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## Economic Commission for Europe

Meeting of the Parties to the Convention on  
Access to Information, Public Participation  
in Decision-making and Access to Justice  
in Environmental Matters

### Fifth session

Maastricht, the Netherlands, 30 June and 1 July 2014

Item 5 (b) of the provisional agenda

**Procedures and mechanisms facilitating the implementation  
of the Convention: compliance mechanism**

## **Compliance by Slovakia with its obligations under the Convention**

### **Report by the Compliance Committee**

#### **Addendum**

## **Supplementary report on progress by Slovakia in fulfilling its obligations under the Convention\***

### *Summary*

The present document provides key supplementary information concerning progress made by Slovakia in implementing decision IV/9e of the Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (see ECE/MP.PP/2011/2/Add.1). The additional information reported on in this addendum was received from the parties in response to paragraph 43 (b) of the main report (ECE/MP.PP/2014/19), which was sent to them prior to publication.

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\* The present document has been submitted late as it contains information received after the document submission deadline.



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## I. Introduction

1. In its report on the implementation of decision IV/9e to the Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) (ECE/MP.PP/2014/19), the Convention's Compliance Committee recommended that Slovakia, as the Party concerned, "take the necessary legislative, administrative or practical measures to ensure that early and effective public participation is provided for in decision-making when old permits are reconsidered or updated, or the activities are changed or extended compared with previous conditions, in accordance with the Convention, unless [it] has by 5 May 2014, to the satisfaction of the Committee, referred the Committee to specific provisions of its legislation applicable in cases when old permits concerning activities under article 6 of the Convention are reconsidered or updated, or the activities are changed or extended compared with previous conditions, and explained to the Committee how these provisions should be applied in such procedures so as to ensure early and effective public participation" (para. 43 (b)). The present addendum reports on the information provided by the Party concerned by the deadline set in that paragraph 43 (b) of that report.

## II. Summary of follow-up action

2. On 5 May 2014, the Party concerned responded to paragraph 43 (b) of the Committee's report.<sup>1</sup> In its response, the Party concerned provided a description of the process for revising or permitting changes of decisions by the Slovak Nuclear Regulatory Authority concerning nuclear installations under its current legislation.

3. The Party concerned also provided an overview of the public participation procedure, which commenced on 21 August 2013, following the judgement of the Supreme Court<sup>2</sup> ordering the procedure with respect to decisions 246/2008, 266/2008 and 267/2008 of 14 August 2008 (the 2008 decisions) to be repeated with Greenpeace Slovakia as a party to proceedings. The Party stated that a similar process would be followed in all proceedings on a new permit or a change to an existing permit and that all the requirements of the Aarhus Convention would be fully met. The Party concerned cited a number of legislative provisions in support of the procedures described above.

4. On 22 May 2014, the communicant of communication ACCC/C/2009/41 provided its comments on the information provided by the Party concerned on 5 May 2014. The communicant disputed that the public was able to participate in the manner described by the Party concerned. It claimed that public participation in the permitting procedure for a change of activity was conditioned on participation in a prior environmental impact assessment (EIA) procedure. If there was no EIA preceding the original permit, there would be no opportunity for the public to participate in any subsequent procedure to permit a change to the activity.

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<sup>1</sup> Documents concerning implementation of compliance decisions by the Meeting of the Parties to the Convention concerning individual Parties are available from <http://www.unece.org/env/pp/ccimplementation.html>. Documents specifically related to decision IV/9e can be found at <http://www.unece.org/environmental-policy/treaties/public-participation/aarhus-convention/envpptfwg/envppcc/envppccimplementation/fourth-meeting-of-the-parties-2011/slovakia-decision-iv9e.html>

<sup>2</sup> No. Sžp/21/2012, judgement of 27 June 2013, which entered into force on 19 August 2013.

5. On 27 May 2014, the Committee requested that the Party concerned to clarify:
- (a) If the 2008 decisions were to be taken today under current legislation, would an EIA be required for those decisions?;
  - (b) If no EIA was required, how would public participation in the 2008 decisions, if they were to be taken today, be assured?
6. On 28 May 2014, the Party concerned provided its response to the Committee's questions set out above. In reply to the first question, the Party concerned stated that in accordance with section 18 of the EIA Act (as amended),<sup>3</sup> the Ministry of the Environment is required to state whether a change would have such an adverse impact that an EIA would be required. It also submitted, inter alia, that according to the case law of the Slovak courts,<sup>4</sup> an EIA is necessary when old permits (i.e., permits issued prior to the EIA Act that were not subject to an EIA procedure) are reconsidered or updated, or activities are changed or extended. With respect to the Committee's second question, the Party concerned stated that if no EIA was carried out the public concerned could still participate in a permitting procedure according to article 14 of the Administrative Procedure Code.<sup>5</sup> Any person representing its concern for a decision on environmental matters could thereby be considered a party to the proceeding. Moreover, following the decision of the European Court of Justice (ECJ) in the so-called Slovak Brown Bear case,<sup>6</sup> the authorities and courts of the Party concerned interpret procedural rules to the fullest extent possible in favour of the public concerned, including non-governmental organizations (NGOs), in order to bring administrative or judicial proceedings into accord with the objectives of articles 6 and 9 of the Aarhus Convention.
7. On 29 May 2014, the communicant submitted comments on the information provided by the Party concerned on 28 May 2014. With respect to the Committee's first question (para. 5 (a) above), the communicant stated that the amendments to the EIA Act adopted in recent years had not added any obligation to conduct an EIA in such cases. The communicant submitted, inter alia, that, as was the case in 2008, the responsible authority may decide that no adverse impact is to be expected, without having executed a proper environmental assessment in that regard. With respect to the Committee's second question (para. 5 (b) above), the communicant disputed the assertion by the Party concerned that any person representing its concern for the decision on environmental matters is considered to be a party to the proceeding. Rather, section 14 of the Administrative Procedure Code is often put forward by the public in support of their claim to become a party to the proceedings, but the authorities generally refuse on the grounds that if a special law (such as the Atomic Act) regulates who is a party to proceedings under that Act, the general law (Administrative Procedure Code) does not apply. Moreover, if pursuant to article 14 of the Administrative Procedure Code a member of the public is entitled to participate in a permitting procedure there is no guarantee that the public's comments or information concerning the potential environmental impacts of the proposed activity will be taken into account. At present, under the law of the Party concerned only an EIA procedure ensures that the environmental impacts of a proposed decision or project will be taken into account.

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<sup>3</sup> Act No. 24/2006 as amended, inter alia, by Act No. 287/2009 which amended article 18.

<sup>4</sup> The Party concerned did not cite any court decisions in support of this statement.

<sup>5</sup> In its letter of 2 December 2009, the Party concerned stated that, pursuant to article 14, paragraphs 1 and 2, of the Administrative Procedure Code, the parties to a proceeding include (a) a person whose rights and legally protected interests or obligations are the subject matter of proceedings or whose rights, legally protected interests or obligations may be directly affected by a decision; (b) a person who claims that their rights, legally protected interests or obligations may be affected by the decision until it is proven otherwise; and (c) a person recognized as a participant under a more specific law.

<sup>6</sup> C-240/09, *Lesoochránárske zoskupenie VLK v. Ministerstvo životného prostredia Slovenskej republiky*, [2011] ECR I-1255.

For this reason, section 14 of the Administrative Code does not guarantee public participation in accordance with the Aarhus Convention.

### III. Consideration and evaluation by the Committee

8. The Committee welcomes the efforts made by the Party concerned to meet the condition set out in paragraph 43 (b) of its report to the Meeting of the Parties at its fifth session, including its willingness to work within the necessarily short deadlines.

9. The Committee recalls that, in order to fulfil the requirements of decision IV/9e, the Party concerned needed to provide the Committee with evidence that it had reviewed its legal framework so as to ensure that early and effective public participation is provided for in decision-making when old permits are reconsidered or updated, or the activities are changed or extended compared with previous conditions, in accordance with the Convention.

10. Given these requirements, the subject matter of the original communication and the condition set by the Committee in paragraph 43 (b) of its report to the Meeting of the Parties, it is appropriate to focus in the present supplementary report on whether, if the 2008 decisions were taken today under the current legal framework, public participation meeting the requirements of the Convention would be ensured. If this appears to be the case, the Committee considers that the Party concerned has sufficiently reviewed its legal framework so as to fulfil the requirements in decision IV/9e.

11. Article 18, paragraph 4, of the EIA Act (as amended in 2009)<sup>7</sup> requires that each change to a proposed activity specified in annex 8, Part A, of that Act is to be the subject of a statement by the competent authority (i.e., the Ministry for Environment) as to whether the change may have a substantial unfavourable influence on the environment. Nuclear activities are listed in annex 8, Part A, of the EIA Act and are listed without any thresholds. Thus, it is the Committee's understanding that any proposed change in a nuclear activity must be subject to a mandatory opinion by the Ministry for Environment as to whether the proposed change may have a substantial influence on the environment.

12. If, as a result of the Ministry for Environment's statement, an EIA procedure is required, the Committee understands that, pursuant to articles 24 to 27 of the EIA Act (as amended in 2009 and 2011)<sup>8</sup> natural persons and NGOs promoting environmental protection, among others, which submit a written opinion according to the provisions of the EIA Act may be a party to the proceedings in the permitting procedure. Similarly, pursuant to section 8, paragraph 3, of the Atomic Act (as amended), natural and legal persons that have submitted a written statement in accordance with sections 24–27 of the EIA Act may be a party in the subsequent permitting procedure under the Atomic Act.

13. According to the Party concerned, if an EIA is not carried out, the public concerned can still be a party to the procedure pursuant to article 14 of the Administrative Procedure Code.<sup>9</sup> Moreover, in accordance with the decision of the ECJ in the Slovak Brown Bear case, the authorities and courts of the Party concerned interpret procedural rules to the fullest extent possible in favour of public concerned, including NGOs.

14. The communicant disputes the above assertion by the Party concerned and claims that if a special law (such as the Atomic Act) regulates who may be a party to the proceedings, the general law (i.e., the Administrative Procedure Code) is considered by the

<sup>7</sup> As amended by Act 287/2009.

<sup>8</sup> As amended by Act 287/2009 and 408/2011.

<sup>9</sup> See footnote 5 above.

authorities to not be applicable. The communicant, however, did not provide any examples from practice or case law to substantiate this contention.

15. The Committee recalls that the requirements for public participation in article 6 of the Convention, as well as the definition of the public concerned in article 2, paragraph 5 (according to which NGOs promoting environmental protection and meeting any requirement under national law shall be deemed to have an interest), apply also to decision-making regarding changes or extensions of those activities and to updates or reconsiderations of their operating conditions. With respect to Slovak law concerning proposed changes to activities for which an EIA procedure is to be carried out, in the view of the Committee, sections 24–27 of the EIA Act (as amended) appear to ensure that the public concerned, including NGOs promoting environmental protection, are entitled to participate both in the EIA procedure itself and, if they submit a written statement during the EIA stage, during the subsequent permitting procedure.

16. With respect to proposed changes to activities for which an EIA procedure is not required, so long as the authorities indeed apply article 14 of the Administrative Procedure Code in such cases so as to enable the broadest public concerned to participate, the Committee considers that early and effective public participation should be ensured by the Party concerned. Yet, the Committee emphasizes that if the authorities in practice were to refuse to apply article 14 of the Administrative Procedure Code so as to deny the public concerned the opportunity to participate in an early and effective manner, on the grounds that the proceedings at issue were pursuant to a special act (e.g., the Atomic Act), that would not be in compliance with article 6, paragraph 4. In this context too, the Committee recalls that, pursuant to article 2, paragraph 5, of the Convention NGOs promoting environmental protection and meeting any requirement under national law shall be deemed to have an interest.

17. The Committee notes the concerns expressed by the communicant regarding the alleged failure of the Nuclear Regulatory Authority to provide access to all information relevant to the decision-making and to permit the public concerned to submit comments on the environmental aspects of the decision-making. It also notes the communicant's queries as to how, in cases in which no EIA is carried out and thus article 14 of the Administrative Procedure Code would apply, persons other than those that are already party to the procedure would be notified of their right to participate. The Party concerned has not had an opportunity to respond to these allegations, so the Committee does not consider these allegations further for the purposes of the present report. Nevertheless, the Committee recalls that such matters are relevant components for ensuring early and effective public participation under article 6 of the Convention.

18. Based on the information provided by the Party concerned, including in response to paragraph 43 (b) of the Committee's report to the Meeting of the Parties at its fifth session, as summarized in the present supplementary report, and referring, *inter alia*, to the various legislative amendments made by the Party concerned since the 2008 decisions were taken, including Acts Nos. 287/2009 and 408/2011 amending articles 18 and 24–27 of the EIA Act, the Committee finds that the Party concerned has actively engaged in efforts to review its legal framework so as to ensure that early and effective public participation is provided for in decision-making when old permits are reconsidered or updated, or the activities are changed or extended compared with previous conditions. The Committee concludes that the Party concerned has taken sufficient measures to meet the condition set out in paragraph 3 of decision IV/9e.

19. In the light of the above, and bearing in mind the current procedure concerning the 2008 decisions with Greenpeace Slovakia as a party, the Committee finds that the Party concerned is no longer in non-compliance with the provisions of article 6, paragraphs 4 and 10, of the Convention with respect to the issues covered by decision IV/9e.

#### **IV. Conclusions and recommendations**

20. The Committee welcomes the efforts made by the Party concerned to meet the condition set out in paragraph 43 (b) of its report to the Meeting of the Parties at its fifth session.

21. Based on the information provided by the Party concerned, including in response to paragraph 43 (b) of the Committee's report to the Meeting of the Parties at its fifth session, as summarized in the present supplementary report, and referring, *inter alia*, to the various legislative amendments made by the Party concerned since the 2008 decisions were taken, the Committee finds that the Party concerned has actively engaged in efforts to review its legal framework so as to ensure that early and effective public participation is provided for in decision-making when old permits are reconsidered or updated, or the activities are changed or extended compared with previous conditions. The Committee concludes that the Party concerned has taken sufficient measures to meet the condition set out in paragraph 3 of decision IV/9e.

22. In the light of the above, and bearing in mind the current procedure concerning the 2008 decisions with Greenpeace Slovakia as a party, the Committee finds that the Party concerned is no longer in non-compliance with the provisions of article 6, paragraphs 4 and 10, of the Convention with respect to the issues covered by decision IV/9e.

23. The Committee recommends that, pursuant to paragraph 35 of the annex to decision I/7, the Meeting of the Parties endorse the above supplementary report with regard to compliance by Slovakia.

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