The Statement of the Slovak Republic as the Party concerned for the communication ACCC/C/2014/120 (Slovakia)

I.

General Statement of Slovak Republic

1. Slovak Republic (hereinafter "SR") represented by Ministry of Agriculture and Rural Development of the Slovak Republic (hereinafter "ministry") received a kindly invitation of the Compliance Committee to submit to the Compliance Committee any written explanations or statements clarifying the matter referred to in the communication of Mr. Robert Oružinský represented by VIA IURIS (hereinafter "communicant") no. ACCC/C/2014/120 (Slovakia) (hereinafter "communication").

2. The communicant alleges a violation of public rights under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, called Aarhus Convention (hereinafter "Aarhus Covention").

3. The Aarhus Convention according to the communicant was violated in 2013 in the legislative process on "the draft act which amends the Act no. 326/2005 Coll. on forests as amended and on the amendment of certain acts" (hereinafter „draft act concerned") in the process of evaluating the collective comments, which were raised to the draft act concerned.

4. The communication is not directed against the fact that the ministry accepted or partially accepted 13 public comments of the communicant and did not accept 4 public comments (on which the contradiction persists) of the total number 17 public comments applied on the draft act concerned. The subject of the communication therefore is not the substance of the contradictory negotiation on the public comments of the communicant. The communicant is not seeking review of the contradictory negotiation.

5. The subject of the communication is the acting of the ministry and the Government Office of the Slovak Republic (hereinafter "government office") by which the violation of the public rights to "participate during the preparation of executive regulations and other generally applicable legally binding rules that may have a significant effect on the environment" arising from the Article 8 of the Aarhus Convention should be committed. In this regard also the Article 14 of the Legislative Rules of the Government of Slovak Republic (hereinafter "legislative rules") governing the legislative process in SR, should be violated.

6. The subject of the communication is also the alleged failure to fulfill the obligation of SR to "ensure that members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment" arising from the Article 9 of the Aarhus Convention.

7. The draft act concerned was and to this day is publicly available on the web "Portal of legislation" (hereinafter "portal"). The interdepartmental discussion on the draft act concerned lasted from 10 May 2013 to 30 May 2013. The communicant applied 17 public comments during the interdepartmental discussion through the portal. The communicant

also applied during the interdepartmental discussion identical 17 public comments in written form, signed by 9062 people. The ministry as the submitter conducted with the communicant contradictory negotiation on the public comments on 10 June 2013.

8. The authorities of the Slovak Republic included:
a) the ministry as a submitter,
b) the Legislative Council of the Slovak Republic (hereinafter "legislative council") as an advisory body of the Government of Slovak Republic for the legislative process and as the legislative authority,
c) government office as the institution responsible for activities of the Government of Slovak Republic,
d) Government of the Slovak Republic (hereinafter "government").

II.

Statements of SR to the individual factual allegations of the communicant in accordance with paragraphs 19, 20 and 21 of Decision I/7 Review of Compliance

1. The claim of the communicant in the part III. 1. p. 3, 5 and part III. 2.2., 2.4. p. 11, 12 of the communication:

The communicant claims that the comments of the public, which were applied by the public representative electronically through the portal, are not in the evaluation of the interdepartmental discussion identified as essential, despite the fact that the public representative stated these comments on the portal as essential ones.

Statement of SR:

1.1. The procedure of application, evaluation and negotiation on public comments is governed by legislative rules - Art. 14 par. 6:

"*(6) Contradictory negotiation with a representative of the public may take place if the submitter did not accept the comment, which was applied by a greater number of natural persons or legal persons from the public and a mandate for the representative of the public to represent the public is simultaneously a part of the comment (public comment). Contradictory negotiation with a representative of the public shall be held whenever the submitter does not accept a public comment which was supported by at least 500 natural persons or legal persons. If the public comment was applied electronically via portal, a list of natural persons or legal persons which supported the public comment may be sent to submitter also in other way than through the portal.*".

1.2. The public in SR is entitled to comment the drafts of the laws. Individuals and groups may comment. If a comment is applied by a group of the public, it is called a public comment. For the purposes of the application of the public comments and communication with the submitter of the draft the public must nominate its representative.

1.3. The public comment may be applied electronically via portal or in a written form. The public is not obliged to apply its comment electronically. If the public applies its comment electronically via portal, the public expresses its support to this comment directly via portal. In applying the public comments a list of individuals supporting the public comment must always be delivered to the submitter.

1.4. If the public comment is supported by less than 500 persons and when the submitter does not agree with this public comment, the submitter is not obliged to conduct the contradictory negotiation.

1.5. If the public comment is supported by 500 or more persons and when the submitter does not agree with this public comment, the submitter must conduct the contradictory negotiation with the public representative.

1.6. The public comment on the portal is automatically labeled as an ordinary comment. It does not matter whether the public representative states directly in the text of the comment that it is an essential comment. This measure that any public comments on the portal is labelled as ordinary, and also the limit of the number of 500 persons needed to conduct the contradictory negotiation, should ensure that

- the public comment will be applied with a relevant greater public support,
- and the legislative process will not be burdened by contradictory negotiations on any public comments or on only the comment of an individual, if it is labelled as essential one.

1.7. The essential comment according to legislative rules may be applied only by the public authorities, i. e. particularly the state bodies and bodies of local and professional autonomy - Art. 14 par. 3 and 4:

"*(3) If the commenting authorities apply the comments they deem relevant, this is expressed in each of these comments, like this: "ministry considers this comment for essential" or "the ministry insists on this observation". If the submitter does not accept the comment labelled in this way, it becomes a subject to the contradiction. If the submitter does not accept the other comments of the commenting authorities, they are not the subject of the contradiction.*

(4) The essential comment means a categorical disagreement of the body which applied it and indicates that without acceptance of this comment a member of the government probably will not vote for the draft at the government session or the person who applied the essential comment and present at the government session, will raise it at this session. Essential comment are applied by letter of the minister, state secretary, head of other commenting body or his representative; this does not apply to the application of essential comment on summary consultation exercise on the principles comments in the shortened interdepartmental discussion or if essential comment is applied on a draft of law which the government does not approve.".

1.8. The comments, which are subject to the communication of the communicant, however, were supported on the portal by only 62 persons, i. e. they were not supported by more than 500 persons. This public comment applied via portal therefore had not a character of an essential comment and the submitter was not obliged to conduct a contradictory negotiation on this public comment.

*Proof - **Annex 1** "print-screen portal - public comment."*

- Link to information on support of mass public comment:

https://lt.justice.gov.sk/Public/MassReviewList.aspx?instEID=-1&matEID=6173&langEID=1&tStamp=20130531074422807

1.9. According to the legislative rules, the comments applied via portal are listed in the evaluation of the interdepartmental discussion always with only that indication by which they were labelled on the portal - Art. 14 par. 9:

"*(9) Comments on the draft act which were sent electronically through the portal, will be listed in the evaluation of the interdepartmental discussion together with the indication that it is an essential comment, and if they are not accepted, with the grounds of non-acceptance; it also applies to the comments applied by compulsory commenting authorities as well as the comments of the optional commentating authorities and the public. The comments, which were not sent electronically via portal and the typing, grammatical and stylistic comments are not listed in the evaluation of the interdepartmental discussion; this does not affect the obligation of the submitter to evaluate such comments*".

Therefore we suppose that the public participation was secured in accordance with the article 8 of the Aarhus Convention as well as in terms of the article 14 of the legislative rules.

We hold the compliance of the communicant in this part as manifestly unreasonable under the paragraph 20 point c) of the Decision I/7 on Review of Compliance.

2. The claim of the communicant in part III. 1. p. 5, 8 and part III. 2.2. p. 11 of the communication:

The communicant claims, that the comments of the public raised by the public representative electronically through the online portal, are evaluated in the evaluation of the interdepartmental discussion as the comments, which are not taken into account, by what the submitter of the draft has unreasonably refused the collective comments.

Statement of SR:

2.1. For the reasons set out in point 1., the public comment that was applied through the portal, was not applied in a way which binds the submitter to conduct a contradictory negotiation on this public comment.

2.2. However, the communicant applied the same public comments without using the portal, in written form, where he showed support of the 9062 persons. The communicant applied validly the collective comments in written form out of the portal, under the legislative rules – Art. 14 par. 6 – see point 1.1.
Proof:
Annex 2 *– Public comments of the communicant applied in written form.*

2.3. The submitter is obliged to evaluate and conduct contradictory negotiation even if the public comment was applied with the support of at least 500 persons only in a written form according to legislative rules - Art. 14 par. 6 - see point 1.1.

2.4. Under the Legislative rules, the comments applied in written form are not listed in the evaluation of the interdepartmental discussion. The submitter of the draft is, however, always required to take these comments into account and to evaluate them and discus them with the commenting person – Art. 14 par. 9 – see point 1.9.

2.5. The submitter of the draft act concerned has fulfilled this obligation and considered the public comments applied in written form, evaluated them and discussed them with the public representative in the contradictory negotiation under the legislative rules.

2.6. The communicant applied the same public comments twice - electronically via portal as well as in writing, i. e. in two different ways. The submitter was not obliged to conduct the contradictory negotiation on the comments applied via portal for the reasons specified in points 1.4. to 1.9. However, the submitter conducted the contradictory negotiation and evaluated the same public comments supported by more than 500 persons which were applied by the communicant in written form. The

public comments applied in written had, from the point of view how they were applied, greater weight than the same public comments applied via portal because they were supported by a qualified quorum. Evaluation of the public comments applied via portal was therefore not necessary. Thus the submitter came to meet the public, because the contradictory negotiation was conducted on the public comments applied in written form, which by the difference of those that were applied via portal had their character as the essential comments.

Therefore we suppose that the public participation was secured in accordance with the article 8 of the Aarhus Convention as well as in terms of the article 14 of the legislative rules.

We hold the compliance of the communicant in this part as manifestly unreasonable under the paragraph 20 point c) of the Decision I/7 on Review of Compliance.

3. The claim of the communicant in part III. 1. p. 5 of the communication:

The communicant suspects the Ministry of arbitrary interference in the labelling of the public comments applied through the online portal from the label "essential" to the label "ordinary".

Statement of SR:

3.1. Labelling of the comment on the portal as "ordinary" or "essential" may make only that one who applies the comment. The arbitrary interference of the submitter of the draft is not possible.

3.2. The public comment concerned, however, was on the portal automatically labeled as an ordinary one. Public comment has a nature of an essential comment only if it is applied with support of at least 500 persons. See points 1.4. to 1.7.

We hold the compliance of the communicant in this part as unsupported and completely untrue under the paragraph 19 of the Decision I/7 on Review of Compliance.

4. The claim of the communicant in part III. 3. p. 14 of the communicatin:

The communicant claims that the public was not given the opportunity to discuss the applied public comments with the submitter of the draft.

Statement of SR:

4.1. The submitter of the draft conducted with the public representative the contradictory negotiation on the public comments applied by the complainant in written form according to the legislative rules – Art. 14 par. 6 – see point 1.1.

4.2. The contradictory negotiation was held on 10 May 2013 at level of the minister under the leadership of the ministry's employee, who was empowered by the minister. The public representative was informed about the higher level of the negotiation.

Proof:

- ***Annex 3*** *- A written invitation to the appealing procedure*
- ***Annex 4*** *- Invitation e-mail*

4.3. The public representative recorded the process of the contradictory negotiation on a mobile phone and has an evidence on the contradictory negotiation.

4.4. The results and conclusions of the contradictory negotiation were resumed in report and subsequently consulted with the public representative via email. The contradiction persisted only in 4 of the 17 public comments.

Proof:
Annex 5 *- Contradictory negotiation report*

Therefore we suppose that the public participation was secured in accordance with the article 8 of the Aarhus Convention as well as in terms of the article 14 of the legislative rules.

We hold the compliance of the communicant in this part as unsupported and completely untrue under the paragraph 19 of the Decision I/7 on Review of Compliance.

5. The claim of the communicant in part III. 1. p. 4 of the communication:

The communicant claims, that he was not given a standard report or record form the contradictory negotiation in written form and signed by the parties, but only in the electronic version.

Statement of SR:

5.1. According to the legislative rules the result of the contradictory negotiation shall be resumed in a record signed by the parties. The Legislative rules do not provide a form of the record – Art. 14 par. 7:

"*(7) The report on the contradictory negotiation signed by the representatives of both sides of the contradiction shall be done by the submitter.*".

5.2. Participation in the contradictory negotiation and its results were confirmed by signatures of all participants to the meeting. The record was completed and signed by all parties of the negotiation. It contained the evaluation of all the public comments applied in the written form. The record was sent to the public representative via email and subsequently consulted.

Proof:
Annex 5 *- Contradictory negotiation report*

Therefore we suppose that the public participation was secured in accordance with the article 8 of the Aarhus Convention as well as in terms of the article 14 of the legislative rules.

We hold the compliance of the communicant in this part as manifestly unreasonable under the paragraph 20 point c) of the Decision I/7 on Review of Compliance.

6. The claim of the communicant in part III. 1. p. 7, part III. 2, 2.1., 2.4. p. 10-12, part III. 3. p. 14:

The communicant claims that the material of the draft which was submitted to the Legislative Council of the Government of the Slovak Republic and to the Government of the Slovak Republic lacked the information on not accepted public comments. Thus, the Legislative Council and the Government were not aware of remaining contradictions and could not take a position on them.

Statement of SR:

6.1. The legislative council discussed the draft act concerned on 3 September 2013 and the government discussed it on 26 September 2013.

6.2. The material of the draft law concerned, which was submitted for discussion of the legislative council and the government, contained the list and evaluation of all the comments applied via portal, including those identical public comments, which were applied by the public representative in both ways, namely through the portal and in written form. All of these comments were kept in disposal of the legislative council and government.

Proof
Annex 6 *- The evaluation of the interdepartmental discussion*

6.3. The material contained also the submission report containing information of persisting contradiction with the commenting entities, as the communicant was not the only commenting subject.

Proof:
Annex 7 *- Submission report for the session of the legislative council*
Annex 8 *- Submission report for the session of the government*

6.4. The submitter according to the legislative rules is obliged to state in the submission report in the case of persisting contradictions with the public representative also the reasons for the persisting contradiction - Art. 18 par. 2 subpar. d) point 1.:

"*(2) Material by which the draft act is submitted to the government and the legislative council, shall in addition to the draft include mainly*
d) a declaration
1. on non-contradictory of the draft act submitted or on contradictions which the draft has, including contradictions with the public representative and on what grounds the contradictions could not be removed,".

6.5. Information on the persisting contradictions as to the public comments of the communicant in both submission reports is stated only as a brief summary, given the limited and informative scope of the submission order. Consequently, the Art. 18 par. 2 subpar. d) point 1. of the legislative rules is fulfilled only partially - see section 6.4.

6.6. Nevertheless, the overview of all the comments applied on the portal was in disposal of the legislative council and the government, including the public comments of the communicant which he applied in the identical wording in written form.

6.7. The Legislative Council and the government had the opportunity to study and discuss the public comments concerned of the communicant applied via portal and identical to those which he applied in writing. The Legislative Council and the government had the opportunity to request the submitter to explain why the submitter evaluated those public comments as "not taken into account ".

6.8. The communicant himself on its own initiative notified in writing and also via e-mail the legislative council as well as the prime minister on his objections to the legislative process, on 19 June 2013 and 25 September 2013, i. e. even before the discussion of the legislative council and before the discussion of the government on the draft act concerned. The legislative council and the government were therefore informed about the persisting contradictions on the communicant´s public comments, independently of the procedure of the submitter.

6.9. Any comments, including the essential comments of the state authorities and the public comments have for the government only consultative and not binding character, even if there is a persisting contradiction about these comments.

6.10. The government is the authority that decides on the persisting contradictions. The government took measure of all the not accepted comments to the draft act

concerned, including the public comments and persisting contradictions, in a way it become familiar with them in terms of point 6.9. and approved the draft act concerned.

Therefore we suppose that the public participation was secured in accordance with the article 8 of the Aarhus Convention as well as in terms of the article 14 of the legislative rules.

We hold the compliance of the communicant in this part as manifestly unreasonable under the paragraph 20 point c) of the Decision I/7 on Review of Compliance.

7. The claim of the communicant in part III 1. str. 5-6, 7:

The communicant claims that the submission report for the legislative council and government contains a misleading information about the persisting contradiction in the case of the communicant's comment no. 11, which, on the contrary was, accepted.

Statement of SR:

7.1. Indeed, the submission report contains information on the persisting contradiction, which relates to non-acceptance of essential comment demanding deletion of the point 54 from the submitted draft act concerned, which amends the wording of § 30 par. 3 of Act no. 326/2005 Coll. on forests.

7.2. However, it is not a statement about the communicant´s comment no. 11. It regards a comment applied by the "Association of Trade and Tourism".

Proof:

- essential comment of the Association of Trade and Tourism on the point 54 - see ***Annex 6***

7.3. The communicant mistakenly believes that he is the only entity with which the contradictions persisted and which is covered by the submission report.

Therefore we suppose that the public participation was secured in accordance with the article 8 of the Aarhus Convention as well as in terms of the article 14 of the legislative rules.

We hold the compliance of the communicant in this part as manifestly unreasonable under the paragraph 20 point c) of the Decision I/7 on Review of Compliance.

8. The claim of the communicant in part III. 1. p. 5, 6, 8, 9 and part III. 2.3 p. 11 of the communication:

The communicant claims that the submitter of the draft arbitrarily and completely changed the wording of the provision of the draft, which was agreed in the contradictory negotiation based on the collective comment of the public no. 11. The communicant also alleges that he was not informed of the change.

Statement of SR:

8.1. The comment of the communicant no. 11 addresses modification of § 30 par. 3 of Act no. 326/2005 Coll. on forests as amended. This modification was the contained in point 54. of the draft act concerned as submitted to the interdepartmental discussion. In the draft act concerned as submitted to the session of the legislative council it was contained in point 57. In the draft act concerned as submitted to the

government, in the draft act submitted to the National Council of Slovak Republic and in the approved wording of the draft act submitted it was the content of point 55.

Proof:

a) The wording in the interdepartmental discussion:

"54. The § 30 paragraph 3 reads as follows:
"(3) To organize physical education, sport or tourist competitions and events or to carry out commercial activities on forest land is possible only after a written agreement with the forest manager.".".

b) The wording as changed according to the outcome of contradictory negotiation with the communicant and submitted for the session of the legislative council:

"*57. The § 30 paragraph 3 reads as follows:*
"(3) To organize public physical education events, sport events and tourist events or to undertake the activities for profit on forest land is possible only with the consent under special acts.[45c])".

The footnote to reference 45c reads as follows:
"[45c]) § 3 par. 4 of the Act no. 479/2008 Coll. on organizing public physical events, sporting events and tourist events and on amendments to certain acts.
§ 126 of the Civil Code.".".

c) The wording as changed according to the comments of the legislative Council and submitted to the government, the National Council of Slovak Republic and approved wording:

"*55. § 30 paragraph 3 reads as follows:*
"(3) To organize or carry out activities for profit on forest land is possible only with the consent of the owner or administrator. Public use of forests does not apply to closed and fenced forest land in military forests.".".

d) The approved wording published under no. 182/2014 Coll. was corrected only grammatically.

8.2. The public proposed a new wording of the § 30 par. 3 of Act no. 326/2005 Coll. on forests as amended regulating the organization of sport activities on a forest land, under the condition stated by the special act. The content of this special condition is the consent of the owner or user of the forest land to organizing the sport activities on private property. The aim of this public comment was that public entry into the woods would not be limited in an inappropriate manner.

Proof:

Annex 2
– Public comments of the communicant applied in written form
- The communicant´s comment no. 11:

„We require amending of the point no. 54 as follows:
In Section 30 the paragraph 3 states:
„Organizing of physical education, sport or hiking events on forest lands is possible only in accordance with particular regulationsXY)"
Footnote in respect to note XY states:

„XY) law no. 479/2008 Coll. on organizing of physical education, sport and hiking events of public character“

Reasons:

Thus worded provision would de facto liquidate organized tourist events, school trips in the countryside, leisure activities for children, youth and adults in the countryside, etc., that cannot be the intention of the submitter. It is not in possible in any way to justify the obligation of obtaining the consent of forest manager for outdoor activities that do not pose any harm to him.

It is also unrealistic that the organizers of such events, even with a small number of participants (such as organized Saturday's tours of local hiking clubs, etc.) should always before the event investigate who the forest manager is, seek an authorization in writing and wait how the forest manager expresses and whether he expresses at all his statement (many events are, however, held in the areas of several forest managers). Such bureaucracy would essentially make it impossible to legally organize events in the forest. Moreover, it is questionable whether it is possible to insert such an "institute of agreement" into the Act which, in fact, is not an agreement, but it is only an expression of consent or dissent of the forest manager with planned events. The procedure proposed by the submitter represent an inadequate and unjustified bureaucracy and restrictions on the free movement of citizens of Slovak Republic who need, in their spare time, to unwind and regenerate their physical and mental strength (rest after work, recuperation leave).".

8.3. This comment was accepted in the contradictory negotiation.

Proof:
Annex 5 *- Contradictory negotiation report*

8.4. Without prejudice to the accepted public comment relating to sporting activities, the provision § 30 par. 3 was extended also over the activities for profit under the same conditions of the consent of the owner or user to such activity on the forest land. The draft act concerned was in this wording submitted to the legislative council - see point 8.1. b).

8.5. Submitter is obliged by the legislative rules to submit a draft law to the legislative council - Art. 18 par. 1:

"*(1) Submitter of the draft who submits the draft for the government, submits the draft modified according to the results of interdepartmental discussion to the legislative council. Following the submission of the draft to the legislative council the submitter mentioned in the first sentence may submit the draft to the government.*".

8.6. Legislative Council has the right to propose and to insist on modification of any provision of the draft, including those resulting from the contradictory negotiation.

Proof - Statute of the Legislative Council of the Government of Slovak Republic:

"*(6) Materials for the session of the legislative council shall be submitted in accordance with the Legislative Rules of the Slovak Government.*

(10) If the material is not submitted to the legislative council in accordance with paragraph 6, the legislative council may return such material for reprocessing to the submitter, which is the ministry or other state authority.".

8.7. § 30 par. 3 of Act no. 326/2005 Coll. on forests, based on oral comments made at the session of the legislative council, was modified so that the condition of consent of the owner or user of the land was deleted as regards physical education, sport or tourist

competitions and events. This condition was left in the provision and was expressed directly only in respect of profitable activities. Consent of the owner or user for the purpose of sporting tourist activities arises regardless of this provision from the special Act no. 479/2008 Coll. on organizing public sports events. The Act no. 326/2005 Coll. on Forests does not affect the conditions of organizing the sport and tourist activities at all.

Proof – see point 8.1. c)

8.8. This communicant´s public comment no. 11 was not refused in terms of content, but only as in terms of the formulation. The goal, which the public wanted to achieve with this comment, therefore remained intact. § 30 par. 3 of Act no. 326/2005 Coll. on forests was modified even more liberal than the communicant required by his public comment. The condition of the consent to organize physical education, sports and tourist events and competitions in forests does not regulate the Act on forests in tougher way, but it is regulated in general way by the Act no. 479/2008 Coll. on organizing public sports events. The communicant required the application of this very Act in his public comment.

Proof - § 3 par. 4 of the Act no. 479/2008 Coll.:

"*(4) If the event takes place outside the premises or public spaces used for this purpose, the organizer must submit to the notification consent of the owners or users of premises or land.*".

8.9. Therefore, it was not necessary to inform exclusively the public representative about this change of § 30 par. 3 of Act no. 326/2005 Coll. on forests, because the result of the contradictory negotiation and the factual content of the provision was not changed. The comment remained accepted. Only the formulation was changed.

8.10. Regarding notification of the subjects that applied the comments interdepartmental discussion and with which the contradictory negotiation took place, each of them is informed about the changes in the draft through the portal, where the entire material is publicly and free available in its actual and modified version in every stage of the legislative process. The material of the draft act concerned which was challenged by the communicant is available on the portal to this day.

Proof – link to the portal – draft act concerned:

https://lt.justice.gov.sk/Material/MaterialWorkflow.aspx?instEID=-1&matEID=6173&langEID=1

Therefore we suppose that the public participation was secured in accordance with the article 8 of the Aarhus Convention as well as in terms of the article 14 of the Legislative rules.

We hold the compliance of the communicant in this part as manifestly unreasonable under the paragraph 20 point c) of the Decision I/7 on Review of Compliance.

9. The claim of the communicant in part III. 4 p. 14-17, part IV. p. 18, part VI. p. 19-23:

The communicant claims that the Slovak Republic does not guarantee enforcement public participation in public affairs and does not guarantee the administrative or judicial procedures for the protection of public rights under the Aarhus Convention.

Statement of SR:

9.1. The Constitution of Slovak Republic in Art. 1 par. 2 provides that it recognizes and respects all its international obligations, i. e. including the Aarhus convention:

"*(2) Slovak Republic recognizes and respects the general rules of international law, international treaties by which it is bound, and its other international obligations.*"

9.2. According to Art. 46 par. 1 of the Constitution of Slovak Republic any person may claim his right to an independent and impartial court or other authority of the Slovak Republic:

"*(1) Everyone may claim by procedures laid down his or her right to an independent and impartial court and in cases stipulated by law at another body of the Slovak Republic.*".

9.3. The communicant did not use all available opportunities of the administrative, judicial or any other special procedure that are guaranteed by the Constitution of Slovak Republic and other Acts, i.e.

a) filing a complaint under the Act no. 9/2010 Coll. on complaints:

"§ 3

(1) The complaint is a submission of a natural person or legal person (hereinafter "the complainant"), by which he

a) seeks to protect his rights or interests protected by law, which he considers are violated by action or inaction (hereinafter "the action") the authority;

b) identify specific deficiencies, in particular violating the law, if their elimination is the responsibility of the public authority."

b) proposing a protest of the prosecutor under the Act no. 153/2001 Coll. on the prosecution:

"§ 31

(1) The prosecutor reviews the legality of the procedures and decisions of public authorities, prosecutors, investigators, police and courts within the limits set by law, also on suggestion, while he is authorized to carry out measures to eliminate the breach, if their execution is not under special laws only in responsibility of other relevant bodies."

c) filing a complaint under the Act no. 564/2001 Coll. on the Public Defender of Rights (Ombudsman):

"§ 11

(1) Anyone may contact the Ombudsman who believes that the proceedings, the decisions or omissions of public administration violated fundamental rights and freedoms in conflict with laws or principles of a democratic and legal state."

d) proceeding before the Common Court under the Code of Civil Procedure:

"§ 244

(2) The administrative courts review the legality of decisions and proceedings of state administration bodies, bodies of local self-government and bodies of interest self-government and other legal persons as well as natural persons if any act confers them to decide on the rights and obligations of natural persons and legal persons in public administration.".

9.4. The communicant, however, used the highest level of protection of his rights, namely the proceedings before the Constitutional Court and challenged the legislative process, against which he filed a complaint under § 49 of Act. no. 38/1993 Coll. on organization of the Constitutional Court. The Constitutional Court rejected his proposal. From the reasoned resolution of the Constitutional Court is, inter alia, clear that

a) the submitter has complied with all requirements for public access to information, participation in decision-making and access to justice in environmental matters under the Aarhus Convention,
b) application of the public comment (and, consequently of any other comments) does not entitle to its acceptance or its acceptance in exactly identical wording as that comment proposes.

Proof – Resolution of the Constitutional Court of SR I. ÚS 73/2014-280 – link:

http://portal.concourt.sk/SearchRozhodnutia/rozhod.do?urlpage=dokument&id_spisu=530545 *, especially:*

"... it is not disputed that the public was by the submitter provided with sufficient time to apply comments and that the public had full access to the submitter´s draft act on forests and the opportunity to express, respectively apply against the draft the comments",

"... it is clear that based mainly on the communicants's activities as the public representative, the legislative council respectively its director and the prime minister himself were notified of the specific deficiencies of the submitted material (by the written submissions of the communicant/s), and namely before performing the session of the legislative council and session of the government", "... it cannot be concluded that the procedure of the submitter and the government was marked by deficiencies of such an intensity, that it could be described as a procedure by which sufficient public awareness and consultative democracy providing, respectively allowing public to participate in the preparation of generally binding legislation, was not guaranteed",

"... the right to take into account the comments in the form of absolute, respectively unconditional acceptance of public comments is not part of the right conferred by Art. 8 of the Aarhus Convention. ".

9.5. Slovak Republic strengthens from 2015 the opportunity for public participation in the preparation and commenting on legislative and non-legislative drafts. From 1 October 2015 the "Uniform methodology for assessing selected influences" is applied, by which the legislative process shall be preceded by consultation with business and other entities, which is public and is restricted neither as to form of commenting nor limiting the number of persons or type of entities that may be included thereat. The submitter of the draft is obliged to draw up a summary of the outcome of the consultation, indicating the duration of the consultation, participating entities, comments applied, forms of communication and conclusions.

Proof – link for the "Uniform methodology for assessing selected influences":

http://www.economy.gov.sk/jednotna-metodika-iys/138426s

9.6. The legislative Rules provide in Art. 14 par. 6 for participation of the public in legislative process. The legislative rules, although approved by the Government Resolution no. 352 of 25 May 2010, but consistently based on the National Council

of Slovak Republic Act no. 350/1996 Coll. on Rules of Procedure of the National Council of Slovak Republic are binding for all subjects involved in the legislative process.

Therefore we suppose that Slovak Republic guarantees for the public both administrative and judicial options for enforcement of the rights arising from the Aarhus Convention in accordance with article 9 paragraph 3 of the Aarhus Convention.

We hold that the communication of the communicant with regard to the application of the communicant to the Constitutional Court of Slovak Republic as the highest body of protection of rights and legitimate interests should be evaluated in accordance with point 21 of the Decision I/7 on Review of Compliance.

We hold the compliance of the communicant in this part as unsupported and completely untrue under the paragraph 19 and 21 of the Decision I/7 on Review of Compliance.

III.
Final statements of SR

1. SR proceeded in accordance with the Aarhus Convention and the Art. 8 of the Aarhus Convention was not violated in the case concerned, since both under the legislative rules and also in the legislative process relating to that draft act concerned
   a) the time-frames sufficient for effective participation should were fixed, as interdepartmental discussion on draft act concerned lasted 15 working days (from 10 May to 30 May 2013) in accordance with legislative rules,
   b) the draft act concerned was published and made publicly available from 10 May 2013 on the portal,
   c) the public was given an opportunity to comment, directly and through representative consultative bodies, as the communicant could apply and applied public comments,
   d) the results of public participation were taken into account as far as possible, as the submitter conducted with the public representative the contradictory negotiation on 10 June 2013 and accepted in whole or in part 13 of the 17 public comments what represents 74.5 % acceptation.

2. SR fulfills its obligation under Art. 9 par. 3 of the Aarhus Convention and ensures that members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment, as in the legal system of the Slovak Republic the public or public representative has the option to
   a) file a complaint under the Act no. 9/2010 Coll. on complaints,
   b) propose the issue of prosecutor's protest by Act no. 153/2001 Coll. the Prosecutor's Office,
   c) file a complaint under the Act no. 564/2001 Coll. The Public Defender of Rights (Ombudsman),
   d) bring an action on a court to review the legality of the process of state administration bodies under the Civil Procedure Code,
   e) file a complaint against the action of state administration by Act no. 38/1993 Coll. on the organization of the Constitutional Court.

3. On this basis, we hold that SR did not committed the violations, the communicant alleges, and that SR does not infringe any other provision of the Aarhus Convention.