

Question 1)

On p. 8 of the annex to the report you submitted on 1 December 2011, it is mentioned that there will be proceedings pursuant to the 50/1976 Building Act and the 541/2004 Atomic Act, concerning the peaceful use and operation of the facility. Could you please confirm that members of the public, including the non-governmental organizations (NGOs), will have the right to participate in both procedures?

If yes, will it be possible for the participating members of the public, including NGOs, to raise questions and comments concerning nuclear safety in these procedures. And, will the responsible authorities take due account of these comments?

If these procedures have already taken place, please provide evidence to the Committee to show that members of the public, including NGOs, participated in the decision-making for the peaceful use and operation of the facility at issue and that due account was taken of the outcome of public participation.

Response 1)

Public participation, including non-governmental organisations, is guaranteed within both procedures, both within the procedure held under Act No. 50/1976 Coll. on territorial planning and on the Building Order (the Building Act) as amended (hereinafter referred to as the “Building Act”) and the procedure held under Act No. 541/2004 Coll. on peaceful use of nuclear energy (the Atomic Act) and on amendments to certain acts (hereinafter referred to as the “Atomic Act”). The procedure is essentially one adjusted by the aforementioned legislation (the Building Act and the Atomic Act) which fully guarantee public participation.

Pursuant to §8(4) of the Atomic Act, “A party to the proceedings for the issuance of a permit which has been preceded by an environmental impact assessment procedure under a separate regulation (Act No. 24/2006 Coll. on environmental impact assessment as amended (hereinafter referred to as the “EIA Act”) shall also be a natural or legal person for whom such position arises under a separate regulation”.

The public, including non-governmental organisations, may become a party to the proceedings under the Atomic Act through their participation in an EIA procedure. In this respect, the public, as well as non-governmental organisations have the rights and obligations as a party to the proceedings. A decision-making authority is required to consider comments and proposals made by all parties to the proceedings and in its decision, the decision-making authority shall indicate how it has incorporated proposals, objections and comments provided by the parties to the proceedings.

The Nuclear Regulatory Authority of the Slovak Republic (hereinafter referred to as the “NRA”) takes a similar approach when issuing decisions pursuant to the Building Act.

Under §59 of the Building Act, “parties to the building permit procedure include:

- a) the builder;
- b) persons having ownership or other rights to the lands and structures built on those lands, including adjacent lands and structures, if their ownership or other rights to such lands and structures may be directly affected by the building permit;
- c) other persons for whom such position arises under a separate regulation (that is, including under the EIA Act);

- d) a construction supervisor or a qualified person;
- e) a project designer in that part which concerns construction project.”

The public, including non-governmental organisations, may become a party to the proceedings under the Building Act through their participation in an EIA procedure. In this respect, the public, as well as non-governmental organisations have the rights and obligations as a party to the proceedings. A decision-making authority is required to consider comments and proposals made by all parties to the proceedings and in its decision, the decision-making authority shall indicate how it has incorporated proposals, objections and comments provided by the parties to the proceedings.

With respect to the Mochovce nuclear power plant 3,4 (hereinafter referred to as the “NPP Mochovce 3,4”), no proceedings have been initiated so far, and will not be initiated unless the Slovenské elektrárne, a.s., power company (hereinafter referred to as “SE”) submits a relevant application for proceedings to the NRA. Once the proceedings begin, the NRA will proceed pursuant to the applicable legislation with respect to the parties to the proceedings, including the public, and will take all steps required upon the launch of the proceedings.

Question 2)

Further to the Committee’s findings and recommendations on communication ACCC/C/2009/41, the Meeting of the Parties found that: by failing to provide for early and effective public participation in the decision-making leading to the decisions by the Slovak Nuclear Regulatory Authority 246/2008, 266/2008 and 267/2008 of 14 August 2008 concerning the Mochovce Nuclear Power Plant, the Party concerned failed to comply with article 6, paragraphs 4 and 10, of the Convention.

Please elaborate on the law amendments carried out in Slovakia to ensure that this does not happen again in relation to the update of old permits for activities that are covered by the Convention.

Response 2)

A detailed answer to this question is included in the reports already submitted, namely in the Progress Report of 30 November 2011 and the Implementation Report of 30 November 2012, which specifically describe the legislative changes made with respect to the status of the public as a party to the permit procedure.

Regarding previously issued old still valid permits, these permits cannot be interfered because of the legislative principle of non-retroactivity. If these permits would be opened under the certain legally accepted conditions, e.g. by the court decision, the currently valid and effective legislation would be applied.

The Slovak Republic provided in the two submitted reports (i.e. the Progress Report of 30 November 2011 and the Implementation Report of 30 November 2012) the wording of transitional and final provisions of amended acts. The Slovak Republic is convinced that the presented legislative progress can be considered satisfactory, despite the allegations by non-governmental organisations that the presented progress is not sufficient.

Question 3)

Please provide examples of public participation that took place in the decision-making for the reconsideration or update of the operating conditions for activities falling under the Convention – other than those relating to the Mochovce nuclear power plant. What was the process followed by the responsible authorities and how was the outcome of public participation taken into account?

Response 3)

First of all, we would like to note that examples of projects, both nuclear and non-nuclear ones, with public participation can be found on the website of the Ministry of the Environment of the Slovak Republic at <http://www.enviroportal.sk/>.

Regarding the nuclear decision-making and permitting processes in terms of the EIA can be found again on the website of the Ministry of the Environment of the Slovak Republic at <http://www.enviroportal.sk/>, as well as on the NRA website at www.ujd.gov.sk.

The Slovak Republic does not have information about the above requested examples of public participation that took place in the decision-making for the reconsideration or update of the operating conditions for activities falling under the Convention – other than those relating to the Mochovce nuclear power plant at its disposal, because no such cases have so far occurred.

CONCLUSION

The Slovak Republic firmly believes that its responses will definitively satisfy ACCC and would like to note that since the beginning of the case it has tried to deal with all ACCC requests and requirements in an accommodating and responsible manner.

The Slovak Republic has cooperated and implemented all the necessary measures and recommendations within prescribed deadlines. Both reports were submitted on time to the ACCC Secretary - the Progress Report of 30 November 2011 and the Implementation Report of 30 November 2012. The reports were prepared with a high level of detail, including a very in-depth description of all legislative changes made, in order to ensure and attain compliance with the Aarhus Convention.

The Slovak Republic hereby expresses its firm belief that it has taken all the necessary actions as required from it under the decision IV/9e on compliance by Slovakia with its obligations under the Convention (ECE/MP.PP/2011/L.16) adopted at the fourth session of the Meeting of the Parties to the Aarhus Convention concerning the findings and recommendations of the Aarhus Convention Compliance Committee with respect to case ACCC/C/2009/41/Slovakia.

In the conclusion, the Slovak Republic would like to point out again that through its central state administration body, the Slovak Nuclear Regulatory Authority, when issuing three decisions (246/2008, 266/2008 and 267/2008 of 14 August 2008 concerning the Mochovce NPP), proceeded in accordance with the legal instruments in force at that time and in accordance with the principle of legality of administrative procedure, laying down that the administrative body acts in accordance with the Acts and other legal instruments, in accordance with the Constitution of the Slovak Republic, the Acts and other regulations, complying so with procedural and material law in force in Slovakia at the time of issuance of the decisions. The Compliance Committee has confirmed the aforementioned statement in

paragraph 66 of its findings and recommendations, where it states that “nevertheless considers that the decision-making for the 2008 decisions on the Mochovce NPP appears to have been in accordance with Slovak national law. Yet, the case was a special case, where the obligation to provide for public participation under the Convention stems from the reconsideration and update of the operating conditions, as well as the change to and extension of the activity as compared to the one permitted in 1986”.

In this respect, we would like to note that the decision-making process in the matter of nuclear power plant Mochovce 3,4 in 2008 (the issuance of the three decisions 246/2008, 266/2008 and 267/2008 of 14 August 2008) was directed only to increase the safety of nuclear power plant Mochovce 3,4, and it was not a substantial change in the construction; and it was just a part of the still valid decision of the construction permit for the Mochovce 3,4 nuclear power plant issued in 1986.