



Ella Behlyarova
Secretary to the Aarhus Convention
United Nations Economic Commission for Europe
Environment and Human Settlement Division
Room 332, Palais des Nations
CH-1211 Geneva 10, Switzerland
E-mail: public.participation@unece.org

**Case ACCC/C/2009/41 concerning Slovak Republic and NPP Mochovce
RESPONSE of the communicant to the draft findings**

Vienna, 30 November 2010

Dear Ms. Behlyarova

This is our response on the draft findings and recommendations of the Compliance Committee with regard to case C-41 Slovak Republic.

1. In general we agree with the draft findings.
2. In paragraph 18 of the draft findings it should be mentioned that the EIA procedure was conducted after the three decisions in questions were issued. This becomes clearer later in the draft findings, but for clarification it should be stated there. Otherwise the situation could be understood in the way the EIA was carried out before the permitting procedures.
3. Following article 20 of the draft findings it should be mentioned that, as discussed during the public hearing, legislation has changed for procedures initiated after 1. May 2010, more precisely, for permitting procedures that follow EIA procedures concluded after 1. May 2010 and (only) since then legislation provides that the public concerned participating the EIA procedure has standing in all subsequent permitting procedures, including those falling under nuclear legislation.
4. At the time the Mochovce EIA was initiated legislation did not provide for standing for the public concerned in subsequent permitting procedures, but only for the status of "involved parties" that have the right to make comments and access documents, but not the right to challenge decisions. Since the Mochovce EIA was concluded on 6. May 2010 the new legislation applies and the public concerned will have standing in the following procedures. Please note that during the public hearing and in our statement of 20. May 2010 we alleged this is not the case, but now we are aware the new legislation is applicable for cases following the Mochovce EIA.

5. We regret that that the Compliance Committee did not follow up on issues regarding article 9 since it is, from our perspective, obvious that any court procedure taking several years to come a decision regarding in environmental matters, in particular regarding public participation, appears in stark contradiction to Article 9 (par 4) by its nature. But we agree the substance of respective court cases can only be dealt with once the court issued its decision.
6. We regret that the Committee did not state anything regarding latest legislative developments we raised during public hearing and in our statement of 20. May 2010 with regard to disclosure rules that could undermine the whole public participation process.
7. Following paragraph 54 of the draft findings it could be added that Article 6 applies also where public participation is provided for under national EIA procedures (Annex I par 20). The Slovak Republic carried out an EIA-procedure, however, far too late. But the mere fact that an EIA was carried out firstly indicates that significant changes took place, secondly it is another legal argument for the applicability of Article 6.
8. Regarding paragraphs 61 and 62 of the draft findings we refer to our comments above in paragraph 3 and 4. It is correct that we did not challenge legislative failure in our original communication, since the issue of the three 2008 permits without public participation was the prevailing matter. But we raised legislative shortcomings later in the procedure, in particular during the public hearing. We want to stress that only since the legislative changes from May 2010 the public concerned participating the 2009/2010 Mochvoce EIA procedure has standing in any subsequent permitting procedures such as further amendments of the decisions in question or any other related permitting procedure with regard to the NPP Mochovce, whereas this is not correct for other Slovak cases where the EIA was concluded before 1. May 2010.
9. Despite of new legislation amending the EIA Act (which entered into force on 1 May 2010) and which provides for broad public participation in subsequent permitting procedures (providing that the public participated actively in EIA), situations similar to the NPP Mochovce would not be influenced. In other words, if old permits are to be reconsidered and/or updated the legislation still does not provide for early and effective public participation in such administrative procedures. Public participation in permitting procedures is conditioned by public participation in EIA.
10. Following this the findings in paragraphs 63 and 64 are only complete under the presumption that the public concerned can effectively participate in (meaning having the procedural right of standing so that arguments are effectively taken into account and this right can be enforced at courts in accordance with Article 9 par 2) any subsequent permitting procedure following the EIA. This is correct for Mochovce, but

other cases, where the EIA was concluded before 1. May 2010, the old legislation with pure observer rights applies.

11. Furthermore it could be stated in the findings that initiating an EIA procedure (in order to comply with the public participation provisions of the Convention) only after crucial project permits are issued and construction have started is not compatible with the Convention. This can be stressed since this approach appeared to be in line with Slovak legislation.
12. An additional recommendation could refer to the argument above (paragraphs 9 and 11) that Slovak legislation should prohibit the approach of issuing project permits before the EIA and public participation procedure since standing rights in permitting procedures depend on prior participation in EIA procedures. In addition to this not any permit falling under the Aarhus Convention does by the same time provide for an EIA, even though the latter is the standard case.
13. We disagree with the attempt of the Slovak Republic to re-open a discussion on the substance of the case by its response to the draft findings submitted on 29. November 2010. The procedure is closed. The allegations regarding facts (such as progress of constructions and significant of changes) were extensively discussed during the public hearing. The legal matters were discussed as well in Geneva. There is nothing new in this. Since the procedure is closed we do not further react on the Slovak submission.

Best wishes

A handwritten signature in black ink, appearing to read "Dr. Klaus Kastenhofer".

Vienna, 30. November 2010

Dr. Klaus Kastenhofer

Director GLOBAL 2000/Friends of the Earth Austria

Telephone: 0043/1/812 57 30

Fax: 0043/1/812 57 28

E-mail: Klaus.kastenhofer@global2000.at