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*THE MINISTRY OF THE ENVIRONMENT
OF THE SLOVAK REPUBLIC
Legal Services and Appeals Department
Aarhus Convention National Focal Point*

Bratislava, 26 November 2010
No: 68847/2010

Ms. Aphrodite Smagadi
Secretary to the Aarhus Convention Compliance Committee
UN ECE
Environment, Housing and Land Management Division
Bureau 332
Palais des Nations
CH-1211 Geneva 10
Switzerland

Re: Comments of the Slovak Republic on the Draft findings of the Aarhus Convention Compliance Committee regarding Communication ACCC/C/2009/41

Dear Ms. Smagadi,

In response to your letter of 11 October 2010, please find enclosed comments of the Slovak Republic on the draft findings of the Aarhus Convention Compliance Committee regarding communication ACCC/C/2009/41.

We would like to express our strong concerns about the conclusions reached in the draft findings.

The Aarhus Convention contains clear conditions that must be met for a decision of a public authority to be subject to public participation as outlined under Article 6 of the Convention. After proper analysis of the Aarhus Convention, the Slovak authorities concluded that no environmental impact assessment was needed at the time of the change of permits in 2008. The 2008 permits did not significantly change the underlying activity (in terms of size, location or effects). In fact, they reduced potential adverse effects by introducing more stringent safety requirements. Finally, the construction could have been validly completed according to the original 1986 permit without any environmental impact assessment where more lenient safety requirements applied.

In line with the Aarhus Convention, the Slovak authorities concluded that it was appropriate to perform the environmental impact assessment in relation to the operation of the nuclear power plant within the operation permit procedure, and they performed such assessment at the appropriate time.

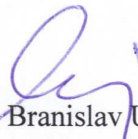
In our view, the draft findings ignore or at least lack the proper legal analysis of the relevant provisions of the Aarhus Convention, which has led to the misapplication of the law to the facts of this case and, as a result, unsound conclusions. It appears from the draft findings that no analysis was performed whether the conditions for application of public participation obligations under Article 6 were fulfilled. These conclusions would have far reaching implications on all construction permitting processes in all countries which are parties to the Aarhus Convention, where such implications were not anticipated.

We therefore welcome this opportunity to assist the Compliance Committee in the clarification of the exact meaning of the relevant provisions, and to explain why the permits granted in 2008 do not fall within the scope of public participation obligation under Article 6. As a matter of legal certainty and with regard to the insufficient legal analysis of the Aarhus Convention in the draft findings, we urge the Compliance Committee to reconsider its draft findings, to follow the wording of Article 6 and to come to the appropriate conclusions regarding the Slovak Republic compliance with these provisions.

Since we believe that significant revisions of the draft findings will be appropriate in light of the nature of our comments, we would very much welcome the opportunity to review and comment on the revised draft findings of the Compliance Committee once such draft shall have been prepared. Due to the nature of our comments we would also find it appropriate to hold another meeting where the facts and applicable law could be presented before the Compliance Committee in person.

In light of the above, we cannot agree with the Compliance Committee adoption of these recommendations, in accordance with paragraphs 36(b) and 37(b) of the Annex to Decision I/7. We would of course be pleased to reconsider should the Compliance Committee reconsider its conclusions.

Yours sincerely,



Mgr. Branislav Ujvári
Head of the Department

Enc. Comments of the Slovak Republic on the draft findings of the Aarhus Convention Compliance Committee regarding communication ACCC/2009/41

Cc: Permanent Mission of the Slovak Republic to the United Nations Office and other International Organizations in Geneva