, the Constitutional Court assessed whether the requirements of article 8 of the Convention had themselves been met directly. In these circumstances, the Committee finds that the allegation that the non-binding nature of the Legislative Rules amounts to non-compliance with the Convention is not substantiated.

Article 9 (3)

117. The communicant alleges that the fact that the Legislative Rules are non-binding means that there is no possibility to challenge a violation of the rights granted by article 8 before a court.

118. In its submissions to the Committee, the Party concerned acknowledges that article 9 (3) applies to alleged violations of article 8. It is evident from the judgment of the Constitutional Court that the Constitutional Court likewise accepts that article 9 (3) applies to alleged violations of article 8.

119. Article 9 (3) requires that members of the public meeting the criteria, if any, laid down in national law have access to administrative or judicial procedures to challenge acts and omissions that contravene provisions of national law relating to the environment. Obviously, this does not mean that the claims brought within the scope of article 9 (3) must, in every

⁹⁴ Communication, p. 17.

case, be successful. Rather, it requires that the reviewing body properly review the alleged contravention of national law to the standard required by article 9 (3).

120. While Mr. Oruzinsky's claim under article 8 of the Convention did not succeed on its merits, it is evident that the Constitutional Court examined the events against the requirements of article 8 and concluded that the requirements of article 8 had been sufficiently met. In particular, the Constitutional Court in its judgment of 5 March 2014 held that:

From the above, it is clear that the minimum procedural requirements for respecting the public right arising from [article] 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.

...

Requirement of [article] 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.

...

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[s]. 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, [to] 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 [was not] 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 [have accepted] 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 [article] 8 of the Aarhus Convention.⁹⁵

121. In the light of the above, the Committee considers that the Constitutional Court, in its judgment of 5 March 2014, did provide access to justice as required by article 9 (3) of the Convention. The Committee thus does not find the Party concerned to be in non-compliance with article 9 (3) in the circumstances of this case.

IV. Conclusions and recommendations

122. Based on the above considerations, the Committee does not find the Party concerned to be in non-compliance with articles 8, 9 (3) or 3 (1) of the Convention in the circumstances of this case.

⁹⁵ Party's reply to the Committee's questions, 18 May 2021, annex 11, pp. 25–28.