

Z á p i s n i c a

z rokovania vládných delegácií Slovenskej republiky a Maďarskej republiky o implementácii rozsudku Medzinárodného súdneho dvora v Haagu vo veci Sústavy vodných diel Gabčíkovo - Nagymaros, konaného 15. decembra 2009 v Budapešti

1. Delegácia vlády Maďarskej republiky vedená splnomocnencom vlády Dr. Györgyom Erdeyom a delegácia vlády Slovenskej republiky vedená splnomocnencom vlády pre výstavbu a prevádzku Sústavy vodných diel Gabčíkovo - Nagymaros Ing. Gabrielom Jenčíkom uskutočnili 15. decembra 2009 v Budapešti rokovanie vo veci implementácie rozsudku Medzinárodného súdneho dvora v Haagu v spore o projekte Sústavy vodných diel Gabčíkovo-Nagymaros vyneseného 25. septembra 1997. Zoznam účastníkov rokovania obsahuje *Príloha č. 1*.
2. Rokovanie začalo úvodnými prejavmi vedúcich delegácií. Prejav Dr. Györgya Erdeya obsahuje *Príloha č. 2*, prejav Ing. Gabriela Jenčíka obsahuje *Príloha č. 3*.
3. Strany sa dohodli, že predlžujú platnosť Štatútu Riadiaceho výboru pre SEA do 30. apríla 2010.
4. Maďarská strana sa zaviazala, že do 23. decembra 2009 odovzdá slovenskej strane dokument nazvaný „Background paper for the Strategic Environmental Assessment of the Danube section between the Sap and Ipeľ confluence. Draft Environmental Report for discussion with the Slovak Party“. Maďarská strana sa ďalej zaviazala, že v januári 2010 odovzdá slovenskej strane definitívnu verziu Predbežnej štúdie realizovateľnosti (Preliminary Feasibility Study), ktorá bola odovzdaná na stretnutí spolupredsedom Riadiaceho výboru pre SEA 5. marca 2009 v Bratislave, a následne na to svoj návrh „Environmentálnej správy (Draft Environmental Report), týkajúcej sa rehabilitácie životného prostredia úseku Dunaja nad Sapom“.
5. Slovenská strana dnešného dňa odovzdala svoju odpoveď na Predbežnú štúdiu realizovateľnosti pod názvom „The standpoint of the Governmental Delegation of the Slovak Republic on the Hungarian document named „Preliminary Feasibility Study: The Rehabilitation of the Szigetköz Reach of the Danube“, ktorá je v *Prílohe č. 4* tejto zápisnice.
6. Slovenská strana sa zaviazala, že do dvoch týždňov od prevzatia všetkých dokumentov uvedených v bode č. 4 upresní časový harmonogram na zaujatie stanoviska k týmto dokumentom.

7. Maďarská strana deklarovala, že nemá záujem ďalej rokovať o slovenskom návrhu dohody z 19. decembra 2006. Strany sú pripravené rokovať o novom návrhu dohody slúžiacej na realizáciu rozsudku Medzinárodného súdneho dvora, ktorý využije poznatky získané pri realizácii spoločnej SEA.
8. Strany sa dohodli, že požiadajú svojich zástupcov pred Medzinárodným súdnym dvorom, aby najneskôr do 31. januára 2010 v spoločnom vyhlásení informovali Medzinárodný súdny dvor. V prípade uplynutia termínu bez výsledku, obe strany samy rozhodnú o informovaní Súdu.
9. Táto zápisnica je vyhotovená v slovenskom jazyku a v maďarskom jazyku a jej obe znenia majú rovnakú platnosť. Zápisnica obsahuje štyri prílohy, ktoré sú neoddeliteľnou súčasťou tejto zápisnice.

V Budapešti 15. decembra 2009.



Dr. György Erdey
vedúci vládnej delegácie
Maďarskej republiky



Ing. Gabriel Jenčík
vedúci vládnej delegácie
Slovenskej republiky

Členovia slovenskej a maďarskej vládnej delegácie na rokovaní súvisiacom s realizáciou rozsudku Medzinárodného súdneho dvora v Haagu vyneseného vo veci Sústavy vodných diel Gabčíkovo - Nagymaros, konanom 15. decembra 2009 v Budapešti

Zoznam členov maďarskej delegácie:

Dr. György Erdey, vedúci delegácie, Ministerstvo pre ochranu životného prostredia a vodné hospodárstvo MR,
Dr. György Kovács, tajomník medzirezortnej komisie pre Gabčíkovo-Nagymaros, Ministerstvo pre ochranu životného prostredia a vodné hospodárstvo MR
Dr. István Gerelyes, zástupca riaditeľa odboru, Ministerstvo zahraničných vecí MR
Judit Csóka, hlavný odborný radca, Ministerstvo národného rozvoja a hospodárstva
Gábor Kolossváry, hlavný odborný radca, Ministerstvo pôdohospodárstva a rozvoja vidieka
Dr. Gábor Bartus, expert pre otázky ekonomiky životného prostredia
Dr. Boldizsár Nagy, medzinárodnoprávny expert
Pál Benyo, tlmočník

Zoznam členov slovenskej delegácie

Ing. Gabriel Jenčík, vedúci delegácie, splnomocnenec vlády Slovenskej republiky pre výstavbu a prevádzku Sústavy vodných diel Gabčíkovo-Nagymaros
JUDr. Metod Špaček, vedúci slovenskej časti pracovnej skupiny pre právne otázky, Ministerstvo zahraničných vecí SR,
JUDr. Luděk Krajhanzl, právny expert
PhDr. Anna Majkutová, Úrad vlády Slovenskej republiky
Ing. Július Binder, expert Ministerstva životného prostredia SR
RNDr. Zoltán Hlavatý, PhD., expert, Konzultačná skupina Podzemná voda
RNDr. Dalibor Rodák, PhD., expert, Konzultačná skupina Podzemná voda
Ondrej Hoffman, tlmočník

Úvodné slovo na rokovaní vládnych delegácií 15.12.2009 v Budapešti

V mene slovenskej vládnej delegácie ďakujem za pozvanie do Budapešti na ďalšie rokovanie vládnych delegácií SR a MR o realizácii Rozsudku Medzinárodného súdneho dvora vo veci Sústavy vodných diel Gabčíkovo – Nagymaros.

V liste, v ktorom sme oznámili maďarskej strane, že prijímame pozvanie uskutočniť rokovanie vládnych delegácií, sme navrhli venovať sa nasledujúcim témam:

- Informácia strán o doterajšom priebehu SEA.
- Diskusia k ďalšiemu spoločnému procesu SEA a Dočasnej dohody o implementácii Rozsudku MSD.
- Riešenie termínov realizácie SEA.

Tieto témy považujeme za aktuálne vzhľadom na dnešný stav prác na SEA a rokovaní konaných v súvislosti s realizáciou rozsudku MSD.

Po dlhých vzájomných rokovaní sme sa dohodli, že spoločne vykonáme strategické environmentálne posudzovanie územia dotknutého Zmluvou 1977. Slovenská strana si bola vedomá toho, že na vypracovanie zmysluplného SEA bude potrebný pomerne dlhý čas a finančné výdavky na oboch stranách. To viedlo slovenskú stranu k tomu, že vypracovala a v decembri 2006 odovzdala návrh Dočasnej dohody. Predložením tejto dohody sledovala dva základné ciele:

- dočasne legalizovať súčasný prevádzkový stav a stav v plnení zmluvných záväzkov a
- taktiež vytvoriť časový priestor a právny rámec na realizáciu SEA.

Roky 2007 a 2008 sme venovali diskusiám o právnej podstate návrhu Dočasnej dohody a obsahovej náplni SEA a spôsobu jeho vykonania.

Vláda SR v dôsledku dopadov finančnej krízy prijala razantné opatrenia v rozpočtových výdavkoch, ktoré sa pochopiteľne prejavili aj vo finančných prostriedkoch pridelených na zabezpečovanie dohodnutého mechanizmu realizácie SEA. Z týchto dôvodov slovenská strana prechodne pozastavila práce na spoločnej SEA. Výdavkové škrty sa však nedotkli zmluvno-právnych záväzkov prijatých v Dohode z apríla 1995. Slovenská strana zároveň zabezpečovala v roku 2009 v plnom rozsahu plnenie záväzkov týkajúcich sa výmeny údajov z účelového monitorovania úseku Dunaja medzi Sapom a Budapešťou, ktoré sú základným podkladom pre realizáciu komplexnej spoločnej SEA.

O situácii v rokovaní o Dočasnej dohode a v prácach na SEA bola vláda podrobne informovaná a zaujala jednoznačné stanovisko. Rokovania sa musia prioritne zamerať na dosiahnutie stavu načrtnutého v Dočasnej dohode. Táto dohoda vytvorí základný predpoklad na dosiahnutie dohody o implementácii Rozsudku MSD, ako aj právny, časový a finančný rámec na dôsledné vykonanie spoločnej SEA.

Vláda k tomuto záveru dospela na základe pochopenia, že iba spoločne vykonaná komplexná SEA dokáže identifikovať technické riešenia, ktorými bude na úseku Dunaja medzi Bratislavou a Budapešťou implementovaný rozsudok Medzinárodného súdneho dvora vo veci Sústavy vodných diel Gabčíkovo – Nagymaros.

Takýto proces musí byť otvorený, bez kladenia predbežných podmienok, musí byť založený na odborných argumentoch a musí zohľadňovať vyváženým a integrovaným spôsobom všetky štyri identifikované základné ciele Zmluvy z roku 1977. Tento proces zároveň musí byť spoločný a nemal by presiahnuť rámec rokovaní o implementácii rozsudku, keďže toto je mandát oboch vládnych delegácií. V rámci procesu musia byť spoločne posúdené všetky varianty navrhnuté jednou zo strán. Žiadne z navrhnutých riešení by nemalo byť vylúčené z procesu posudzovania. Proces nie je záležitosťou niekoľkých mesiacov, ale môže trvať niekoľko rokov. Slovenská strana preto presadzuje pri vykonávaní SEA jasný integrovaný prístup, kde sa zohľadnia všetky aspekty a všetky ciele stanovené Zmluvou z roku 1977 na celom posudzovanom úseku Dunaja. Vykonanie SEA zameranej na čisto environmentálny aspekt a len na vybraný úsek nie je naplnením rozsudku MSD.

Na dnešnom rokovaní navrhujeme preto prerokovať postup SEA v kontexte Návrhu dohody z roku 2006, z 19. decembra 2006. Je nesporné, že konečnú podobu právneho rámca musia pripraviť právne skupiny na základe obsahu a cieľa, na ktorom sa dohodneme.

Toto je teda hlavný mandát slovenskej delegácie na tomto rokovaní. Neznamená to však, že je spochybnený spôsob, resp. mechanizmus vykonania SEA dohodnutý v štatúte riadiaceho výboru pre SEA a štatúte spoločného monitorovania spoločne prijatého 12.8.2008. Chceme ubezpečiť maďarskú stranu, že slovenská strana je pripravená venovať mimoriadnu pozornosť komplexnej a spoločnej SEA. Nevyhnutnou podmienkou pre to je dostatok monitorovaním získaných údajov. Konanie slovenskej strany, keď si splnila všetky záväzky vyplývajúce zo štatútu spoločného monitorovania - máme na mysli záväzky týkajúce sa výmeny údajov z účelového monitorovania úseku Dunaja medzi Sapom a Budapešťou - nasvedčuje, že si túto nevyhnutnosť uvedomuje.

Maďarská strana ako podklad pre vykonanie strategického environmentálneho posudzovania (SEA) vypracovala predbežnú štúdiu realizovateľnosti rehabilitácie szigetközského úseku Dunaja. Na dnešnom rokovaní Vám odovzdávam stanovisko slovenskej strany k predloženej štúdii, s tým, aby toto stanovisko bolo súčasťou záznamu z dnešného rokovania. Zo stanoviska vyplýva, že slovenská strana má zásadné pripomienky k procesnej i vecnej stránke štúdie. Ak nám zostane priestor, sme pripravení naše stanovisko objasniť, alebo sa mu môžeme venovať na osobitnom stretnutí.

Ďakujem za pozornosť.

The standpoint of the Governmental Delegation of the Slovak Republic on the Hungarian document named

“Preliminary Feasibility Study: The Rehabilitation of the Szigetköz Reach of the Danube”

Bratislava, December 14, 2009

Antecedents

The Governmental Delegation of the Slovak Republic and the Governmental Delegation of the Republic of Hungary negotiating on the implementation of the Judgement of the International Court of Justice in The Hague (hereinafter: ICJ) agreed, on their meeting held on March 7, 2007 in Bratislava, that they will conduct a joint Strategic Environmental Assessment (hereinafter: SEA). At the meeting held on November 6, 2007 in Bratislava the Governmental Delegations agreed on mutual exchange of existing data from monitoring of natural environment and on starting an environmental monitoring on the stretch between Sap and Budapest, both serving for preparation of background materials for the joint SEA. Furthermore they agreed on elaboration of a Statute for monitoring and a Statute of SEA Steering Committee. Both Statutes were accepted on the meeting of Governmental Delegations held on August 12, 2008 in Komárom.

The Governmental Delegations agreed that the goal of the joint SEA will be the evaluation of proposed human interventions in connection with the objectives of the 1977 Treaty and that the SEA will be conducted on the Danube stretch between Bratislava and Budapest. In this context the Hungarian Party on March 5, 2009 handed over to the Slovak Party the “Preliminary Feasibility Study: The Rehabilitation of the Szigetköz Reach of the Danube”, which represents a Hungarian input material for the joint SEA.

Introduction

The Slovak Party highly appreciates the work conducted by the Hungarian experts. The Slovak experts studied the abovementioned study carefully and thoroughly. This material contains the standpoint of the Slovak Party to the Hungarian Feasibility study. Our remarks and comments are divided into three parts: general comments, comments on the legal issues and comments on other environmental and technical aspects. The Slovak Party believes that these comments will be helpful in the next step towards the preparation of a joint environmental report elaborated under the joint SEA procedure.

General comments

According to the opinion of the Slovak experts an Introduction is missing from the “Preliminary feasibility Study: Rehabilitation of the Szigetköz reach of the Danube” (hereinafter: PFS), where the basic and partial goals, the methods and the logical building of the study would be defined. The Slovak party advocates the realisation of a comprehensive SEA to identify technical solutions, by which the Judgement of ICJ in the Gabčíkovo-Nagymaros case will be implemented on the whole Danube section between Bratislava and Budapest. This process must be open, without preconditions, must be based on technical and

scientific arguments, and must reflect in a balanced and integrated way all four principal objectives of the 1977 Treaty. This process must also be common and should not exceed the framework of negotiations on the implementation of the Judgment, since this is the mandate of both Governmental Delegations. The process must jointly consider all options proposed by either Party. None of the proposed solutions should be excluded from the assessment process.

Having in mind the Judgement of ICJ the Slovak Party is of the opinion that after the definition of environmental objectives the environmental compatibility of all forms of uses must be ensured, including the energy production, navigation and flood protection concerning the whole Danube stretch. From this point of view is the study unsatisfactory. **It is unacceptable and is in conflict to the intention of the SEA, to seek solutions for the upper section of the Danube only (Čunovo-Sap)**, but it is necessary to seek, to identify and jointly comprehensively assess optional solutions for the entire section of the Danube (Bratislava-Budapest). The solutions for the upper and lower section were proposed as hydraulically interconnected, which ensured the interconnection of biota and NATURA 2000 sites as well.

It should be realized that the SEA is not a purely environmental process. Environmental considerations for assessing of individual technical solutions is just one of several, and from our perspective this objective to be achieved for the implementation of the Judgment of ICJ has equal importance as the objectives of navigation, flood protection and electricity production, including the land development. While the Hungarian party prioritizes the environmental perspective, it seems to us that the most urgent in the present situation is the solving of flood protection. Since the incomplete system failed in fulfilling this goal on the whole affected Danube stretch, the issue of incomplete flood protection represents an increased risk.

The historical and general description of the landscape development is objective and in principle corresponds to the reality. Very positively we consider the effort for restoration of an anastomous river branch system. In general we agree also with the delineation of environmental objectives. However, some drawbacks we realized in definition of constraints. They are very general and uncertain.

Since 1995 the Slovak Party and the Hungarian Party realize Joint Monitoring according to the “Agreement between the Government of the Slovak Republic and the Government of the Republic of Hungary on certain temporary measures and discharges to the Danube and Mosoni branch of the Danube” signed on April 19, 1995. The Slovak side is of the opinion that the jointly collected data are accurate, correctly define the processes that occurred in the past and correctly define the changes caused by human activities in the past. Large deficiency of the PFS is **the lack of results jointly achieved in the frame of the Joint Monitoring**. Moreover the PFS is not using and does not rely on the scientific material mutually exchanged. The study relies only on general textbooks, general publications and the general “truth”.

The Slovak Party considers the range of stakeholders defined by the Hungarian side as too narrow in relation to objectives of comprehensive SEA. Views and opinions must be obtained not only from local residents, local governments, small and medium enterprises, but also from water management organizations, interest groups of carriers (navigation and road transport), a broader non-profit sector, national business chambers, energy companies, water supply companies and the like.

Comments on legal issues

The purpose of these comments is to evaluate and express an opinion on the legal aspects of the PFS elaborated by the Hungarian party in connection with the preparation of the joint so called SEA process. The review focuses on Part 5 of that material, entitled: *Legal obligations and interests of involved entities that need to be assessed*.

In relation to the legal basis the process should be primarily based on two basic documents, the 1977 Treaty and the Judgment of the ICJ from 1997. In addition to these documents is necessary to consider all rules relating in particular to environmental protection and to navigation, as well as documents and policies governing the renewable and waste-less energy exploitation, and urgently the needs to solve the flood protection have to be considered, especially at critical sections of the Danube.

The Slovak side advocates that the SEA process is to be conducted in legally unloaded relationships. We realize that the process is not a matter of months, but may take several years. It would be more than purposeful to have an agreement, temporarily settling certain legal relationships between parties by creation a temporary legal and technical status, which would allow both parties without any pressure of “illegality”, in which they occur, to achieve an objective assessment of the situation.

Ad 5.1 Legally binding obligations of parties:

This section of Chapter 5 is clearly trying to foist the idea that above the 1977 Treaty and the ICJ Judgment there is a set of environmental standards of International law and European law, which significantly modify and relativize the explicit obligations of the Treaty Parties arising from these documents. However, this obviously mistaken premise is not argued enough in the present material¹

Ad 5.1.1 Judgement

The Slovak Party points to the fact that the parties differed in negotiations so far in their opinions on the interpretation of primary sources, especially the ICJ Judgement. Contrary to this, no negotiation on the interpretation of the ICJ Judgment was conducted so far, as the Slovak Party proposed it. Such a discussion would help to clarify the basic international legal framework of negotiations.

In the section in which the opinion relates to the Judgement of the ICJ in The Hague, the material uncritically focuses only on the precisely purpose-selected passages from the descriptive part of the Judgement, where the Court deals with the standards of environmental law, and without having interpreting the whole context of the legal text, and especially in the optics of the decisive part of the Judgement.

In relation to the Judgement, the Hungarian material provides only a single task: “to identify the present standards of environmental law and other legal sectors, which must be applied in a process in which the Variant C will operate in a manner that satisfies the basic environmental

¹ No doubt, the accession of the negotiating Parties to the European Union has fundamentally affected the freedom of action of the Parties, setting constraints and imposing demands which derive neither from the Judgment nor from the 1977 Treaty establishing the Gabčíkovo-Nagymaros Barrage System or from bilateral or multilateral treaties (and customary international law) binding them. Sic!

interests, while it does not interrupt the electricity production and will also pursue other objectives of the 1977 Treaty (shipping, flood protection)”.

Hungarian material does not take into account that the Court in § 146 of the Judgement in relation to Variant C places into a harmonious balance the economic operation of the power production system and the satisfaction of the essential environmental concerns². Thus, the finding in this part of the Hungarian material, that at the satisfaction of the essential environmental concerns is sufficient if there is no interruption of electricity production, is clearly misleading. The court clearly states on economic ... electricity generation, so such a production that has economic significance.

It can be said that a harmonious balance has been achieved already in the 1995 Agreement, based on which the monitoring confirmed that an economically viable operation of the Gabčíkovo hydropower station satisfies the basic environmental concerns. The monitoring is all the time realised in accordance with current environmental standards.

The Court in § 141 states: “It is for the Parties themselves to find an agreed solution that takes account of the objectives of the Treaty, which must be pursued in a joint and integrated way, as well as the norms of international environmental law and the principles of the law of international watercourses.” The Parties must therefore seek for solutions, which will reach not only satisfactory environmental objectives on the whole affected section, but in unity and conformity an economic electricity production, improvements in navigation conditions envisaged in the Treaty and sufficient and permanent flood protection.

An important conclusion of the Court is “the Parties are under an obligation so to conduct themselves that the negotiations are meaningful, which will not be the case when either of them insists upon its own position without contemplating any modification of it.”

The Slovak side, therefore, advocated in SEA realization a clear integrated approach of all aspects and all objectives set by the Treaty 1977 across the whole considered section of the Danube. Implementation of the SEA focused on purely environmental aspect and only the selected Danube segment is not in conformity with the implementation of ICJ Judgment.

Ad 5.1.2 International law

Both parties repeatedly agreed on the fact that the basic legal framework for the implementation of the ICJ Judgement consists of two documents: the 1977 Treaty and the Judgement of ICJ itself, in particular its decisive part, i.e. Article 155. Of course, Parties cannot disregard the Court findings in justification of Judgement, but must bear in mind its non-binding and largely interpretative, thus supporting character.

In the other applicable sources of international law the Parties did not achieve compliance. However, no applicable norm of *ius cogens* was identified during negotiations, thus the international law does not impose barriers to the Parties mutually agree on such modalities of implementation of the Judgment, which they both deem appropriate.

For the ICJ was the most important fact that the “1977 Treaty is still in force and consequently governs the relationship between the Parties. That relationship is also

² ...Variant C could be made to function in such a way as to accommodate both the economic operation of the system of electricity generation and the satisfaction of essential environmental concerns.

determined by the rules of other relevant conventions to which the two States are party, by the rules of general international law and, in this particular case, by the rules of State responsibility; but it is governed, above all, by the applicable rules of 1977 Treaty as a *lex specialis*.” (§ 132 of the Judgement).

During the negotiations of the Working Group on legal issues the Parties failed to agree on a mutual list of other relevant conventions, which may affect the relationship between the two Parties. The minutes of the Working Group on legal issues from February 27, 2006, reflect that the Parties are in agreement that the relationship is subject to the following international conventions:

- Convention on Navigation on the Danube, Belgrade 1948
- European Agreement on main inland waterways of international importance, Geneva, 1996
- The Convention on Wetlands of International Importance especially as Waterfowl Habitat, Ramsar 1971
- Convention on Environmental Impact Assessment in a Transboundary Context, Espoo 1991
- Convention on the Protection and Use of Transboundary Watercourses and International Lakes, Helsinki 1992
- Convention on co-operation for the protection and sustainable use of the River Danube, Sofia 1994
- Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, Aarhus 1998
- Vienna Convention on the Law of Treaties, Vienna 1969

Slovak Party points to the fact that there is *prima facie* evident that in addition to these treaty documents the relationship between the two Parties is regulated by the Agreement between the Government of the Slovak Republic and the Government of the Republic of Hungary on certain temporary technical measures and discharges into the Danube and Mosoni branch of the Danube, Budapest 1995, and by the Agreement between the Government of the Czechoslovak Socialist Republic and the Government of the People Republic of Hungary adjusting water management issues in the boundary waters, Budapest 1976.

In the context of relevant international conventions it can be identified international treaties containing purely bilateral commitments and agreements containing commitments to third countries as well. As mentioned above, no commitments have the character of *ius cogens*, from which the States could not depart in a specific mutual agreement, or modify them. Regarding the high legal awareness of both countries, as well as the active influence of the European legislation, it can not be assumed that the Parties would adopt a solution in implementation of the ICJ Judgement, which would be inconsistent with obligations arising from these documents in relation to third countries.

Regarding the individual conventions the material in this section is limited only to a brief general description of the purpose and content of individual agreements (available on the internet), without mentioning their specific application to the subject of SEA, or exploring their true particular relevance. From that brief description of such individual conventions can only be obtained an encyclopaedic understanding of the convention content, but it can not be responsibly assessed the extent and impact of individual liabilities and their specific weight.

The three conventions given in the Hungarian material were not evaluated together, that they are applicable to the relationship between the two countries in the implementation of the Judgement of the International Court of Justice. This is the Convention on Biological Diversity, Rio de Janeiro in 1992, the Convention on the Conservation of European Wildlife and Natural Habitats, Bern 1979, and the European Landscape Convention, Florence 2000. While legal experts evaluated the first two, the third one came into force for the Hungary in 2008, so at the time of the assessment was ineffective for the Hungary. It is clear that all three conventions are valid both, in relation to the Slovakia and to the Hungary as well. All three conventions are implemented in Slovakia within the framework of national legislation and their implementation is regularly assessed. However, according to our view they do not represent such sources of international law, which should directly affect the behaviour of the Parties during realization of the SEA.

Ad 5.1.2.2 Navigation

In regard to the Belgrade Convention and the obligatory character of its recommendations it has to be mentioned. Neither the Belgrade Convention nor the recommendations of the Danube Commission have lost anything of its nature and its binding character. In this connection it is good to recall that under Art. 13, paragraph 1 of the Agreement between the Government of Czechoslovak Socialist Republic and the Government of People Republic of Hungary adjusting the water management issues on the boundary waters, the Parties are obliged to “maintain ... fairways on the Danube according to the recommendations of the Danube Commission”. Through these provisions of the Agreement Parties incorporated the provision of the recommendations of the Danube Commission, these provisions therefore have become binding for both Parties.

The legal obligations of Parties have to be assessed in the terms of these four documents obligatory for both Parties:

- The Belgrade Convention
- The Intergovernmental agreement on boundary waters
- The 1977 Treaty
- The European Agreement on main inland waterways of international importance (AGN)³

In this context it is important to recall that parameters of fairways differ for free flowing and impounded section of a river.

Ad 5.1.3 European law

In relation to the application of European law on the implementation of the Judgement Parties have exchanged extensive views, but nevertheless they differ in some views on the relevance and on the application method of specific standards of European law. The Hungarian side originates sometimes from non-critical concerns, bordering with a fear of standards of European law. In the implementation of commitments to act (obligation of conduct) refers to such areas of the European law that are not mandated for delegation negotiating on the implementation of ICJ Judgment. This should be taken into account in defining the scope, purpose and objective of the SEA. However, the Parties managed to agree that any proposed solution must comply with the European law. Any variant of solution, however, is not *a priori* in conflict with the European law. The European or international law does not impose barriers to the implementation of a particular technical solution.

³ See also the Article 7 of the Minutes of meeting of the Working Group on legal issues, held on February 27, 2006

The Environmental law in general (at the Community level and the State level as well) assumes ecological carrying capacity, i.e. pollution is allowed to some extent (which is settled in individual provisions on a rather vague principle of sustainable development). That reflects the fact that virtually every human activity represents a risk of pollution or environmental damage and is therefore to find viable limits in terms of the current state of the environment. In this context it should be noted that the relevant environmental regulations mostly does not prohibit the execution of certain plans or activities, but only limit them in the above meaning (in this sense it is to be understood the argument of the general principles of environmental protection at Community level in accordance with Art. 2 and 6 of the EC Treaty (hereinafter “TEC”); these principles are also made specific in Art. 174 to 176 TEC, but none of these principles is directly applicable without its specific reflection in the secondary legislation.

It is impossible to affirm in general that if a plan will have a negative impact on the environment than therefore it is not feasible. The Community rules on environmental protection itself allow situations when a plan is realized with obvious negative implications on certain components of the environment⁴. Along with the requirements for environmental protection it must be considered in this context the overriding public interest reasons, including those with social and economic nature⁵.

Ad 5.1.3.1 Water Framework Directive

The Slovak party cannot and does not want to question the importance and the content of obligations of the Water Framework Directive, nor its impact on the proceedings, or on the negotiation of the Parties in the realization of the proposed SEA. However, it is important to do not regard it as a panacea (general cure medicine) on all outstanding implementation issues under the Judgement. In this context, it is necessary to clearly define and distinguish the mandate of the government delegation, which is limited to discussions on the implementation of the Judgement and not the broader obligations of States to implement the Directive.

The Hungarian side is convinced that for the resolution of “the legal dispute” the consideration of the requirements of the WFD will be crucial. This statement is true only insofar as both countries are under the obligation of achieving the WFD objectives in terms settled, i.e. primarily to achieve the desired quality and quantity of surface and ground water.

In relation to the implementation of a specific intent it is not possible to argue using Water Framework Directive on water protection in the sense, that the intention is not feasible, because its implementation could adversely affect the current state of the affected waters. Implementation of a specific intent, and the achieving of the quality and quantity requirements are mutually linked, but they are not directly dependent on (the Directive does not prohibit the execution of a particular action, for example the construction of a waterworks). Moreover, in relation to the individual requirements of section 3 it is necessary to note that the Directive allows numerous exceptions to the achievement of the objectives – e.g. Art. 4, paragraph 4 (delays of terms), paragraph 5 (setting limits lenient than those contained in the Directive), and paragraph 6 (a temporary deterioration of water bodies status) of the WFD. An important provision in this respect is the Art. 4, paragraph 7, which contains reasons for failure to comply with the requirements of good ecological status (or good ecological potential), which cannot be regarded as an infringement.

⁴ e.g. Art. 6 of the Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora

⁵ paragraphs 12 and 13 of the preamble to the Directive 2000/60/EC

In section **5.1.4 International law as European law** should be considered only those international agreements that are part of the union legislation, which clearly affect the implementation, i.e. those already considered above applicable to the case.

Ad 5.2 Interests of stakeholders

Slovak party may only take note on the findings in the LIFE-III. It is a wholly unilateral action, which may have only limited impact on the joint assessment in the frame of the SEA. It covers interests and expectations of limited subjects on a limited area only.

In this connection it is necessary to draw attention to the incorrect statement that there is no agreement about water sharing between Slovakia and Hungary. It is, however the 1995 Agreement, which we consider as the key basis for water management on Gabčíkovo structures.

Comments on environmental and technical aspects

Navigation

The PFS only marginally deals with the Treaty objective to improve the navigation on the Danube stretch between Bratislava and Budapest. The discussed documentation contains variants of technical solutions omitting navigation issues at all. It should not be forgotten that according to the applicable present legislation in the Slovak republic and the Republic of Hungary the Danube old riverbed is still categorized as a fairway, so some of the suggested variants of technical solutions are not compatible with navigation improvement nor navigation conditions. Looking for a comprehensive solution requires the elaboration of an assessment incorporating not only environmental objectives as it does in Chapter 6 of PFS, but the navigation aspects as well.

In this context and in concordance with international conventions in the field of navigation, binding both the Slovak Republic and the Republic of Hungary, it is necessary to include into environmental objectives and criteria for the hydrodynamic and morphodynamic regime of the Szigetköz reach of Danube constrains regarding the navigation.

The Danube old riverbed between Čunovo and Sap has two functional ship locks at present, satisfying criteria for a fairway of the Class Vb. Any measures planned in the Danube old riverbed in the frame of technical solutions, including the future maintenance works, should meet these criteria.

Unacceptable is omitting of solutions for navigation improvement on the Danube section between Sap and Budapest.

Subsidiarity principle

The Slovak Party cannot agree with statements of the Hungarian Party concerning the principle of subsidiarity. It seems to us that the activity and proclamations of local government representatives are based on misusing or misinterpreting of this principle declared by the authorities of European Union. It must not be forgotten, that the significance of the Danube section between Bratislava and Budapest highly overlaps the significance on local, even on national level as well. Nevertheless, technical solutions and measures proposed have to take into account the interest of local governments and local stakeholders to the

maximal available extent. However, the general decision must remain on the level of the central authorities.

Particular aspects concerning environmental objectives

Regarding the historical development in the area the Slovak Party is of the opinion that concerning the gravel dredging it have to be necessary to set the dredged amounts on individual sections of the Danube more precisely. There are also inaccuracies in the PFS concerning the portion between dredging for commercial and navigational purposes.

The mapping of environmental processes was focused on hydrologic processes, which is logical, but the biological aspects, except the ichthyofauna, remained omitted or inadequately worked out. Not only is the analysis of historical background missing, but the evaluation of the actual situation as well. When someone would like to improve the system, knowing of the present situation is necessary and a concept of the future development has to be delineated. This entirely misses in case of the terrestrial and aquatic plants.

Another drawback of the presented study is the limited range of groups of organisms used for delineation of environmental objectives. The future of terrestrial ecosystems was discussed very marginally. In general, however, the Slovak Party can agree with most of the statements.

Concerning the monitoring and evaluation of available data the Slovak Party sees a large drawback in a fact that the Hungarian Party did not use or used in a very limited extent the results of the Joint monitoring and numerous results of Slovak and Hungarian experts engaged in this region.

The use of the term of habitats deterioration could be misleading. The evaluation is always dependent on the angle of view. For example the change of flow velocity could be evaluated positively from the ichthyology point of view, while the impact on zoo-benthos and water vegetation could be negative.

Concerning the future conduct of monitoring we are of that opinion, that it would be useful, perhaps at least for a limited period, to use the system of “wandering” monitoring (monitoring of various habitats) instead of the monitoring fixed to a specific site, as it is conducted at present.

Regarding the development of fish population the Slovak Party is of the opinion that thanks to the European legislation protecting waterfowls there is a high pressure of fish-eating birds., which are breeding excessively. The abundance of fish-eating birds is several times higher than in the past. Thus the technical solutions must create appropriate number of spawning, nursery and feeding habitats.

Environmental objectives and technical solutions

Balance between the environmental objectives and constraints arising from the energy production, flood prevention, navigation, silviculture and land use will be the hardest task. Moreover, conflict with the interests of landowners can be expected. At all variants of technical solutions the relation between environmental, societal and economic priorities has to be solved. The economic impacts of individual technical solutions on energy production have to be analysed foresightedly and in very detail.

Concerning the table of environmental objectives and constraints identified, it would be very helpful (environmental assessment it requires), if additional information on possible special (extreme) situations and their potential effects would be set as well. These special situations can be critical for individual parameters.

Regarding the dynamics, it seems that sharing of the discharge on a basis of constant portion would be the most appropriate. This could simulate the natural dynamics of discharge fluctuation in the whole system.

The assessment of the impact of groundwater level fluctuation on agricultural areas must be based on more exact results. Modelling of interaction between the groundwater level and soils has to incorporate data on soil layers thickness as well.

Very important in the area is the forest ecosystem, which plays a crucial role in the stability of the assessed region, namely the structure and spatial distribution of the tree species, mode of silviculture, the portion of natural and artificial reforestation, and the like. However, the PFS give to the forest ecosystem a limited attention only.

Feasibility of the restoration of former river ecosystem, which is supposed in the Chapter 6, has to be studied carefully. The human impacts, particularly the water management and the silviculture, in last centuries, especially in last five-six decades, were so significant that the changes could be irreversible, or partially reversible, but at unrealistic energetic, financial and socio-economic inputs. Moreover the definition of the so-called “original status” is more than problematic.

When variation to technical solutions will be proposed, bigger attention should also be paid to the climate change. This issue was mentioned only marginally, however the PFS properly points to the large uncertainties in the future trends of climate development. Nevertheless, this issue has to be studied carefully and the water management proposals must count in scientific predictions in this issue. The present scenarios count upon further continuous warming. This issue also has to be reflected in the so-called “reference status” suggested in the PFS. It might be impossible to reach certain desired objectives.

In the whole material the priorities of future uses of the assessed region are missing – flood protection, renaturalisation of natural environment, navigation, energy production, economic interests of local governments, land use, etc.

Water Framework Directive

Basic principles and objectives of the EU water policy are defined by the Water Framework Directive (hereinafter WFD). The main goal of WFD is to ensure the sustainable use of waters without their deterioration and to reach the good state or good potential of water. Basic principles of measures and revitalization must be defined with respect to environmental objectives. The delineation of environmental objectives has to be based on such measures, which are economically and technically substantiated and feasible, and which can ensure the appropriate conservation and sustainable use of landscape. The member states have to analyze not only if the good state can be reached by appropriate measures, but also if it is technically and economically feasible. This means that the Slovak Republic and the Republic of Hungary have to identify if the good state or good potential can be reached at all. In this context changes in the floodplain ecosystem caused by anthropogenic pollution – releasing (leaking)

of wastewater from point and diffuse sources – have to be added into irreversible changes in the Szigetköz region.

Thorough standpoints of Slovak experts will be incorporated into subsequent materials elaborated by the Slovak Party in the frame of the joint SEA.

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