

Comments of the Slovak Republic to the message from the communicant Mr. Thomas Alge, director of “OEKOBUEO - Coordination Office of Austrian Environmental Organisations“ related the decision IV/9e on compliance by the Slovak Republic, addressed to the Secretariat of the Aarhus Convention Compliance Committee on the 28th March 2012

In general, we would like to note that the mentioned above message in an inadequately manner and reasoning, has doubted the independence and impartiality of the Slovak courts prior to the upcoming court hearing date in the proceedings on the reviewing of the legality of the decisions issued by the Nuclear Regulatory Authority (NRA) in 2008, by which the changes of the nuclear installation construction of NPP Mochovce 3-4 were approved. The Slovak Republic supposes and kindly requests the Compliance Committee not to take into account those unsubstantiated statements.

Equally, inadequate are statements concerning the putative creation of pressure on the judiciary by the currently designated Government, created on the basis of the recent democratic parliamentary elections results. Again unduly, it is supplying the Compliance Committee misleadingly with pseudo-fears of political power constraints into the decision-making process made by independent courts. In any case, such mentioned statements would not be taken into account by the Compliance Committee.

As regards the completion of the NPP Mochovce 3-4 construction, the investor continues the construction consecutively, on the basis of the valid and effective decisions. The regulatory authorities have not significant impact on the intensity and the manner of the construction works, moreover in the case that all safety requirements are fulfilled and the constructor is following the approved safety documentation.

In special, the Slovak republic still insists on the fact that the review of the legality of the decisions made by the public authorities might be performed by the Slovak court exclusively. Thus, proceedings on the reviewing the legality of the NRA’s decisions of 2008 has been in progress since 2009 and the court hearing will be held on 11th May 2012. Prior to the above mentioned court hearing is held and judicial decision is made, NRA considers its decisions of 2008 as legally binding, valid and still effective. NRA, as a regulatory state administrative body (the body which has issued the concerned decisions), would not intervene and influence the procedural and material nature of the proceedings made by the court, as it is persuaded that the court is going to decide without bias and with expertness, in respect of the independence, impartiality and legality of courts in their decision-making process.

The Compliance Committee in its Final findings and recommendations with regard to communication ACCC/C/2009/41 concerning compliance by Slovakia recommended to review the legal framework and invite the Party concerned to submit to the Committee a progress report (the Slovak Republic submitted to the Compliance Committee the progress report describing all changes in legislation related mainly to the public participation in the administrative proceedings on time – 30. november 2011). In general point of view the Compliance Committee; in its findings and recommendations, did not indicate concrete/specific steps or actions in relation with the NRA’s 2008 decisions.

In the Report of the Compliance Committee - Final Findings, paragraph 66 the Compliance Committee has mentioned 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. For that reason, on the basis of the information provided in this case, the Committee cannot conclude that Slovak law on public participation and EIA in general also fails to comply with article 6 of the Convention.“

Indeed, any delays in the completion of the NPP Mochovce 3-4 construction are only objective reality, but, in principle, it is a risk factor for the investor and its business. In fact, these delays are of any significance for the validity and effectiveness of the 2008 decisions. Any potentially new proceedings in case of completion of NPP Mochovce 3-4 construction itself is actually in hands of investor, who may, but, is not obliged to apply for the further change of construction approval prior to its completion. From the NRA’s point of view, there is no reason for initiation of such proceedings. Furthermore, NRA as governmental authority will not prejudice, in any manner and as the case may be, the on-coming judicial decision of the Regional Court in Bratislava.

As regards an early public participation in the next decision-making process and in case nothing unexpected would happen, the proceedings on issuance of authorisation for the commission of the nuclear installation of Mochovce 3-4 will be held pursuant to the 2004 Atomic Act as amended and the construction permit proceedings and the proceedings on the ahead usage of the construction for the purposes of the trial operation will be held pursuant to the 1976 Building Act as amended. The public participation will be legally guaranteed in these proceedings. The position of the public as the participant in the licensing proceedings that follows the EIA proceedings in the case (in which the complainants as subjects had been already involved) is legally guaranteed as it is stated in actually effective legislation – in the Act No. 24/2006 Coll. on EIA as amended, as well as, in the Atomic Act No. 541/2004 Coll. as amended. But and the most important again is the fact that the initiation of such proceedings is fully in hands of the investor, and, therefore NRA might not set a certain date of commencement of such proceedings.

In conclusion, we would like to reaffirm the correctness and truthfulness of all the facts and arguments of the Slovak Republic presented in already sent the progress report, in particular as regards the amendments of the legislation, which we would like to present once again with appropriate commentary due to clarification:

1. amendments to the legal instruments concerning public participation in decision-making processes:

- **Act 287/2009** amending the Act 24/2006 on environmental impact assessment and amending some other Acts as amended (hereinafter referred to as „the EIA Act“)
- **Act 117/2010** amending the Act 543/2002 on nature and landscape protection as amended and amending the Act 24/2006 on environmental impact assessment and amending some other Acts as amended
- **Act 145/2010** amending the EIA Act

- **Act 258/2011** on permanent storage of carbon dioxide in the geological structures and amending some other Act
- **Act 408/2011** amending the EIA Act (entering into force on 1 December 2011)
The Act 408/2011 also amends the Act 543/2002 on nature and landscape protection in the area of providing for public participation in decision-making and access to justices in environmental matters.
- **Acts 350/2011** amending the Act 541/2004 on peaceful use of nuclear energy (Atomic Act) and amending some other Acts as amended

The amendments **287/2009, 145/2010 and the last amendment 408/2011** are the most substantial from the point of view of the public participation in decision-making. The objective of these amendments was to gradually harmonise the rights of the public concerned with the European legislation and relevant international conventions and to open the environmental impact assessment process to the general public (from a natural person to non-governmental organisations and legal entities).

The rights of the **public concerned** were narrower than the rights of **the party to the proceeding**. **The public concerned** had a right to be informed on the beginning of the procedure and on other submissions by the parties to the proceedings, to take part in oral negotiation and local inspection, to submit proofs and additional information to the background for decision.

However, the public concerned (compared to the party to the proceeding) in the environmental impact assessment process did not have the rights mentioned below, resulted for the public from the Aarhus Convention:

- right to the information, to be included in the decision, how the administrative body took account of comments, objections and position of the public in the decision backgrounds,
- right to the entire full-text of the decision, including justification of the decision,
- right to the decision on the protest of the prosecutor to be delivered and the right to be notified of the correction of mistakes in writing, in numbers and other apparent inaccuracies in the written form of the decision, which caused that information on the final decision has not been ensured,
- right to submit an appeal against the decision or the right to propose a renewal of administrative proceeding, the public concerned did not have the right to access to the court in order to review the lawfulness of decisions by administrative bodies.

The amendments have specified precisely the term of the public concerned both for the natural and legal persons. As regards the provisions on public concerned, the restricting conditions have been dismissed (e.g. the number of persons/members of civic initiative) and the spectrum of administrative proceedings, where the civic initiative, civic association and

non-governmental organisation can be a party to subsequent permitting procedures, has been extended. This is the important extension of the rights of the public that is interested in taking part in decision-making on environmental matters so that it has sufficiently efficient instruments to promote their requirements, so that it is notified of reasons of a refusal of such requirements and so that it has an opportunity to question the decision at a court. Both natural and legal persons should have an open access to the court, being one of the pillars of the Aarhus Convention.

Provisions affected:

The latest amendment **408/2011** in article 6a defines the participation of the public concerned in assessment of strategic documents and their rights.

In article 24, which lists particular categories falling under the term of the public concerned, provisions have been added for the legal person, specifying legal persons in general in article 24b and specifically non-governmental organisations promoting protection of the environment in article 27, for which a specific condition applies according to which they are not obliged to prove their interest in the decision.

Insertion of article 24b has specified conditions for participation of a legal person in the environmental impact assessment process and subsequent permitting procedures.

Article 26 has specified conditions for participation of a civic association in the environmental impact assessment process and subsequent permitting procedures.

A new article 27b has been inserted which summarises particular rights of the public concerned.

Paragraph 65 provides the public participation in decision-making processes relating to the old permits.

6a

Participation of the public concerned in the assessment of strategic documents

(1) The public concerned in the assessment of strategic documents means the public which is interested or having an interest in the preparation of strategic documents before their approval.

(2) The public concerned in the assessment of strategic documents includes

- a) a natural person older than 18 years,*
- b) a legal person,*
- c) a civic initiative pursuant to paragraph 3.*

(3) The civic initiative means natural persons older than 18 years who sign a common position to a draft strategic document. The civic initiative identifies itself by a signature document which includes name, surname, permanent residence and year of birth and signature of the persons supporting the common position.

(4) A plenipotentiary of the civic initiative authorised to act on behalf of the civic initiative and to receive documents is a natural person who is listed in the signature document as a plenipotentiary. If such a data is missing or is unclear, the plenipotentiary of the civic initiative is the natural person listed in the signature document on the first place.

(5) The public concerned in the assessment of strategic documents has the right to take part in the preparation and assessment of a strategic document up to the approval of the strategic document, including the submission of a written position pursuant to article 6

paragraph 6, article 8 paragraph 7, article 12 paragraph 2, participation in consultations and public hearing on a strategic document.

Footnote 9b) shall read:

9b) E.g. the Act 83/1990 on associations of citizens as amended, the Act 147/1997 on non-investment funds and amending the Act of the National Council of the Slovak Republic 207/1996 as amended, the Act 213/1997 on non-profit organisations providing public services as amended, the Act 34/2002 on foundations and amending the Civil Code as amended.

Article 24

The public concerned is the public that is interested or having an interest in environmental decision-making procedures. The public concerned includes in particular

- a) a natural person pursuant to article 24a,*
- b) a legal person pursuant to article 24b or article 27,*
- c) a civic initiative pursuant to article 25,*
- d) a civic association promoting environmental protection pursuant to article § 26.*

Article 24b

A legal person, who submits a written position pursuant to article 23 paragraph 4, article 30 paragraph 5, or pursuant to article 35 paragraph 3, showing that such a legal person is interested in a decision, will be in the subsequent permitting process under special law in a position of a party in the proceedings. Such a legal person is considered to be a public concerned whose right to a favourable environment may be affected by the decision. The legal person, registered in the Commercial Register or in a similar register, shall submit to the competent authority an extract from such a register, not older than three months, together with submission of the written position.

Article 26

A civic association established under special law for the purpose of environmental protection, which submits a written position pursuant to article 23 paragraph 4, article 30 paragraph 5, or pursuant to article 35 paragraph 3, will be in the subsequent permitting process under special in a position of a party in the proceedings. A civic association shall submit to the competent authority a document on registration of such a civic association together with submission of a written position. Such a civic association is considered to be a public concerned for the purposes of this Act whose right to a favourable environment may be affected by the decision.

Article 27b

The public concerned referred to in article 24 has a right to

- a) actively participate in the preparation and permitting of the proposed activity in the entire assessment process up to issuance of a decision on permission of a proposed activity, including submission of a written position pursuant to article 23 paragraph 4, article 35 paragraphs 2 and 3,*
- b) participate in the subsequent permitting procedure when conditions laid down in articles 24 to 27 are fulfilled,*
- c) submit comments pursuant to article 30 paragraph 5,*
- d) participate in consultations and the right to take part in public hearing on the proposed activity.*

Article 65

Transitional provisions for regulations effective from 1 December 2011

(1) The provision of article 65 paragraph 3 does not apply to assess the impact of strategic documents that were subject to preparation and approval from 21 July 2004 to 31 January 2006. Strategic Assessment of the effects of such documents shall be made in accordance with the law effective from 1 December 2011. Assessment of the effects of strategic documents that were subject to preparation and approval before 21 July 2004 and were approved by more than 24 months from 21 July 2004 shall be made only if the competent authority on a proposal from the contracting authority decides to assess the impact of the strategy documentation is feasible. The competent authority shall publish its decision on the Ministry web site.

(2) If the written statement pursuant to article 23 paragraph 4, article 30 paragraph 5 or article 35 paragraph 3 cannot be given because the process of assessing environmental impacts under this Act was completed by 30 April 2010, involved the public pursuant to articles 24a and 24b is a participant in the subsequent licensing procedure, if during the licensing process submitted a written statement, which shows its interest in the decision and the interested public pursuant to article 25, articles 26 and 27, the participants follow the authorization procedure by special legislation, if during the licensing process submitted a written statement.

CONCLUSION

The Slovak Republic in the light of the findings and recommendations of the Compliance Committee, endorsed at the fourth session of the Meeting of the Parties to the Aarhus Convention, in accordance with the decision IV/9e on compliance by the Slovak Republic, registered under reference No. ECE/MP.PP/2011/L.16, hereby declares that through the central state administration bodies involved – the Ministry of the Environment of the Slovak Republic as a body competent for the Aarhus Convention, the Ministry of Foreign Affairs of the Slovak Republic, the Ministry of Economy of the Slovak Republic and the Slovak Nuclear Regulatory Authority – consequently monitors and follows the development of the European legislation, actively takes part in working meetings and sessions of the Aarhus Convention and reflects changes and development in this area.