

Colloquium 2006 : Case and Questionnaire

Your State is planning a new motorway. The project traffic routing:

- runs through the territories of several municipalities,
- passes by a residential area,
- continues across farmland,
- runs through a birds sanctuary in the sense of the EU – “Birds Directive” (Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds – Official journal L 103, 25/04/1979 P. 0001 - 0018)
- and ends in a nature protection area which is home to a significant number of endangered (Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora – Official Journal L 206, 22/07/1992 P. 0007 - 0050)

Moreover, there is an increased risk that the emissions of the projected motorway will exceed the limit values of the EU – “Ambient Air Directive” (Council Directive 1999/30/EC of 22 April 1999 relating to limit values for sulphur dioxide, nitrogen dioxide and oxides of nitrogen, particulate matter and lead in ambient air– Official Journal L 163, 29/06/1999 P. 0041 - 0060)

When the planning decision is made public the following plaintiffs decide to take legal action:

1. An inhabitant of the residential area who is afraid of unbearable traffic noise and air pollution.
2. One of the municipalities which has divergent projects plans for its territory.
3. The national environment agency, which is of the opinion that the motorway will seriously affect the environment.
4. A farmer who will lose parts of his farmland.
5. A national association for the protection of the environment, which is of the opinion that the motorway constitutes a serious threat to the environment in general and to the species listed by the “Habitats Directive” in particular.
6. An association for the protection of the environment of your neighbouring state which is afraid of transboundary pollution.

Questionnaire :

1) Administrative consent procedure :

Please give a short outline (no specific details) of the administrative consent procedure applying to project planning in your national legal order (procedural steps, time limits, competent authority, involvement of lobby groups and technical experts).

Answer: Act No. 127/1994 Coll. – on the environmental impact assessment lays down public involvement in the approval procedures of various projects that have an impact on the environment. Its essential purpose is a comprehensive impact assessment of planned buildings on the environment (i.e. it applies to motorway development) with the involvement of the relevant technical public and public at large.

This law is based on the compliance with the sequence of these steps:

1. The motorway investor shall prepare a draft preliminary environmental study, which includes the basic characteristics of the proposed activity, information on the current condition of the environment, data on the anticipated environmental impact of the motorway development and other particulars of the content. The investor shall prepare the draft preliminary environmental study at least in two different variants and, in addition, the investor must deal with another alternative that elaborates on the situation when the proposed activity would not be executed.
 - 1.1 When the plan complies with statutory requirements the Slovak Ministry for the Environment, which is the competent administrative body, shall send it to municipalities, on which the planned motorway would have an impact, and the competent state authorities for opinion. Each municipality concerned shall make the preliminary environmental study public in a manner that is usual in this municipality (public notice, Internet, local newspapers or TV broadcasting) and on this basis, the citizens may send the municipality their observations, alternative proposals and opinions.
2. In the next step, the Ministry defines the assessment scope of draft preliminary environmental study assessment in the same way. The Ministry shall determine what problems need to be further elaborated in detail, what impacts of the road need to be paid special attention, what variants of the motorway development preliminary environmental study need to be elaborated in more detail and within what time framework and it shall specify other requirements. Then, the Ministry shall distribute the elaborated written assessment scope to all municipalities concerned that shall again make them public in a manner usual in the municipality.
3. Then, a next step during which the proponent ensures the assessment of the draft preliminary environmental study by means of the environmental impact statement,

follows. The purpose of the environmental impact statement is to analyse the anticipated impacts of motorway development on the individual components of the environment and to propose measures for minimising these impacts. The annex to the law includes detailed instructions for the drafting of the environmental impact statement.

1.1 After completing the environmental impact statement, the Ministry shall serve it on authorities and concerned municipalities while the municipality concerned shall make technical arrangements for a discussion of the environmental impact statement during meetings with the citizens. Citizens and municipalities may send written opinions to the report in advance.

1.1 At the same time, the investor as the proponent of the preliminary environmental study must ensure the drafting of an expert review that will assess the completeness and accuracy of the materials drafted so far, observations presented by the public and the process as a whole.

4. After drafting the expert review and the discussion of the environmental impact statement, the Ministry shall draft a final record. The final record shall include a recommendation or rejection of the motorway development, and it shall identify the most appropriate variant for the development and determine the conditions for its implementation. The final report shall be again made public in a manner usual in the municipality.
5. The final report is a necessary supporting material for the decision-making in planning permission procedure concerning the location of a motorway. The building authority permitting the process of development must consider this final report and reflect it in its decision-making. The refusal or acceptance of the final report must be explained in the reasoning of the project planning decision.

2) **Public involvement :**

- a) Is there any public involvement and/or hearing of individually affected parties during the administrative consent procedure?

Answer: Yes, public involvement is ensured.

- b)

Answer: Public involvement is ensured during all above stages of the procedure.

Act No. 127/1994 Coll. on environmental impact assessment constantly emphasises the involvement of public at large and expert public in the assessment process by effective informing at every stage of the process. After initial uncertainty concerning the interpretation of the concept of “informing in a manner usual in the municipality” the Supreme Court of the Slovak Republic, considering the relevant provisions of community law, ruled that all means the municipality commonly uses to inform the

public in other cases shall be used in informing the public and shall include mainly local radio, local newspapers or local cable TV, the website of the municipality together with organising thematic and sufficiently open exhibitions of plans and models of the proposed structure.

- c) Do affected parties lose their rights to challenge the planning decision before the courts if they do not make use of this form of public involvement?

Answer: In Slovakia it is not required that in its action against a decision taken by an administrative body a party has to prove using the same challenges in administrative proceedings.

3. **Judicial process:**

Answer: As the case study focused exclusively on the “project planning decision” type, all following answers will only concern judicial review of project planning decisions.

Pre-trial proceedings: The Civil Procedure Code does not allow the courts that carry out judicial review of decisions by administrative bodies, which also include the above project planning decisions, to perform any activities prior to opening court proceedings (Section 246c CPC together with Article 2 paragraph 2 of the Constitution of the Slovak Republic). In this case, court proceedings commence with filing the action. This means that the parties may not request trial court to perform any conciliation, to order interlocutory injunctions or to secure evidence. Therefore, the competent court must reject all motions concerning the performance of any pre-trial activities and it may only give a positive response to an action from all motions when all particulars (time limits, exhausted remedies etc.) required for its filing are complied with.

Time-limits: One of the requirements for filing an action against a decision made by an administrative body is its early service. In this case, the Civil Procedure Code requires that the plaintiff files the action not later than two months from the service of the decision made by the appeal administrative body. The decision becomes final upon its service. Though in some cases the Civil Procedure Code allows waiving default of time limit, in this particular case such waiver is explicitly excluded.

On the other hand, the Civil Procedure Code also envisages the occurrence of a procedural situation where the administrative body could have failed to duly identify the group of parties to administrative proceedings, in which case the one claiming to be treated as a party to the proceedings should have the right to file a motion for project planning decision review. Firstly, the court shall verify the correctness of this statement. When this assertion is legitimate and the term of three years has not lapsed since the issue

of the challenged project planning decision that was not served on the plaintiff the court shall order the administrative body to serve the administrative decision on this party under the threat of imposing a pecuniary sanction and it shall postpone its enforceability as the circumstances may be. The administrative body shall be bound by this court opinion.

After this service, the above mentioned 2 months time limit starts to lapse.

Competent courts: In the Slovak Republic, administrative justice is administered by specialised judges who act as single judges or panels at regional courts or panels at the Supreme Court of the Slovak Republic. In case the party is dissatisfied with the final decision issued after all remedies have been exhausted and at the same time he/she has the feeling that this decision failed to remove the intervention in his/her fundamental rights and freedoms guaranteed by the Constitution of the Slovak Republic, then this party may file a complaint with the Constitutional Court that also becomes a competent court in the proceedings concerning the project planning decision on the basis of this complaint.

Appeal: An appeal against trial court decision in the case of project planning decisions is always admissible when the trial court rejected the action. If the regional court cancelled the challenged project planning decision and returned the case for further proceedings to the administrative body then an appeal is admissible only when the project planning decision was cancelled on grounds of

- a wrong decision of the administrative body as to the law,
- established facts of the case contradicting the content of the file.

The appeal is subject to a court fee and it must always include grounds of appeal presenting party's view explaining where he/she considers the court decision or the previous court procedure to be wrong. In the case of project planning decision, the Slovak law limits grounds for appeal only to lodging the objection that a party to the proceedings should not have been a party at all, that a party had no procedural capacity and was not duly represented, obstruction to *res iudicatae* or that proceedings have already been opened in the same matter, to an unfair court trial, an objection to decision-making by an excluded judge or single judge, objection to wrong legal assessment of the matter or incorrect establishing of the facts of the case. The appeal must be filed not later than 15 days from the date of serving the trial court decision on.

No other remedy is admissible against the decision of the Supreme Court of the Slovak Republic concerning the appeal issued in the case of project planning decisions where the Court acted as an appeal court as this decision is a final decision.

This is the above described situation when remedies are exhausted and when it is possible to file a complaint with the Constitutional Court reasoning that e.g. party's right to a fair court trial was harmed by the procedure of administrative bodies or courts (for

instance these complaints often give as reasoning the arguments that the party or his/her legal representative were not summoned to the trial duly and in time, could not study the position of the counter-party thoroughly, was not exempted from court fees or was not given a legal representative free of charge).

Interlocutory injunctions: In administrative justice the only possibility existing is postponing the enforcement of the project planning decisions because the court proceedings opened on the basis of the action reviews final decision and opening of the court review of the final project planning decisions does not effect the non-enforceability of the decision (in our case the commencement of intended development work). Other interlocutory injunctions are inadmissible in administrative justice. Upon party's request, the presiding judge may rule postponement of project planning decisions enforcement if the immediate enforcement of the challenged decision could cause serious detriment. The party must always prove his/her statement that there is a threat of a serious detriment, or that this detriment has already occurred and continues. If the presiding judge does not satisfy the request, he/she shall inform the party concerned.

4. Standing :

4.1. Do all of the above –listed plaintiffs have standing before your national courts?

Answer: Presence before court is regulated in the Slovak Civil Procedure Code in favour of those individuals who have reasons to claim that as proper or omitted parties to the administrative procedure they would be harmed by the project planning decision and the procedure by the administrative bodies in their rights. The substance of reviewing the eligibility of a party to the proceedings is the existence of a concrete right, its harm caused by issuing the project planning decision and also what right is in favour of the plaintiff. In case of failure to prove these three basic facts, it is a situation when the action was filed by an unauthorised person and the trial court must discontinue court proceedings. Therefore, it is always necessary to identify whether the relevant person could suffer harm to his/her rights caused by the concerned decision within the meaning of Section 250 paragraph 2 of the CPC.

- An inhabitant of the residential area – in this case the inhabitant of a residential area is a natural person - shows his/her concern of noise generated by road traffic and further unacceptable air pollution linked with this transport.

1. In the meaning of Section 34 paragraph 2 of Act No. 50/1976 Coll. on territorial planning and building order, parties to the planning permission procedure concerning the permission for motorway development shall also include persons whose ownership or other rights to the plots or structures as well as neighbouring plots and structures, including flats, can be directly affected by the project planning decision. In this case it is the assumption of excessive noise and air

pollution (so-called “undesired emissions”) “nuisance” of these people both of which are prohibited in Section 127 paragraph 1 of the Civil Code, and, at the same time, Section 13n of Act No. 272/1994 Coll. on the protection of people’s health stipulates that when designing structures the risk of noise and vibration exposure of people living in residential zones must be reduced to the lowest achievable level taking into account technical progress and availability of measures for reducing noise and vibrations.

2.

3. Equally, Act No. 478/2002 Coll. on air protection together with the implementing Regulation No. 705/2002 Coll. include motorways among stationary sources of air pollution and therefore in their design consideration must be given (Section 8 paragraph 1 subparagraph a/ point 1 of Act No. 245/2003 Coll. on integrated air pollution prevention and control) to ensuring that their operation will not exceed the defined emission quotas (Section 4 paragraph 6 Act No. 478/2002 Coll.), because the case study clearly shows that there is an evident risk of exceeding limit values. This means that there is sufficient reason to conclude that an inhabitant of the residential zone could be affected by the issuance of the project planning decision in his/her concrete rights guaranteed by a separate legal provision and thus, he/she shall be a party to the proceedings.

- One of the municipalities – in this case it is one of the municipalities affected by the construction of the motorway that has a different land use plan elaborated for its locality.
 1. In the meaning of Section 34 paragraph 1 of Act No. 50/1976 Coll. on territorial planning and building order, a municipality, provided it is not the building authority competent for planning permission procedure, is a party to the planning permission procedure concerning the permission for motorway development.
 2. This also means that there is sufficient reason to conclude that a municipality could be affected by the issuance of the project planning decision in its concrete rights guaranteed by a separate legal provision and thus, it shall be a party to the proceedings.
- The national environment agency – in this case the state authority for nature and landscape protection (Section 64 of Act No. 543/2002 Coll. on nature and landscape protection) - objects that the project planning decisions interferes with the environment in a serious manner.
 1. In the meaning of Section 9 paragraph 1 subparagraph b) of Act No. 543/2002 Coll. on nature and landscape protection, the nature protection authority is always a concerned body in the planning permission procedure concerning the issuance of a project planning decision. The nature protection body exercises its authority by means of issuing a position to the activity (Section 9 paragraph 2 of the quoted

act), and therefore it becomes an involved party with relevant rights in the planning permission procedure.

2. Based on the above facts it is also reasonable to conclude that by not considering the position of the nature protection body the project planning decision could suffer a serious procedural defect, and the court must consider the nature protection body a party.
- A farmer – in this case it is a natural person who, being directly affected by the motorway development, does not agree with the loss of his/her plot.
 1. Again, in the meaning of Section 34 paragraph 2 of Act No. 50/1976 Coll. on territorial planning and building order, parties to the planning permission procedure concerning the permission for motorway development shall also include persons whose ownership or other rights to the plots or structures as well as neighbouring plots and structures, including flats, can be directly affected by the project planning decision.
 2. In this case, it is a clear interference with the ownership of a natural person who does not agree with such intervention taking the concrete form of expropriation proceedings.
 3. The above means that the farmer, being a person affected by the issuance of the project planning decision in his/her concrete right guaranteed by the Constitution of the Slovak Republic, shall be a party to the proceedings.
 - A national association for the protection of the environment – in this case a national environmental civic association makes a general objection that the motorway development is a threat to the environment and makes a concrete reference to protected species listed in the Habitats Directive.
 1. In the meaning of Section 34 paragraph 1 of Act No. 50/1976 Coll. on territorial planning and building order, a party to the planning permission procedure concerning the permission for motorway development shall also mean persons enjoying this position e.g. on the basis of Section 54 paragraph 18 of Act No. 543/2002 Coll. on nature and landscape protection and/or Section 9 paragraph 4 of Act No. 127/1994 Coll. on environmental impact assessment. In both cases, it is a civic association established under Act No. 83/1990 Coll. on association of citizens, who made their objective the protection of the environment or one of its components under their charter. In some legal provisions the requirement for a larger membership (for instance more than 150 members) or a time aspect (the charter or their amendments are valid at least a year) is added.
 2. This allows concluding that a national association for the protection of the environment shall be a party by law.

4.2. If not, which are the reasons for their exclusion?

- A foreign association for the protection of the environment – in this case a foreign association for the protection of the environment is concerned of cross-border air pollution because of the existence of a motorway.
 1. Such a foreign association for the protection of the environment shall have no right to become a party to the administrative procedure or court proceedings. As already stated the Slovak legal order emphasises the “Slovak origin” of the association for the protection of the environment directly or indirectly, in particular, by referring to Slovak Act No. 83/1990 Coll. on association of citizens.
 2. In the meaning of Section 11 paragraph 1 subparagraph n) of Act No. 245/2003 Coll. on integrated prevention and control of pollution of the environment, a person operating or planning to operate a structure or facility with a negative impact on the environment must file an application in which he/she must mark *inter alia* the body of a foreign state provided the new operation or a significant change in the activity of the existing operation has or can have a significantly negative cross-border impact on the environment of this other state. This means that this cross-border foreign body represents the interests of a foreign country including the individual interests of its citizens and civic associations.
 3. Therefore, there is no reason that a foreign association for the protection of the environment becomes a party to the proceedings.
 4. Here, it is necessary to emphasise the fact that at the time when materials for answering the questions of the questionnaire were collected the authors had no information as to the accession of the Slovak Republic to the Aarhus Convention (Convention on access to information, public participation in decision-making and access to justice in environmental matters).
 5. In case this foreign association for the protection of the environment would insist on participating in the court proceedings and its arguments would mainly be based on relevant legal acts of the European Union, the court would subsequently have to deal with all aspects resulting from it including the consideration of the possibility to refer to the European Court of Justice for preliminary ruling.

5. Scope of claims:

Are the above-listed plaintiffs only allowed to claim infringements of their individual rights (e.g. illegal expropriation of farmland, pollution of their private property) or may they claim infringements of public interests (e.g. adverse effects on the environment) or the unlawfulness of the planning decision in general (e.g. because of procedural deficiencies) as well?

Answer : The Civil Procedure Code does not allow almost any individual to file an action in public interest (*actio popularis*) and this power is vested in the Prosecution of the Slovak Republic through Section 250 paragraph 6.

The status of civic associations having the main and/or only mission the protection of nature and landscape for a period of at least one year according to their charter (Section 54 paragraph 18 of Act No. 543/2002 Coll. on nature and landscape protection, and/or Section 10 paragraph 3 subparagraph a/ of Act No. 245/2003 Coll. on integrated environmental pollution prevention and control) is a certain exception to this rule. Act No. 245/2003 Coll. also grants a special status to interest associations of legal entities that associate entrepreneurs of an industrial sector or a kind of operations existing at least one year in Section 10 paragraph 3 subparagraph b) because these associations have also a right to participate in planning permission procedure concerning permission for motorway location. Such legal situation shifts the procedural status of given associations from the position of the protection of their subjective rights to the position of the protector of the rights of the public *sui generis*, i.e. they support public interest.

Another exception results from the special status of the Prosecution of the Slovak Republic and of the Public Defender of Rights (the Ombudsman).

The Prosecution of the Slovak Republic has the status of a public administration body, and under Section 3 paragraph 2 of Act No. 153/2001 Coll. on the prosecution office it has the duty to act in public interest to prevent, identify and remove any breach of law, to restore infringed rights and to conclude responsibility for their violation. Under Section 35 paragraph 1 subparagraph b) of the CPC and in cases when prosecutor's protest was not satisfied, the Prosecution of the Slovak Republic may file an action requesting the review of the lawfulness of decisions made by administrative bodies within this generally defined power. In doing so, it considers the proposals or initiatives by individuals. This means that it may also step in administrative as well as court proceedings in case of project planning decisions.

In the meaning of Section 19 of Act No. 564/2001 Coll. on the public defender of rights, he/she (the ombudsman) has the right to monitor administrative proceedings (i.e. he/she may look in the files, ask civil servants oral or written questions or directly notify the concerned or superior administrative body of identified defects in the proceedings). When the administrative body refuses to respond to ombudsman's initiatives then the ombudsman may address the Government of the Slovak Republic directly with a request for remedy. However, he/she is not a party to the proceedings.

The consequence for the Slovak law is that the group of plaintiffs 1 to 6 proposed in the case study is internally broken down into:

- participants 1 to 4, who must claim the protection of their individual rights in the action,

- then there is a plaintiff given under No. 5, where an action in public interest is also admissible, and
- finally, it is also necessary to mention the plaintiff under No. 6, whose status of a party to the court proceedings is, to say the least, doubtful.

6. **Scope of judicial review :**

Do your courts review the lawfulness of a planning decision in every procedural and substantive respect or is the scope of judicial review restricted (e.g. to procedural aspects or clear and serious infringements of national or Community law)?

Answer : Causes of action (i.e. causes given by the plaintiff in his/her action on grounds of which he/she says why in his/her view the project planning decision or the adoption process is unlawful) define the limits of judicial review in an unchangeable manner. In other words, the plaintiff cannot change these causes for action or adjust them after the lapse of the time limit, and, on the other hand, the court must not „investigate“ other causes for action even when it clearly perceives their absence. This means that a Slovak court only carries out a review of every group of defects or deviations identified by the plaintiff and never reviews all of them.

The description and selection of causes for action in cases of challenging a planning decision and in other cases of actions (exceptions refer mainly to social, health care, asylum and unemployment matters) is mandatory carried out by the legal representative of the plaintiff or his/her staff member with a university level legal education. The description of the cause for action consists in stating the facts indicating incorrect, incomplete or otherwise wrongly established facts of the case by the administrative body and subsequent/or wrong legal assessment of the case in question.

Further, the plaintiff must not limit himself/herself to the listing of defects linked with establishing the facts of the case but he/she is required to give a brief and clear legal identification (sometimes an indication is enough) as to which provision of a procedural piece of legislation was allegedly violated by the procedure of the administrative body and/or which substantive right of the party was infringed. A mere statement of the plaintiff that the issuance of the planning decision violated a concrete provision of a piece of legislation identified by the plaintiff without a description of resulting detrimental consequences for the plaintiff cannot be considered a cause for action.

On the other hand, the Slovak court must always examine all aspects of administrative procedure “ex officio” to determine whether

- during these proceedings no constitutional rights and freedoms of a party to the administrative proceedings were not violated (as to the scope of protected rights except certain exemptions, mainly linguistic differences or exceptions linked

with the service of court documents, while it is completely irrelevant whether it is a domestic or foreign party), and

- in case of Euro-citizens or the rights resulting from the *acquis communautaire* conditions for referring a preliminary ruling request to the European Court of Justice are met.

7. EU environmental law – Which decision will your court take, if:

7.1. the environmental impact assessment prescribed by Community law has not or not duly been carried out in connection with the project in question?

Answer: After establishing, that the administrative body failed to comply with the procedures of environmental impact assessment of certain projects laid down in Act No. 127/1994 Coll. – the Environmental Impact Assessment Act partially or fully the court must cancel the project planning decision and return the case for new proceedings to the administrative body. The Supreme Court of the Slovak Republic has already ruled in this manner when reviewing a decision concerning the development of one section of a Slovak motorway.

However, in case a party would indicate a wrong transposition of the text of the relevant Directive into the Slovak legal order in a credible manner and, on this basis, he/she would directly refer to the more favourable legislation of the Directive then the Slovak court would either have to apply this Community legislation directly in the court proceedings (the case of a clear and direct application of an EU Directive provision) or to interrupt the proceedings on grounds of this situation (the case of a vague provision of an EU Directive in relation to its direct applicability or interpretation of a disputable content) and to refer a preliminary ruling to the European Court of Justice.

7.2.

Answer: The Slovak legal order, namely Section 33 Act No. 50/1976 Coll. on territorial planning and building order, authorises the nature protection body to issue a decision on the special area of conservation under Section 27 paragraph 10 of Act No. 543/2002 Coll. on nature and landscape protection. An important legal issue is already tackled at the stage of compiling the “National List” under Section 27 paragraph 5 of Act No. 543/2002 Coll. and therefore the building authority must not continue in the proceedings concerning motorway location and must suspend the building permit procedure according to Section 29 paragraph 1 of Act No. 71/1967 Coll. on administrative proceedings until the decision on the special area of conservation is issued.

7.3. the project adversely affects a natural habitat which has been transmitted to the Commission as being eligible as a special area of conservation but which has not yet

been placed on a Commission list ? (Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora – Official Journal L 206, 22/07/1992 P. 0007 - 0050)

Answer : The answer is similar to the one in case given under subparagraph b), however, with the difference that already at the stage of approving the “National List” at the European Commission according to the procedure under Section 27 paragraph 4 of Act No. 543/2002 Coll. an important legal issue is tackled and therefore the building authority must not continue in the proceedings concerning motorway location and must suspend the building permit procedure according to Section 29 paragraph 1 of Act No. 71/1967 Coll. on administrative proceedings until the decision on the special area of conservation is issued.

7.4. the project adversely affects a birds sanctuary in the sense of the EU – “Birds Directive” ? (Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds – Official journal L 103, 25/04/1979 P. 0001 - 0018)

Answer : The Slovak legal order, namely Section 3 paragraph 4 Act No. 71/1967 Coll. on administrative proceedings obliges the building authority to base its project planning decision on facts established in a reliable manner. In its decision-making, it must also consider decisions by other state authorities it is bound with under Section 40 paragraph 1 of Act No. 71/1967 Coll. If it omitted for any reason to consider the decision on establishing a birds sanctuary under Section 26 of Act No. 543/2002 Coll. on nature and landscape protection then it is highly probable that the court would cancel its project planning decision on grounds of serious procedural defects.

7.5. (Council Directive 1999/30/EC of 22 April 1999 relating to limit values for sulphur dioxide, nitrogen dioxide and oxides of nitrogen, particulate matter and lead in ambient air– Official Journal L 163, 29/06/1999 P. 0041 - 0060)

Answer: The Slovak legal order, namely Section 3 paragraph 4 Act No. 71/1967 Coll. on administrative proceedings obliges the building authority to base its project planning decision on facts established in a reliable manner. In its decision-making, it must also consider decisions by other state authorities it is bound with under Section 40 paragraph 1 of Act No. 71/1967 Coll. If the building authority knows that the project fails to meet the limits defined for air protection (these limits are strictly derived from the Ambient Air Directive), and despite this knowledge it would omit for any reason to consider this fact then it is highly probable that a Slovak court would cancel its project planning decision on grounds of serious procedural defects.

8. Consequences of procedural and substantive deficiencies of the planning decision:

8.1. Are there – in your national legal order – any procedural and/or substantive deficiencies, which regularly render a planning decision completely void?

Answer: It cannot be said that planning decisions are regularly rendered void in Slovakia. Today, they are still rare court decisions also due the fact that Slovakia is a new EU Member State. Therefore, it is not possible to answer this question. As already mentioned above, the Supreme Court of the Slovak Republic has so far issued a ruling that should give an exhaustive answer to the number of variants and their modifications in the process of environmental impact assessment, to the definition of the group of parties, public involvement and the manner in which to inform the public.

8.2. For which kinds of rulings does your national legal order provide in this case (e.g. cassation of the planning decision or declaratory ruling establishing its nullity)?

Answer: In principle, a Slovak court can issue three types of verdicts in this case study. More details are given in Part 3 Judicial process.

8.2.1. In the first possible verdict, the Slovak court shall confirm the challenged decision of the administrative body with a judgement and reject the action as unfounded.

8.2.2. In the second possible verdict, the Slovak court shall cancel the challenged decision of the administrative body with a judgement and return the case to it for further proceedings.

8.2.3. In the last possible verdict, the Slovak court shall discontinue the proceedings on grounds of established procedural defects (lapsed time limit for filing an action, action filed by an unauthorised person, impossibility of judicial review, filing of action by a person who is not legally represented by a lawyer, the plaintiff failed to remedy defects of the action ordered by the court in time, failure to pay the court fee of SKK 3,000I-- /approx EURO 80/ and/or the action was filed with an incompetent court) with a resolution.

8.3. For which kinds of rulings does your national legal order provide if the planning decision has only minor deficiencies / is not completely void (e.g. modification of the planning decision by imposing additional requirements such as noise barriers, speed limits or reforestation)?

Answer: The Slovak court has no possibility to issue a verdict of partial cancellation of the planning decision and/or to impose additional requirements to the verdict concerning the permission of motorway construction as indicated above. The cassation principle applied in the Slovak administrative justice prevents the application of this procedure. More details see in answer under 9.

8.4. Which rulings are likely to be given in the cases of the above – listed plaintiffs?

Answer: Each judge used to receive a complete action, evidence and to hear statements by parties personally present would have difficulties to answer this

question without sufficient assessment of the facts of the case. Nevertheless, we will try to present an assumption of the Slovak judges.

1. Provided the inhabitant proves his/her claims, he/she will be successful in proceedings before the Slovak court, the planning decision will be cancelled and the case will be returned for repeated proceedings to the building authority together with an attached legal opinion that the building authority must handle the threat of noise and air pollution exceeding the limit values.
2. . As seen from the enclosed figure a different and valid territorial plan of the municipality really exists and so the municipality will be successful in the proceedings before the Slovak court, the planning decision will be cancelled and the case returned to the building authority for repeated proceedings together with an attached legal opinion that it is necessary to address the existing valid territorial plan of the municipality which is a binding tool of the territorial planning documentation under Section 13 of act No. 50/1976 Coll.
3. Such dispute could hardly happen in the Slovak Republic because the nature protection body and the building authority permitting motorway development are one and the same institution.
4. The farmer would have to prove that there is no public interest in the motorway development crossing his/her plots, which seems completely unrealistic considering the described circumstances, and therefore we support the view that the Slovak court would reject his/her action.
5. Provided the civic association proves their claims, it will be successful in proceedings before the Slovak court, the planning decision will be cancelled and the case will be returned for repeated proceedings to the building authority together with an attached legal opinion that the building authority must handle the threat to species protected under the Slovak legal order.
6. As already indicated the court proceedings shall be discontinued and it is highly probable that the action will be rejected.

9. Remedy of deficiencies:

May procedural or substantive deficiencies of the planning decision be remedied during the judicial process? If yes, on which conditions?

Answer: When reviewing decisions made by administrative bodies, i.e. also project planning decisions, the Slovak courts must apply the procedural principle of cassation, i.e. they may only confirm the decision of the administrative body challenged with the action or cancel it and return the case to the administrative body for further proceedings. The third possibility, which would already characterise an

appellate court system, i.e. the possibility to cancel the decision and to have a court taking a decision instead of the administrative body, is inadmissible in the Slovak administrative justice system except decisions of civil law nature (in particular, imposing the obligation of paying). The reason for this situation is the division of the power in the state among the legislative, executive and judicial branches.

at Bratislava on 02 February 2006