In the matter of an arbitration
under the Rules of Arbitration of
the International Centre for
Settlement of Investment Disputes

Case No. ARB/14/14

ICC Hearing Centre
112, avenue Kléber
75016, Paris

Day 3                      Wednesday, 14th September 2016
Hearing on Jurisdiction and Liability

Before:

PROFESSOR PIERRE MAYER
PROFESSOR BRIGITTE STERN
PROFESSOR EMMANUEL GAILLARD

EUROGAS INC and BELMONT RESOURCES INC
Claimants
- v -

SLOVAK REPUBLIC
Respondent

MONA BURTON and MAUREEN WITT, of Holland & Hart LLP, appeared on behalf of EuroGas Inc.

HAMID GHARAVI, EMMANUEL FOY and ELLEN-LOUISE MOENS, of Derains & Gharavi International, appeared on behalf of Belmont Resources Inc.

STEPHEN ANWAY, DAVID ALEXANDER, ROSTISLAV PEKAR, RAÚL MAÑÓN, MARIA POLAKOVA and EVA CIBULKOVÁ, of Squire Patton Boggs, appeared on behalf of the Respondent.

Secretary to the Tribunal: LINDSAY GASTRELL
Assistant to the Tribunal: CÉLINE LACHMANN

Transcript produced by Trevor McGowan
Georgina Vaughn and Lisa Gulland
www.thecourtreporter.eu
ALSO APPEARING

FOR CLAIMANTS

WOLFGANG RAUBALL, EuroGas Inc
MICHAEL COOMBS, Mabey & Coombs LC
YUHUA DENG, Derains & Gharavi International
LAETICIA MORARD, Derains & Gharavi International
VOJTECH AGYAGOS, Belmont Resources Inc
GUY LEPAGE, La Française IC Fund
ALEX HILL, Wardell Armstrong International
DAVID E LETA, Snell & Wilmer LLP
BRAD W MERRILL, Snell & Wilmer LLP

FOR RESPONDENT

ANDREA HOLÍKOVA, Ministry of Finance of the Slovak Republic
RADOVAN HRONSKY, Ministry of Finance of the Slovak Republic
TOMÁŠ JUCHA, Ministry of Finance of the Slovak Republic
ANNETTE JARVIS, Dorsey & Whitney LLP
GREGORY B SPARKS, John T Boyd Company,
ABDUL SIRSHAR QURESHI, PricewaterhouseCoopers
KATERINA HALASEK DOSEDELOVA, PricewaterhouseCoopers
JOHN ANDERSON, Stikeman Elliot LLP

INTERPRETERS

WILL BEHRAN, Slovak-English interpreter
PAVOL SVEDA, Slovak-English interpreter
KATARINA TOMOVA, Slovak-English interpreter
## INDEX

<table>
<thead>
<tr>
<th>Name</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>DR ONDREJ ROZLOZNIK</td>
<td>1</td>
</tr>
<tr>
<td>Cross-examination by MR PEKAR</td>
<td>1</td>
</tr>
<tr>
<td>Tribunal questions</td>
<td>22</td>
</tr>
<tr>
<td>Re-direct examination by DR GHAHARI</td>
<td>56</td>
</tr>
<tr>
<td>MR PETER KÚKEĽCÍK (called)</td>
<td>63</td>
</tr>
<tr>
<td>Direct examination by MR ANWAY</td>
<td>64</td>
</tr>
<tr>
<td>Cross-examination by DR GHAHARI</td>
<td>65</td>
</tr>
<tr>
<td>Tribunal questions</td>
<td>153</td>
</tr>
<tr>
<td>Re-direct examination by MR ANWAY</td>
<td>165</td>
</tr>
<tr>
<td>MR PETER COREJ (called)</td>
<td>169</td>
</tr>
<tr>
<td>Direct examination by MR ANWAY</td>
<td>170</td>
</tr>
<tr>
<td>Cross-examination by DR GHAHARI</td>
<td>171</td>
</tr>
</tbody>
</table>

**NOTE:** Since at the Paris hearing a dispute occurred between the Parties regarding translation of certain mining terms (such as: banská činnosť, ďažba, dobývanie), in order to ensure that correct mining term used by a Slovak speaking witness is noted in the transcript, the Parties agreed to add after English version of the mining term used by an interpreter, a Slovak language version that was actually used by a witness in the following form: “In Slovak language version:...”. 
Tuesday, 14th September 2016

(9.04 am)

THE PRESIDENT: Good morning. We continue the cross-examination of Dr Rozloznik.

MR ANWAY: Mr Chairman, before we get started, I just wanted to alert the Tribunal that we have a new member on our side of the room: Mr John Anderson, our expert in British Columbia law.

THE PRESIDENT: Thank you.

So, Mr Pekar.

MR PEKAR: Thank you very much.

(9.05 am)

DR ONDREJ ROZLOZNIK (continued)

(Evidence interpreted)

Cross-examination by MR PEKAR (continued)

Q. Good morning, members of the Tribunal. Good morning, Mr Rozloznik. As all of you are aware, we have added some documents both in the binder that we distributed yesterday and there is even a small -- there is no translation? (Pause)

So, Mr Rozloznik, I was explaining that this morning we have added a few documents into the binder that you had before you yesterday, and there is also another, third binder, a small one. I believe that, just for convenience, we will start with the documents which are
in the third bundle, so that everybody can get rid of it
and then work with the second binder that we had
yesterday.

The document that we have added into the third
binder is tab 47, C-230. (Pause) This is the 2004 plan
that we foreshadowed to some extent in our discussion
yesterday.

So, please, Mr Rozloznik, go to the first page, and
on the first page you have the date when the plan was
prepared. The date is November 1st 2003; is that
correct?

A. It's correct.

Q. Thank you.

Now I would ask you to go to part 1.2.3 of this
document. It's called "Method of opening and
preparation, their segmentation, time and material
distribution of work"; correct?

A. Yes.

Q. And we remember that the structure in the plan from 1998
was quite similar. So here you are explaining what you
proposed to build in order to open the deposit. And in
the English translation it is at the beginning of the
next page, you state:

"On the basis of the height difference between the
valley and the deposit the opening from the Dlhá dolina
can be accomplished either by a winze or a pit.

"After assessing all general advantages for
development, a winze was chosen as the main mining
works. A vertical shaft for ventilation, an emergency
exit and transportation of packing material was shown to
be the best option for the mine outlet."

Sir, this actually is a copy/paste, sort of, from
the plan from 1998 because it does not mention the adit
that we discussed yesterday; is that correct?

A. It is correct, but yesterday we discussed the POPE is
elaborated for winze. The second part, using the adit,
was only an idea as a consequent consideration. This
project only concerns the winze, no adit, with the
approval of the Mining Office. This is only about
information about an adit. I was explaining that
yesterday.

Q. Thank you for the clarification. So under this plan,
and the authorisation of mining activities which was
issued on the basis of this plan, the only opening of
the deposit which was approved by the District Mining
Office was the winze; is that correct?

A. That is correct.

Q. I would also ask you for clarification of one point.
I seemed to understand yesterday that you were saying
that you were planning to build a decline or winze with
a smaller profile than in 1998. Is that correct?

A. Correct.

Q. The one thing which puzzles me is that if you look at
the specification of the winze or decline in this plan,
it states that the profile is 20.25 metres square, and
when I looked back at the plan from 1998 -- which is
tab 23 (C-168), if you want to check it -- I realised
that the profile is actually smaller in the 1998 plan
than here. Not by much, but I will give you the exact
number: I believe it is 18 metres square there.

Do you have any comment, sir?

A. Let me have a look at it first, how many square metres
it was in the previous one. However, we always were
saying that there was a rough and a light profile, there
are two different profiles. So if there is
a difference, if it is true there are 20.25 and
18 square metres, I see no problem in that difference,
because the profile of that corridor or tunnel is 4 by
4.5, as it also was according to the plan before.

Q. So just to clarify the profile, this winze or decline is
not smaller than the decline that you intended to build
under the 1998 plan?

A. I will explain it as follows. As I was explaining
yesterday, we were planning half-profiles, so 12 square
metres instead. That can be consequently agreed upon
with the Mining Office, that we are going to go ahead with a different profile and the District Mining Office would just approve it consequently. So it was a sequence of events within certain deadlines by which we wanted to lengthen the profile. That is why we initially used the data from the first POPE.

Q. Understood. Now, please, if you look still at the specification of the new decline or winze -- and it will be useful actually to keep open the specification in the 1998 plan -- another difference is that here the downgrade is steeper, because it's 12%, while in 1998 it was 10%?

A. It was not 10%, it was 12%.

Q. It's tab 23.

A. You are right, it was 10%. However, the design was done by Mr Haidecker. But later, by the contract for works, with Rima Muran was already 12% decline contracted.

Q. I also have the impression that the winze you were proposing to build in 2004 was somewhat shorter than the winze from 1998?

A. Yes, it was related with the profile. I explained it yesterday. Because by increasing the decline to 15%, the winze would end up being substantially shorter. All the data would then be submitted consequently for approval to the District Mining Office: steeper decline, smaller
profile and shorter distance of the winze.

Q. Now let's turn just a page in the English version and let's go to 1.2.3.2 in the new plan, the 2004 plan. There you describe additional verification work during winze cutting. Why was it needed, sir?

A. It's very important because when we were approaching the deposit by cutting, major tectonic disturbances were discovered. So through our cutting works, our drilling works, we wanted to find the precise locations of these tectonic locations and disturbances, what materials are they composed of, because that impacts the drilling work itself, being aware of which environment we are going to go into, so we can have a proper reinforcement for that. That is a commonplace with respect to mining activity.

Q. Then we go forward to section 1.2.3.3. This is where you describe what will or may follow after the opening of the winze, or rather after the completion of the winze I should say and the additional verification work; that's how you call it.

A. That is exactly the informative proposal for Mining Office, how we shall proceed further once we have completed our winze and approached the deposit. So we would notify them in advance that we shall be arranging for a zoning permit for locating the adit you can see in the consequent map in the appendix.

Q. Sir, if we look at the text of this section 1.2.3.3,
I will read from it. My understanding is that actually you are proposing two options. One option, which is called in the English translation "Alternative 1", is winze -- and the translation I suppose is supposed to be the adit -- and "Alternative 2" is still the old one, winze or decline; and I would call it a chimney, because that's the one thing I can visualise the easiest.

A. We were reminded of that by the Mining Office, that there is a stylistic mistake as alternative 1 and alternative 2. Mining Office had approved work only for alternative 1.

Q. Mr Rozloznik, I think that a while ago we were discussing what was approved in the authorisation which was issued on the basis of this plan, and you mentioned that it was only the winze or decline.

A. That is the alternative number 1. Adit is not supposed to be here; we have already clarified it with the Mining Office.

Q. So the adit was not supposed to be here. This is probably also because, as you state at the very beginning of this part, you presented this as the next steps or step in the opening work, so far without actual executive design documentation in alternative form. So this was not binding in any way; you did not submit the documentation necessary to have it approved, right?
A. Yes, correct. We never submitted it to neither the adit, nor the pit (shaft).

Q. Further down it says that:

"According to [you] Alternative 1 [with the adit] represents the only optimal solution for the problem-free economical mining of the deposit."

And then there is another sentence which I find interesting:

"The decision on implementation of one of the alternatives will be taken by the investor ..."

That's Rozmin, I take it:

"... after evaluation of the results of work from the implemented winze."

Could you please explain this sentence?

A. Of course. As long as we would be proposing later, submitting design documentation for adit, we would have to consult with the owners, because that would result in increasing investments. It's a 4.2-long excavation, which requires -- calls for increased funding. We have discussed this with the investors and they have agreed with that, and we have agreed that during drilling the winze, we will already begin submitting application for approval of the adit. So they have agreed that we can meanwhile prepare the documentation for approval.

Q. Okay. Sir, would you agree with me that you would not
have been able to commercially operate the mine until
you prepared the second opening or the second entrance
to the mine, either the chimney or the adit?
A. I'm not sure I understand exactly what you mean.
Q. Apologies, I am advised that there was incorrect
translation, so I will repeat my question.
Would you agree, sir, that you would have been able
to commercially operate the mine only after the second
entrance, second opening or second point of access to
the mine is prepared?
A. It is not precisely so, because by having -- gaining
access through the winze to the deposit, being able to
take the necessary multi-tonne large samples, that would
give us a certain image of the deposit much better than
laboratory tests, and I am convinced that the tests
would end up being positive. So that was already
background for making the overall alternative for opening of the
deposit more precise.
It is not a problem that if you -- as long as you
have arranged for zoning permit for the adit and have
everything approved, and then take the sampling from the
first alternative, from the laboratory multi-tonne
tests, would end up being negative, then you're going to
have to decide whether you're going to continue on the
deposit, whether the deposit has such positive value.
It's quite commonplace.

Q. Thank you for the explanation. But what I had in mind was commercial operation of the mine, and I believe that under Slovak legislation -- and we discussed that yesterday as well -- a mine can be operated only if it has two points of entrance, for safety reasons. Is that correct?

A. It is correct that you need two entries. We had a shaft, or we had designed in our design, and so if we were to come and gain access to the deposit through the winze, we would already be excavating exclusive mineral, and then by which time we would begin already implementing the chimney, which would end up being much shorter than the one 320 metres tall I mentioned to you. The one we were proposing only had 200 metres height. So technologically it was thoroughly verified by Mr Haidecker, who had much experience about these issues.

Q. But for the construction of the chimney, you would have needed to submit a new plan and obtain a new authorisation of mining activities; is that correct?

A. You may always submit an addendum or appendix to the POPE.

Q. But the chimney was not approved under the authorisation of mining activities issued in May 2004, was it?
A. It was not approved. However, as I say, you may always have submitted a request for additional approval, submitting additional documentation. When you locate the chimney somewhere in the forest, you again have to approach the forest administration to gain permit from them, you need to build access road to the chimney -- shaft.

However, it was not yet necessary to be involved in that work. That was sufficient to be left for later, when it would be necessary to resolve all the ownership relations.

Because design -- in theory we have had everything prepared already: hydrogeology, conditions, everything that was already prepared beforehand. So all you need to do is to de-conflict the conflict of interest.

Q. Okay. Let's go to part 1.4 of the document. I will ask a follow-up question. I will ask a question.

Mr Rozloznik, before going to that, could you please explain what you mean by "conflict of interest"?

A. "Conflict of interest": not really a conflict as such, but it's an encounter of interests rather than conflict. It means various organisations which are somehow related to land, or whatever else they need to approve, for you to be able to conduct any work, let's say in a forest. They need to approve it. Let's say it's an environmental agency, it's hydrogeology issues, there is forest land, it's forest owners. So it's a complex
of varied encounters of interests from varied areas which you need to beforehand, before you get authorisation and the approval of the Mining Office, which you need to also obtain permit from.

Q. You mentioned owners of land plots. Do the owners of land plots have a legal obligation to agree to what you were planning to do on their land plots?

A. Yes, they have to. Indeed, they have to. They have to give a positive answer.

Q. Do they have an obligation to do so?

A. Is it an obligation? If you do not have an approval from them, Mining Office will not approve it for you.

Q. There may be a translation issue.

Let's say I am the owner of a land plot that you need for your construction, you come and ask me for my approval, and for whatever reason I say no.

A. Then I have a problem and I have to address it.

Q. Now let's go to this part 1.4.

THE PRESIDENT: Is it really 1.4 or 1.2.4?

MR PEKAR: Thank you, Mr Chairman. Yes, it's 1.2.4. I was too quick.

The English translation again uses the word "Excavation", which is forbidden, but it comes from the Claimants. I will use it in Slovak then. It says "[Dobývacie] methods, information on their approval,
justification of use, special measures for introduction of new excavation methods".

Here you inform the mining authority that you will be using a method called "Mechanised underhand stoping by heading method". And then a little bit further down you specify the "Basic spatial demarcation of the excavation block". Do I understand correctly that the -- or I should have said "[dobývacie] block" -- that the dobývacie block is located deep under ground surface?

A. I will explain it to you, what it means, the (as heard in Slovak) dobývací block.

In order for you to be able to start excavating, you need to demarcate, by mining works, an area which is optimum, which contains more than 60% of talc, and that's where you do mining work. As proposed here, it is also graphically depicted here where you begin drilling and you demarcate the place -- that is the block -- that is limited by mining works, in the middle and underneath. That's where the part is which whoever is going to be excavating the deposit, that is the part that you are going to have to excavate out. And then yield is calculated according to individual blocks. So they know the volume and the tonnage, how much from each block they need to excavate out.
Q. And the block was located deep under the surface?
A. It was on the ground.
Q. And you needed the winze to get to it; correct?
A. Yes, of course. The initial design -- I was explaining yesterday, when the winze was classified as the main mining works, and we got to the top of the deposit, afterwards there needed to be a spiral bore drilled. After each 25 metres you would bore a horizontal work.

So that has had an impact on the excavation method, as described initially. It is commonplace in the world, and the Mining Office is familiar with these methods, and they have no objections against that. It's a commonplace method when mining (in Slovak language version: ťažiť).

You may even ask me later, except in cases -- or why we are proposing the baseline of all the adits which we are going to be reinforcing with a concrete mix.

Q. I will maybe shorten the discussion of this point. Did you ever start the dobývat in accordance with this plan?
A. Well, according to this plan, I do not know what precisely you mean under the term "dobývanie", because we were conducting mining activity.

Q. Sir at the beginning of your answer, I will read the answer (Pause). Sir, I will reformulate the question again.

I believe that at least in the response that you gave in the Slovak language, you said that in order to start dobývat, you needed to get to this dobývacie block. Is
that correct?

A. Yes, quite certainly. We need to first of all localise the specific area which needs to be mined (in Slovak language version: dobývaný).

Q. Yes. But physically you need to construct the winze to get to the block which is located deep under the surface; is this correct?

A. Well, it's not that deep underground; it is at the end of the winze. We will reach the block by the winze. We don't need to go any further. We simply approach the deposit. We take a technological sample, high-tonnage sample, according to the approved mining (in Slovak language version: dobývacia) method.

Q. What was the height difference between the entrance to the winze and the upper part of the deposit where you planned to get to?

A. I cannot give you the precise answer, but I think it can be found. It definitely is in the document. The difference in altitude, my estimate is about 200 metres.

Q. Did you ever get physically to those 200 metres down?

A. Well, the winze which we have started, obviously no, it only had 90 metres in length.

Q. Okay. Now I will ask you to go to the following tab, still in binder 3, it is tab 48. It does not have a C-number because it is a reprint of a table that we submitted on page 10 of our Rejoinder, which, Mr Rozloznik, is
a filing in this arbitration. I appreciate that you
have never seen the document, and I will not ask you any
questions about this document; I will just use it.

I represent to you, sir, that this is a list of
various, I would say, problems with the applications for
permits and otherwise that Rozmin was making throughout
its history. For example, in the third column of this
table we state the deficiencies of the requests which
were made. And very often -- actually always -- we have
a problem with incomplete documentation. Sometimes we
also have a problem with non-payment of an
administrative fee.

For the interest of time, obviously we will not be
discussing all of those. But I would now point you to
documents pertaining to the last line in this table,
which is actually the request for the authorisation for
mining activity which you filed on the basis of the plan
that we have just seen.

So in principle we should be done with binder 3 now,
so you may put it away, to make it easier for you on
your table. Please go to tab 44 of bundle 2.

DR GHARAVI: What's the purpose of that table of your
memorial that you showed?

MR PEKAR: I just showed it.

DR GHARAVI: You just showed it? You think that's
a cross-examination question, showing a page of your memorial to a technician?

MR PEKAR: This actually is the authorisation of specific mining activities that you got in May 2004, right?

A. That's correct.

PROFESSOR STERN: What's the exhibit number?


Now let's have a look at page 3. It starts with "Reasoning" in the English version, and at the very beginning it describes the procedural history of this request. So the first paragraph states that the -- there may be a translation issue, I am informed. I meant procedural history, procesné historie, of this proceeding. I will ask you a question.

So the first paragraph says that the request was filed on 8th November 2004; is that correct? Can you see that in the first paragraph?

A. If that is the case, that must be also the situation in reality.


Q. Then the second paragraph explains that the Mining Authority:

"... examined the requirements of the submission: completeness of the plan and documentation, solving of public interests ..."

That we mentioned:
"... protected according to special regulations and compliance with the principles of the mining technology during the securing of the rational use of the exclusive talc deposit, whereby it discovered, that the submission and prescribed documentation does not fulfil these requirements: ...

Then it goes on and it states under number A that:

"... together with the submission was not paid the administrative fee according to [whatever] item ..."

And that was 1,000 Slovak crowns; divided by 30, I think it is like €33. Is that correct?

A. Yes, that is correct. It was paid afterwards. I don't want to elaborate. We sent the official stamp by post and they claimed it never arrived. So we paid it in a different way. I'm not going to go into detail on that.

Q. You mentioned the official stamp. So the way you were supposed to do it -- would you agree with me, sir -- is that you were supposed to go to a post office, buy this official stamp, glue it on the submission and send it to the Mining Authority? Is that the most usual way how those small fees are handled?

A. Well, eventually we've paid. I'm not going to go into any detail on that. The way how we did it, it doesn't make any difference. We have paid the €33.
Q. But it was paid only later; correct?
A. Yes, perhaps several days or so.
Q. Then in point B there are some missing documents.
Then in point C there is an identification of problems with the plan. Problem number 1 is that the requirement of securing two entrances -- the one we discussed a while ago -- is specifically mentioned. Then under 2 there are some other, I would say, more technical problems mentioned there.
Is that correct? Did your plan have those deficiencies?
A. Well, I wouldn't say "deficiencies". We didn't know about these annexes. Nevertheless we made them, we submitted them and we sent it to the Mining Office. Everything was delivered to them as required.
Q. If we go down to the second paragraph after the list, it mentions that:
"The applicant by its submission, which was protocolled on the mining office on 11.03.2004 ... [amended] its preceding submission ... for the requested requisites."
So this is what you alluded to in your previous response, when you said that you provided all the information which was required by the Mining Office; is that correct?
A. Yes, that is correct. We have eventually provided documents.

Q. You can see here that the requirements which the Mining Office had were quite clear. So you had no doubt with respect to what you needed to supplement or not?

A. Yes, that was very clear. The second gentleman, Mr Palco, a project designer who was responsible for this, he prepared all the annexes and delivered them -- well, not him, but Rozmin delivered them.

Q. Two and a half months later you obtained this authorisation of mining activities; correct?

A. Well, yes, we received the final decision for the execution of the mining works and also we received the permit. (Pause)

Q. So, sir, would you agree with me that this authorisation was actually conditional?

A. I wouldn't agree with that. This was the final approval in order for us to carry out mining activities.

Q. Please go to page 2. It states:

"For the execution of the authorised mining activity are determined these special technical conditions: ..."

A. Yes.

Q. So it is your understanding that you had to comply with those conditions?

A. Yes, well, quite certainly this was my understanding. And we
have added them, respective experts who were authorised and who were tested in front of the Mining Office, eventually did it.

Q. Would you then agree with me that until these conditions were fulfilled, the authorisation was conditional, because obviously nobody could know whether you would or would not be able to fulfil those requirements?

DR GHARAVI: Aren't we moving to legal issues now? I think the gentleman answered everything he could.

MR PEKAR: Dr Gharavi, I have to repeat what I said yesterday. This gentleman was the responsible person for mining activities at Rozmin and it was his personal duty, under applicable Slovak legislation, to understand and apply Slovak mining legislation. I am not asking any questions of civil law, any other field of law; just mining law.

DR GHARAVI: But it implies legal questions, your question. You know that; that's why you're asking. Ask a factual question.

THE PRESIDENT: No, this is within the sphere of competence of the witness, I think.

DR GHARAVI: His competence is to answer whether the technical conditions have been met, have started, but not whether it is legally conditional.

THE PRESIDENT: He must have some knowledge of the legal
obligations when he submits a request for
an authorisation.

Go on, Mr Pekar.

MR PEKAR: Could you please answer? You don't have the
screen, so I will repeat my question to you.

So do you agree that until these conditions were
fulfilled, the authorisation was conditional, because
nobody could know whether Rozmin would or would not be
able to fulfil those requirements?

A. Well, I can answer only by my statement. For me the key
is a decision by the Mining Authority issuing a permit
to carry out mining activities. So we did comply with
all the requirements stipulated by the District Mining
Authority. This decision was issued; on the basis of
this decision we started our works. Everything else,
I cannot comment on that.

THE PRESIDENT: Sorry, I'm not sure about the translation.
For the "execution" of the authorised mining activity,
I don't know what is the Slovak word and in what sense
the word "execution" is used. Because it's an ambiguous
word in English: because these could be conditions precedent or
these could be the consequences of the granting of the
authorisation. So I am uncertain about that.

A. Well, it clearly says that, "The decision was made that
we permit mining activity". These are the very words.
MR PEKAR: Okay, I will go to something which may be easier.

Right after the list, you have the paragraph which says:

"By this decision are not affected rights and duties according to special regulations comprised in decisions and statements of other authorities of the state administration."

Can you see that? This is right after the numbered list.

A. The documentation which was prescribed by the Mining Act --

Q. Sorry, there is a list running from 1 to 6, and then there is a new paragraph, which states:

"By this decision are not affected rights and duties according to special regulations comprised in decisions and statements of other authorities of the state administration."

Can you see that?

A. I am reading what you are referring to. It's written the way it's written.

Q. What is your understanding of the meaning of this provision, sir?

A. I am unable to respond to that, simply.

Q. You don't know. Sir, I represent to you that it means that if there is another decision issued by another Slovak authority which prohibits mining activities, or
which imposes conditions on those mining activities,
then this authorisation issued by the District Mining
Office does not prevail over such other decision.

Did that refresh your memory, sir?

A. No decision of any other state authorities were received
by us.

Q. Sir, do you agree that the interpretation that I offered
to you is correct?

A. I'm not a lawyer, I am not able to respond to that.

Q. Okay. Let's go to page -- in the English version that
will be 7. I'm not sure what it is in the Slovak
version, but in the English it is at the very bottom of
the page. The paragraph states:

"Different conditions or measures arising from the
relevant legal regulations concerning water and
execution of activities in areas of hygienic protection
of the water supplies are in the competence of the Water
Authority."

Can you see that, sir?

A. Yes, I can see it. All particulars and approvals from
water authorities were obtained by us.

Q. Were there any conditions which restricted your ability
to start mining activities --

A. I no longer remember. But if there were, we would have
resolved them.
Q. We will come to that later. But I will show you a decision, which was applicable at the time, which actually prevented you from starting mining works until you finish and commission the water treatment facilities.

DR GHARAVI: Why don't you show him that document instead of talking? Why don't you show him the document?

MR PEKAR: I can show him the document if you wish.

DR GHARAVI: (Inaudible, no mic) [...] closing.

MR PEKAR: Absolutely not. And thank you for advising me how I should conduct my cross-examination.

DR GHARAVI: The gentleman, you are representing a legal decision without showing him it. He's not a lawyer, he doesn't have the decision. That's all I'm asking.

MR PEKAR: You will have a full opportunity to comment on it. I will now continue with my line.

THE PRESIDENT: But the remark is correct. You are not making an argument in front of the Tribunal; you are cross-examining the witness --

MR PEKAR: I will just foreshadow it. If we might go to tab 12 in binder number 1.

PROFESSOR STERN: Exhibit number?

MR PEKAR: It is R-57.

If you start from the end of the document, you have "Recorded by: [Mr] Baffi". And then I think it's the
"Rozmin has performed and performs works related to the completion of surface water management construction due to the limitation of performance of mining activity by Decision of Roznava District Authority, Environment Department no. ..."

And there's a number of the decision:

"... of 9 August 2002, which is conditional on putting temporary surface buildings into use."

A. Yes, I am aware of this. We have put the structures to use, and the condition was that the authorised person must be designated who will observe this. It was all arranged: it was Engineer Baklak. So all the conditions were met by us.

Q. But this is not what the minutes say, is it?

A. You would have to show me.

Q. I have shown you the paragraph. The paragraph says:

"Rozmin has performed and performs ..."

Still performs:

"... works related to the completion of surface water management construction ..."

So these minutes suggest that the work has not been finished yet. Do you agree with me?

A. Look, I have already explained this to you: that Rima Muran had not put to use a single surface
structure. It was Rozmin who was making all the
arrangements, getting all the final approvals, including
a bridge which I explained about yesterday. It was all
done by Rozmin. And also putting to use a water
treatment facility for the mined-out water. All was
arranged by us. It was all in accordance with what you
are saying.

Q. Was the water treatment plant, sir, the only
construction object that you needed to put into use in
accordance with this decision of 2002?

A. Certainly. I'm not sure whether it still pertained even
to some electrical lines. We were making all the
arrangements because we were purchasing high-voltage
line from Rima Muran, which was made accessible. But
later problems had occurred. We gave them a 1 million
crown deposit, because we wanted to purchase it for
4 million. They made it accessible, but then they have
withdrawn from the contract. And other structures,
everything worked as it was supposed to.

Q. Okay. I will refresh your memory, sir. Let's now find
this decision. I will ask you to go to document tab 37.
It is Exhibit C-259. And because the document is very
voluminous, there are some stickers there for easier
orientation.

This document is the contract for work that you
signed with Siderit, the company which was supposed to
build the winze. (Pause) I will represent to you this
is the agreement you signed with them.

This agreement also attaches in Annex no. 4 -- this
is the first sticker -- the annex is called "Mining,
building, and water-law related decisions".

Then if you go to the second sticker in the English
version, it states "Mining Permits", but this is
actually bad translation. So I would ask the
interpreters to go to the equivalent in the Slovak
language and confirm that the correct translation would
have been "Water-Related Permits". Again, it's one of
the stickers further down in the text. (Pause)

Okay, so under this tab we have various decisions,
and before going to the decision in question we may go
to the last one actually, the last sticker. (Pause)
Actually it's the last page before the Slovak version;
that may be the easier way to find it. (Pause) It is
the decision of the District Office of Environment in
Roznava which was issued on October 26th 2004. Correct?
Is everybody on the right document? (Pause)

There basically I will read it to you because the
Water Authority here recaps the status of various
permits:

"[The] District office ..."
This is the paragraph after some space left blank:

"[The] District office in Roznava, as the competent state water administration authority pursuant to [certain acts] ... after assessing the reasons submitted by the Work investor, for which the Work could not be completed within the deadline set determines the completion date of the temporary surface structures -- water works implemented as part of the Work 'Drifting of the Winze -- Talc Deposit of Gemerská Poloma', to May 30, 2005."

Then the second paragraph states:

"In implementation of the Work, conditions must be observed as laid down in the Decision issued by the former District Office in Roznava, Department of Environment, dated September 23, 1999 ..."

And then also the decision that we are discussing, and which I will show to you in a while, from August 9th 2002:

"... which determined conditions for draining mining waters and monitoring surface waters dated July 28, 2004 issued by the District Environmental Office in Roznava."

Then it states:

"The Work can be used only upon the Final Approval Decision. Builder, within 15 days of completion of the Work, shall submit a proposal for final approval of the
Work to the state water administration authority under the building act in effect and the Water Act."

Then at the very end:

"Conditions of the Permit to the temporary use of the structure CS 024 -- Mine Waters Treatment Plant dated July 28, 2004 ... which defined conditions for the use of the [Mine Waters Treatment Plant], shall be met by October 30, 2004."

Can you see all of that, sir?

A. Yes, certainly. It's exactly as you said.

Q. Is my understanding correct that the surface structures which were to be built, and which were the subject matter of this decision, actually are in two categories: category 1 is the one water structure, which is mentioned in the last paragraph; and then all remaining ones are subject to the first three paragraphs? Is that correct?

A. Look, all I can say to that is: that which was not completed with regard to the water-related works, we have completed it. It was done by second contractor, Siderit, who had completed the water treatment plant which was not completed by Rima Muran with drainage into the creek over the entire period. We had guards there who would measure drainage amounts, water -- amounts of water, temperature of water. And an appropriate
hydrogeologist also was available, with whom we had a contract, who would be sampling at regular basis the wastewater, had them analysed and supplied reports about the analysis which we provided to the Water Authority. Everything was in order.

Q. Sir, may I ask you a factual question. If we look at paragraph 3 here, or the third paragraph of those that I read to you -- it's the third paragraph of those that I read, so it's the penultimate paragraph of this decision -- it says:

"The Work can be used only upon the Final Approval Decision. Builder, within 15 days of completion of the Work, shall submit a proposal for final approval of the Work to the state water administration authority under the Building Act in effect and the Water Act."

So question number one: did you submit a proposal for final approval of the work to the State Water Administration Authority?

A. This pertains to the item SO 024, water treatment facility plant. Now, which construction? I'm not sure which construction or structure we are talking about.

What are we talking about?

Q. You do not know what this decision relates to? Okay.

A. Can I say something about this? I'm not sure why we are evolving this particular topic --
Q. Okay, I think I know why I do that. This refers to -- do you remember, sir, that you submitted requests for approval or for construction permits for several water treatment-related construction objects?

A. I don't remember exactly. But I know that as long as we would receive a request to submit something, we have always done so. I cannot prove it to you now 100%; I don't remember anymore. It's been years ago.

Q. Let's go to the decision from August 9th 2002. Please go back in your binders: and that will be the fifth sheet. So ten pages back within the same document.

This is a permit, as you can see on the first page: "... to change the water structures erected as part of the temporary Work of 'Drifting of Exploratory Winze -- Talc Deposit of Gemerská Poloma' before completion, according to the project documentation prepared by [Mr] Belo ... Change to the Work applies to the following structures ..."

And there you have a list of eight structures. Can you see that?

A. Yes, it is here.

Q. The last of those eight structures is the mining wastewater treatment plant?

A. Yes.

Q. Now if we go back to the permit that we were discussing,
the remaining seven construction structures --

PROFESSOR STERN: Can you help us where we are, please, because we are completely lost.

A. I too am lost.

THE PRESIDENT: 2002?

MR PEKAR: Yes, 2002 decision, August 9th.

DR GHARAVI: I would appreciate if you can continue your efforts to be patient with this witness, because if the Tribunal doesn't follow, you can imagine the stress, the age of this witness.

MR PEKAR: I apologise, I didn't realise that the Tribunal was not on the right page.

What I was taking the witness to, on the first page of the 2002 permit, was the list of structures. We agreed that there are eight structures on the list, and the mining wastewater treatment plant is just one of them, the last one. Therefore this was in the response to the witness's question that in the document that we were discussing right before, he did not understand or did not remember what the first three paragraphs referred to, or actually all the document except the last paragraph refers to, which deals specifically with the mine water treatment plant.

Have I refreshed your memory, sir?

A. Certainly. You have to remember what is this CS 024: it's been the most important mining wastewater treatment
plant that was completely completed, which was not completed by Rima Muran, it was completed by Siderit, and it was approved by the appropriate authority. What needs to be said as well: at that time we were not yet conducting any drilling, any mining works. That was still at the original state.

Q. Thank you, sir. Maybe we now can skip something.

When you added that you were not drilling any mining works, you said that because the temporary use of this mine water treatment plant was limited to treatment of the water which was already in the winze, but it was not approved for use in connection with further drilling of the winze; is that correct?

A. It was not discussed at all how the water is going to be used. This was never discussed or negotiated about with anyone. This is something maybe I told you about, you take this -- I was only describing the ideas how mining waters may be used. It was only a comment of mine, and not some kind of use and arranging for permits for such use.

Q. I'm not sure that you answered my question, sir, but there may have been a translation issue. So I will repeat my question.

Am I right to say that the permit for the temporary use of this one structure, mine waters treatment plant,
10:16 1 was limited to its use for treatment of water which was
2 already in the flooded decline? Is that correct?
3 A. Yes: for cleaning, not for treating/processing of that
4 mining wastewater. You are right when you say that.
5 This was the only condition back then for this
6 particular structure.
7 Q. For this one object, and for the temporary use of this
8 object, this was the only use which was approved for this object
9 was to treat this water which was already in?
10 A. Yes.
11 Q. And there was a common understanding at the time that
12 when you resume mining works and you start drilling the
13 winze, first you have to take out the water which was in
14 the winze, that has to go through this plant; and then,
15 when you continue drilling, you will also have to pump
16 water out of the winze under construction, so to say; is
17 that correct?
18 A. Look, you have to realise that the throughput of the
19 water was very small. So it was not a problem later to
20 build a little pool and then connect that water into the
21 water treatment plant. Because in the winze there was
22 not yet any mining water. The winze had not yet struck
23 mining water. The water was coming from the explosives
24 storage.
25 Q. Was it your understanding that when you start drilling
10:18  the winze, you will have to pump water out of the winze
2 under construction; yes or no?
3 A. Yes, certainly you are going to have to. You can't
4 leave it there, to be obstructing the drilling work.
5 Q. You needed to have first a permanent approval for this
6 mine water treatment plant; and second, you needed also
7 a final approval decision with respect to the seven
8 other water treatment construction objects that we saw
9 in the decision 2002. Is that correct?
10 A. Look, I'm kind of confused by now what are we talking
11 about. I can't really get my things straight.
12 The changes of the individual structures which are listed here,
13 the eight structures, including the water treatment
14 plant, were done again by Rima Muran. Rima Muran back
15 then had a valid permit from Rudny Projekt Košice
16 according to which design they were supposed to build
17 this. Now they were starting to make amendments to that
18 design, and they have requested this gentleman
19 to make those amendments for them to their
20 design.
21 And basically, perhaps you are hinting at whether we
22 have then forwarded these designs to the Building Permit
23 Authority. I guess we had, we did, because there were
24 no protests coming from them during that period.
25 Q. I'm afraid you haven't answered my question. I will
repeat my question exactly as I asked it.

DR GHARAVI: Please do, because frankly I do not understand the interactions you're suggesting, and the witness said he is confused. So if you are going to repeat it the same way, there is no use. He is confused.

MR PEKAR: Yes, I will try to address the confusion.

If we look at the decision of August 9th 2002, it lists eight construction objects. Do you follow me?

A. Yes.

Q. The last one is the "Mining Wastewater Treatment Plant"?

A. Yes.

Q. I believe we have established that this last object had been approved for temporary use in 2004?

A. Yes.

Q. The temporary use was limited to the treatment of the water which had flooded the winze; correct?

A. Yes.

Q. We also established that if you were to drill the winze further, you first needed to pump out the water which was already there; correct?

A. Yes.

Q. That water would be treated in the mining wastewater treatment plant in accordance with the temporary use; correct?

A. Yes.
Q. Now, if you were to start drilling further, once the winze is empty, you would also need to pump water out as a sort of continual process?

THE PRESIDENT: I think this is a yes or no question.

A. Certainly the water has to be addressed, the minimum of the water there.

MR PEKAR: Thank you. And the temporary use of the mining wastewater treatment plant did not include the treatment of this new water, so to say?

A. Well, it did include it, because the water during the entire flooding was flooding -- seeping out of the mine, going through the water treatment plant. So the water too was part of the temporary solution, the mining water. It was part of the mining water. There was no other water in the winze.

Q. Just to make absolutely certain we speak of the same thing, I mean the water which would go -- or continue going -- into the winze once you start drilling the winze. And my question is: did the temporary use of mining wastewater treatment plant include, authorise, treatment of this water?

A. Yes, it did allow.

Q. I will refresh your memory on that point.

I believe it's tab 36 (C-244). This is the decision which authorised the temporary use of this plant;
correct? Please go -- in the English translation it is page 4. There is 9, 10, then II, A: it authorises the temporary use of this one, CS 024 mining wastewater treatment plant. Then in the following paragraph it states in English:

"The Mining Wastewater Treatment Plant will be used to purify mine waters drained from the areas of the winze tunneled so far ..."

And I put emphasis on "tunneled so far".

Does it refresh your memory, Mr Rozloznik?

A. It's a completely clear, already-drilled area. That's the 90 metres, 43 metres of it.

Q. Yes, I agree with that. And then when you start drilling, you go beyond what has been tunnelled so far. Can you still use --

A. But the amount of water will remain unchanged. The amount of water will stay the same as it is here.

Q. I don't understand your response, Mr Rozloznik. This provision says "tunneled so far": I understand this means, as you just said, what had been tunnelled prior to July 2004. If you start tunnelling more, you will be outside the scope of this provision, wouldn't you?

A. This is a wording of the Water Administration Authority, "tunneled so far". I am again quite confused, not sure where you are aiming with your questions. I cannot
understand it, because these are very technical and very easily resolved things.

Q. Okay. Let's go back to the first seven documents from the list we have on page 1 in the 2002 decision. It is called in English: "Sump", "Settling Tank and Surface Water Drainage from the Tailings Pile", "Drainage of Forest Road over the Tailings Dump", "Stream Adjustment", "Water Tower", "Water distribution" and "Sewer".

Do you agree with me, sir, that the decision we have seen on the temporary use of water structures explicitly referred only to the last item, "Mining Wastewater Treatment Plant"? Correct?

A. (Not interpreted).

Q. I believe that your answer was not translated, sorry. Could you please repeat it?

A. Now which one? The one I said before? That what we are discussing here now, as it relates to the water, I am a little confused about that, because I cannot understand where your questions are aiming in this regard, to which issues, because all the data or information about the water conditions are easily resolved technically and they could have been easily resolved.

Q. Going back to the decision in 2002, it lists eight
structures. One of them, the last one, was authorised for temporary use; the other seven were not. Do you agree with that?

A. What do you mean, that the previous ones were not permitted for temporary use? But they did. This only pertains to the submitted design. But this gentleman who approved that, it was all addressed beforehand.

Q. Sir, I regret I have to do that again, but please go to tab 36 (C-244), the first page. This is the decision on temporary use that you referred to, is it?

A. Certainly I have.

Q. Yes. If you go to page 4, under II it grants the permit to temporary utilisation, which specifically refers only to the mining wastewater treatment plant; correct?

A. But the previous paragraph, it talks about the entire structure. It could be construed as the separate structure, but the way I understood it was the entire structure. So it means all the structures listed.

Q. Would you agree with me, sir, that this is not what this decision says expressly?

A. There is a deadline there, I say again.

Q. Okay, let's go back -- and this is the last time we go there -- to the decision from October 2004. This is the one which was at the very end of document tab 37 (C-259).
Here, as we have gone through it, in the biggest paragraph you are being given a deadline to finish -- no, I'm sorry, I need to get to the English version -- you are being given a deadline to finish:
"... surface structures -- water works implemented as part of the work 'Drifting of the Winze -- Talc Deposit of Gemerská Poloma', to May 30, 2005."

Correct?

A. Yes, certainly.

Q. So it means that those structures were not finished yet when this decision was issued; is that correct?

A. But we have already begun completing them. But later the mining (in Slovak language version: dobývací) area was withdrawn from us: how could we have then continued, when they have taken away from us the mining (in Slovak language version: dobývací) area in the first months of 2005?

Q. Thank you.

Now, I omitted one thing with respect to the 2002 decision, to explain why it was so important. And this is really the last time we go there.

If you go to page 3 of this document -- I'm not sure if it is also in Slovak page 3, because in the translation it is the very end -- you have IV, "Obligations of the Work Investor". This is Rozmin, right? Are you with me, sir? And then if you go to condition 5, please. I will read it to you:
"The Investor may re-launch the mining operations yet after having had the surface structures commissioned, when the conditions for operating of the Work will be set out."

A. But we have been working on that. We began -- by the end of 2004 we had completed a new water treatment plant. That was completed. It never went into operation because the excavation area was taken away from us. We have completed the works SO [024] and other structures as well. So we have been working on it. We would have completed it all.

Q. Thank you, sir. Do you agree with me that this condition 5 means that you cannot start mining works at the deposit until the eight structures mentioned on the first page of this permit are put into operation?

A. I disagree, because I explained to you ...

We basically had been working very hard on that by the end of 2004, having built a new water treatment plant which was completed. We have also completed the other treatment plant, SO 024 we were discussing so much, and we would have completed all other additional structures as required by the water treatment authorities, water administration authorities.

And I have hinted what you should discuss with
experts from Mining Office: that they did not consider
and do not consider surface structures as mining
activity. So we could have continued drilling the winze
without putting these structures into use. So
I disagree with your -- with that, but that is how it is
construed. It's a legislative some kind of a --
Q. Do I understand correctly that you are telling us that
the drilling of the winze is not mining activity?
A. I never said that. Mining activity is not surface
structures.

MR PEKAR: I agree with that.

Okay. May we have a little short break now? I will
try to reorganise my questions.

THE PRESIDENT: Yes, 15 minutes.

MR PEKAR: Thank you, Mr Chairman.

(10.39 am)

(A short break)

(10.59 am)

THE PRESIDENT: Mr Pekar.

MR PEKAR: Thank you, Mr Chairman.

Mr Rozloznik, we will continue. Please go again to
document tab 37, Exhibit C-259, but this time we will
speak about the agreement itself and not the decisions
of state authorities which were attached to it.

First I would like to correct one issue which is
a pure translation issue. At page 9 of it, the date in
the English version is incorrect. It states May 11th
2004, but I believe it is uncontroversial that in fact
it's 5th November 2004. Do you agree with that, sir?
A. Yes, I do.
Q. Thank you.
Then please go to Article IV, which is on page 2.
Oh, you don't have the Slovak version? I apologise.
Okay, I will then ask a question to you: is it your
recolletion, sir, that the contractual price for
Siderit's work was agreed to be 76 or almost 77 million
Slovak crowns?
A. Yes, exactly.
Q. Did you have that money on your account, sir? On
Rozmin's account, I mean.
A. On the account, this amount of money was not in its full
on our account. But within the agreement, we have
provided immediately 4 million crowns to Siderit to
begin preparatory work; and gradually, as the work would
progress, the owners would transfer necessary funding to
pay for the invoices.
Q. Do you remember, sir, how much money you had on Rozmin's
account after paying those 4 millions? If I have my
math right, 77 minus 4 is 73 million Slovak crowns that
you still needed to pay. So how much money did you have
on your account after paying the 4 million?

A. I don't remember. But I do know that besides the
4 million, we gave Rima Muran an additional million for
the high-power electrical line. But how much we had in
our accounts, I don't remember. It was not a large
amount.

Q. According to the financial statements that you signed,
Rozmin had cash of 294,000 Slovak crowns, which is less
than €10,000.

A. Why would it surprise me?

Q. Is it within the range that you would expect?

A. I am unable to respond to that. But I am convinced that
consequently, if any payments were necessary to be made,
the owners would transfer the necessary money for those
payments.

Q. Now, please, let's go to Article 7.1 of the agreement.
It's on page 6. And here I will read it out loud for
the translators to translate it for you, because you do
not have the Slovak version. It states:

"The Contractor shall keep a Site Diary for the
purposes of construction documentation, which will
include all activities on site, with the date, time and
description. The work shift manager is required to keep
the Site Diary in the prescribed 'Site Record Book' and
this will always be available for examination at the
The response and signature of the person specified by the Customer is required for recording fundamental changes in the technical execution of the works and other fundamental facts."

A. Yes, it is clear to me. We have kept such diary by Mr Mihók from Siderit.

Q. Let's now look at that document: tab 43, R-141. So on the first page our English translation says "Construction Diary" -- not "Site Diary", but it's just a translation issue -- "of the structure: Opening of the 'Gemerská Poloma' talc deposit in the excavation area, file no. 74/e". Are you with me? Yes.

Then there is some technical information we can skip. And there is one part -- unfortunately the pages are not numbered very well. Towards the end of the document actually, there is "Daily records from the structure", it's called. I will count it for the Tribunal: it's like four sheets down [from] the first page.

Mr Rozloznik, do you have the Slovak version of it?

A. Yes, I have it in front of me.

Q. Again, I think I will read that for you, because the Slovak version is handwritten. So if you have any difficulty understanding the handwriting, just let me know and --
A. It's well-written.

Q. So the diary starts on September 29th, right?

A. On the 29th, yes.

Q. If we look at the description of the work which was done that day, we see that those were, in the English version:

"Digging works on the object SO-024 ..."

Can you see that? This is the water treatment plant that we were discussing which had been approved for temporary use; correct?

A. Correct.

Q. Then we have entries for October and November. So if you turn -- it's like the third page from the one that we were at, we see the works performed on 25th November 2004 and 30th November 2004?

A. Yes.

Q. We see that on that date they finished object 018.2 and this was handed over to Rozmin; correct?

A. Yes.

Q. If we turn the page again, there is no activity on the site until 8th December 2004, and the only entry there is:

"Inspection of above-ground objects with the attendance of DMO, [Rozmin] and the production director of SIDERIT ..."
Can you see that?

A. Yes.

Q. So this is the site inspection that Mr Baffi from the DMO performed on that day.

Then again we have nothing for a week until December 14th to 16th, where we have:

"Alteration of the portal of the winze by covering with soil and alteration of the surroundings in front of the winze."

Then nothing for a month. The next entry is 17th January 2005, and the task performed on that date is:

"Pumping of mining water from the winze through power generator."

This type of entry then continues until the very end, which is 5th February. And then on 12th February there is the instruction - or maybe on the instruction of Rozmin to stop activities on the site.

So, sir, would you agree with me -- generally does it correspond to your recollection of the works which were done at the site?

A. When I am looking over it, yes.

Q. You would agree with me that the water was being pumped only in January 2005 until, let's say, the beginning of February of that year? Is that correct?

A. Well, it is written so in the diary and it is so.
Q. Which was after the inspection of Mr Baffi; correct?
A. Correct.

Q. There are several things which I find somewhat odd, sir. The first one relates to 8th December 2004. Do you agree with me that the entry does not mention any work being actually performed, it only mentions the inspection?
A. Well, it is clearly written down in the protocol: with participation of Mr Baffi, and the time and date when it occurred, just like it is in the record.

Q. I agree with you that we will come to the protocol in a moment. But isn't it odd that the site diary would not record any activities?
A. I am unable to explain why it's not written down here that the workers actually performed some work there.

Q. If you go one page back, no work had been performed for one week before the inspection; correct?
A. What do you mean, no work was performed? In the diary it's not written, but do realise, please, that it was winter. There was a metre of snow, 20° centigrade below freezing point. So it was not easy to work under those conditions.

Q. Then there is three days of activity in December, 14th to 16th, and nothing until the second half of January. Would you agree with me, sir, that this does not look
like a very intense work?

A. Look here, during this period it was known that in the commercial journal it was published that we shall be taken away from us the excavation area. So you can realise under what psychological stress we would be under such circumstances, including the investor and the contractor.

Q. The announcement was published on 30th December. Would you agree with me that it cannot explain the lack of activity in December?

A. 30th December?

Q. The announcement of the tender was published on December 30th. Would you agree with me, sir, that it cannot explain the lack of activity in December?

A. It was in the journal on the 30th. However, when was it sent to be published?

Q. Sir, are you suggesting that the public or you were informed of the dispatch of the announcement to the ...

A. I was not informed of the dispatch of such an announcement, but there were some hints already available; I could feel them.

Q. If we go to the second half of January, Siderit started pumping the water out of the winze. How is that consistent with what you have just said: that because of the publication of the tender, you were holding back?
A. Well, because we still believed that the removal is not final yet. We still were convinced that there will be another solution presented.

Q. Let's go to paragraph 63 of your witness statement. It would also be useful to have bundle 1, the one that we were working with yesterday during the cross-examination of Messrs Rauball and Agyagos, and document 12, which is the minutes from the inspection of December 8th. The number of the minutes is R-57.

A. Yes, we have it.

Q. You state in paragraph 63 that:

"... Director Baffi conducted an inspection of the deposit, which lasted over two hours and led him to conclude that everything was in good standing and to confirm that Rozmin was authorized to continue mining activities until November 2006."

A. Yes.

Q. Can you please point me to the confirmation in document tab 12?

A. It is not written here, but by Mr Baffi saying that everything is legally in order, I took it that the legal document is also a permit for mining activity.

Q. You refer, I assume, to the last sentence of this document, which says:

"During today's inspection no facts were discovered
indicating breach of legal regulations in force."
Correct?
A. Correct.
Q. What legal regulations was Rozmin breaching as of 8th December 2004 with respect to the assignment of the excavation area?
A. They did not violate any regulations.
Q. Then let's go to paragraph 67 of your witness statement. We are done with this document tab 12. Do you have the Slovak version of it?
A. Yes.
Q. When I read the Slovak version of it, I must say that I am completely confused, sir, because -- could you please read out loud the first sentence.
A. "The Mining Act of 2002 enabled the removal of rights of mining activity in case that any interruption of this activity would exceed the period of three years."
Q. So could you please reformulate the sentence so that it's accurate in Slovak?
A. "The Mining Act of 2002, in accordance with the act, enabled the revocation of mining (in Slovak language version: dobývacieho) area in the event of interruption of this activity for a period exceeding three years."
Which is not fully correct either, because it should
be written that "in case, according to law, the
excavation shall not commence". The word "excavation"
is key. From my side it's an incorrect wording.

Q. Could you please repeat that again, because we had
an incorrect translation into English, and this time
this is not the issue that we were discussing.

A. Let me correct it again.

"The Mining Act of 2002 established that
an organisation which does not excavate within
a three-year period shall be removed or revoked its
excavation area."

However, here, in this case -- because this is what
we are discussing about -- here I would like to express
my unequivocal and definitive opinion as I understood
this act of 2002. Let me try and formulate definitely
with a final, from my side, the way I understood it as
follows: excavation in the Mining Act is opening of
deposit by mining activity, but without -- emphasising
"without" -- excavating of the exclusive mineral. That
is how I understood this act.

Q. Could you please read out loud the second sentence of
this paragraph, for the same purpose: I believe we need
to correct.

A. "In this regard, the consequent mining act [of 2007],
with force of June 1, 2007, clarified that the 'mining
activities' under the 2002 Mining Act did not mean excavating."

"Excavating". It's a controversy there to what I have said before. But the statement I have written down here, please do not take that into consideration, but take into consideration what I said just before. This is my opinion about this act.

Q. Then in the following two sentences you discuss the decision of the Supreme Court. In fairness to all the comments I got from my learned friend, I will ask you a fair question: do you feel competent to comment on the decision of the Supreme Court?

A. I think the Supreme Court had only confirmed what I just said. This is the way I understand this. Because the term "excavation" was not put correctly in the Mining Act and it was not explained sufficiently legally in the act.

Q. May I interrupt you, sir? You were victim to incorrect translation. My question was whether you feel competent to comment on the decision of the Supreme Court.

A. No, definitely not to the Supreme Court. That's the supreme body in the Slovak Republic. So I can only accept it somehow.

Q. What I meant is whether you feel competent to answer my questions regarding the wording of the decision of the
A. You should not be asking me this question.

MR PEKAR: I respect that, sir. That closes my cross-examination.

THE PRESIDENT: Thank you very much. So re-direct.

(11.25 am)

Re-direct examination by DR GHARAVI

Q. Sir, I understand that by "dobývanie", in answer to Respondent's counsel's questions, you mentioned that you understood this at the time of the amendment of 2002, until the revocation in 2005, to mean -- starting dobývanie to mean starting works in view of digging and not extracting. Is that a fair summary of how you understood it?

A. Yes, this is how I understood it: that the opening of the deposit by mining activities, without extraction of the mineral.

Q. Then in paragraph 59, I believe, of your witness testimony, you mentioned that you and Mr Agyagos met Mr Baffi at his office in October 2004. The question is: did he indicate to you that he understood that term "dobývanie" to mean something else, or did he ask you or expect you to have started extraction?

A. We begin with extraction. It is written exactly in the protocol the way it was. I did participate there in
person and it was discussed in the protocol. But whether we should begin extraction (in Slovak language version: ťažba), he never said that.

Q. Okay. Then let's go to the inspection. C-28, tab 31 of the opening bundle. You must have the Slovak version.

If you go to the second page. In between, I should add, your October [meeting] and this inspection, there was a notice to commence work. Then there is this inspection.

In the first page there is reference to the May 31st 2004 permit that was valid until November 13th 2006. It lists you and Mr Baffi as the participants. And in the second page it says:

"It was found onsite that since 18 November 2004, Siderit performed and completed construction work ..."

And it goes on:

"... Mining water treatment plant ..."

Then it goes on to say:

"Furthermore, it was discovered that Siderit had performed other works ..."

Then at the end:

"During today's inspection no facts were discovered indicating breach of legal regulations in force."

The question to you, sir, is: did Mr Baffi -- are you listening?

A. Yes, I'm listening.
Q. Did Mr Baffi, during that site inspection, tell you, "Oh my God, you're only performing this type of work, it should be extraction by now"?

MR PEKAR: Mr Chairman, I object to this. This is a completely leading question.

A. I never heard him say anything like that.

THE PRESIDENT: Dr Gharavi, please avoid leading questions.

DR GHARAVI: Did Mr Baffi express to you or not that you were imminently or not breaching any regulation?

A. I have not heard anything like that and he definitely never said anything like that.

Q. I will move on now to ask you: who is Mr Baffi? Is he the teaboy at the Mining Office? Who is he? What is his function? Do you know?

A. Mr Baffi is the chairman of the District Mining Office in the city of Spišská Nová Ves. Chairman.

Q. Do you know whether he is retired now?

A. I think not. I think he is still working at this position.

Q. Then if you go to tab 39, which should be C-36. In response to counsel for Respondent's question regarding this decision, you responded that, "The Supreme Court only confirmed my understanding". And I want to point you to page 25, if you look at the Slovak version.

MR PEKAR: Dr Gharavi, the witness expressly refused to
answer my question with respect to this document, and
I respected it.

DR GHARAVI: No, he answered your first question. He
answered your question. He said the Supreme Court only
confirmed that there was no explanation of the
definition.

MR PEKAR: Dr Gharavi, I was not asking any question. I was
just reading to him the content of his witness
statement, and then --

DR GHARAVI: He answered your question. Anyway, I have
a question on the Supreme Court. It's related to --

MR PEKAR: If he refused to answer questions to me, then he
should not be answering questions to you.

THE PRESIDENT: Don't take him to any part of this decision
of the Supreme Court. If you want to -- I think you
will do it in your closing arguments -- use that
decision, of course that's your job. But he says he is
not able to answer any questions, and that goes for your
questions as well as your opponent's.

DR GHARAVI: Professor Mayer, I think there is
a misunderstanding. The first question that my learned
colleague asked was answered, and then another question
was asked on the ground that there must have been
a misinterpretation. In any event, the answer to the
second question was that, "I'm not qualified to comment
on a decision of the Supreme Court". So it is quite different.

In any event, sir, are you aware of an act of 2007, which became effective only on June 27th, that set out what it understood or not in relation to the term "dobývanie" used in the 2002 amendment?

A. I cannot tell you the exact wording, but it is perhaps as follows: dobývanie/excavation of a specific mineral in accordance with approved excavation method. It says: dobývanie/excavation of the specific mineral. So it explains afterwards what the word means.


Q. Are you aware of any prior explanations of law or any official documents explaining before that?

A. Officially, if it was worded like that, I am not aware of anything. It is not known to me at all.

Q. Mr President, I will reserve for closing to walk again through the chronology of 2004 to 2007.

For the sake of time, I will just ask you a question in relation to whether or not you are aware of a decision rendered in 2003 by the Main Mining Office that expressed an opinion on the lack of information about the [District Mining Office]'s request for
documentation to Rozmin before approval of authorisations?

Maybe I can ask you to look at the document, it's easier. It should be tab 25. It's C-226 Professor and it's at tab 25 of our first bundle. It's a decision dated 15th May 2003 that revokes the 16th January 2003 decision. If you look at the fourth page, it says that the Mining Office did not even clarify the documents that it requested.

Did you take part in that decision in the litigation? Were you following these decisions?

A. I have to say that I would prefer not to respond to that. I don't feel competent to be able to respond to that. I would have to get back to it. Please do take into consideration my ability, having to go back so many years in my mind.

DR GHARAVI: Thank you. That ends our re-direct.

MS BURTON: Members of the Tribunal, EuroGas has no re-direct.

THE PRESIDENT: Thank you very much.

The Tribunal doesn't have any questions, so this is the end of your examination, Mr Rozloznik. So we thank you for your answers, and the long time you have stayed with us. By the way, you may stay if you want, you can sit with counsel.

So who is next? Mr Kúkelcik?
MR PEKAR: This is correct, Mr President.

THE PRESIDENT: Do you want to have a break? We have just
had a break, so I think we can ...

DR GHARAVI: Five minutes?

THE PRESIDENT: Five minutes, okay. Just before that,
I would like to say something on behalf of the Tribunal
concerning the future closing arguments.

We have the feeling that, after having heard your
opening statements, there are many important points
which have not been addressed either by one or by the other
party, or even by both. And we think that the most
important part of your closing arguments should be in
fact a kind of reply and rebuttal vis-à-vis the opening
statements.

Of course your time is limited, one hour and a half.
Maybe it could be extended, if you agreed, if we have
time. Maybe two hours would be a possibility. Sorry,
I have not discussed that with my co-arbitrators, who
may be furious against me. But it's so important. And
if you have to sacrifice something, we had better have
you sacrifice your comments on what was said in the
hearing under cross-examination than this reply rebuttal
aspect.

DR GHARAVI: Thank you, Mr President. On behalf of Belmont,
we would like to encourage the Tribunal to put any
questions they may have. As far as we are concerned, we
would not be offended if certain questions may suggest
a preliminary indication of something. We really
welcome that and feel that it would be very useful.
THE PRESIDENT: It is possible that we indicate at some
further point on which questions particularly we would
like to hear you -- but do not count on it, because it's
a possibility but it's not certain -- so you are able to
know where it hurts in your respective cases and where
we would like to hear you.
Okay, so five minutes' break. You wanted to add something? No? Ok.
(A short break)
(A short break)
MR PETER KÚKELCÍK (called)
(Evidence interpreted)
THE PRESIDENT: Good afternoon, Mr Kúkelcik. You appear as
a witness in this case called by Respondent. You have
a declaration in front of you: can you please read it
aloud.
MR KÚKELCÍK: Yes, of course I shall read it. Good morning.
God bless. Witness statement: I hereby solemnly declare
on my honour and conscience that I shall say the truth,
nothing but the truth, and the whole truth.
THE PRESIDENT: Thank you.
11:51

So direct examination.

MR ANWAY: If you will just indulge me for a minute, members of the Tribunal.

(11.51 am)

Direct examination by MR ANWAY

Q. Mr Kúkelcík, I note that you are wearing the official miners' uniform.

A. That is correct. It is an officially approved mining uniform of the Slovak Republic which, according to protocol, may be used only for prescribed events and significant events, and I consider this one today a significant event. I am wearing uniform with respect to this Tribunal. It dates back to 1312, to a later period of the 14th century.

Q. Just very briefly, would you mind telling us the various elements of the uniform?

A. They are also prescribed. It does not include any voluntary or any other statutory signs. It is a state employee uniform. On my left hand is state decorations; on the right hand are decorations of my status. The decorations there are both Slovak and Czech Republics; also equally the ones on the right-hand side.

MR ANWAY: We have nothing further, thank you. I just thought that was some interesting history the Tribunal might enjoy.
THE PRESIDENT: Thank you very much.

Now cross-examination by Dr Gharavi.

Cross-examination by DR GHARAVI

Q. It is still the morning, so good morning, sir. I am counsel for Belmont Resources and I will be asking you questions this morning.

I would start with your first witness statement, paragraph 3. You mentioned that on June 1st 2000 until December 2005 you were deputy head of the MMO, before becoming head of the MMO in December 2005; correct?

A. In paragraph 3?

Q. Yes.

A. "When I began working ... as a district mining inspector."

And then it follows with my further professional growth.

Q. I understand. The mining authorisation of Rozmin was revoked on December 2004 -- in January 2005; correct? And I understand that at the time of revocation -- that is, in January 2005 -- you were the deputy head of MMO; correct?

A. I was the deputy chairman of the MMO.

Q. Then as the head of the MMO, you followed the process, meaning the challenges, the decisions, and some of the decisions in relation to the revocation you rendered
yourself; correct?

A. Since December 1st I was the head of the Main Mining Office and I was supervising proceedings led by the MMO as a second-instance body. The second-instance body may not interfere with the first-instance body.

Q. I understand, but my question was more general, sir. When you became head of the MMO in December 2005, I understand that you have been very closely following the subsequent challenges to the revocation that followed, and you even issued certain decisions yourself. I just wanted the confirmation of that.

A. I was supervising it, just like any other case and any other proper remedy.

Q. I understand it was not your full-time job.

If you move forward to paragraph 9, you explain that the government had concern about some dormant excavations. In paragraph 8 you mentioned that the goal of the Republic of Slovakia was development of the mining industry and contribution, benefits to the economy. And explaining the history behind the 2002 amendment, you say that the situation -- if you look at paragraph 9:

"According to its provisions ..."

The previous law:

"... in order to preserve rights to an excavation
area, it was sufficient for an entity to apply for the authorization for mining activities within three years from the assignment of an excavation area. No actual activity was required."

Then you go on and say:

"Even if an entity did not take this simple step of applying ... the DMO was not obliged but only authorized to withdraw the excavation area."

The question I have for you is: wasn't there a progress made if mining companies were simply required to undertake any work, any activity? Because before the 2002 amendment, according to you, one could just merely apply, and have no actual activity.

The question is, if you want me to emphasise: would you agree with me that starting activity -- if the mining companies were required to start activity, it was already a progress compared to what was going on before?

MR ANWAY: Mr Chairman, I'm not sure I even understand the question. I would just ask it to be --

THE PRESIDENT: Let's see whether the witness understands; and if he doesn't, he will say so.

A. The question is very broad indeed, and it -- as though there are two things happening at the same time. First of all, I do not understand what Mr Counsel is asking me. I also see a problem in translation. And when the
11:59

translation is correct, then the wording is incorrect,
because there is no County Mining Office in existence
and there is neither in existence a body that shall
apply for authorization to perform activity;
it is always an organization to which the excavation area is assigned
that is asking for an authorization to perform activity.

DR GHARAVI: Well, sir, maybe I can put it in a more simpler
way. It is your statement at paragraph 9. You say:
"... it was sufficient for an entity to apply for
the authorization for mining activities within three
years from the assignment of an excavation area". Then you say: "No".
actual activity was required."

So I'm using the same term as you're using and
asking you to agree with me that if the government
requires contractors, mining companies, to start some
activity, it would have already been better than the
situation as you describe it in paragraph 9, using your
own words.

A. In paragraph 9 I am describing a legal situation prior to
the amendment in force in 2002, which was approved by
the Parliament under the number 558, and the government
may not otherwise describe, other than through laws,
activities for relevant organizations. The legal situation prior
to this amendment did enable organisations such
behaviour that basically, keeping the right of mining (in Slovak
language version: dobývať) at

the deposit, was able to be solved and enabled even by submitting an
application to perform mining activity which the organization did not
have to perform. Despite that, the holding right to (as heard in Slovak)
dobývací area was preserved. Based on these facts, due to blocking of
(as heard in Slovak) dobývacie areas that was possible pursuant to the
applicable law, the National Council of the Slovak Republic, not the government...
THE INTERPRETER: I apologise, may we ask the witness to repeat the answer? The interpreter has lost the witness. May we stop, please? He's way too fast.

I apologise.

A. I will try slowly.

The legal situation prior to the Amendment 558 of the Mining Act, enabling only -- the amendment only could be done by the Slovak Parliament, it enabled the organisations to behave in such manner that it was sufficient to request for permit for mining activity and they had a holding right for three years of holding excavation area.

May I continue?

DR GHARAVI: I don't think it's necessary, because my question was simple: is some activity is better than no activity? And I think the common sense requires the straightforward answer is yes.

Paragraph 9, to be blunt with you, to avoid [wasting] time, you say the situation before the 2002 amendment was that:

"No actual activity was required."

And it's common sense, my question, and it deserves, I think, a yes or no answer, which is: is some activity is better than no activity? You understand that question, right?
A. I hold that we discussed not "an activity" but "mining activity". Mining activity may only be performed based on a permit, based on that which -- when organisation had requested for such permit to be issued. And only professionally apt organisation may request such permit, which holds excavation area. And the request for authorization for mining activity is not an activity itself.

Q. Sir, I will move on to the 2002 amendment that you describe in subsequent paragraphs. You say that the 2002 amendment required "excavation", that's the word in the English translation to your testimony; and by "excavation", I understand you mean "dobývanie" in the Slovak language? I apologise for the pronunciation.

A. If I understood the question correctly, if you're asking what is "dobývanie", I understood the question.

Q. Yes. So you're using the term "dobývanie"; correct?

The 2002 amendment, it uses this term; correct?

A. Yes.

Q. Okay. Would you agree with me that there is no legislator, no court that defines precisely what that term meant until 2007?

A. I disagree.

Q. Are you aware of a law or a court decision that defined what was exactly expected, intended, by that term?
A. Yes, I know.

Q. Can you share with me, give me an indication of the law: which law, what year, what court decision?

A. Of course. It's a decree of Slovak Mining Office, valid in Slovakia, for mining activities conducted in underground, No. 21 of 1989, which is still in force and is fully in line with European legislation, and includes a special chapter, "Dobývanie", and it describes which form of excavation/dobývanie are allowed in Slovakia, under what conditions, and under what technical and legal circumstances.

Q. You are referring to something prior to the amendment of the law to explain what the amendment term meant? Do you have anything after the 2002 amendment?

A. The amendment of 2002 basically, from the viewpoint of legislation, did not amend the Decree No. 21 I referred to, that continues to be in force until this very day.

Q. For you it was very clear what that term "dobývanie" meant in the 2002 amendment; is that how I should understand your testimony?

A. Yes, of course. Undoubtedly clear. And to any expert in mining it would be equally clear.

Q. Then why did the legislator find it necessary to clarify this in 2007?

A. The legislator in 2007 explained the term "dobývanie"
only as it relates to non-activity, and to the
requirement adopted at the EU level that obligations and
definitions must be laid down for legal and private
persons by law only.

Q. Did you read the 2011 Supreme Court decision? I assume
you did, because you were following and ruled on the
subsequent issues. The 2011 decision -- Supreme Court decision.

A. I suppose that it is about this matter because you did
not say the number of the Supreme Court decision. Of
course I read it in much detail, and not only once.

Q. Did you agree with it?

A. As the executive body of the state administration,
I definitely and clearly agree with the decision.
Unless I am able to use any recourse, I only have the
choice of submitting myself to such decision, which we
have done.

Q. Okay, good.

Can I turn you to the decision, so that you have the
exact quote that I want to question you on. It's C-36,
the Supreme Court decision, page 25, tab 39. You should
have the Slovak version. If you turn to page 25.
Please take your time to read it. It says:

"The court of appeal points out the fact that
statutory definition of the term mining as of activity
of the organization in the mining area through which the
acquisition of mineral from the deposit in mining ways occurs, was introduced in the Mining Act only when amended ..."

And it refers to a 2007 law effective June 1st 2007.

And it says:

"... that is why restrictive explanation of term 'start of mining' of the exclusive deposit, which was adopted by administrative bodies in December 2004, is not correct without an appropriate reasoning."

Would you agree with that?

A. This paragraph cannot be read outside of the context of the broader decision. I take it for granted that the Supreme Court underlined a procedural problem, which was then fixed and corrected in a follow-up procedure. Obviously I can only agree with the whole of the decision of the Supreme Court and I can only underline that the Supreme Court pointed to certain procedural flaws, not substantial flaws.

Q. I don't want to go into legal issues with you. It is just on a factual level. Could you agree with what has been stated: that it is only in 2007 that explanation was provided as to the meaning of the 2002 amendment? Would you agree with that?

A. Yes.

Q. Thank you. If you move on, what about the next
paragraph? It says:

"Finally the court of appeal points out the fact that legal standards do not apply in a vacuum, but within the society and their main aim is the treatment of social relations in such a way that intervention into rights and interests protected by rights of legal entities and natural persons occur only in inevitable cases, in conformity with public interest and to the smallest extent possible."

Then it goes on and reminds us of the intention behind the 2002 amendment, which I understand you agree with because it's set out at paragraphs 8 and 9 of your first testimony: namely that the government wanted to stop dormant mines and wanted to avoid speculation.

I trust you agree with that paragraph as well?

A. I'm afraid I do not understand what is pure speculation.

Q. Well, maybe I can go back to your own witness statement at paragraphs 8 and 9. I understand that by amendment of the law in 2002, you wanted to make sure that mining companies were not unfairly blocking competition, as you describe, and were serious to move on the project.

That's how I understood the philosophy behind the 2002 amendment, as you describe it.

A. Yes, the main objective of the amendment from 2002 was to avoid artificial and purposeful blocking of
Q. Artificial and purposeful blocking, okay. I will come back to this point. But meanwhile I want to go a little bit into the chronology. 2002 amendment, and then you have the revocation of the mining rights that occurred on January 3rd 2005.

Are you aware that in October 2004 -- according to Mr Agyagos, who is the president/CEO of Belmont, and Mr Rozloznik, who was the executive of Rozmin -- there was a meeting at the District Mining Office with Mr Baffi? Are you aware of that?

A. You mean the District Mining Office? I am not aware of that.

Q. You are not aware of that. Did you try to enquire about whether there were any meetings between Mr Baffi and Mr Agyagos or representatives of Rozmin during that timeframe? That means the few months preceding the revocation.

A. No, I was not trying to find out these facts.

Q. Have you read the witness statements of Mr Agyagos and Dr Rozloznik?

A. Yes.

Q. Their testimony at this hearing was that when they met with Mr Baffi in October 2004, there was no indication by Mr Baffi that the expectation of District Mining was
that extraction would be conducted within the month or
two that followed. Are you aware of that? I suppose
not, because you say you didn't speak to them.

A. I do not understand the question.

MR ANWAY: I think there was a translation problem. You may
just want to repeat the question.

DR GHARAVI: Are you aware or not that Mr Baffi had meetings
with Mr Agyagos and Dr Rozloznik during the months that
preceded the revocation?

A. No, I am not aware about such meetings.

Q. And I suppose you didn't think it was relevant or you
didn't have the time to enquire? Why haven't you
enquired?

A. Well, because this is not relevant for my work. I do
not need to investigate who the chairman of the District
Mining Office is meeting with. I am the chairman of the
Main Mining Office, and I am not in charge of a District
Mining Office.

Q. But then after the revocation you ruled on relevant
questions about the fairness of the revocation, to whom
it should be reallocated in light of the subsequent
decisions. At that point of time you didn't think it
was relevant to sit down with Mr Baffi to see what his
understanding was, in terms of the expectations on the
ground, whether or not he communicated that to Rozmin?
You didn't think that was relevant?

A. Well, the only relevant fact is what is in the appellate file submitted to the MMO by any DMO and the appeal of the legal entity Rozmin, where the executive and responsible person of Rozmin can write any facts that did take place before the issuance of the relevant decision.

In such case we review it all.

MR ANWAY: Mr Chairman, I think there may have been a translation issue. He was said the "appellate document"; I think in Slovak he meant the "appellate file".

DR GHAHARI: Thank you, colleague.

Let me show you documents; maybe that would be easier. If you move to tab 30: it's a 8th November 2004 notice of the commencement of mining activity. It's C-267.

And then more importantly C-28, which is at tab 31, which is a protocol of a site inspection of December 8th 2004. When was the first time you saw this document?

A. Well, I suppose, as this was a part of the appellate file, this was my first encounter with this document. On the other hand, I also have to state that this issue was investigated from other state administration
bodies which are superior to the Mining Authority, Mining Office. This was investigated based on a request of Rozmin by the Regional Prosecution Office in Košice, and a complaint was also filed with the MMO, and consequently also with the Ministry of Economy.

So up to this date I do not know on which date I have read these minutes for the first time. But I have seen it, and I am familiar with it.

Q. So that you situate yourself from a timing perspective, three weeks after this visit, the protocol of which is in front of you at tab 31, C-28, Mr Baffi from the District Mining Office sent a letter to Rozmin revoking their mining authorisation, based on the 2002 amendment law.

The question I have for you is: if "dobývanie" means that the mining company has to extract, how come Mr Baffi, three weeks before, visits the site, according to Mr Rozloznik does not say anything, raise any complaint against Rozmin, and then signs a protocol where not only there is no complaint that extraction has not started, but there is no complaint at all? How could that be possible?

A. Well, I do not see the specific document to which you [refer].

Q. If you go to tab 31. You are at tab 31. Then on the next tab you have Mr Baffi's revocation letter, which is tab 32, it should be.
A. I can see it now.

Q. C-30. Let me cut to the chase and be straightforward with you, to save time.

I submit to you that it is impossible that the District Mining Office understood the term "dobývanie" to mean extraction, as otherwise Mr Baffi would have, during the inspection of December 8th, said, "Oh my God! You are just at this stage? Your days are counted, it's finished. What am I doing there?" He never raised any complaint, and he signed the protocol three weeks before. How do you explain that, sir?

A. Well, it is very simple. On 8th December there was a standard control performed by the District Mining Office, which we are entitled to legally, to perform such a control. So any day, any time of the day, we can enter the premises of mining organisations.

These minutes state only one thing: that at the moment of the control, there was no mining activity, there were [only] construction activities performed. Mr Baffi was not obliged to report or to signal anything other than the violation of regulations. The company Rozmin is an officially entitled company which was perfectly familiar at least for three years since the effectiveness of the law that they have the obligation to excavate.

I do not understand the relevance of questions of a difference between "dobývanie" and
"tazba", for the purposes of this question.

Any pre-adjudication is not entitled. Mr Baffi was not entitled to state in advance that he will revoke or send a notice on cessation of a right to the organization.

He could act only after three years had lapsed, and this is what happened. The key period is 1st January 2005.

The first official step was taken on 3rd January 2005.

(Pause)

Q. I'm not trying to hold that protocol, draw any legal consequences with you. I'm asking you, as a person with common sense: we just discussed the Supreme Court decision, the holding that says the term "dobývanie" was only clarified in 2007. And then on the ground you have Mr Baffi wasting his time with an inspection, without signifying any remotely concerned about timing; and then three weeks later, terminate like that. I mean, how does that make sense?

A. Well, I think it is very simple. The legal counsel put into relation two or three facts that are not really related.

The first thing is that the Supreme Court did not say that the term "dobývanie" emerged in 2007. The term "dobývanie" in the Mining Act has first of all, the first time, emerged in 2007. The term "dobývanie" was explained long before in the safety regulation.
The other issue is the character of the control, inspection, performed. The identified issues are listed in the minutes. There is no law that stipulates that the official state representative should be involved with specific activities of a mining company which are not in breach with valid regulations.

The activities of the Rozmin company on 8th December were not in conflict with any regulation. The interruption of activity is not a violation of the law. They have interrupted the mining activity as such, and in the key period they have not performed any activities that would lead towards excavation.

MR ANWAY: There's one other correction.

MS POLAKOVA: I think it states:

"... [no] official state representative should be involved with specific activities of a mining company which is in contrast with the legal stipulations."

So I think it probably should be: which breaches or which is not in compliance with the legal stipulations.

This is what the witness stated.

DR GHARAVI: You know, if it's material questions --

MS POLAKOVA: This is material, because it states the contrary in the record.

MR ANWAY: We will be careful not to interrupt unless it is
DR GHARAVI: If it's obvious, the mistake, as well, then we can live with it.

Sir, may I suggest to you that given the objective of the legislator was -- as you describe it in paragraph 9 of your witness statement -- to put an end to a situation that a mere application was enough to entertain the process, without any work, that starting actual construction work, especially when we see the protocol and Mr Baffi not raising any complaint, was understood by Mr Baffi and by my client as meaning start of the works, and not extraction. Could that be possible?

A. No, this is not possible.

Q. Did you speak to Mr Baffi about this protocol? Did you speak to him about this document, tab 31, C-28? Because I understand you're at a higher level. Did you speak to the person who wrote the revocation letter and the protocol, what was his understanding of the term at the time? It's a yes or no. Did you speak with him about his intention?

A. Well, we haven't discussed the minutes with Mr Baffi.

Q. Why? Why haven't you discussed these minutes?

A. Well, I believe this was explained once, and I am happy to repeat it again.
The District Mining Authority is the first-instance body, they have their own description of work and they perform on-site inspections. It is not the obligation of the District Mining Authority, unless this is requested by the Main Mining Authority, to send us their minutes from relevant meetings. Apart from the fact when on 8th December I was not the chairman of the Main Mining Office, I was only the head of one of the departments, minding the fact that during any other inspection, no other body is responsible or is required to send such minutes to the Main Office unless asked for.

Q. I understand. But you followed the dispute afterwards, you saw the position of the parties, you saw the position of Rozmin, that understood this "dobývanie" to mean something else. I mean, why, as the superior body, you don't ask the person, "Was that your understanding? Did you communicate it?" I do that: "Did you tell this? How did you understand it? You communicated".

A. I don't know what dispute on 8th December and 3rd January was in place, when all the disputes and the complaints and all the ordinary and extraordinary recourses occurred after this date. If this was in the appellate file, we reviewed it thoroughly. Until then, there was no dispute.

Q. Assume Mr Baffi had the same understanding as my client
12:30

as to the term. Then Rozmin would not be responsible
for this; they had the same understanding as Mr Baffi.

Wouldn't that be relevant?

A. I don't know how your client understood or Mr Baffi understood this
problem. Understanding of the Main Mining Office can
only be reflected in a written statement by which
an appeal or a complaint is handled.

And the procedure was then approved, of
notification of non-activity, as the first legal act of

Q. Sir, is Mr Baffi retired today? Is he retired?

A. No, he is not.

Q. What is his function today?

A. He is the head of the District Mining Office in the city
of Spišská Nová Ves.

Q. When did you see him last?

A. 8th and 9th September, last week.

Q. To prepare for this; correct?

A. Of course. But not with Mr Baffi.

Q. Mr Baffi is not in Paris today, for example? He was not
in Paris yesterday? You heard my question.

A. I am not aware of him being here.

Q. You are not aware, but you don't exclude that he may be
around?

A. I personally exclude it.
Q. You personally, but you are not sure?
A. I am sure.

Q. Where is he? Do you know where he is?
A. He is clearly at work.

Q. In his office in Slovakia?
A. Whether he is in his office, he doesn't need to let me know that. But if he were off work, he would have to let me know. So I do not suppose he is off, and I am 100% sure he is at work. He could be in his office or he could be on the road within his district.

Q. Who took the decision to revoke, the decision of January, the one you have at tab 32?
A. District Mining Office Spišská Nová Ves. It was not a person; it was the District Mining Office Spišská Nová Ves, as a state body.

Q. Who takes that decision within the District Mining Office?
A. Responsible person, plus head of the department, plus head of the Mining Office.

Q. Mr Baffi; correct?
A. Mr Baffi could not have addressed this matter as three persons in one. Mr Baffi was the chairman and he signed the decision, bearing full responsibility for it.

Q. Did he communicate with the Main Mining Office on the subject prior to notifying us of the decision?
Q. Did he receive any instructions from the Ministry of Economy or your office?
A. In no event from our office, and I also deem neither from the Ministry of Economy.

Q. Can you explain the procedure for one to revoke a licence? How long does it take? Are there meetings? What are the formalities, the duration? How does it work?
A. I can. Every District Mining Office is in charge of the appropriate jurisdiction area within which there are mining (in Slovak language version: dobývacie) areas in which there are state deposits of the Slovak Republic, exclusive deposits in the ownership of the Slovak Republic. Every District Mining Office is obliged to observe lapsing of periods of appropriate mining (in Slovak language version: dobývacích) areas, in terms of non-activity, whether mining activity has been approved or not, or whether mining activity is underway or has been suspended.

In case of a three-year period having lapsed since the force of act amendment of 01/01/2002, until its next amendment of 2007, it was a period of three years for both underground and above-ground work. Such entity which did not observe such period or deadline -- meaning since assignment of (as heard in Slovak) dobývací area did not conduct mining activity for more than three years or had suspended mining activities for more than
three years -- such entity was notified of cessation of its right to
(as heard in Slovak) dobývať deposit and the mining (in Slovak language
version: dobývací)
area was published in the appropriate journal for the purposes of tender
procedure.

Selection procedure proceeds in a way that the independent
commission -- composition of which may not be influenced -- that
is composed of at least five members of local
administration, state administration and Mining Office will evaluate
projects -- not companies that submitted the projects -- but projects, how
they have dealt
with the use of the deposit within the mining (in Slovak language
version: dobývací) area.

Based on its evaluation it will set an order.

And then the District Mining Office has to
respect the order.

Q. I am looking more for practical answers, more specific
to this case. You revoked the licence on January 3rd
2005. Then there was an announcement in the press,
before the notification, which was at the end of
December. That entails that the decision to revoke and
tender was taken at a prior time. And my question is
when exactly the decision to revoke the licence was
taken for it then to lead to a tender decision, and the
posting of it at the end of December.

A. First administrative act of the District Mining Office
towards Rozmin was made on 3rd January 2005, after having
lapsed a three-year period, which was approved by both
regional and Supreme Court of the Slovak Republic,
12:37      including the Košice Regional Prosecution Office.

      The fact of the publication in early December in the

3 journal does not change anything about it, because that

4 was not the only notification; notification regarding mining (in Slovak

5 language version: dobývací) area in Gemerská Poloma was the third in

5 order.

5 In

6 January, it was the third in order. And in 2005 we have

7 published approximately 30 such notifications.

8 Q. Sir, you understand very well my question and I really

9 expect an answer. I have reserved my right to

10 cross-examine witnesses to focus essentially on you, so

11 I have a lot of time, and I want a clear answer to my

12 question.

13 There is an announcement in the press for a tender

14 of my client's rights that were notified afterwards. And

15 the logic is that if you tender something, that means

16 a decision for revocation and tender has been taken.

17 And I want a scientific answer to my scientific

18 question: when was the decision taken with a stamp or

19 a signature?

20 A. That was adopted -- notice on cessation of rights -- on 3rd January

21 2005.

21 Q. Sir, I am not a specialist of your law or your system,

22 but you cannot take a decision on January 3rd to revoke

23 a right when you have put it in tender on December 30th.

24 How does that make sense? How do you want us to engage

25 constructively?
A. I don't know how it could be understood constructively when it's clearly seen from all the courts of Slovakia's decisions who would have examined this case when the legal principle was established that the first legal act conducted against Rozmin by District Mining Office was on January 3rd 2005 -- notice on cessation of a right to mine (in Slovak language: dobývať) exclusive deposit due to inactivity. There was no preceding legal act prior to this date. Notification in the journal cannot be construed as legal act of a state body towards organisation of any kind.

Q. I understand. I'm not looking for a legal impact. I'm just looking for a factual chronology to understand what led to the announcement. Forget the notification, forget the legal consequences.

You have an announcement in the press on December 30th. What was the step before that?

A. Prior to notification, what was the step? Did I understand your question correctly?

Q. I think we can be very clear on this.

On January 3rd 2005 there was a notification. Forget about that. Move backwards.

End of December, December 30th, there was an announcement of tender of my client's rights; correct? Before that, what happened at the District Mining Office?
A. I don't understand the question. What's supposed to have happened?

Q. In the journal that was published, it didn't come like this (indicating), the decision. You need -- you agree with me -- someone to communicate to the journal at a certain date a request for publication; then before you request a publication, you need to decide that you want to organise a tender. So when was the decision taken at the [District Mining Office] to organise a new tender?

Is that clear?

A. No, because no decision about the tender is necessary to be made. A notification of tender is not a decision; it is merely a declaration of facts about a mining (in Slovak language version: dobývacom) area, and not about the rights of the company Rozmin.

Q. Okay. When was the letter of the District Mining Office communicated to the journal for publication of the tender?

A. I'm not sure of the date, but it must have been sometime November/December. I cannot tell you exactly what date it was on. I'm not familiar with the file through which the request for publication in the journal was made.

Q. You didn't have the curiosity to enquire at which time the decision to put my client's right to tender was taken, the process? You didn't have this curiosity?
A. I think we don't understand each other. But I do not see the need of making any decision, and the notice to the journal in general is not a decision about rights of your client. It is an announcement about mining (in Slovak language version: dobývacom) area Gemerská Poloma which basically does not include any rights of your client, and by such notice their rights could not have been impacted in any way.

Q. Okay. Then I ask you: when a decision is taken in November, let's say, why isn't this communicated to us? Why Mr Baffi, who is one of the decision-makers, takes such decision, and comes after at our site and issues that protocol? What sense does that make? Issues the protocol of his visit on December 8th.

MR ANWAY: I object to the question. The witness did not say the decision was taken in November.

DR GHARAVI: He said "November/December".

MR ANWAY: That's right.

DR GHARAVI: Yes.

A. I have to keep on asking back. I did not fully understand what decision is Mr Counsel still speaking, dear panel, because the notification publication in the journal, no decision is required for such publication. They will just -- the District Mining Office will just
send the request by a simple letter, and the journal will decide
themselves on what date they will actually publish it.

With all due respect, I cannot remember matters for
which I am not responsible, for which was the
responsibility of the District Mining Office. And the
notice does not impact any rights of any mining
organisation. And in December and January, and
consequent months, we have in the first year sent to the
journal to be published about 30 different cases, which
I have stated in my written testimony.

The first step which could be considered as
a decision, or any legal act, administrative act, as it
relates to organisations which did not perform mining
activities within the period of three years, has been
the legal act of notification on cessation of legal rights, which was
reaffirmed by higher-instance courts, all the way to
Supreme Court of Slovakia. And in order to publish
tender in a journal, no decision is needed for that; it
is an information activity, information step, nothing
else.

Q. Sir, I am not talking about law, I'm talking about fact.

Take [my colleague] again: I decide myself to fire
him, then I notify him on a certain date; but before
that, I have taken the decision. It has no valid legal
implication yet, but I have taken it; it's a fact.
So when was that meeting/correspondence held that led to that official decision of revocation and publication? You understand me?

A. It's not perfectly clear. I need to first of all clear it up for myself. What do you mean with the term "When did the correspondence occur"? Between whom?

The entity rights were taken away, that resulted from the law after the three-year period lapsed.

This is the distance between 1st January 2002 and 1st January 2005. There is nothing else to say; no other steps, no other involvement of state bodies. Nothing else caused the cessation of these rights. It was simply the inactivity of Rozmin on its own, with no involvement of anyone else.

Whether the District Mining Office or Mr Baffi or anyone else was there during any other inspection in any period -- vis-à-vis, for example, the safety at work conditions, or vis-à-vis any other legal formalities -- this has no impact on the three-year period. The three-year period can be only affected by the mining activity of the mining organisation, no one else.

So I see no reason to argue about what correspondence, what communication. So please state your question clearly. What do you need to know? And if I know, I will definitely share this information with
Q. What I want to know is: who decided, and when, to send a letter to the publication journal that published the tender on December 30th? Do you understand that? Who decided to send --

A. It was a decision made by the DMO. Yes, I understand the question. When? I cannot answer. I cannot give you a specific date, whether this was the 13th, the 15th or the 10th or -- I don't know. But it can be found from the file. A decision was made about sending this notice to the Official Journal. The decision was made by the District Mining Office in case of Gemerská Poloma excavation area.

Q. Before the decision was sent, the request for publication was sent to the journal, are you aware of any process, procedure, that was followed at the District Mining Office?

A. What process? What do you have in mind?

Q. A meeting where Mr Baffi comes in, has a coffee, then says, "Okay, let's gather to discuss the mining rights and let's discuss, look at the dates, look at what they are working on, let's make enquiries, let's instruct someone to make enquiries, to look at the legal provisions, and then let's meet again to review these conclusions; oh, and then let's send to the publication,
the journal". You understand?

A. Partially, yes. But I don't know what meeting you have in mind. I don't know about any meetings at coffee or about any other meetings. We cannot task anyone with performing the inspection rights other than our own institutions. I'm not aware about any such meetings.

And it would have no impact on the end of the three-year period. The three-year period can be only affected by the activity of the mining organisation, and only mining activity -- and excavation specifically -- can affect the three-year period; nothing else.

After ten years of arguing, it is quite clear that there was no excavation performed by the Rozmin organisation. Whether it was under the term before 2007, after 2007, it doesn't make any difference. They are perfectly legally capable of understanding what does it mean. And also they understand that. And if they do not understand, there is a presumption of understanding of a professionally capable organization.

Q. Let's talk about something different. Why doesn't the District Mining Office, before revoking mining rights, give a heads-up or send a warning to the contractor saying, "Listen, we are at this date: in 40/50/60 days there is going to be an expiration of the term under the 2002 amendment, and we notify you of this"? Rather than just sending something like that, publishing first to the journal, and then sending on January 3rd 2005 the
A. May I answer?

The DMO has no obligation to signal to an organisation that they will have their rights to (as heard in Slovak) dobývať revoked given the lapsing of the three-year period, for two reasons. First of all, they know about their rights and duties. They should be perfectly aware about their rights and duties.

Second, this is not allowed by the Constitution of the Slovak Republic, which in Article 2 states that state bodies can only act within the spirit of the law, in line with the law and in full meaning of the words of the law. The only exemption is in case of protecting rights and human life under the Geneva Convention, when we are obliged to provide counselling services in case of safety at work activities.

Q. Did you read the 2008 Supreme Court decision on this issue? You must have, because you ruled afterwards.

A. Yes.

Q. Do you recall that that's not the position that the Supreme Court has taken? It said that by notifying it this way, it talks about the right to be heard, right of defence. It talks about the right to express an opinion.

I am talking about the 2008 decision: tab 37,
Exhibit C-33. If you turn to it --

THE PRESIDENT: Sorry to interrupt. I am informed that the filming is not working now, and maybe Ms Gastrell can --

MS GASTRELL: I am very sorry for the interruption, but there is a power issue on this side of the room that has prevented the filming from taking place. We have a technician waiting outside, but I was just suggesting that at a good stopping point we can stop for lunch, so that we can take care of it during the lunch break and won't interrupt again. (Pause)

THE PRESIDENT: So you have this information, if you want to conclude this line of questioning.

DR GHARAVI: The line of questioning may take some time. But I will be happy to continue with this question, and then I may suggest a pause for lunch.

Here at page 8, C-33, Supreme Court decision, it says:

"From the available evidence in the file it is obvious that the administrative authority committed a whole series of severe ..."

These are the terms of the Supreme Court:

"... procedural misconducts, considerably decreasing the chances of the plaintiff to defense. The basic premise in the rule of law in such a situation is that shortcomings of a public power authority cannot impose
a burden for physical or legal entities."

And then:

"According to the Supreme Court, this specific matter cannot contravene the generally accepted principles of administrative procedure, such as the right of the participant to be heard, his right to express his opinion to the grounds of the decision, to propose evidence to prove his statement, the right to be acquainted with the reasons of the administrative act. The plaintiff had no chance to use these rights; therefore the procedure had a considerable defect."

Have you bothered to read this? And if so, how can you testify the way you have?

A. Yes, I have read it.

Q. Then how is that reconcilable with the answers you provided to my question as to the absence of warning and giving my client a chance to defend?

A. This is not true.

Q. What is not true?

A. Because your client did receive during the administrative procedure -- which was duly completed basically after eight or nine years -- your client had received all the rights which were awarded to your client by the district and regional court. They had a full possibility to submit evidence. Witnesses have
been heard.

This is all clear also from the DMO ruling and the Main Mining Office ruling on the appellate procedure. These are the decisions taken after the ruling of the Supreme Court from 2011 -- I don't know the precise number of this ruling -- when all the procedural flaws that were identified by the Supreme Court, in the first round and also in the second round, all have been removed and corrected. And the whole process has basically been repeated by issuing the decision of the DMO and the MMO three times.

Q. That was not my question. I have no interest yet in talking about the period that followed the notification of the revocation. I am asking you: why was there not a prior warning to the notification of January 3rd 2005? Why in December/November the District Mining Office didn't send a letter to us informing us that it was its understanding of the 2002 amendment -- or without an understanding -- saying, "Based on the law we are terminating on that date"?

MR ANWAY: Mr Chairman, I object. You will recall from the opening statement that we showed testimony from Mr Agyagos saying he was warned by Mr Baffi.

DR GHHARAVI: No, no. This is completely inappropriate.

MR ANWAY: The premise in the question is that he wasn't
warned. That hasn't been established.

DR GHARAVI: No, no. First, I do not appreciate interruption. This is unacceptable. I am talking about a notification in writing. Secondly, Mr Agyagos's testimony that you referred to said "starting works"; it had nothing to do with termination because of excavation. So it is not appropriate to interfere like that and suggest a response.

So the question, sir, is: why didn't you warn -- the District Mining [Office] warn that it was going to terminate -- in writing, if you prefer -- prior to this date?

A. Because this is simply not our obligation.

Q. There is no obligation. But then what does the court say? I just read the Supreme Court decision. It says the contrary: it says you had the obligation.

A. Clearly the Supreme Court decision doesn't state that we have to warn in advance every mining organisation that they have to respect the Mining Act, which is published in the collection of acts and the company is professionally aware, and we also have to presume the knowledge of this act.

Q. Okay. I will leave the meaning of the Supreme Court's holding to the Tribunal.

I ask you practically: don't you think that prior warning is useful and in the interest of all? Because
if you warn what you are going to do, it's not simply
a bureaucratic procedure; it allows the other party to
say, "Wait, you are basing it on the 2002 amendment, but
the 200[2] amendment doesn't say that, that term doesn't
say that. Oh, Mr Baffi, come here. Is that your
understanding?" He would say, "No, it's not my
understanding", or, "Yes". Then we would say there is
a misunderstanding. Then we would ask a court or
a mediator.

Don't you think it's useful? It allows us to do
what we are doing here.

A. May I answer?

THE PRESIDENT: Yes, please.

A. Well, this information Mr Rozloznik, as the responsible person and executive
of the organisation, did receive. He
only didn't receive it in written from the DMO. This is
not the obligation of the DMO.

But the Slovak association of miners, the Slovak
Chamber of Miners organised briefings, seminars or
organised expert meetings, conferences, discussions,
where also the representatives of universities and state
administration took part, and they did inform the
participants that: there is this amendment, this is the
legal situation and this is the development that can be
expected. Apologies, it was not done ad hoc for one
organisation; it was done for all the mining organisations which took part.

DR GHARAVI: Mr President, I will be happy to break if that is agreeable to you. (Pause)

PROFESSOR STERN: It's not a question to the witness, but at the beginning of his testimony he referred to a Decree No. 21. Do we have this on the file?

MR ANWAY: We do, Professor Stern. We will provide you the relevant reference number. An excerpt of it, and we will provide you the number.

THE PRESIDENT: Thank you. So we break for lunch. Exceptionally, it will be 1 hour and 15 minutes today. So we reconvene at 2.20.

MR ANWAY: Mr Chairman, before we leave, could you please give the instruction to the witness not to speak to anyone in the break.

THE PRESIDENT: Yes.

Mr Kúkelcík, you are requested not to talk about the case with anyone during the various breaks, and particularly the lunch break.

MR KÚKELCÍK: Of course.

THE PRESIDENT: Thank you.

(1.03 pm)

(Adjourned until 2.20 pm)

(2.20 pm)
THE PRESIDENT: When you like, Dr Gharavi.

MR ANWAY: Before we start, I did find the reference that Professor Stern had asked for. You had asked the question about the decree to which Mr Kúkelcik had referred. It is R-165. It is an excerpt from Decree 21/1989. In fact it was slide 5 of my opening statement on the merits from Monday: you will recall there was a slide that said that excavation can only begin after opening works.

DR GHARAVI: If we can leave it there.

MR ANWAY: Sure, yes.

DR GHARAVI: If you allow me, Mr President.

THE PRESIDENT: Yes.

DR GHARAVI: Good afternoon, sir. We had left off before lunch on the question of advance warning before the decision to revoke is communicated. I want to move on to the next topic, which is a related one. I want to engage with you as to whether or not the decision of the District Mining Authority to revoke Rozmin's rights was wise and in conformity with the spirit of the 2002 amendment, as you describe the spirit at paragraphs 8 and 9 of your first testimony.

If you turn to paragraphs 8 and 9 of your testimony, you discuss the intention of the drafter, and I would like you to discuss these two paragraphs and what I will
read you from the Supreme Court decision at page 25, C-36, tab 39, it's decision of 2011. I will read that to you, and I invite you to read it together with me. It starts with, on the English version, let's say the third paragraph:

"Finally the court of appeal points out ... the fact that legal standards do not apply in a vacuum, but within the society and their main aim is the treatment of social relations in such a way that intervention into rights and interests protected by rights of legal entities ...

(Pause to locate the document)
I will start again. Bear with me. It says:

"Finally the court of appeal points out ... the fact that legal standards do not apply in a vacuum, but within the society and their main aim is the treatment of social relations in such a way that intervention into rights and interests protected by rights of legal entities and natural persons occur only in inevitable cases, in conformity with public interest and to the smallest extent possible."

Then it goes on to say:

"That is why the administrative body when issuing an individual administrative act, which undoubtedly causes an intervention into subjective rights of
individuals, must evaluate this intervention from all perspectives, mainly concerning its conformity with the public interest and proportionality."

And finally:

"In this case the public interest was undoubtedly the most possible effective use of the mining area 'Gemerská Poloma', however without any evaluation and comparison of profitability of leaving the plaintiff the mining area in question or its assigning to another organization, the decision of the plaintiff was premature, unclear and insufficiently reasoned."

Now, the first question I have, sir, to you, is: have you seen any evaluation of this sort in the file of the District Mining [Office] prior to January 2005?

A. Assessment of what? Of public interest, of legal fact, of meeting a merit of -- assessment of what?

Q. Have you seen any analysis in the District Mining Office prior to January 2005 of what I have just read to you: whether it was in the public interest, whether it was not premature, whether they were -- was this the most possible effective use, comparison of profitability of leaving the mining area in question to Rozmin or assigning it to another? Did you see any such evaluation? I think it's no, but I don't want to suggest that to you. It's yes or no. Did you see?
A. I have no concern whether you're going to slip something between the lines to me. But the fact remains that the decision of the Supreme Court which you are quoting from is from 18 May 2011; I don't know on what basis could have the District Mining Office analyzed this acceptance of the Supreme Court. At that time, the District Mining Office was not obliged to analyze.

The only thing is the legislator -- who is fully entitled to do so -- had issued an Amendment No. 558: where it is strictly stipulated -- the cessation of a right to dobývať exclusive deposit when dobývanie was not commenced or when dobývanie was suspended for a period longer than three years. In the relevant period -- not only Gemerská Poloma but additional 20/30 cases were of similar nature. With regard to assessment of lapsing of the period, I hold that there is no body authorised to judge that; it was stipulated by the legislator.

Rozmin fulfilled the subject-matter of the cessation of a right to dobývať the exclusive deposit, and therefore this exclusive deposit was put into tender. All deficiencies identified in the first and second decision were removed in the final decision that was not contested by Rozmin.

And also this analysis was performed in that decision.

Q. I'm not asking whether you should have done that, why you didn't do that. I'm asking you to confirm basically that you did not see in the [District Mining] Office any report nor any evaluation in terms of proportionality, where the project stood, the intention of the company
Rozmin to pursue or not, and what were the alternatives. Could you confirm that there was no such evaluation in the records of the District Mining Office prior to January 3rd 2005? That's the question. It's yes or no, and I suggest it's no.

A. Such an assessment was not part of the appellate file, and the Mining Office was not obliged to conduct such assessment.

Q. I understand.

Do you know that on January 3rd 2005, at that period of time, Rozmin had started works -- I'm not saying it is extraction -- it had started works, as per the protocol of December 8th by Mr Baffi, had signed a contract with the company Siderit, had paid a downpayment and no bills were outstanding? Are you aware of that?

A. Whether bills were or were not outstanding, I am not aware of that. But I found about a contract from the appellate file: after 01/01/2005, the company Rozmin was no longer authorised to handle or to dispose of the state excavation area. We do not interfere into the contractual freedom of organizations.

Q. Okay. I will move on to --

THE PRESIDENT: Sorry to interrupt. While we are on this page 25, I read several times:
"The court of appeal points out ..."

"Finally the court of appeal ...", et cetera.

I understand it is in fact the Supreme Court, it speaks of itself, but I would like to have confirmation from both parties.

DR GHARAVI: Yes.

MR ANWAY: (Nods head)

THE PRESIDENT: Yes. Sorry.

MR KÚKELCÍK: Mr Chairman, may I have a point of order, back to your question? May I respond?

THE PRESIDENT: Yes.

A. The Supreme Court is the regular appellate court to the regional court. But above the Supreme Court there is the Constitutional Court as well, even above it.

DR GHARAVI: Your testimony, as I understood it, was that it is the District Mining Office who is the exclusive body in charge of the revocation of the mining authorisation, right?

A. To notify the cessation of the right to excavate as a result of the time period having elapsed, yes.

Q. And your testimony is that it never received any instructions from the Main Mining Office, your office, no instructions from the Ministry of Economy, and it did not communicate with these other organs before taking the decision; correct?
A. Who did not communicate with whom?

Q. Before notifying the decision to revoke the rights on January 3rd 2005, the District Mining Office did not receive any instructions in relation to this project, to the revocation, and did not consult the Main Mining Office in this relation; correct?

A. On behalf of the Main Mining Office, I can say: no, no instructions were received by DMO on the matter of Gemerská Poloma. All DMOs received a general instruction, how to proceed in all cases, not per any ad hoc case.

About communication with the Ministry of Economy, I have absolutely no knowledge. How could I know anything about that?

Q. Was the Main Mining Office, your office, engaged in any action/consultation with other prospective mining companies in relation to this project prior to the revocation notification of January 3rd 2005?

A. No. But if I may be allowed by the panel, you kept asking about communication between Mr Baffi, Rozloznik and Agyagos. Since I have no knowledge of that, you never asked whether I know of somebody else who would have consulted about this issue prior to having issued the January 3rd 2005 decision, because my answer would be: yes. I personally was approached by Dr Rozloznik,
the second Thursday and second Friday of September 2004, at
the official event of the Slovak-wide celebration of
Mining Day, on the matter of Amendment 558 of 2002, in
force on January 1st 2002.

Q. That was not my question. My question is: was the
Main Mining Office in contact with other prospective
companies interested in this mine?

A. No.

Q. I ask you again, because it's an important question for
you to think again before answering. So I give you the
date: January 3rd 2005, revocation by the District
Mining Office of our rights. Prior to that, prior to
January 3rd 2005, were other companies in contact with
the Main Mining Office in relation to this deposit?

A. On behalf of the Main Mining Office, department of
deposit protection, which I was in charge of at that
time -- I was not the head of the Main Mining Office --
on behalf of myself and my department, I answer: no.

Q. But you were the second person in that office, right?

A. That is correct.

Q. Who was above you?

A. I was deputy. Mr Martin Ludonski in the first, and
second round would be Mr Martin Durbak.

Q. And who was following your instructions below?
A. I had my inspectors: Mr Sikora, Mr Durbak. At the time when Ludonski was the head, Mr Ferenz(?) and Mr Iring(?).

Q. And who is someone by the name of Dusan Cellar?

A. You said Mr Dusan Cellar?

Q. Yes.

A. What about him?

Q. I am asking you: what is his rank?

A. Mr Dusan Cellar at that time at the Main Mining Office did not work. He never worked there. And due to such a time difference, I'm not sure whether he was still in the position of advisor to the Ministry of Economy or not anymore, because afterwards, after he ceased working as the minister's advisor, he won a tender for District Mining Office Košice head. But I do not remember the date, just to make sure I do not provide you an incorrect date.

Q. Where is the gentleman today? What is his function and where is he? Do you know?

A. Where he is working, I have the information from -- someone told me allegedly in Romania. But I'm not sure in what position, what company or what location.

Q. Where is he? Which country did you say?

A. Allegedly he is in Romania.

Q. Do you know where he was during the January 2005 period?
A. I think he was at the Košice District Mining Office, but I could be wrong. But it could be found out easily from his personal file, which is at the Main Mining Office. But I do not recall it off the top of my head.

Q. You didn't try to enquire?

A. Why should I?

Q. Sir, have you read all the World Bank reports alleging that there is a lot of corruption in the tender process in your country? Are you aware of such reports?

A. No, I am not aware.

Q. Are you aware of European Commission reports alleging that there is lots and lots of corruption in the tender processes in your country?

A. No, I am not aware.

Q. Are you aware of reports from the secret services of your country confirming that there is corruption in your country?

A. No, I do not know. I am not authorised person who would have access to such information.

Q. I'm not from your country, and I'm aware. Because you read and watch television, right? This is in the press. It's your country. It talks about tender. Your testimony is you've never heard of allegations of corruption in the tender process in your country?

MR ANWAY: Mr Chairman, I think it was clear that the
witness was simply saying he doesn't have access to secret service information.

DR GHARAVI: I am continuing. That's not what I was talking about. Reports in the press.

A. Press statements are not intelligence agency reporting; it's the journalists reporting.

May I elaborate on this question, Mr Chairman?

THE PRESIDENT: Go on with your questions.

DR GHARAVI: Thank you.

Sir, can I turn to your second witness statement for a second at paragraph 1. You submitted a first witness statement in the Counter-Memorial; it's a legal document submitted by Slovakia's representatives. It attached your first witness statement. Then in the second submission of the Slovak Republic we found your second witness testimony. It says, in paragraph 1:

"On 29 June 2015, I prepared my first witness statement, the accuracy of which I again confirm."

Then you say:

"I have read the statements in Claimants' Reply dated 29 September 2015. I have prepared this second witness statement to react to what are, in my opinion, false and misleading statements in the Reply concerning delays in obtaining a new authorization of mining activities, which were allegedly attributable to the
I have strictly no question in relation to the paragraphs that follow in your witness statement, because you address bureaucratic issues in response to the Reply memorial.

The question I have in this regard is: if you turn precisely to my memorial -- it's at tab 48. It's the Reply memorial to which you react in your second witness statement, and at paragraph 464 -- and this, what I'm going to read to you, is not a factual document; it's a legal position of counsel -- us -- of Belmont in this arbitration. This is what we say.

We say at paragraph 464 that: "Days before the appointment of the [selection committee for the tender that followed the revocation of our rights], the bids ..."

The bids, the tenders: "... had already been ranked."

The tender applicants had been ranked. We say: "Indeed, on April 11, 2005, Mr Cellar disclosed in an email to Mr Keller ..."

Mr Keller being from the company Mondo: "... the names of the entities that had so far bid for the project, with specific indications as to which bids were more interesting to the State."
My question to you is: how come you chose to react
in your second witness statement in relation to
bureaucratic issues, but not on such an important
allegation?

A. I'm not aware of any e-mail, a statement or meeting of Mr Cellar
with Mr Keller. And in a way, from the viewpoint of
legal procedure for tender, it's completely irrelevant.

Q. Okay, I understand.

A. Mr Cellar in no case, in no way, regardless of what
position he was at, could not have impacted or in any
way influenced the tender, and I am convinced that never
happened. And I have an evidence of this, not only
a statement of someone, because due to the initiative of
Rozmin, criminal police had investigated thoroughly,
having questioned the entire tender commission, have
questioned all of the employees who were involved from
the District Mining Office, and despite the fact that I was not
in my office at that time and I had nothing in common with this
proceeding, I was also providing
testimony to criminal police.

So I hold: if something like the nature were to
occur, the criminal police would have investigated and
would have discovered, and would have initiated
indictment and criminal proceedings against someone. If
you have such information, please disclose this
information here.
Q. Well, we can. It's an invitation to disclose the documents. But I will stay with my question.

You read our Reply memorial; that's why you write in paragraph 1 of your second witness statement that you have things to criticise about our memorial. Did you read that statement I just read you about alleged the irregularities in the bid procedure, Mr Cellar in communication with tenderers? Did you read that at the time when you wrote your second witness statement?

A. With my second testimony, my witness testimony, I was not aware of this information, thus I have not responded to it. And the claims about the bureaucratic procedure of state bodies in Slovakia as they relate to issuing permits to mining activity is completely irrelevant to action or inaction of Mr. Cellar or Mr Keller. Because in my second witness statement -- I know very well what I wrote and what I have signed -- clearly I point to the fact how the administrative proceedings were handled in the matter of issuing permits for Rozmin for mining activities after the expiry of the first mining authorization in 2002. There were no delays because of bureaucracy. And we have evidence in written documents how it was proceeded, how the organisation of Rozmin had proceeded as well.

Q. That's not my question. I'm asking you whether or not
you checked what we said was true. Have you talked to Mr Cellar about whether or not he was in contact with other bidders during the selection process in 2005?

A. No.

Q. No?

A. No.

Q. Okay. Sir, do you have your files in relation to this dispute, project, from the years 2005, 2006, 2007, or did you classify that?

A. Sorry, what do you mean by "did you classify them"?

Q. No, do you have your files, your papers, your emails from the years 2005, 2006, 2007 in relation to this file?

A. I'm not sure what you're talking about.

Q. Sir, you have a costume, you have an office, you have an important position, you have documents, you have a computer; correct? You have a computer in your office? Do you have a computer in your office?

A. Yes, in the office I do.

Q. Did you receive emails? Did you send emails?

A. Yes.

Q. Do you have your emails from the years 2005, 2006, 2007 in relation to this file, communications you may have had regarding this file?

A. With myself, you mean?
Q. No, I guess you don't communicate with yourself, you communicate with others. But that was probably your question. Yes, do you have the emails that were sent to you and the emails that you sent to others in relation to this file for the years 2005/2006?

A. I don't remember emailing anything like that to anyone.

Q. Okay. Do you keep in general your emails from -- if you wanted to find an email from your file, any file, from 2005, could you have access to it?

A. When they pertain to official business or official files, they are included in a file-their originals including photocopies, in order to avoid accidental deletion because of printing problems.

But I personally do not keep emails. I do not have such e-mails. I have never dealt with something like that with respect to dobývací area -- unofficially.

All official documents, including emails, are included in file. So if there are emails, they are included in the file.

Q. Leave the files aside. The emails, does somebody come along and delete them, or did they remain in the computer system, do you know?

A. Could I kindly ask this respected Tribunal to take into consideration the fact that electronic mail, according to Slovak legislation, has a principle which still applies. Every citizen and every legal entity, including foreign legal entities, are authorised to
apply through email any application to any official body in Slovakia. When they do not add it within three days in writing, it is not considered as done. Recently we have been conducting electronisation of state administration. Electronic signature was introduced. Those who do have electronic signature authorised do not any longer have to supply an additional hard copy with the emails within the three-day deadline. So I do not completely understand the question whether our main office archives emails from 2005, '06 or '07, '08 because I'm neither an engineer, I have no obligation in this regard; my obligation is to archive files as such. And in case electronic mail, email, was part of any official file, it is then included in the file. This also includes the recipient, the sender, all the other information which is required. Whether it is in the IT system or not, I would need to verify that. I don't think it is unfeasible.

Q. Could you, sir, go to tab 46. We will start with Exhibit C-357, dated 13th December 2004, from Mondo Minerals to Mr Cellar.

Sir, this is an email from a company -- have you heard of the company Mondo Minerals?

A. Yes.

Q. So you have an official from Mondo Minerals by the name
of Keller who writes to Mr Cellar. And Mr Cellar, we submit, works in your office. Correct?

A. He was working. He is no longer working there.

Q. Okay. What was the period of time when he was working there?

A. I'm sure he was working in a certain period, but I don't know when, because he was working at a District Mining Office in Košice, later in Spišská Nová Ves; then he was working in the Ministry of Economy; he returned back to the District Mining Office in Košice. I don't know. I'm afraid I would give you a wrong answer, what was the specific period when he worked at the District Mining Office in Košice. I suppose this was from 2004 on. I'm not sure about the month.

Q. Do you know why Mondo Minerals is in discussion with someone from -- let's say Mr Cellar was at the District Mining Office and not at the Main Mining Office at that time -- in relation to a deposit that had not yet been revoked?

A. I don't know. Even though this email is in English, I see it for the first time here.

Q. It is the first time? You've never seen it? Nobody has brought it to your attention? You address in your witness statement stamps for application permits, but you have emails of this sort showing contact between
1. mining companies interested to take our rights, which were not revoked at the time, and you were not shown this email? Is that my understanding? You didn't see this email before? It's the first time?

2. A. Who was supposed to notify me about this email?

3. Q. Your lawyers, or you read yourself. You said you read the Reply memorial.

4. A. Is this the official documentation of the office?

5. Q. You said in your second witness statement that you read the Reply memorial, and in our Reply memorial we address this, we also submit this. But fine, your testimony is that you've never seen this; correct?

6. A. Could I see a Slovak translation of this document?

7. Q. The Slovak translation, we don't have the luxury of providing it to you right now, but I can read it to you and the translators can translate, and counsel for the government is here to correct me if I say something that is not correct.

8. Mondo Minerals, Mr Keller, emails Mr Cellar on 13th December 2004 -- this is Exhibit C-357 -- and says:

9. "Thank you for your kind hospitality during my visit to the Gemerská Poloma talc mine ..."

10. Which is our project at the time:

11. ". . . last weekend and for arranging the meeting with the Deputy Prime Minister of the Slovak Republic and
"I hope that the attached PowerPoint Presentation of Mondo Minerals ... will help to illustrate the business and activities of Mondo Minerals. If you have any questions please let me know."

Forget about this email. Were you informed that Mr Cellar was in discussion with Mondo Minerals at that period of time, the first half of December 2004, as well as the Minister of Economy of your country?

A. No, I was not aware of that.

Q. Does it surprise you?

A. The fact that I didn't know, or the fact that there was a discussion? The Minister of Economy does not inform me about whom he is meeting. And Mr Cellar, well, I doubt he was organising it in a way as to inform the broad public. For example, I see this email for the first time, and I do not know on the basis of what they have met, and what was the subject of their discussion. The fact that Minister Rusko was there, I can only say that the minister knew what he was doing.

Q. Maybe you can explain how it works in your country, because I really don't know. You have Mr Cellar, at the lower District Office, in communication regarding a deposit with the minister, and how come you are not involved in that time? You have your uniform, you exist
as well: you have the right to know, you have the right to participate. Why not you? You exist as well.

A. Well, now that we are going into such detail, first of all, in December 2004 I was the head of a department at the Main Mining Office. Mr Cellar was not subordinate to me but to the chairman of the Mining Office. He wasn't responsible to me. He was not bound to reply to me or to respond to me. He was not my subordinate. Never in official documentation have I seen this information, otherwise I would be informed about it.

Q. How come during the challenge procedures that were ongoing in 2006, 2007, 2008, 2009, 2010, 2011, 2012, including two decisions in relation to the talc project taken by yourself as the head of the Main Mining Office, you did not speak to the ministers at the time who were involved, to Mr Cellar, with all these allegations of corruption and irregularities? Didn't you miss something in carrying out due diligence and the fact-finding process? You didn't do your job correctly then, did you?

A. That is your opinion. My opinion is that Mr Cellar was not authorised to act Claimants’ version: in this way / Respondent’s version: in regard to this matter, and I am not going to talk on behalf of Mr Cellar, nor on behalf of the minister.

The situation was as follows. The document that I see
here, the file has not been listed -- this document has not been added to official file. Regarding my position as the chairman of the Main Mining Office, I can assure you that I was responsibly following this case. In case of the court decisions, I was very careful about it, with a special emphasis on the fact that all the requirements of the court would be complied with.

Regarding my discussions with various ministers, regarding the issue talc Gemerská Poloma, we had the following talks.

Only once was I involved -- in spite of denial from the Rozmin company -- only once was I involved at a meeting at the Ministry of Economy with Minister Rusko. I do not know the specific date. I know this was in 2005, when Mr Durbak was the chairman of the Main Mining Office. He took me with him, as the responsible head of the department for protection of deposits. We were involved in a meeting between the Ministry of Economy and the reception or the meeting with the representatives of Rozmin. This was the only meeting I was taking part in. Dr Rozlozník said I couldn't understand a thing because the meeting was in German, there was no simultaneous interpreting; or it was in English perhaps.

There was another discussion I had with the
minister: this was Minister Malharek(?), who appointed me as the head of the Main Mining Office. Mr Malharek met me, with representatives of the Chamber of Miners and expert advisors, where he clearly stated his full support of the Main Mining Office in respect of this file, and he stood behind all the decisions we have issued up to that point in time.

Other meetings we had was with the following minister, Minister Yanatek(?). Always after we had a court proceedings, I always informed and briefed the minister on the status of this case.

Q. Okay. Now the email is here, you know the information, and you seem to have a very firm idea of what is regular, what is official, what is acceptable or not. Is this an acceptable procedure: that before the official revocation -- you were insisting legally our rights, Rozmin, were revoked only on January 3rd 2005. Is it an appropriate procedure that before that revocation, the District Mining Office, with the implication of the minister, shows our top project to other investors? Is that regular procedure?

MR ANWAY: We object to that, Mr Chairman. That has not been established. The members of the Tribunal will recall it excluded a document that the Claimants alleged supported this fact. But that is not established from
DR Gharavi: I'm just working on this document, C-0357, and there is an email --

MR Anway: The document is not from anyone who works for the government.

DR Gharavi: It's from Mr Keller to Mr Cellar. Are you following, sir? It is C-0357. It's not the first one, it's the second one. Maybe you're confused. I confused you because there were two.

MR Anway: This is another document from Mr Keller.

DR Gharavi: It's to Mr Keller (sic), okay? From Mr Keller to Mr Cellar. It's the second one I am talking about, hence the confusion. So if you'll allow me, I'll proceed.

MR Anway: I just want to be clear.

DR Gharavi: C-0357. It's the second document in the tab that you have, 46.

MR Anway: The document that I have shows it's from Mr Keller --

DR Gharavi: Yes.

MR Anway: -- who is not an employee of the government.

DR Gharavi: No, of course. But it is from Mondo Minerals to Mr Cellar from the Mining Office.

MR Anway: I understand what the objection is. The suggestion was made that some correspondence came from
None of these documents shows anything coming from the government.

DR GHRARVI: Well, it is forwarded afterwards, isn't it?

But anyway, assume. Is it a normal procedure, acceptable procedure, for the District Mining Office to be in contact and show the deposit -- our deposit -- to other investors before the revocation without informing us?

A. I don't know which district office you talk about. The respective responsible authority was the Spišská Nová Ves DMO, which is not mentioned here and Dusan Cellar was not competent in any way to act with respect to this matter.

And information where he was, where the minister was, I'm not competent to comment on that.

Q. Do you know who won the tender?

A. Who won the tender? Is this the question?

Q. Yes. After our rights were revoked, our rights were given to another company.

A. Of course I know.

Q. Which company?

A. RV Agency Roznava.

Q. Is that an international company?

A. Why should it be?

Q. I'm asking you.

A. In the Slovak Republic there is a condition that whoever
wants to take part in a tender needs to comply with three conditions. RV Agency, other Slovak [Company] and further international [companies], they complied with these conditions, and that's why they were part of the tender.

Q. Did it have a long track history as a company in Slovakia before it won the tender?

A. With the exception of one organisation in the tender, all the remaining five -- even international -- were younger than one month in terms of their mining permit, which was a condition for the tender.

THE PRESIDENT: Sorry, just to interrupt. Just to say that in an answer to a previous question by you, the witness says, "My opinion is that Mr Cellar was not authorised to act in this way, and I'm not going to talk on behalf of Mr Cellar".

DR GHRAVI: Yes.

THE PRESIDENT: So that's something that was already an answer to your questions afterwards, I think. Anyway, I wanted to --

DR GHRAVI: Yes, but I moved the subject.

THE PRESIDENT: I know, but --

DR GHRAVI: What can I do?

THE PRESIDENT: Nothing. I'm just putting that on the record.

DR GHRAVI: Thank you very much. We appreciate that,
Mr President. Yes, yes, I noted that. Thank you.

THE PRESIDENT: You were asking and asking.

DR GHARAVI: Yes, yes, yes, yes. But I moved finally to the Economy Agency.

Economy Agency, how many people did it employ when it was awarded the tender; do you know?

A. I don't know.

Q. One person? Or not even, nobody? It was a setup company, sir.

A. My personal comment is this is not true, whatever you allege. If the members of the Tribunal permit, the minimum was two people.

Q. I'm asking questions. Do you know who was the --

A. You said, "One person".

Q. No, I'm asking you whether you know anything about Economy Agency. What do you know about Economy Agency at the time it won the tender?

A. With respect to Economy Agency, I'm not informed about them from the tender.

Let me elaborate on that, let me explain, in order to avoid a wrong interpretation of my statement. All the information that I will now state were delivered to me because of an order from the Regional Prosecution Office in Košice, which bound me as an appellate body to verify the correctness and veracity of the technical documentation.
that was provided for the tender procedure.

In the tender procedure, with exception of one company, all other companies were newly established companies, including Mondo Minerals Slovakia. All the companies in the tender procedure complied with the condition of having a branch office in Slovakia. They have registered in the legal register of the Slovak Republic and they also had the mining permit as the expert precondition for acting in this field.

As a follow-up, they have submitted their bids, their projects, which were assessed: they were assessed by an independent expert commission. This commission stated in writing an order, and the DMO had no other possibility other than to decide in line with the order determined by the committee.

After assessing the projects -- which was a duty given to me by the Regional Prosecution Office -- we, as the Main Mining Office, which was overseeing the use and protection of mineral resources in Slovakia, we have stated that all the involved contenders complied with the tender requirements. And as regards the expert quality of the proposed bids and projects, with the exception of the RV Agency project,
none of them complied with all the preconditions as they were stipulated as mandatory conditions in the prepared proposal.

Q. Sir, Mondo Minerals, incorporated in Bratislava, is owned by which company? By Mondo Minerals. Economy Agency, registered in Slovakia, is owned by the wife of Mr Corej, who is an accountant. What is the experience of this lady? What is the backup of this lady? What are the credentials of this lady? Who is the team? Where are they going to find money?

Remember the 2002 amendment, paragraphs 8 and 9 of your witness statement, the philosophy: revoke people to give it to the hands of people who have the means, the intention, the experience, I would say, necessarily, to move this forward. Did Economy Agency have that experience, knowledge, intention, means?

A. In accordance to the submitted design project or bid, they did, because they have declared so and they have met all the conditions of the tender terms of reference. An independent commission, which cannot be impacted because they are varied members unknown until the very last moment -- not even the DMO knows the names of the members of the commission-- and they assess not a company but a project submitted as part of the bid.

Q. Sir, in answer to my previous questions on Mr Cellar,
you suggested that had this happened, it would have been
irregular for him to interfere in this way prior to the
revocation of our rights. Then you testified that you
didn't speak to Mr Cellar. Then Mr Baffi, who has
signed the protocols, who was involved, you didn't speak
to him as to the meetings he had with us, his
understanding of the amendment of the law.

Now on Economy Agency you say that there was
an important amendment, and we have on the record that
this is a newly set up company by nobodies, that have no
established means and no experience.

The conclusion I draw from that, sir: isn't the
whole procedure tainted? Doesn't it stink? Is it in
conformity with the international reports that
I mentioned from the World Bank? It's bad, isn't it?

A. I'll try and answer this.

I didn't say anything about Mr Cellar only that he was
not authorised to handle these things as they relate to
this email. You've kept asking me about Mr Baffi,
whether I have talked to him about this, but you have no
interest to know that I have myself instructed
Mr Rozloznik as to what risk he is exposing himself to.

With regard to projects of RV Agency and others, I did inform
this Tribunal that I received a written instruction -- if it's
not on the file, I can submit it -- that the Prosecution
Office instructed me, as the head of the MMO, to verify all the design
projects,
all the bids submitted, whether they have met all the
particulars. That is why I am aware of these projects:
I have had to become familiar with them in much detail,
because of this instruction from the Prosecution Office.
And they are still on file in a sealed safe.

Other issues -- that I claim that I did not
speak to Baffi, or that RV Agency had no authorised
professionally apt people -- professionally capable people
must have been there since RV agency obtained mining permit.
Otherwise it would not obtain it. And it does not smell because
the same mining permit was issued to Mondo Minerals, just
like to Rozmin, who in May 1997 received a mining
permit, and consequently the excavation area was
transferred one month later from the state company to
the Rozmin company with complete documentation. So the same conditions
do apply to
one and do not apply to another entity?
I am an executive body of state administration. I respect what the
parliament orders me through the laws. The commission is formed by
specialists who on the day
of selection proceedings open the sealed envelopes
from which they can only see which company submitted its proposal;
the content of the proposal and the author of the proposal is reviewed
only in the
selection procedure.
Every bidder has to submit all their
particulars, including their mining permit and aptitude of the designer who prepared the project.

Now, as long as you ask me about the RV Agency, I only remember three projects. For Mondo the project was prepared by Mr. Širila; for RV Agency it was Mr. Čorej. They both are holders of a valid certificate of professional aptitude for such projects, obtained by state exam, and they have an official government exam about their professional expertise.

Q. Sir, if it's as simple as that, just to pass an exam and then award, for example, a monkey to win a tender and say, "I have an exam" -- I mean, come on; that's not going to work.

The question I have for you: you said you didn't read that section of our Reply memorial. Assume with me that I will be able to demonstrate to you, convince you, that during the tender process there was somebody from the District Mining Office opening the tenders before the selection committee was in place but after the tender applications were submitted, opening them and commenting to one of the tender applicants.

Would that taint the procedure? Would you conclude that thing smells? Would that convince you?

A. I'm curious when you submit evidence in this respect, because I claim that that is not possible. If in
official mail, in official archive bids would be opened,
envelopes opened before the tender procedure, that is
not possible. The way the system is set up, it makes
sure that is not possible.

Q. I understand. It's not possible because it's irregular,
its not professional, et cetera. But if that would
happen, by luck or by some kind of magic, it would not
be regular, right? It would taint the procedure;
correct?

A. I do not believe in miracles.

Q. You don't believe in what?

A. I do not believe in miracles. No miracle could have
occurred.

Q. Assume it happens. It would be irregular -- I think you
can admit that -- if somebody opens the tenders and
communicates before the committee is put in place with
the applicants? It's irregular, come on. Give me
something. You don't want to give me that?

THE PRESIDENT: I think it was implied in the witness's
answer.

DR GHAHARI: Yes.

A. Thank you.

DR GHAHARI: Now, the Economy Agency. I put to you that it
is owned by an accountant. And you know what happened
to Economy Agency: it gave its shares to another company
Did that selection process of Economy Agency meet the spirit of the 2002 amendment as you describe it? Was a company that intended, with serious means, to extract minerals, selected?

A. I will definitely not speak on behalf of the Economy Agency; I will just share the facts which exist. And these facts are unquestionable.

Within the lawfully stipulated deadline, after tender procedure went underway, the deposit was opened, prepared and exploited (in Slovak language version: dobývané) within three years' time. These are arguments which are documented and undisputable.

Whether the Economy Agency had such-or-such intentions, or wanted to do this or that, that is not up to the powers of Mining Office to view or judge that, or to assess the intentions of some kind of individuals.

Q. Do you know why Economy Agency was selected over others? Do you know what were the advantages Economy Agency had over other applicants?

A. I did say some moments ago. Let me repeat that. Economy Agency was selected by independent selection committee composed of seven individuals. The entire matter, except for the Prosecution Office, was also investigated by criminal police. Based on the Prosecution Office order, I was verifying, as the head
of the Main Mining Office, all the particulars of all
the projects submitted as part of the bids.

The only project that included all
particulars required by the tender -- and I'm not
talking about scope or quality, I am talking about particulars
and parts that should have been prepared by the author
of the project – was the project of Mr Corej,
Economy Agency. All
other bids were missing some particulars of such or
other nature.

It is all documented, it is all written records made
of, and the written record is made and submitted to the
Košice District Region Prosecution Office, who then
return the entire file to both the District and Main
Mining Office.

Q. Can I conclude that from your assessment at the time,
when you looked at this question as to whether or not
Economy Agency really deserved to win, the conclusion
was that it won by default, because others were de facto
eliminated? Is that the conclusion you reached? Is
that what you just said as well; namely, "Others didn't
comply, and only Economy Agency was left, and then we
awarded that to Economy Agency"?

A. No, you may not interpret these words in this way.
I did say this clearly. The order was established by
the selection commission, not the District nor the Main Mining Office Mining Office. We only assessed the formal and the legal procedural side of the entire tender.

Q. Okay. Could you go to R-0194, which is in the pochette that has been distributed to you. It should be the second or third document, R-0194. It's the report of the advisory committee of the chairman of the Mining Office: it's you, very respectable head of that department. Your name is on the top of the document.

You assess the situation, and at the bottom of the page you have "the following results". You say: in the proposal of organization Siderit, there were some things missing. You say that NewCo Slovakia were also things missing. Then you say: Economy Agency, bravo, it met the legal regulations. Fourth, the other one had things missing. Mondo Minerals, it had things missing, and in parenthesis you say:

"... (7 counterparts of a map of surface situation are missing in the proposal)."

Which I understand to mean that it missed simply seven photocopies in that application. Correct?

A. I will answer very simply. This is not a report to me as the head. I was not the head of the Main Mining Office at the time. It says present: Kúkelcík, head of
department.

And the commission verified all the bids and just stated what was missing in individual bids.

Proposal for assignment of dobývací area to other organization – not only seven copies.

It is based on regulations that are valid in the Slovak Republic and the author of the project is obliged to respect them and the content shall fulfil what the decree requires. And Mondo Mineral did not have the map on surface situation.

Q. Thank you for the clarification.

I understand that in the second page it said basically:

"According to the indicated ..."

That means, I understand, based on the foregoing:

"... six proposals ..."

Only one qualified, and that's Economy Agency, because others had bits and pieces missing; including, as far as Mondo Minerals is concerned, seven mere photocopies of a document.

Is my understanding correct: that everybody was eliminated, and because of some missing documents in the application?

A. No, that is not true. That is not true. This is a document, we have verified formal particulars for Regional Prosecution Office. This is not a document based on which the selection commission was deciding
about the order of bids. In my knowledge -- I hope I'm not wrong -- the commission did not exclude anyone due to the problems in projects or because of missing seven copies. Seven copies is a map of surface area. I'm not sure if you're aware of what it is. It is one of the most significant mapping documents there is.

MR ANWAY: I was going to raise this issue as well. It's not just that the photocopies were missing, it was the map itself was missing.

DR GHARAVI: He had an opportunity to respond.

MR ANWAY: Yes, but when there are premises in your question that have not been established, it's fair for me to object and point that out.

DR GHARAVI: No, it's not, because I said: "'7 counterparts'; is my understanding correct?"

Do you have on the record any proof that somebody tried to get in touch with any of the five companies to try to draw their attention to fact that some[thing] was missing? Or is that not the problem of the selection committee? Sir, this is the 2002 amendment; it is very important. You kick out somebody, you put in a tender procedure. Six applicants: five of them are eliminated because they don't have the papers, documents, they have stuff missing, and one remains?

A. We have not thrown away anyone from the deposit; one
thing. Second thing is: selection commission did not exclude any bid within the tender due to some formalities or substantive particulars missing. The commission judged all the bids submitted and they have made a final decision, and the responsibility for that decision is only held by the commission composed of seven members.

Q. Okay. Did you see any evaluation of any selection committee, at the time of selection or immediately thereafter, as to whether the Economy Agency had the requirements in terms of experience, financial means, intention, to meet the objectives of the 2002 amendment? Because after all, you kicked somebody out; you don't want to bring somebody that is worse or the same. Have you seen any evaluation?

A. All this information is included in the project, how the bidder intends to go ahead with this project: technically, economically, including financial cost. That, whether the development after the tender had occurred, cannot impact the fact that there was a legitimate procedure that cannot be impacted by neither the District nor the Main Mining Office. The fact that the company Rozmin held (as heard in Slovak) dobývací area for seven and a half years and only had excavated 30 metres, the second fact is that, within the period of three years, the other company that is the legal successor of the winner of the tender proceedings, and I can´t do anything about that, opened the site and dobývala it.
So is this a progress or is it not?

MR ANWAY: Excuse me. I don't know if it's a translation issue or a court reporter issue, but it said, "Rozmin held for three years"; I think he said seven and a half years.

MS POLAKOVA: Seven and a half. Maybe we can correct that with the witness.

DR GHARAVI: I'm not talking about --

A. Seven and a half years.

DR GHARAVI: I assume with you that Rozmin is the worst company in the world. Forget about Rozmin, okay? You want to bring somebody that is new, okay? Okay. What did you see in the file that assured you that Economy Agency had the money even to go forward? Did you see anything in the file?

A. I saw in the project, technical design of opening, preparation and excavation/dobývanie, I have seen in the technical project the procedure, method of excavation. I saw technical and economic parameters, geological parameters. I saw in the bid project financial side of the whole matter. I saw in the project something I would call -- I'm no expert for economy -- but it's a financial guarantee, a certificate obtained, a pledge of monies provided, a funding provided, which was
calculated based on the technical design proposed.

The only thing I can say about this is that the technical projects of the remaining bidders equally dealt with technical designs of opening preparation. They all attempted to include what was required by the District Mining Office, as per tender terms of reference, which includes all the conditions to be met by any bidder.

So consequently, when we placed the question, so that when I've seen the project, did I know that this was the chosen company, I hold that it would be pure speculation. I was interested not as a lawyer but as a technician only in fact. The deposit was opened and excavation began. Everything else became irrelevant from the viewpoint of the Slovak Republic, protection of its mineral wealth and payment for excavated minerals.

Q. I want to engage with you a little bit further, because I don't want us to go around in circles. I want to again be very blunt with you.

In the 2002 amendment you described the philosophy: you want to kick out losers, or those that have no intention or no means. I think we agree on that. You kick us out. You claim today that we are losers and [don't] have financial means, and we were sitting on that thing idle.
Then you tender and you give it to Economy Agency.

And I put it again to you: if that amendment is intended to be applied seriously, to the point of having people kicked out and appointing new ones, then you would expect to see some financial analysis of the company there; not by you necessarily, but by someone in charge of allocating the tender. And my understanding on the file and listening to you is to say that there is zero out there to assess the economic capacity of this Economy Agency to go forward.

Am I correct to conclude there is nothing on the financial capacity of Economy Agency?

A. A moment ago I stated that from the aforementioned activity I found that there was a pledge -- forgive me the vulgar word; I don't know what exact document is now included in the bid -- about financial guarantees, just like with all the other bids.

I did not ask to be placed as a member of the selection commission. I was only dealing with all the particulars met. And each member of the commission votes with their best conscience and knowledge whom they are going to choose -- not the DMO or the MMO -- and with regard to some particulars, whether it was or was not, whether it had or had not - the result is, that the deposit is opened.

The result being that Mondo Minerals, equally to
other bidders, were also one- or two-man operations.

I can't list all the other bidders from the top of my head, but it was VSK. They only had the technical potential themselves. Now, when you refer to how bad the organisation is, or how many people they had, how many people had Rozmin? Three people. How many of them had conducted mining activities? Not one.

So if we were to be honest, I admire you, because you are a very smart lawyer, but I don't think you are going to be able to push me to a speculation, into trying to respond to a thought or hearsay or this. Mining officials do not think, do not consider, do not speculate; they act as they are required by law. That's what we have done. We were reviewed by three different revisions, both district and main. The third decision of the DMO and the MMO – why did not they file the extraordinary remedy?

Q. Sir, my role is not to push you. Also you're bigger than me: I wouldn't dare push you! I'm just trying to find out whether or not there was some financial analysis, you saw some concrete financial documents supporting this newly established company owned by an accountant. And I understand from your answer that you saw zero, nothing.

In that relation I would like to --
15:35  1  A. That is not true.
2  MR ANWAY: He has repeatedly said the opposite.
3  DR GHARAVI: What did you see then? What did you exactly
4  see in terms of financial capacity of Economy Agency,
5  concretely? Not, "Blah blah, I saw a pledge of this
6  thing". What did you see? If you don't remember, say
7  you don't remember. But concretely, what did you see?
8  A. I did say this a moment ago, maybe five times: that
9  a document about financial pledge of the project was
10  included in the project as part of the bid. What
11  document exactly it was, I no longer remember, and
12  I will definitely not tell you exactly because I am no
13  economist. I am not familiar with banking rules, what
14  exactly was that pledge document, financial backing.
15     Because the selection commission -- not only with
16  that particular tender -- they had sustained, with any
17  bidders, appropriate pledges or banking or funding
18  documents proving their own funding potential, and it's
19  100% that it was included in the bid. What exact form
20  of financial pledge it was, I am unable to define to you
21  exactly. Definitely it was something the commission
22  found acceptable; not the DMO or MMO, the selection
23  commission.
24  Q. But you don't recall. Based on this, I will proceed to
25  tab 36, C-268. You have the reaction of Mondo Minerals
to the tender that warranted a letter from Mondo's
attorney addressed to the head office of the district
mining. It is dated May 18th 2005.

The first question is: when did you see this
document for the first time?

A. I suppose when it's from, May 2005. Since I am CC'ed to
the Main Mining Office, I suppose that I have seen this
document in May 2005.

Q. Okay. Can I walk you to the sixth paragraph after
item 7, "Newco Slovakia s.r.o.", item 1. It says:

"The company Economy agency s.ro. consists of one
person, it was established on April 31, 2004 by
a natural person, Ms ...Corejova. The execution of
a mining activity and of activity executed with a mining
method was inscribed into the object of activity of the
company that handles also with the brokering, trade
activity and accountancy only on March 31, 2005."

Is that true, first? Did you verify whether the
company's purpose was brokering, trade activity and
accountancy? Is that true? Did you verify that?

Because brokerage is not good, huh?

A. I first would like to see the paragraph, because your
colleague is not keeping up to show it to me. Let me
just read it first. (Pause)

Q. I will continue while you are reading. It says:
"Given that this is a company that does not have sufficient capital and financial means necessary for the mining of the deposit, it was selected by the committee as first despite the fact that it did not demonstrate financial means necessary for the mining of the deposit, that is estimated at approximately 500,000,000 SK.

"Document which the company submitted in connection to this into the selection procedure, labelled as 'Indicative credit commitment from the branch office of Tatra Banka ... is not in any case a document confirming financial security, since this is a non-binding loan promise, by which the bank bound itself only to negotiations with this company about a possible future provision of a loan and its conditions, while the bank in the document emphasized that any obligations do not arise from this Indicative credit commitment towards this company."

Have you read it now?

A. Yes.

Q. A quick question I have is: did you verify whether this gentleman is telling the truth that the company that won, Economy Agency, is a company engaged in brokering, trade activity and accountancy only? Did you verify: is that true?

A. This complaint is addressed to the District Mining Office. We
have only verified the consequent objection. So I'm not sure whether DMO did that. We did not review it because we did not have jurisdiction in the first instance. But we dealt with the subsequent complaint that was delivered to us.

Q. The question is: did you verify or not? Forget about this letter now. Did you verify or not that the winning company was engaged or not only in trade activity or brokering and accountancy only on 31st March 2005? Did you verify that information? Is it true?

A. Within the appellate proceedings, I'm sure we have verified this fact. But not from the viewpoint of assessing potential change of order, about which only the selection commission could decide, because neither District nor Main Mining Office have authority by law to enter in changing the order of bids.

Q. Is it true that that company at the time was engaged in brokering, trade activity and accountancy? Is it true?

A. Their excerpt from the business register is part of the file. It is possible. But since they were bidding in a tender, they must have had included in their scope of business also the mining activities because they also had the mining permit.

Q. I know. But it was a brokering firm when it applied; correct? Brokering, trade activity and accountancy. If that's the case, then how is that on its face compatible with the 2002 amendment, where you're trying to get out of the intermediary systems, those that are in the
middleman? How is that compatible? It's not, is it?

A. Where does the 2002 amendment say that we're trying to get rid of some intermediaries? Your free interpretation of the act strikes me as odd because the 2002 amendment says that it was adopted in order to avoid blocking of Slovakia's own deposits, which was a 25-30% occurrence before that amendment. In 2005-06, this blocking dropped down to 4-5%, due to other reasons other than inactivity of companies, because all who were not excavating were -- tendered for these particular mining (in Slovak language original: dobývacie) areas. There was not a single case in which the court or prosecution would cancel or change the order determined by the selection commission.

Q. I understood -- paragraph 8 at the end -- yourself saying that those who were trying to block the deposits, or:

"... some could have waited for better market conditions to commence activities or to transfer the areas to other interested party, others were unable to finance the actual mining activities."

But anyway, I will move on to the next issue in that document, which is the documents which the companies submitted. Here there is an allegation of one of the five losing bidders saying that the winner didn't submit
anything other than a document that is worth zero; that
is not a commitment, but only a commitment to negotiate.

I would assume that when you have a company like
this that wins, following the revocation of somebody's
rights, upon receipt of a very reputable company's
letter saying, "These guys are phoney, they have no
means", to verify whether that is true or not, in the
interest of the legitimacy of the process, but also in
the interest of the public to ensure that that company
didn't just provide the document that Mondo is
describing.

So the question again is: did you verify whether
Mondo Minerals' allegation is correct or not? No, you
didn't.

A. Do you have in mind that a reputable company whose
representative Keller discussed with Mr Rusko, this
Mondo Minerals, or Mondo Minerals Slovakia? Because in
case of Mondo Minerals Slovakia and legal representative
at the time of submitting the complaint, we have
thoroughly investigated the complaint and we have
written, responded in writing. And the party was happy
with our reply to the complaint because they have not
used any recourse with the court.

Q. Okay. But the response -- I understand it that
following this letter there was a committee put in
place, and the result of it is R-0194, namely the
document previously where I was, and the answer was
simply that -- not that, "This agency had the means to
start trade activity and it has the financial means that
we verified", but that the five others were excluded.

R-0194, dated September 6th 2005, I understand is in
response to the complaint precisely of Mondo Minerals.

A. Are we talking about the minutes of the advisory
committee from 6th September 2005?

Q. Sir --

A. This is not the official reply to the complaint by
Mondo Minerals.

Q. I will read the [Counter-Memorial]. I represent what
I'm reading to you is the [Counter-Memorial] of your
lawyers, of Slovakia. At paragraph 310 they say:

"Following the selection of Economy Agency as the
winning bidder, a company named Mondo Minerals Slovakia
... challenged the selection procedure. As a response
to this challenge, the [Main Mining Office] composed
an advisory committee to evaluate the selection
procedure as a whole. After a thorough review of the
bids, the advisory committee issued its written
conclusions on 6 September 2005 ..."

Then it points to this document. Okay?

So is it correct, what I just read from your
lawyers' representation: that the Mondo complaint led to the document of 6th September 2005?

A. I am not commenting on the statements of my legal counsel. I am not questioning their statement.

What I am saying is that this record is not the official reply to Mondo Minerals. The reply needs to have special -- needs to comply with certain formalities. I am not saying that certain parts of the text were not taken from this document, but this is not the reply to Mondo Minerals per se from the Main Mining Office. This is an internal document, and the document which lists or which is a record of the meeting when we were investigating the complaints that were raised.

The official reply needs to have the official heading "Main Mining Office", then at the end it needs to be signed by the head of the Main Mining Office, which I'm sure you're perfectly aware of.

Q. You mentioned that the project carried on and ...

THE PRESIDENT: I have a question relating to the previous exhibit, which is the complaint by Mondo Minerals. If you go to the third page -- that's under tab 36 (C-268) -- second paragraph, the page which starts with the number 7 at the top.

One of the complaints is that the application submitted into the selection procedure should have
fulfilled, among other things, the fact that
an application must be accompanied by a "relevant mining
authorisation", and apparently the winner didn't have
it. That is what is implied in the letter of Mondo
Minerals.

So did it have that authorisation, the general
permit to conduct mining activities? Did it have it?
And if not, is it wrong? And if it had it, how could it
have it?

A. May I reply?

THE PRESIDENT: Please.

A. Certainly RV Agency, when we talk about the mining permit - a license for
the territory of the Slovak Republic to conduct business in mining
activities, they
definitely had to have this permit, this authorisation,
before even submitting their bid for the tender;
otherwise their proposal or their bid would not be
accepted.

This information in the complaint by Mondo Minerals,
the fact that they claim that the RV Agency had no
mining permit, this is not based on
truth, it is not substantiated. I am perfectly informed
about this.

THE PRESIDENT: Can you explain: they had that
authorisation?

A. Yes, quite clearly they had the authorisation. One of
the conditions in order for an organisation to be
accepted when applying for such a tender procedure, when we are assigning a mining (in Slovak language version: dobývací) area to another mining company due to inactivity -- there are also other possibilities how you can acquire an extraction (in Slovak language version: dobývací) area --

well, the basic precondition is quite clearly for the organisation to have a licence which enables them to operate in this economic activity.

In case of Slovak territory, if you perform mining activity, it is the mining permit. Mining permit can be obtained only by a Slovak legal entity which employs a professional expert who is professionally authorised to guarantee the professional administration and guidance of mining activity. If they employ such an individual, this chief of mine or this chief of quarry, then the respective District Mining Office issues such a mining permit, such an authorisation.

From all the applicants, all of them had this mining permit; otherwise they would not be part of the tender.

MR ANWAY: Mr Chairman, I think the following paragraph makes clear that it's two other companies -- NewCo Slovakia and IMI Fabi -- that are the ones that didn't have that permit. It did not relate to Economy Agency, which would be consistent with the testimony just given.

THE PRESIDENT: Okay, thank you. So they had the
Still, to get the authorisation, isn't there
a procedure which takes some time? Can you explain
maybe? Because I understand that it was a new company?
A. Yes. Well, the procedure is as follows. I'm sure this
is not that complicated, and it will not surprise you.
The basic preconditions are outlined in the Mining Act
51 from 1988, sections 4(a),(b),(c).

This mining permit, or this process of
issuing the mining permit, follows the
administrative law for the Slovak Republic. This is the
administrative order: this is 71 from the year 1967.
According to this procedural document, the District
Mining Office has to control all the respective
attributes of the applications, which are listed in
Act number 51, everything that has to accompany such
an application in general.
First of all, they have to issue the valid print
or valid confirmation about their registration in the Commercial
Register as
a legal entity in Slovakia not older than three months.
Then they have to also confirm they have paid the
administrative fee. And thirdly, they need to verify
who is the expert authority, if this is not the
executive of the company. They also
have to issue the certificate of evidence from the
criminal registry of Slovakia.

If they issue all these documents and everything is
complete, on the basis of this application the
administrative procedure is concluded and the
mining permit is issued. No other
meeting or other inspection is required. So it is
a purely administrative procedure. These conditions apply for every
company. We do not take into
consideration the size or any other attributes of the
company.

So if you comply with these requirements, we have no
other choice but to issue such a mining permit. The
whole period is stipulated by the law – that such application fulfilling
all conditions has to be processed immediately, but not later than
within 30 days.

It is a licence which is
issued in a form of a declaratory statement of the state
administration -- in this case it is the DMO -- after
confirming or after verifying all the attributes, all
the particulars.

THE PRESIDENT: Am I right if I suppose that it is the
presence of Mr Corej which decided the DMO to grant this
permit, the presence of Mr Corej in the company or as
the husband of the manager?

A. Apologies, apologies. I do not know, Mr Chairman, what
you mean under "the presence of Mr Corej". Mr Corej is
quite clearly a legitimate expert who has received his certificate of responsible person a long time before. 15/20 years ago he has been authorised as a mining expert. He is officially registered as a mining expert. In my understanding he is very known to all the mining bodies. He is quite notorious as a member of our chamber, as an active member of our mining community.

Equally --

THE PRESIDENT: Sorry to interrupt. That's precisely why I was supposing that the reason why the company got the permit was his presence.

A. Well, I think that the reason was the fact that -- indeed, this was the fact, that Mr Corej owns this official certificate; but not that his name is Corej. The fact that he is officially authorised was the main precondition.

THE PRESIDENT: Of course I was not meaning that it was because of his name, which could be any name. Thank you.

A. My apologies, perhaps there are some issues in interpreting. I thought you were alluding to the fact that he was himself. No, the District Mining Office cannot discriminate against anyone, or cannot support anyone or cannot give priority to anyone, because we control it by a second instance and we would simply
THE PRESIDENT: I was not implying that. I was simply alluding to the fact that he was precisely someone as you described.

Sorry, Dr Gharavi.

DR GHARAVI: Thank you, Mr President.

How serious is this tender process after revocation? Because I see this Economy Agency registered newly under the name of an accountant. Could the shareholders of Rozmin, after the revocation, have set up a company, called it -- I don't know -- Very Economic Agency, or Rockefeller Agency, and then applied? Would they have been allowed to apply as shareholders of another company?

A. Well, yes. As another legal entity, yes. The Slovak legislation enabled that.

Q. But then how could it be? Because if a company is kicked out because its shareholders are unable to process, and these same shareholders tomorrow set up a company and apply again for the same deposit, how is that rational?

A. I do not understand who is supposed to justify anything to whom. It is not possible for one owner to have several companies; is it not? It's a matter of holding the excavation area, tie that to specific entity having
specific company registration number, which is tied then
in turn to specific rights and obligations.

Rozmin, by its own inactivity, without any third
party's fault, had caused themselves, by themselves, the
cessation of their right to mine (in Slovak language version:
dobývať) in that area. That is
not tied to ownership, to any professional aptitude.
Which means, if I were to understand this correctly,
though professionally licensed person may no longer
operate or exist? They did have the right, they could
do it. Why they did not do it, I don't know. Rozmin is
not obliged to justify this to us. And Rozmin had other
options they could have explored how to resolve their
problem; and despite that, they did not do so.

Q. The issue that I also have with all this is that Economy
Agency, which -- this is our submission -- did not have
any means or intention to go forward with the project,
was selected in the circumstances that we described, and
then, six months/nine months later, gave all of its
shares to another company, and it's the other company
that moved the project forward. So basically it was
a broker there. It just got something ...

A. Do you want to say "just like Rozmin"? I don't know
what to say else but this. The entire procedure or the
entire administrative proceedings aiming at assignment of
the excavation area to another company, the entire
tender procedure when the independent selection committee -- that is not subordinated to the DMO or the MMO -- was selecting from among the bidders the
winner, no other entity may enter the powers of this particular selection commission. It was verified twice by Regional Prosecution Office, by criminal police of Slovakia, and twice by judicial review.

Neither one of these bodies had come to the conclusion that with these steps of either the selection committee or DMO or MMO, there would be any violation as to the substantive matter at hand. And all the other small shortcomings -- I emphasize that all -- identified in complaints were subsequently removed in the final decision of the DMO and the MMO. And Rozmin did not use any extraordinary recourse they had available throughout the period of three years.

Q. That's not my -- I don't know if you had many problems with me, but the problem I had with you during the last hours is that everything I ask you to justify, you say, "Oh, there was a procedure in place, everything was correct, was verified". But that's not what all this is about. If it is as simple as that, there would be no purpose of questions and answers. So I try again on this point.

Doesn't it bother you the fact that somebody was kicked out, it was given to a company owned by an accountant, in the circumstances we described, and
finally it's not that company that provided the means that moved forward the project and went on and found another who moved then the project forward? That doesn't bother you?

A. You know, first of all, I don't have any problem with you. I just said a moment ago that I consider you a very smart lawyer; I mean it seriously. The one thing I have a problem with is that you're wanting me to answer something to speak on behalf of the selection commission. Based on what legal title am I to judge the proceedings made by the selection commission, having done their job based on their best conscience and knowledge back in 2005? I don't know what consideration the selection commission was taking into account. I don't know each one member of the Commission, when they are voting in secret, how they establish in their own minds the order of the bidders.

And this envelope, it still remains sealed until this very day. Neither prosecution, nor criminal police, nor the Supreme Court had opened the envelope. You know why? Because they have all found that it is a decision of a collective body which needs to be respected. Because if it's not going to be respected, such a decision of collective body composed of independent entities, there will be anarchy. Neither
DMO nor MMO -- please do kindly take this into consideration -- did not judge this. It was judged by commission, selection commission.

The commission was established by law, by the Parliament -- it was put into the legislation.

The only thing I can admit is the fact that the legislator did not put into the legislation the 558, those procedural provisions which, even after the experience of having with those selection commissions, were available by Amendment 219 of 2007. If we were to have had these procedural provisions at that time in the law, then the court would not be able to find so many procedural shortcomings they have found, because they have not found them subsequently, with the final decision on the conclusion of the proceedings against which all remedies were available but were not used.

Q. If I am smart, then you are my professor, because you did it again to me. I asked you a clear, specific question, and you went out; I don't know where you went out, but you did that throughout. So I return the compliment.

The things you said, there are a number of things you said that I have issue with, but I will just pick on one. I'm saying it's not true, it's not true, sir, that when the tender applicants submitted their application,
it was not opened. Because we know and we have alleged
that there is a document showing that somebody from the
District Office not only opened it, but engaged in
commenting on these tenders.

Do you have anything to say to that?

A. Only that I'm not aware of any commenting.

Q. Aren't you interested to find out about that?

A. Of course, sorry, at the time of the tender -- I don't
know how else to respond to this -- at the time of the
tender, at the time when these matters were published in
the commercial journal, business journal, and when it
was notified to the organisation that their rights have
ceased, and what you're describing here, there were some
discussions held between -- amongst some entities, I'm
not aware of any of that. I've never seen Mr Keller;
I don't know him, I have never met him. I don't know
who is the representative of IMI Fabi or whatever other
time.

That which I do know: I can say that I would never
allow myself to say something untrue. I am not here in
a capacity of a private person, I'm here as the
representative of a state body.

Q. You should have. You should have within the context of
this procedure, you should have at the time that you
were reviewing all these documents, because that thing
is very material, and we invite you to do so in the
future. That document exists and your counsel has it.

In any event, my last question is that your
submission is that there were 50 other companies whose
licences were revoked in the same circumstances as ours;
correct?

MR ANWAY: That was not his testimony.

DR GHARAVI: I'm asking the gentleman if that was his
testimony.

MR ANWAY: No, you represented to him that his testimony was
that there were 50 other companies and --

DR GHARAVI: How many other companies? Because in your
witness statement you mention a number of companies
whose licences were revoked in the same circumstances.

A. Approximately 30.

DR GHARAVI: 30. Could you give them my phone number? No
further questions.

MR KÚKELCÍK: May I? If I were to give them your phone
number, give me your business card!

THE PRESIDENT: Re-direct?

MR ANWAY: I do have some.

(4.09 pm)

Re-direct examination by MR ANWAY

Q. In fact, on that topic, you did indicate, Mr Kúkelcik,
that there were approximately 30 other reassignment or
cancellation procedures in 2005, which was of course the
same year when the Rozmin excavation area was
reassigned. Out of those procedures, how many of
them -- just approximately -- actually led to
cancellation or reassignment of the excavation area?
A. In all cases.
Q. Thank you. And of those, besides Rozmin, how many of
them appealed the decision up to the Supreme Court
complaining that the law was unclear?
A. The Supreme Court only handled one such case.
Q. So Rozmin, out of all of these other companies who went
through a similar procedure, was the only one that
complained to the Supreme Court that the law was
unclear?
A. In 2002 to 2005, yes -- sorry, 2007. I mistook the
year.
Q. Now, you had testified --
A. Apologies, I wanted to say -- I got taken aback by the
wrong year -- there were three or four additional
complaints made to the Regional Prosecution Office for
the procedural matter. They were all stating that the
District Mining Office did not violate any act and it
never went up to a higher instance, even to the MMO.
Q. Thank you.
Now, you testified at some length about the purpose
behind the 2002 amendment. Is it your opinion that the
2002 amendment was successful in reducing the number of
companies that idly sat on excavation areas?

DR GHARAVI: The answer is yes.
A. Definitely. It is completely clear from the statistical
data, from the fees collected for mined (in Slovak language version: dobývané) minerals.

DR GHARAVI: I will object in the future to leading
questions. Was the thing successful? It calls for
an answer which is "yes".

MR ANWAY: You had, in answering Dr Gharavi's questions,
I think mentioned the celebration or some type of
gathering within the mining community sometime in 2004,
when Mr Rozloznik had approached you and there was some
discussion about the 2004 amendment. Dr Gharavi didn't
let you finish that answer; I'd like to give you the
opportunity to do so now.

A. Simple answer: it was not in May 2004 but it was on the
second Thursday and second Friday of September 2004, as
part of the Slovak-wide celebrations of the Day of the
Miners, when I personally have, with good intentions,
briefed Mr Rozloznik whom -- I'm sorry, yes -- whom
I know very well as a man who is very capable and
a responsible person in Rozmin, that there is
an amendment in place and that there is a risk which
could occur, such problems could occur, when there is
16:13

an obligatory proceedings by law or by the DMO. And he
gave me a friendly answer: "I'm aware of this and we
will be paying attention to that".

Q. Once a company has failed to commence excavation within
the three-year time period, under Slovak law, is it your
understanding that that company can participate in the
tender to try to win back the excavation area?

A. The Mining Act says clearly it will be transferred to
another organisation due to inactivity. So the same
company may not bid in a tender for the same mining (in Slovak language
version: dobývací)
area. The selection commission would have to respect
that stipulation by law.

Q. I think I have only one final question for you,
Mr Kúkelcík. Do you know whether the successor to
Economy Agency opened the mine in accordance with the
Economy Agency project plan, the technical solution that
they had proposed in their bid?

A. Yes, it is so. They have opened in accordance with the
project submitted and within the deadline prescribed by
law. I know it exactly because we were submitting this
evidence to the court as part of our administrative
file.

Q. So is it fair to say then, just rephrasing the answer
you just gave, the technical solution that was proposed
by Mr Corej’s company in the bid with Economy Agency
ultimately proved successful?

DR GHARAVI: That's leading, sir. It's a textbook leading question.

MR ANWAY: I will withdraw the question. I have nothing further, Mr Chairman.

THE PRESIDENT: Thank you. So this completes your examination. Thank you very much for coming here.

Now we will have a 15-minute break before the examination of Mr Corej.

MR KÚKELCÍK: Thank you, Mr Chairman.

(A short break)

MR PETER COREJ (called)

(Evidence interpreted)

THE PRESIDENT: Good afternoon, Mr Corej. You are appearing as a witness in this case, called by Respondent. You have a statement in front of you: can you please read it aloud.

MR COREJ: Witness statement: I solemnly say on oath to saying the truth, nothing but the truth, and the whole truth.

THE PRESIDENT: Thank you.

Direct examination?

MR ANWAY: Just very brief.
Q. Good afternoon, Mr Corej.
   Mr Corej, are you an employee of the Slovak State?
A. No, I am not an employee of the Slovak Republic.
Q. Are you here today representing the Slovak State?
A. No.
Q. Then it may be helpful if you could tell the Tribunal why you are here today testifying.
A. I'm here as a witness because legal counsel on behalf of the Slovak Republic had approached me in relation to the ongoing dispute between Slovakia and EuroGas, or the (indistinct) Republic, when they asked me several questions, whether I would be willing to answer those questions, which I did. And based on that, my testimony as a witness was drafted, which is part of the file here submitted.
Q. Are you being reimbursed by the Slovak Republic for your lost time and expenses for your work in this arbitration?
A. I'm not sure how it works elsewhere, but there are some legal standards applicable in Slovakia which stipulate exactly how expenditures related to witness testimonies of individual witnesses are being reimbursed.
Q. Is it your understanding that the reimbursement the
Slovak Republic is providing you for your lost time and expenses is consistent with the Slovak legislation on reimbursement of witnesses?

A. Yes.

MR ANWAY: I have nothing further, Mr Chairman.

THE PRESIDENT: Thank you.

Cross-examination by Dr Gharavi.

(4739 pm)

Cross-examination by DR GHARAVI

Q. Good afternoon, sir. I am counsel for Belmont and I'm going to put some questions to you.

I kindly ask you to look at your first witness statement, paragraph 41. You say:

"... payments from Rozmin were always late."

And that's in relation to the time when you were a shareholder and a contractor of Rozmin in 2001.

Then you go on -- even in the above paragraph, at the end of 39, you say:

"... Rozmin were always late."

Then at paragraph 44, you say in the middle of it:

"RimaMuran was getting into bigger and bigger financial problems, we did not have money to pay for the works at the deposit, we owed to our suppliers, and we were under a threat of bankruptcy."

When you say here "we were under the threat of
bankruptcy", you mean Rima Muran, right? Not -- it was Rima Muran that was under --

A. Yes.

Q. It seems that you become bankrupt quite easily, sir, because the amounts you're setting out are not significant amounts, are they?

A. The amounts were substantial for such company and for such demanding mining works and mining project we started to implement.

Q. How much was outstanding at the period you describe? Let's take May 2001.

A. It had stayed at the figure 5,086,000 Slovak crowns.

Q. That's in May 2001?

A. Let me quote exactly: 5,06[1],812 Slovak crowns. It's €168,000 and some small change. That was the debt of the company Rozmin to Rima Muran.

Q. That's not a very significant amount, is it, to become bankrupt?

A. Going back to roughly 2000, it was at the time. For such companies in Slovakia in general, it was a substantial amount. 5 million crowns was at that time a big money; it was not a small amount. One realises that the entire project we were to implement had cost 71 million crowns.

Q. Could we go to tab 18 of the first bundle, which is

R-0169. It's sent by Dr Rozloznik to you, I believe.

Was it sent to you at that time?

A. It was sent to company Rima Muran.

Q. Okay. But you reviewed it at the time; correct?

A. Yes, definitely.

Q. Okay. Do you agree with the conclusions that are set out here? It says that -- there is a table on the top --

A. No, I disagree.

Q. What items of it do you disagree with?

A. With the conclusion and with the amount. Mainly with the amount, because the figure here is definitely the one I mentioned earlier, which is 5,06[1],000 crowns, and it was further confirmed later, because when settlement had occurred of some problematic issues between the two companies, the company -- I think it was EuroGas at that time -- had acknowledged this amount and paid the due amount in this --

Q. Yes, but I'm talking at that period of time, sir; we're not going forward. To facilitate that, I propose that you keep that document open and you look at your response dated July 23rd 2001. It is in the pochette, R-0126; it should be the first document.

In that letter, in response to R-0169, you say the
line that you find for HV line should be removed. But it has been paid, so I guess that amount is neutralised. Then you have an issue only with the payment received in relation to your invoice of 6 million crowns that is on the right-hand table of page 29 of R-0169. And my understanding, you say, "Out of that 6 million amount, I didn't receive the 3,740,000 indicated in the letter of Rozmin, but only 2,159,000". Is my understanding correct?

A. I don't remember this exactly, I have to admit. Because, these things were mainly related to the economy of our company, which was the economy department's responsibility. I was in charge of technical implementation of the work and technical supervision over the implementation. So please do not take me precisely with regard to specific figures; and given the time that has lapsed since, I am not able to recall exact figures.

I insist -- and we have always required payments due from Rozmin in the amount of 5,086,000 and change, which later was accepted and paid. So these tables I do not take as fully relevant, and I -- even later on, I cannot really respond to those tables anymore.

Q. Sir, you know, I didn't invite you to submit a witness statement; the Slovak Republic did. And in your witness
statement you indicate precise dates -- April, May, June, July -- and then you draw a conclusion, or at least an implied conclusion, that it was Rozmin that caused these financial difficulties that your company was undergoing at the time.

I point out to a letter, at that time, that was sent to you and the response that you provided under your signature. And the conclusion I draw from that is that you contest only the 6 million invoice in the table, and you said you didn't receive 3,748,000 but you received only 2,159,000, which makes it that you have a shortfall of only 3.9 million; which is not much, I suggest.

And moreover, it relates, if you look at the table at R-016[9], it's "Advance payment invoices submitted by RimaMuran, [and] not yet covered by actual works carried out". Then if you add to it the amounts also received for your previous invoices -- 1.4 million, 1 million -- for advance payments, whereas work was not carried out, and the advance payments set out on the next table, which means 2.73 million, that's your cash positive?

A. This is not true at all, because in reality the situation was as I have already described it to you: Rozmin was not paying on a regular basis, and as a result of that we were becoming insolvent.

Q. But that's your word, right? That's your word, that's
your testimony. I point out to a document that Rozmin wrote at the time and a letter that you signed.

PROFESSOR STERN: Just to be sure I am following, at R-0169 it is said it is a letter from Rima Muran to Rozmin, but I guess it is a letter from Rozmin to Rima Muran? Unless I don't understand.

DR GHARAVI: Yes, this is a letter from --

PROFESSOR STERN: So it's wrong?

DR GHARAVI: No. That you should have found in -- okay, yes, yes.

PROFESSOR STERN: Okay. I was just sure to be following.

DR GHARAVI: Yes, R-0169 is from Rozmin to Rima Muran and R-0126 -- I apologise -- is from Rima Muran to Rozmin.

PROFESSOR STERN: Okay.

DR GHARAVI: So you see, Mr Corej, you come here a number of years after a dispute that relates to my client and the Slovak Republic, and you bring in your personal issues with Rozmin, you make certain allegations that discredit my client. I put to you two documents, one signed by Rozmin to you and the other in response, that both of them put together show that you were cash-positive at a period of time where you allege in your first witness statement that my client was in payment default; and moreover, that that was causing the insolvency of your company for a very ridiculous amount.
So what do you have to say to that, apart from that, "I don't remember"?

A. I will read in detail the letter I wrote:

"On 22 May 2001 there was a general meeting held of Rozmin. At this general meeting, among other things, we have discussed the status of funding of work at Gemerská Poloma. Advance spending was approved in the amount of SKK 6,000,000 (see section 4 of the minutes of the general meeting). That amount has not been paid to date. SKK [3.748 million] were paid out of that amount, and the last instalment was paid on 12 July 2001, in the amount of SKK 1,588,500. Under sections 14 and 15 of the contract for work, the contractor is authorised to suspend works in case the customer fails to pay a partial invoice. As of the works suspension date, it has been 62 calendar days. We suspended the works on the basis of that fact.

"As to submitted invoices for works actually carried out and payment of those invoices, we have to notify you that

"- the provided amounts for the high voltage line cannot be included in other invoices, because a separate contract was concluded for that line,

"- the invoices provided in the table cannot be correct because as of 1 July 2001, out of SKK 6,000,000,
only SKK 2,159,5[00] was paid.

"The other matters will be handled by taking over the works for April, May, June, July, surface construction, July -- underground works.

"We request that you provide with us funds for further continuation of works."

So I did not make this up just now, that there was no funding available, clearly, for us to be able to continue our work. Bills were not paid, invoices were not paid for material. And the worst situation occurred in the case at this general meeting. Even though it was promised by the EuroGas executive officer or CEO that amount would be paid in the amount of 6 million total, it was never paid in full; and due to that, or as a result of that, we would gradually be phasing out our works, until full suspension of our works.

So I insist, I do insist on the fact that the owing amount of Rozmin, the final amount, towards Rima Muran is the 5.08-and-change million crowns which personally was approved, acknowledged by EuroGas representatives by signing a settlement agreement where this amount was acknowledged by them, and later paid in shareholdings 40%, which we handed over to the company EuroGas as the countervalue, 43% shareholding of Rima Muran.

I have nothing more to add to that.
Q. I just repeat: my understanding of these documents is that you were cash-positive, because the only outstanding invoice at the time was an invoice for works not yet carried out; and moreover, largely compensated for other amounts received for works not carried out, plus the advance payment you received.

So I just don't understand how we could have caused your bankruptcy, because you were cash-positive; and moreover, for works that you had not carried out.

A. I have to correct you very much. All works during that period with regard to surface construction has been completed and they were handed over. We are discussing now 2001. In 2001, spring, the main ramp began to be drilled, meaning that all surface structures had to be completed by then.

So claiming that we have not completed some of the surface structures is completely unacceptable. They were all completed, as it was stipulated by the letter on processing costs per individual structures, above-surface structures. So I cannot agree with you that we would not have completed some of our above-surface structures. They were all completed as defined in the tender terms of reference defined by Rozmin themselves.

One exception perhaps would be the fact that some
structures, despite the fact that they were --

Q. I'm just talking about cash positions, I'm not talking about a construction dispute. I'm just talking about your cash position and the impact, and I think we covered it.

The other question I have for you, sir, is: would you agree with me that there was a dispute also between the parties at the time about the quality of the work? I have no intention, before you answer, to engage with you as to who is right or wrong. I don't want to get into a construction dispute. But do you agree that at the time there was a debate as to the quality of the work your company was providing; yes or no?

A. No. I do insist that all works done by us were fully in line with the project documentation, and I can substantiate that with the fact that I have summoned the Rudny Projekt, the design office who produced the design, and they have documented and conducted an authorship supervision over the site, and they have made a record of the inspection they have conducted claiming that all the works have been completed in accordance with the design.

Q. Sir, I'm not saying to you who is right or wrong. I'm not asking you this. I'm asking you whether or not, rightly or wrongly, Rozmin was claiming at the time that...
the quality of the works you were providing was not
good, was bad. Was Rozmin claiming that the works you
were doing were bad at the time?
A. With regard to the above-surface structures no. They
only had one single reservation against the mining
works.
Q. May I deduce from your previous answer, since you
commissioned the work to verify or not whether your
works were good, that means there was an allegation by
Rozmin that the works were not good? Can I conclude
that, and move on to my next question?
A. It cannot be understood as that because also the
organisation, the company Rima Muran, having performed
this work, did have their own authorised supervision
with regard to the above-surface structures. It was not
necessary for mining work because the supervision was
conducted by myself in person. And from the side of
Rozmin for above-surface structures, I'm not sure who
conducted the supervision there; but for mining work,
they had a gentleman conducting the supervision.
I keep insisting that the only, from their side,
declared problem was the decline of the mining works,
and it's a very simple problem.
Q. There were problems. And the question I have now --
A. There were no problems, because those problems did not
Q. Could we agree that Rozmin was also claiming that your
company was going over budget? And again, I don't want
an answer that there were additional works, and
a justification. Were there claims made by Rozmin at
the time that your company was going over budget? Just
a yes or no question.
A. Yes. But one thing needs to be explained. I have to
explain one substantial fact.
Q. I am not interested in -- I don't want to defend the
position of Rozmin. I am just trying to find out
whether or not there was a claim on their side. Maybe,
if you think that is relevant, counsel for Respondent
will allow you to elaborate.
Would you agree with me that some of the
shareholders of Rozmin had issues with you in your
capacity as a shareholder?
A. I don't know what exactly you have in mind.
Q. Were you in dispute with Mr Rauball or other
shareholders at the time in your capacity as
a shareholder? Not as a contractor; forget about [as]
a contractor.
A. We did have one problem, yes.
Q. Okay, thank you. Then may I also suggest that your exit
from Rozmin was a sour exit, that you perceived it at
the time as being a very sour experience? Again, 
rightly or wrongly, it was not good, huh?
A. Leaving who from where? You mean my person?
Q. When I read your statement and when I see your presence 
here, I understand -- maybe rightly so -- that you were 
upset, because you are claiming moreover that it caused 
you bankruptcy, you didn't sell in good conditions. And 
I am just asking you whether that's a fair conclusion to 
draw from your testimony, that all this left a sour 
taste in your mouth.
A. Certainly it was difficult for me to say goodbye to that 
project, because I dedicated some 20 years of my 
professional life to that. So it's not simple to leave 
such a project, and even under such circumstances.
Q. I understand. I am not challenging whether you were 
right or not.
May I move now to paragraph 54 of your first witness 
statement. Here you are talking about the year 2004.
You say:
"According to my knowledge, no further works were 
performed at the deposit until the moment when Siderit ...
... came to the deposit in 2004. I personally notified 
representatives of Siderit to be aware of finances and 
to always ask an advance payment and not to perform any 
work unless they are first paid."
Why are you going out of your way, in relation to a project that you left years ago, first, to follow up the project; and two, to write to our contractor to discredit us? Here in this arbitration I understand it's the Slovak Republic that contacts you. But back then, why are you following up and why are you trying to discredit us?

A. One thing: the project Gemerská Poloma was, is and shall remain an issue close to my heart. That's a side comment.

As per your question with regard to Siderit, not myself have contacted Siderit, but it was the other way around. Siderit contacted me, asking me: what kind of people are these with whom they are to go into some kind of business? I only told them the truth, what experience our company had with them, and nothing going out of my way I told them.

Q. So if I understand you correctly, paragraph 54 was that, "I personally notified representatives of Siderit in response to their enquiry"; correct? Because you say they contacted you to be aware of finances. You received a call, basically, from Siderit? So they contacted you, right?

A. Yes.

Q. You didn't mention that in paragraph 54. You forgot,
I guess, or you didn't find that necessary.

A. If we were to debate over the entire history of this problem, we would need much more time for that.

Q. I asked you a very direct and simple question. They approached you to ask comments about the financial strength of Rozmin, you didn't approach them; correct?

A. Definitely not me them.

I did not have any reason for that.

Q. Who approached you and when, the first time, from Siderit?

A. Just to make one thing clear --

Q. Sir, I asked you a question. Who approached you from Siderit and when? Can you give me a name and an approximate date?

A. It was Mr Bolacek, who at that time performed the job of economist of the company.

Q. And what year was that, what month? Do you remember?

A. It was in 2004, for sure.

Q. First half, second half of 2004?

A. Please do not catch me for my word, because I no longer recall that precise information.

Q. It was during one of the 365 days of that year; that's how I should understand it, right? Did he contact you in writing, by phone, by email?

A. No, we met somewhere, some social occasion. I don't
know exactly how it was. But we just debated in person on this topic and he told me that they were approached to join this venture. And he asked me -- they wanted to know from me with whom, what, and under what conditions. Simply they were asking more details about the project, knowing that I had much more details available which they did not.

Q. Now that you know that it was a social occasion, do you remember which social occasion and approximately when in that year? It's a meeting you had. You remember it to a point to put it in writing in a testimony.

A. I was meeting these people basically every other day, so please do not ask me to -- they are even my neighbours, some of them. Director of Nižna Slaná Oravetz is my neighbour, Bolacek was another neighbour, Bernard(?) was another neighbour, just like Mihók. So I would meet these people on a regular basis, quite frequently. So we would discuss this topic on more occasions. But officially mainly I debated this with the gentlemen I already mentioned.

Q. But you don't recall at which social occasion? I will move on. If you don't remember, you don't remember.

A. I am unable to answer what occasion it was, because there were many such occasions.

Q. Here you made a representation to Siderit about our
financial capacities. I understand you warned them, from paragraph 54, basically. Why did you write to the government to badmouth us at the time?

A. Because I was asked to provide information.

Q. You were asked to provide what information, by whom and at what date? Please don't tell me, "It was a social occasion, I don't remember".

A. It was Mr Bolacek, who was the economic director of the company Siderit.

Q. No, no, I apologise. I am talking about something else now, sir. Let's forget about Siderit.

Why did you write to the Government of Slovakia in 2004 to badmouth, say bad things about Rozmin in 2004?

A. I don't know what you mean. In 2004? What government?

Q. The Government of Slovakia, you wrote to them and you badmouthed us. You discredited us.

A. I don't know what you have in mind.

MR ANWAY: Mr Chairman, I think there's a foundation that has to be laid here first: that such a letter was written, the date of the letter, and we can move on from there. We seem to have skipped a step.

THE PRESIDENT: That's right.

DR GHARAVI: Sir, did you write or not in 2004 to any organ of the Slovak Republic to discredit Rozmin in relation to the talc deposit?
A. I don't remember, but I think more likely not.

Q. Okay. Then could you look at the second document in the pochette. It's R-247. It's a document of November 24th 2004. It's a letter from you to the Ministry of Economy. It says:

"Dear Minister,

"I have taken the liberty to address you in the matter of arrangement of a meeting of the foreign companies ... represented by ... Kolárik, and Mondo ... represented by Dr Keller, who authorized me to arrange the meeting with you.

"These companies do business in the mining sector. In particular, they belong to two most significant companies in extraction, processing and sale of the talc raw material in Europe.

"They expressed an interest in the talc deposit in the Eastern Slovakia in the locality of Gemerská Poloma ... the presence of which has been known already for several years. They unsuccessfully tried to acquire this deposit already in 1990. Currently, the excavation rights to this deposit are owned by the company Rozmin ... from 1997. Works on this deposit were commenced in 1999, and subsequently due to the lack of funds they were discontinued in 2001 and this situation lasts until today."
So why are you writing to the government to discredit us, Rozmin at the time?

A. I don't know what is discrediting about this. These are facts based on truth.

Q. First I would like to come back to a declaration that you made. You said, "I continued to follow the project, it was close to my heart". Can I add that it was also close to your pocket and to your bank account; that you had also some financial motivations, some greed.

Would you agree with me that also ...

A. No.

Q. So it was purely emotional, purely sentimental, your approach?

A. My only effort was to open up the deposit, which I have succeeded in doing.

Q. Okay. But emotionally you have feelings towards talc, and this project in particular, no financial considerations; correct? That's how I should understand your testimony?

A. No.

Q. I will go back to this letter R-247. You said in response to my enquiry that, "I said the truth to the minister". I have two questions. One is: assume it's the truth. Why are you writing to the minister to discredit us? Even if you think the facts are true, why are you writing to the minister?
A. The reason the letter was written: because Mr Keller asked me to do that. It was not my own initiative. This gentleman had expressed interest in this deposit. He wanted to meet the minister, and he asked me to try and organise a working meeting he would like to attend.

That's all I can say to this.

Q. But that's the upper part of the letter. My question is from the last paragraph. Why do you make that statement that works on this deposit were commenced in 1999, and you add, "subsequently due to lack of funds they were discontinued in 2001 and this situation lasts until today"? Why are you making that representation?

A. Because it's the truth, or it was the truth at that time.

Q. I understand. I understand. We will get to that. But I am asking you: why are you bringing this issue to the attention of the minister? Why are you notifying of a default situation that you are --

A. Because it was the truth.

Q. Yes, because it's the truth. Is it your business to write to people to detect the truth? Are you an investigator? Are you a philanthropist? I don't know why. Why you are doing it? I suggest to you that you are doing it for the government to start a process to take it away from us and to give it to you and Mondo.
Is that a fair conclusion?

A. Very incorrect. I disagree.

Q. Okay. Then tell me: why are you bringing to the attention of the government that we are or may be in default? What is your objective by doing that?

A. Because it was the truth.

Q. Yes, but that answers the second question I am going to ask you: whether or not it was the truth. I am asking you why you are bringing this alleged truth to the attention of the government.

A. Because it was my personal decision.

Q. Okay. Personal decision to snatch that mine from Rozmin and to get it, as you ultimately succeeded in doing. It's the facts. You triggered the process, they revoked our mine, and you got it. You triggered, and you were a beneficiary of this.

A. No one removed rights from Rozmin. Rozmin did it themselves by not performing excavation activities for which they had a licence.

Q. Sir --

A. What was my impact on their revocation of rights? What was my fault? Working hard, together with my miners, not getting paid for it? I had to make redundant 100 people. 3/400 families were put on the floor.

Q. So you're sour. That's where I was going. I am asking

I will move on to the next question. What makes you think that the situation that you describe is lasting until that day of November 24th 2004? Based on what information do you draw this conclusion that, "Works on this deposit ... were discontinued ... and the situation lasts until today"? And don't tell me you are talking about extraction. You say:

"Works ... were discontinued ... and ... lasts until today."

A. Because it is the real truth, or it was real truth at that time.

Q. You just mentioned that Siderit approached you, enquired. That suggests that Siderit may have concluded or may be about to conclude a contract; and in fact did, at the time you mentioned, enter into a contract, received downpayments. It had been working since September of that year on special specific orders. It had no bills outstanding. It had no allegation of the sort you raised that you had when you were the contractor.

So I ask you again: why are you saying that the works were discontinued at the time? Is it an error or
a lie?

A. It is truth that the works were discontinued. Of course I meant works on making accessible the deposit, which was necessary for mining (in Slovak language version: t'ažba) to begin.

Q. That's not what you mean, because listen: you say works on this deposit commenced and subsequently were discontinued, and this situation lasts until today. You're saying that there are no works undergoing. So the situation lasts today. You use the term "works" that have been discontinued. You're saying this thing is idle?

A. Certainly. **Claimants’ version:** But I had in mind, as any mindful miner would, not being familiar with the issue and that deposit, is not going to play with words with me, imagining something else other than excavation for the purpose of exploiting talc. / **Respondent’s version:** But I had in mind -- as any mindful miner being familiar with the issue ant that deposit who is not going to play with words with me who would imagine under that term drilling of mining work for the purposes of opening of deposit. would, not being familiar with the issue and that deposit, is not going to play with words with me, imagining something else other than excavation for the purpose of exploiting talc.

Q. I can't let that go, sir. You say the situation has been discontinued, but there is a contract in place with that objective set. That objective may not have been met at the time, but that contract is in motion; there is a downpayment, works have started. Maybe I’m far away from your definition of the 2002 amendment, which I leave aside a minute. But works intended to go to that direction are ongoing, were ongoing at that time?

A. It depends what works were underway, because the most
significant moment on this deposit was the high-power line. At that time, when allegedly Siderit was present, the line was in our ownership, and I don't know based on what they would have conducted what kind of work without having access to electricity. If they conducted this using diesel generators, it's in violation with the water proceedings, because it's a third-degree water source protection area where there are very strict measures applicable when handling petrochemical products.

So I'm convinced that without the high-power line, it was not possible to initiate or to continue drilling for the purpose of achieving -- or reaching, rather the deposit as declared by Rozmin.

Q. Could you look at paragraph 29 of your statement. You said on March 16th 1998 you let go of -- you say:

"... we concluded, for the purpose of realization of this transaction, contracts on the transfer of shareholding interests from the individual shareholders of RimaMuran to EuroGas, which had thus become the holder of a 55% shareholding in RimaMuran ..."

And you say:

"The shareholding interests were sold for SKK 1 million ..."

But you received 1.55 million deutschmarks, on March 23rd 1998.
Turn to Exhibit C-284. It's in the pochette. This is an acknowledgement of receipt of 1.55 million deutschmarks:

"... as consideration for the sale of 56% ..."

I think it should have said "55%":

"... member's share in RimaMuran ..."

It's C-284, in the pochette. It should be there.

If it's not, here it is.

MR ANWAY: This is C-284 you've just handed up?

DR GHARAVI: Yes.

MR ANWAY: Counsel, before you ask a question, we're going to get the exhibit for our side too.

DR GHARAVI: Yes. (Pause)

So you may wish to amend paragraph 29 to say you received not 1 million crowns but 1.55 million deutschmarks.

A. I do insist on everything that I have written in my witness statement.

Q. Okay. But that one you have written as well, but this I have written for you. 1.55 million, it's not me that has written it; you have written it. You have acknowledged receipt of 1.55 million deutschmarks.

A. I am not the author of this document.

Q. Who is the author of this document?

A. I do not know.
Q. It has your signature, your name on it.

A. The signature looks like mine, but I cannot fully confirm that it is also authentically my signature. It is a copy, and what I could only confirm would be an original if I would see it.

Q. Well, your name is on it, you would agree with me, under your signature? And I have the signature of your witness statement -- sir, I have the signature of your witness statement, and I have the Slovak original with your name on it, and it looks very consistent. I mean, it looks like you have kept consistently that signature throughout the years; no?

A. Again, I haven't received this, probably I haven't even signed it. That signature does look like mine; however, I cannot confirm 100% it is my signature.

Q. Okay. It is the first time you see this document?

A. No, I'm not seeing it for the first time. I believe I have already commented on it before.

Q. So you don't know whether you received 1.55 million deutschmarks on behalf of yourself and three other people; is that your testimony?

A. Yes.

Q. You rehash things about €100,000 of invoice that cause bankruptcy, and then you don't remember
1.55 million deutschmarks?

A. Again, I'd like to state that I have not taken this amount, I have not received this amount, never.

Q. Then it's a forged document; correct? If you have not received it, then -- but you say you have not received it, but then you say, "I'm not sure whether it's my signature". That's what bothers me, and I have to engage a little bit with you further.

I would understand if you said, "I haven't received that money and I'm sure it's not my signature". But to say, "I have not received that money, but I'm not sure it's my signature", that means you're not excluding it could be your signature; and if you're not excluding it would be your signature, it means you would have cashed that amount.

You're a wheeler-dealer, aren't you?

A. Again, allow me to state that I have never received in cash an amount in this volume from Mr Rauball, never.

Q. In cheque, in bonds, in gold, in talc. Did you receive 1.55 million deutschmarks at the time from anyone, let's say, how about that, that year?

A. No.

Q. Okay, so I ask again. Are you sure or not whether that is your signature on that letter?

A. It looks like my signature. I cannot confirm because
this is not an original that I'm seeing in front of me.

Q. Yes, but, sir, do you understand how grotesque the situation is? Because if you're sure that you didn't receive 1.55 million deutschmarks, you could only be 100% sure that it is not your signature. That's the problem.

A. Can you repeat, please?

Q. I said: you say you're sure that you didn't receive 1.55 million deutschmarks. Then how can you have doubts as to whether or not this is your signature as contained in that letter, where receipt of 1.55 million deutschmarks is mentioned?

A. Once again, and I hope for the last time, this amount was never given to me by Mr Rauball in cash, as he states in his witness statement. This document, I dare to say, may be a forged document.

Q. "May be". Did you discuss this letter with the other [two] persons that are named?

A. I don't know these people, I don't know who that is.

Q. Frankly, I am astonished. You know why? Because we submitted that with our statement of [claim], which is more than 18 months, the Memorial, and you have not bothered to enquire whether it's a forgery or not, and you provide a first/second witness statement talking about bills of ridiculous amounts.
You took that money, sir, and you didn't declare it to anyone. That is the truth; correct?

A. No, that is not the truth.

THE PRESIDENT: Dr Gharavi, I think the Tribunal has understood the point.

DR GHARAVI: Okay, I will move on.

Do you know when the rights of Rozmin were revoked?

A. In my honest opinion, the rights of Rozmin were never taken away from them. They have lost them by their lack of activity, because they simply failed to start the mining activity (in Slovak language version: ťažba) in the prescribed period.

Q. Okay, I reformulate. I don't want to engage in a legal battle with you, Mr Corej, but only on factual questions. So I will reformulate, so that you feel comfortable.

Prior to January 3rd 2005, how many times did you meet with Mr Dusan Cellar from the Mining Office to discuss this talc deposit?

A. Perhaps twice.

Q. Is that regular, normal, lawful, to meet with a state representative in relation to a talc deposit when there has been an authorisation granted or a right granted to another contractor? Is that in compliance with the law?

A. I believe it is fully legal.

Q. You believe. Are you sure? Is that an opinion, is that
a wish? What is that?

A. I am certain.

Q. How many times did you meet with Mr Kúkelcik prior to January 3rd 2005?

A. About 100 times.

Q. No, to discuss the talc deposit. To discuss the talc deposit. Let's be more specific: in November/December 2004, two months before --

A. Not a single time.

Q. Okay. How about in January 2005?

A. I do not recall; perhaps not a single time. There was no reason for that.

Q. And Mr Cellar, who you met, I understand, in November/December 2004 -- is that correct, that you met in November/December 2004?

A. Again, please rephrase the question. What's the point?

Q. It's not a point, it's a question. How many times did you meet Mr Dusan Cellar in the months of November/December 2004?

A. I had -- again, I have said perhaps twice.

Q. Twice. Where?

A. Well, one meeting was in Košice, if I recall, and the second meeting in Bratislava.

Q. Who was with Mr Cellar?

A. When?
Q. Well, the two times you met him.

A. Well, I believe he was always accompanied by Mr Keller.

Q. Mr Keller. Anybody else from the District Mining Office or the Main Mining Office?

A. I am certain that was not the case.

Q. So Mr Cellar was alone representing either the District Mining Office or the Main Mining Office?

A. Mr Cellar was not on behalf of nor the MMO nor the District Mining Office. He was there as a private individual.

Q. He had a function at the time?

A. Well, that doesn't -- the fact that he was an official doesn't bar him from meeting privately other people.

Q. This I can understand: thank God, being an officer or a civil servant doesn't bar him to meet others. But to discuss this talc project, he was discussing it at the time with you in his personal capacity, you mean?

A. According to my opinion, he was there on his own behalf.

Q. But how can he be on his personal capacity to discuss an official talc deposit with a potential candidate to the succession of Rozmin?

A. Because nothing bars him from such meetings. There is no legal document or no law which would ban him from meeting and talking about these things. He is a mining engineer; what am I supposed to talk with him about,
Q. Where did you meet again, the two times? In his offices, in a café? What was your testimony on that?
You said you met him twice: November, December. At what precise location? You mentioned the cities, but not whether it was in your office, in the restaurant, a social gathering.

A. You mean Mr Cellar?

Q. Oh, yes, we're on the same subject. You know who I mean.

A. Twice in Košice, I believe.

Q. Please be more specific: in a restaurant, in a discotheque?

A. Well, I can give you a precise answer. This was in restaurant Letná in Košice.

Q. Okay. Was it the second time or the first time? This is easy.

A. Perhaps the first time.

Q. Okay. The second time?

A. This was again a meeting in Košice, I believe.

Q. You are buying more time to think of the location.

A. Once again, when I entered this room I read a statement claiming that I will testify according to -- this is
what I am saying, this is the truth: the way how I have
met, I have experienced it, the way how I have lived it.
That's what I am giving you; nothing else, nothing more.

Q. That's okay. You met him where, the second time? You
met him at what precise --
A. Again, this was in Košice. Once again, Košice.

Q. The first time you had a meal. The second time
probably, if he invited you, you probably invited him to
a restaurant again, or this time to your house. If you
don't remember, you can get it out of the way, say,
"I don't remember".
A. I recall the second meeting was in the house of
technology in Košice.

Q. The house of technology? What is that? A ministry?
A. It's not a ministry. It is a building dedicated to
technology.

THE INTERPRETER: The interpreters add: it is a building in
Košice.
A. It is not a state official building. It is called
Dom techniky, that's just the common term for it.

DR GHAHARI: Okay. What did you discuss at those two
meetings?
A. The first meeting was initiated by Mr Keller, the
before-mentioned Mr Keller. Mr Cellar took part in this
meeting, myself and Mr Benhoda(?). This was a meeting
organised on 11th December 2004 in Košice, in the
restaurant Letná.

Q. Do you think you answered my question sincerely? Is
there a translation problem? I said: what's the content
of the discussion? You repeat now: you met at
a restaurant at the initiative of Mr Keller. What was
the content? You didn't meet to just eat food, did you?

A. No, this was not only about food. Mr Keller came with
a [certain] proposal to me, because he knew me from the
past. We have met before at the deposit during the
Rozmin period. And he knew me as a person who worked
there for many years, and considered me an expert in the
given field. And that's why he wanted to propose me --
which he did propose me -- a certain cooperation, should
the situation occur that there will be a tender called
for the reassignment of the mining facility or mining (in Slovak
language version: dobývací)area
to another entity.

(Pause)

Q. But for Mr Keller to come with a proposal, there must
have been a prospect of a tender. So what made
Mr Keller believe that there was a prospect at that
point in time for the deposit rights to be re-tendered?

A. As I mentioned already, Mr Keller had been observing the
project for many years. And I suppose quite certainly
he was in contact with Mr Rauball at that time when at
the location, since 2001 to 2004 there was no work conducted there. Let me point out: no work related to opening the deposit and drilling work. And since he was familiar with Slovak circumstances, knowing that an amendment was adopted, I think it was in 2002, about: organisation which has mining (in Slovak language version: dobývací) area assigned to it or obtained it by a transfer, is obliged to commence drilling (in Slovak language version: ťažba) within a 3-year statutory period.

Based on this act, in December it was almost clear that Rozmin is not going to commence drilling (in Slovak language version: ťažba) - dobývanie. I call it "excavation". Professionally, "dobývanie", that's the key word from my experience. So he expected, once this situation shall occur, we shall submit a proposal; would I be willing to enter in cooperation of a certain kind with him once this situation shall occur?

Q. Understood. Let's pause there. Mr [Keller] was interested in his personal capacity or on behalf of Mondo to do this? On behalf of Mondo; correct?

A. He acted as a representative of Mondo Minerals. But it's difficult to say now whether it was his personal interest or whether it was the interest of Mondo Minerals as a parent company. But I had rather viewed this as his personal interest.

Q. Okay, in his personal interest. Was he also emotional about talc, or sensitive towards talc, or had he a financial perspective, based on how you perceived it
at the time? It's a valuable mine, isn't it; there's
a lot of money that could be generated out of this?
A. We could talk for hours about this topic.

First of all, it's not as valuable,
because there were certain stages of geological survey
conducted, and mainly only surface bores were drilled,
and based on these surface drillings, calculations were
made with regard to the size of the deposit. Z1, Z2 and
Z3, there are maybe 85,000 kilotonnes, and 146,000
distorted views upon the deposit, because the drills
were done within a network or a grid based on which
no one can have a perfect overview of what's the size
and yield of that deposit. So that's why I continue --
Q. My fault entirely, because I threw a question at you
that was so vague, and I understand why you want to go
into details, especially that you are passionate
probably about this.

But let me put it this way: it was sufficiently
financially appealing to both you and Mr Keller, in his
personal capacity on behalf of Mondo, that it warranted
Mr Keller coming in, and you or him setting up, with
a representative of the District Mining Office,
a meeting to consider the prospects of a re-tender;
A. I disagree with that, because that is not the truth.

Whether the motivation of Mr Keller was a financial gain, I cannot answer that, because I did not see inside his soul. I can only say on my own behalf: I have never seen a personal financial gain in this.

I have seen a certain realisation, implementation or continuation of my work which had begun before; nothing more and nothing less. The financial benefit: you can have someone who invests his own money, a miner having a return on his investment in time. They may speak of whether or not the deposit was or was not beneficial or profitable. But whether it was a high grade deposit, to say now at this stage is very premature.

Q. Sir, can you tell us why Mr Cellar was present? Because your testimony is that Mr Keller came to submit a proposal to you. How does that explain Mr Cellar's involvement at the first meeting?

A. I suppose that due to the reason that Mr Cellar was -- I'm not sure at that time whether he was already the Košice District Mining Office head. And they have known each other from the past, so I guess he just approached him and he came. And I have to say that Mr Cellar does have at least very little information about this deposit; I would say almost zero.
Q. So what was Mr Cellar's input at that meeting at the
restaurant? The first time was at a restaurant; correct? So what was the input of Mr Cellar?
A. Basically none.
Q. He was sitting there?
A. Basically, yes, he would just sit there. He doesn't speak German in fact, so he would have nothing to discuss. If he said something, I just tried to help him translate it.
Q. So what was he there for? It doesn't make sense, does it? Sir, I put to you --
A. It's his personal decision. He was there as a representative of the Mining Office in the region. Keller knew him from the past, so he came. It was a courtesy call.
Q. Sir, may I put to you --
A. It's quite legitimate.
Q. Sir, may I put to you that this is a valuable mine. You know it. You are a sour former shareholder and contractor. And you set that meeting with Mr Keller to set the basis to have Rozmin's rights revoked, a phoney tender organised for your phoney company that you set up in the name of your wife, who is an accountant with a company that does brokerage, with no financial backing, to then be allocated the tender. Isn't that
the truth? That's the case that I am putting to you: that all this was set up, thanks to you, and the complicity of members of the government.

A. That is your opinion, and I am not objecting against that. Because you put ten fragments into a single sentence, I'm not sure it even makes sense to try and answer it. But I think further development will show that we shall get to the individual partial topics.

Q. Was Mr Cellar reporting what was going on to Mr Baffi?

A. It's a question to Mr Cellar. So, excuse me, I have no professional relation with Mr Cellar. He is the head of the Mining Office. What relations would there have been between Mr Baffi, Cellar and others is not a question to me.

Q. How about the Minister of Economy? You wrote to the Minister of Economy, there was a meeting set with the Minister of Economy, I understand, as well, right?

A. Yes, that meeting took place, correctly. It did take place. It was a courtesy letter from my side, whether or not the Minister of Economy would accept such a meeting to take place.

Q. Okay. And it took place when?

A. The meeting took place, if I remember correctly, on 12th December in Košice.

Q. And Mr Cellar was present as well?
A. Yes, he was.

Q. So there were three meetings with Mr Cellar: one at the restaurant; one with the Minister of Economy, you and Mr Keller; and a third at the house of technology during that period of November/December. That makes three, not two.

A. Once again, at the time we referred to I have met him twice in December, twice in Košice. So the 11th in the evening and the 12th in the morning. What I have in mind is the period of December 2004.

Q. Okay. So you met him twice in November and once in December; is that your testimony?

A. I have met him twice in December. I repeat again: once on 11th December, and the second time on 12th December. Once together with Keller, Benhoda and myself; and on the 12th with Mr Rusko in the house of technology.

Q. Okay. So the meeting with the minister took place at the house of technology; is that how I should understand it?

A. Yes, yes, exactly.

Q. And the minister was here in his personal capacity as well?

A. He was there personally.

Q. I know he was personally. Do you mean physically? Of course he was there physically personally. But was he
as a minister or was he as a layman?

A. Certainly he was there as the Minister of Economy, at that time responsible for the sector of mining as well. But he was not motivated by -- his participation was not only motivated by this meeting alone, because they have had some kind of other meetings there at that time which coincided time-wise. So he was able to schedule and thus be able to meet us on that day. We just happened to have worked out time-wise on that day.

Q. I listened carefully to what you say; I just don't understand. So the minister was here in his capacity as minister. Then Mr Cellar was there in his personal capacity, or was he then also in his professional capacity? Because you mention personal capacity --

A. We are discussing two different things. I am talking about the 11th December meeting. It was Mr Cellar as a private person, together with Mr Keller. On 12th December he was likely there as a representative of the mine administration, the District Mining Office, because he was there with the minister to whose ministry the mining sector belongs. I suppose Mr Cellar was there in his official capacity.

Q. But the first time he was there personally? The first time, December 11th -- in November, the first time.

A. It was in the evening. It was a regular working
meeting. And it was informal. It was not binding, there was no record or minutes made of this meeting. We just were discussing things: what if? And there were no conclusions reached during the meeting. There was a model proposed, and there was a model proposed between Mr Keller and -- not even myself proposing it to Mr Keller: it was Mr Keller proposing me a model for cooperation.

Q. Okay. Did you meet Mr Baffi in January 2005 or in December 2004?

A. I think not, because even though my organisation -- because there are District Mining Offices, and each organisation has jurisdiction into the appropriate Mining Office. But at that time I don't think I had any contact with him and I would not be meeting with him during that period. Even though I say that, there could have been a working meeting. But I think rather not.

Q. With Mr Baffi?

A. Yes, with Mr Baffi.

Q. Again, I apologise, I cannot understand how you cannot remember -- because that's a key period just before the revocation of Rozmin's rights -- whether or not you met Mr Baffi. Because Mr Baffi is the signatory of the revocation letter. He was following the process. Can you make an effort to come with a clear position? Did
you or not meet Mr Baffi in December 2004?
A. I say clearly: I have not met with Mr Baffi in December 2004.
Q. In November 2004?
A. Nor in November 2004.
Q. In January 2005?
A. Nor in January 2005.
Q. Okay. When did you learn of the intention of the District Mining Office to put the deposit in tender?
A. It was published in the journal for public tenders; that's where I read it.
Q. Sir, you have been meeting, you've been soliciting, you have been triggering the process. There is your letter of November 24th 2004. There are meetings at restaurants, at the house of technology, in relation to the talc project. And you want me to believe that you found out about the tender only when it was published on December 30th; that's your testimony?
A. I can say with certainty that I knew about the act being applicable. But whether the Mining Office shall make such steps they did, don't ask me to tell you that I would be aware of Mining Office making such a step. I did not have knowledge of that.
Q. What about Mr Rozloznik? I saw in a few paragraphs -- I can find them if you want me to direct you to these
paragraphs -- that you value him as a person and as a professional. Is that a correct understanding?

A. I have to correct you. I used to appreciate Mr Rozloznik very much. We have known each other for many years as professionals, from sporting activities, we would meet frequently. I nearly had a father-and-son relation with him. Until a situation had occurred where he disappointed me, and unfortunately now with hindsight I have to say that that person has disappointed me greatly.

Q. Well, that's at a personal level. How about professionally: do you value his judgment? Do you recognise that he is an industry specialist in the Slovak Republic, a mining industry specialist?

A. No, because he is no miner originally. It's difficult for me to judge the work of a geologist. I only knew him as such on one, maybe two or three projects. But it is difficult for me to judge his professional know-how in the area of geology because I have studied deep-mine mineral and non-mineral mining (in Slovak language version: dobývanie) as a profession; it's a fairly different profession. So I would not assume to judge his professional expertise and know-how as a geologist.

Q. He came and testified that the term "dobývanie", as set out in the 2002 amendment, does not mean "extraction"
but, as he understood it at the time, to mean "mining works", to start the opening of the mine. Now --

Mr Anway: Mr Chairman, we object to that characterisation of his testimony and it should not be represented to our witness that that was the testimony of Mr Rozloznik.

The President: Could you yourself suggest what you understood from Mr Rozloznik on the definition of "dobývanie"?

Mr Pekar: You mean when he was answering my questions or when he was answering Dr Gharavi's question?

The President: Well, both; and if they are different, we are interested in both.

Dr Gharavi: I can move on, because there is no material point; it was just a introductory point. I will get to the Supreme Court decision.

Have you read the Supreme Court decision? Because you seem to be very much following this, especially after what happened and you became the beneficiary of all this. So did you read the 2011 decision of Supreme Court? I can walk you through it: it basically said that it's only in 2007 that it was provided an explanation as to what the term "dobývanie" meant.

Do you recall reading that decision?

A. Is that the first one or the second one?

Q. So you follow, good. There are three decisions. It's
the one of 2011. My colleague will show you that
decision. It was the only one that discussed this
point.

MR ANWAY: Tab?

DR GHARAVI: It should be tab 39, I think. But I don't want
to insist too much on that; I am just curious to see
whether he has read it. It is on page 25 of tab 39 in
the English version, C-36. It should be underlined in
the Slovak version. Page 25:

"The court of appeal points out the fact that
statutory definition of the term mining as of activity
of the organization in the mining area through which the
acquisition of mineral from the deposit in mining ways
occurs, was introduced in the Mining Act only when
amended [in reference to a law of 2007] effective since
1st June 2007, that is why restrictive explanation of
term 'start of mining' of the exclusive deposit, which
was adopted by administrative bodies in December 2004,
is not correct without an appropriate reasoning."

Do you recall having read that decision? Or you
didn't care because you got the mine anyway?

A. I might have read it, but I do no longer remember its
content.

Q. Okay, fine. Let's move on.

Assume with me that Rozmin's right was rightly
revoked, and I think you would have no problem in proceeding based on that assumption. There was a tender. Let's forget about your meetings in December and November; and the tender, let's assume it was regular.

How do you explain that the company that you set up, Economy Agency, with your wife, managed to win that tender? How do you explain that?

A. It's a question to the selection commission which made a decision about that.

Q. Yes, but you see, I work on the presumption that all this is a phoney and is a big joke, in the meaning that the whole practice is corrupt, because it doesn't make sense for the government to get rid of a contractor that is not serious and then to take a company created by an accountant, whose husband also claims bankruptcy for €100,000.

So I'm asking you what you think. It's not a lottery. You can understand why you won a lottery: you took a number and your number fell. But this is a tender. There's the 2002 amendment.

A. No one revoked Rozmin his mining (in Slovak language version: dobývací) area; they did it themselves -- due to their inactivity. Everybody which was involved knew very well about this, including Mr Rozloznik; he did not speak to one expert but to many. And they told him that unless they will commence
dobývanie/excavation, they will be revoked their (as heard in Slovak) 
dobývací area pursuant to the new law and that a selection procedure 
will be initiated to assign (as heard in Slovak) dobývací area 
to another organisation, 
which did occur in fact due to objective reasons, 
because Rozmin did not excavate anything. That is why 
that tender was called for assignment of this (as a heard in Slovak) 
dobývací area to 
another organisation. 

So the tender was called. It's difficult for me to 
doubt something which is legally established in Slovakia 
by law, because it was a legally made procedure, fully 
accepted and fully published in the journal. I have 
read it, and exactly to the last point I have met the 
conditions of the brief in order to be able to 
participate in that tender. 

So I suppose and I think even that my project was 
assessed as the best one due to the reason also that 
perhaps I was the best familiar with the issue of the 
deposit because I have been involved in it 
professionally for the 20/24 years previously. 

Q. What financial support -- first, let me step back. Why 
your wife? Why send your wife on the battlefield? 
Economy Agency, your wife is an accountant: you put her, 
and you put her as the bidder. Why not yourself? 
A. Okay, well, my wife is not an accountant, she is 
an engineering econom[ist], but she is very familiar 
with accounting as well, and appropriate laws relating
With regard to my decision of doing it not through -- it is a misleading information that I have done it through my wife. I have only done it through a company which was in the ownership of my wife having met all particulars in order to be able to participate in the tender.

It was my honest decision, after having had the experience previously with Keller, with Rauball, to be able to decide freely like this, and to do it right; and proof to having done it right was the successful outcome of the tender. And in my opinion, based on the bid I have submitted, works were conducted, and today the deposit is opened and there is an excavation underway. That is the most important part.

Q. You just said, "I thought it was better to do it in the name of my wife, in a company owned by my wife". I'm just trying to understand when you took the decision to put that company in the name of your wife, and why did you proceed this way.

So, first question: when did you decide to create Economy Agency?

A. Economy Agency was not established before, it has been a long-standing company by then. So I have to correct you on that. It was only one thing which occurred:
every company wanting to participate had to hold
a mining permit.
So I extended the scope of business of Economy Agency to cover the
mining permit based on my
professional aptitude for performing mining activities and activities
conducted by mining means.
So that is why I legitimately was able to participate in
this tender.

Q. That I understand. But why a company in the name of
your wife? This I don't understand. This is what
I want you to help me with.
A. There were several options available, as I already
mentioned. With Keller, Keller all of a sudden at the
last moment had refused cooperation; he said he will
participate or he will bid by himself. I could continue
in the tender with my former company. In the former
company, the shareholders were no longer interested.
I could have found a new company.
I was approached by Belmont that they would be very
happy if I were to join them in the tender, regardless
of through which company, but if I were to succeed with my
project, to get in touch with them, and then we will go
into it together. So after having had the previous
experience and after having made up my mind, I have
decided that this will be for me the most optimum and
the best solution, and I think I have not done it badly.
Q. I won't insist, but my question was not why you didn't
go with the others, but why you created a company and put it in the name of your wife and proceeded this way.

But I'll move on.

The question now I have for you is --

MR ANWAY: I would just object to that characterisation. He did not say he created it and put it in the name of his wife.

DR GHARAVI: The question I have for you is: what was the financial plan? What was the financial backing? You say you won because you had the best proposal, technical proposal. But financially speaking, what was the backup? What guarantee did you give to the government that you would yourself -- "yourself" meaning the Economy Agency -- proceed with the project?

A. Well, first of all, the decision was not made by the government but a selection committee which was appointed by the District Mining Office which was responsible for this dobývací area, for this location. The fact that the parameters for the selection procedure are defined by law, also the fact that the committee assessed the bids as they have assessed them, I couldn't have any influence on that, nor have I tried to influence it. This was a legitimate decision of the committee.

Q. Sir, that was not my question. Every time I ask a question to a witness of the Respondent, they say this
law was applied. Yeah, yeah, yeah.

My question is: what was the financial proposal? The letter you sent on 24th November 2004, for example, the one that we had read, R-0247, mentioned that the above-mentioned companies -- you were talking about Mondo -- expressed an interest in investing 40/50 million. And the goal, I understand, of the 2002 amendment was precisely not to allow companies that didn't have the means to secure the project. That's why I'm asking you.

It's a very direct question, sir. Did you have that money sitting in the account? Do you have a lot of money and you put that as a guarantee? What did you say?

A. Well, this is clearly defined in the project. A project has a part which talks about a financial backing. We had the credit pledge of a bank; I think this was enough for the selection committee. I had also backup plans in my head, because I had several investors who were approaching me.

Q. I was not talking about your head. Let's stop there.

You said you had a pledge from the bank. What was the content of that document? Who issued it? What were the terms of it?

A. I think it was issued by Tatra Banka branch office in
18:16 Košice.

2 Q. What did it say? What were the terms of the letter?
3 A. I can't recall anymore.
4 Q. How could you not remember? You went in a project which
takes tens of millions of dollars, you commit to it; you
talk to a bank institution, it issues a letter, you
submit that. And you say you don't remember, and you
come up with these bills again, dating from a long time
ago, of petty cash. How can you not remember the terms
of the letter? Please make an effort.
5 A. Once again, it was a credit pledge from the bank that if
we succeed in the selection procedure, they will finance
the project.
6 Q. They would finance the project or they would sit down
with you to discuss possible financing of the project?
7 They are two different things.
8 A. You are correct, it's not the same. I don't know how
much you are familiar with my project, but my project
included all the required parameters as they are
required for a project, including a business plan
covered with the financial backing, who will do what and
when. On the basis of this project I approached the
bank, and on the basis of this business plan I have
received a promise from the bank that, yes, according to
their opinion, this project can be implemented. I don't
think that they will issue a pledge like that just, you
know, on the basis of nothing.

Q. Do you still have it? Would you agree to show it to us,
by curiosity? We would like to see it. Do you have an
objection? I mean, of course your lawyer would say
whether it's appropriate or not to provide it. But do
you have a copy of it?

A. Well, I certainly don't.

Q. You don't, with archives as well? What is that? What
is this? How can you be sure you don't have it?

A. Well, I am quite certain I don't have it because the
bank issued it to me, the document is one original, this
original is a piece of the project bid, and I suppose
the bank might have it in their archive.

Q. You didn't do a photocopy of it?

A. No.

Q. Okay, let us move. And I think we should have five more
minutes, not more, I think.

Sir, what was your intention when you submitted the
bid? Was it your intention for the Economy Agency,
directly or through you -- not talking about third
parties -- Economy Agency, directly or through you,
Mr Corej, [to] implement the project, or was it for you
to get it and then sell it to somebody or bring in
somebody to do it? I'm not talking about what you did;
I'm talking about your intention and what you represented. What did you represent and what did you intend?

A. My main motive and single motive was the following: to make sure that I will successfully pull this project. I was unfortunate enough that during the '90s, all the way up to 2004, I was meeting investors who were behind companies such as Belmont and EuroGas, and I was disappointed that this significant project in terms of employment, in terms of mining activities for the district of Rosnava, this project has failed.

For that reason, when in 2004 I started to consider, on the input or on the incentive of Mr Keller, or taking another angle on this project, I was again disappointed also by Mr Keller. And just before the selection procedure, when Mr Keller cancelled all the agreements that we had, I took a decision on my own that I will enter this tender procedure on my own and I will prove to everyone that I can pull this project through.

The result is that I have succeeded. The project that I have elaborated was the basis for the final opening, and it is perfectly functional. I have nothing to be ashamed of. I am very glad that this deposit is finally serving its purpose.

Q. Maybe that's the case, but you still have not answered
my question. My question was a simple one.

When you applied, when you submitted your application, did you intend for Economy Agency to carry out the project directly itself, without any financial support, or through you, Mr Corej, without any third-party investors; or did you intend to take that project, once you won, sell it or bring in another partner, and for that other partner to do all the financing and carry it out?

A. Definitely no. Because in my business plan the idea is clearly outlined, what was my idea on the implementation of this project. Already before in the history, and also in the case of this project, my intention was to employ my employees, those people who had to be laid off in the year 2000. So I was employing them at other jobs, other contracts. And therefore I was very glad that in 2005 the selection procedure concluded as it did, and I had a very clear business plan on how to make the best use of my employees for these works.

Later, when I have merged with another applicant, Mr Engel, who approached me with a proposal to cooperate, we finally opened this talc deposit. And the main part of surface and opening works, and also the initial approach, was done by my company. And that's why I am happy that I found jobs for my employees, who could succeed in the
case of opening this talc deposit. And now they are working for another company, and at least they have partially covered their fees and their employment for the current day. This was my leitmotif.

Q. I understand that your testimony is that once you obtained the project, you engaged into new negotiations with other companies, including with Mr Rauball, for Mr Rauball to possibly step in to provide financial support. Is that correct?

A. This is quite misleading. Mr Rauball -- not specifically -- Mr Agyagos -- had approached me during the process of preparing the project with a proposal to write a project and, if I would be successful, to join them, or to merge with them, and we would create a joint group, under certain conditions, and we would continue to work on this project. But I understood quite quickly that this is just a sidestep from Mr Rauball's side. Because when I asked him how will he guarantee the financial backing of this project, he said, "Just behind the corner there is a bank which will finance it". It was quite clear to me that he had no idea; or at least from his behaviour, it was quite clear that this cooperation with me is [not] serious.

That was the reason for me to refuse his proposal.
This was a proposal by means of a company I was not familiar with, and he wanted me to transfer this mining area or excavation area to this company I was not familiar with. So I am very glad I have merged with Mr Engel and we have fulfilled this project to a successful end.

Q. But you did meet Mr Rauball after the selection process, once you were awarded the tender, to discuss his proposal, correct? You listened to him?

A. No, I was talking to Mr Preuss. That was a man who approached me, and he offered me a cooperation on this project.

Q. Could you turn to paragraphs 40 and 41 of your second witness statement. At paragraph 40 you say:

"After the selection procedure I was contacted by Mr Preuss, as the authorized person of the group EuroGas. I knew Mr Preuss because he often represented Mr Rauball at meetings, and he also acted on behalf of the company EuroGas ..."

Then 41:

"At the meeting in Vienna, Mr Preuss submitted to me an offer for cooperation, this time with the company Transunited Corporation, which had its seat in Liechtenstein, to ensure financing of the works at the deposit. When leaving the meeting I also met
Mr Rauball. During a short discussion, he told me that it is no problem to ensure money for financing the project. I was willing to listen to his proposal."

Then you say, 42:

"After exchange of drafts of the cooperation agreement, however, I realised that Mr Rauball could not demonstrate and commit to financial support of the project and that there is actually no money for the works at the deposit."

What I don't understand is that you don't believe in EuroGas, in Mr Rauball. You say that he is the cause of your misfortunes in 2001. Then you write to the government, you say, "These guys are losers, they don't have the money". You have a project to move this forward. There is the 2002 amendment, you get the project, then you sit down with Mr Rauball to discuss project financing to move forward? What sense does that make?

A. I think you have talked initially about the year 2001, not 2004. This was the beginning of our problems with Mr Rauball. Well, it was an offer from their side. I thought that Mr Rauball is now a more serious trading partner. However, when we have started to discuss particulars of this project, I again saw misleading, and this would bring me to a dead end. And I did not want
to relive the situation from 2001, when I was in a very
unfortunate situation, given the collapse of the
project. And I was very sorry for that, because this
project has a certain perspective.

Q. But you did say that you exchanged drafts of
cooperation; paragraph 42. And I wanted to draw your
attention to one of the drafts that you mention, which
is R-250, in the pochette you have. And you mentioned
in your testimony that you didn't think all this was
a serious proposal.

I want to cover the content with you. The draft
says: Transunited Corporation with Economy Agency. "The
compny TC", which is Transunited, moves forward:

"... is interested in cooperation ..."

Item 3 says it:

"... provide[s] funds to open the deposit ...
SKK 300,000,000, of which SKK 50,000,000 will [go to]
... EA ..."

Which is Economy Agency.

Then at 6 it says:

"The company EA ...

Which is yours:

"... will be prepared, after completion of the
opening works, to transfer its ownership interests to
the company ... in the amount of 100% ..."
So what I understand is that Transunited here is proposing with you, in this draft, for it to finance the project, with 50 million upon signature of this agreement, then proceed, and at the end it will get the 100%.

So what would you get out of this? You were going to pocket that 50 million and keep it? May I suggest that?

A. You totally fail to understand me.

Q. What's the rationale of this agreement?

A. If you have read this agreement well, I do believe that there is a clear bottom line. My intention was the following: to finally open the deposit, and to make sure that we will finally start the excavation; nothing less, nothing more. I wanted to make sure that I, as someone who is very familiar with this issue, who has spent many years on this site, who has managed various openings on various borehole drills, what I wanted was to have the authorship/oversight over of this project, and also to be responsible for one thing, namely to make sure that the funding will be available. And once the deposit would be open, I was willing to transfer the ownership to this company Trans-whatever, but let's call it Mr Rauball. This was my only and single wish.

It took a different shape at the end. I am no
longer working on this deposit anymore. So the opening
works are completed and the raw material is excavated.
I am satisfied.
Q. We heard that, but I am there now. When did you win the
tender? The tender result, when was it? It was
April 2005; correct?
A. I believe so.
Q. So immediately when you win, who you start negotiating
with is with Mr Rauball?
A. Correction, correction. There is a mistake. This is
not 22nd April 2005; this was supposed to be
22nd May 2005. There was a mistake. This was on
22nd May, not 22nd April.
Q. Well, I have the Slovak version and it says 22nd April.
And in your testimony it refers to also -- this document
doesn't have a date. But anyway, it doesn't matter;
April/May.
You win the tender. There is this amendment of the
law that requires you to move forward the project. You
say that that matches your heart. Then you just kicked
out -- rightly, let's say -- Rozmin, that is owned
directly -- let's say claimed to be owned -- by
Mr Rauball at the time, or his group of companies. And
then you immediately not only meet with him to listen,
but you engage in exchanging drafts. So I find that extraordinary.
I think that it is untenable that this whole story that you put forward makes sense.

But I'd like to move on and understand the rationale behind this. Under the draft, what were you going to get? What was Economy Agency going to get? The way I read it, you were going to get 50 million, you were going to pocket it. The other one was going to finance it, open it. And then you would...

A. This is a totally misleading interpretation and you have absolutely failed to understand the content of this document.

I would like to repeat that I have bound myself, when I have entered this tendering procedure, that if I succeed, I have promised to myself that I will pull through this project. This, in my understanding, was to make accessible this deposit, open up this deposit. And for me it doesn't matter whether it would be excavated over 50 years, 100 years, whatever.

And one other comment. Rozmin did not lay me off. I was not made redundant. I never was an employee of Rozmin.

Q. What I was trying to understand -- I will ask you one more time -- is: what was your consideration? What are you going to get financially? I don't want the emotional consideration. Financially, what were you
going to get, according to the draft that we just read?

A. Well, I suppose I was paid for a certain work. I was supposed to perform expert oversight. This is what I was supposed to receive my remuneration for. For me this was a lot.

Q. So you were going to get the project, immediately give it to the hand of somebody else, without any financial contribution, and you were going to go get a salary from that company?

What is your present deal? Let's move on. What's your present deal? After that, you gave it to a company, right? So what was your deal with that company?

A. I never gave anything to anyone. In the tender we had seven companies involved. And the company which was second in the overall, I think this was Východoslovenské Kamenolomy a.s., the owner of this company approached me after the tendering procedure, whether I wouldn't be interested in working together on opening this deposit, and he guaranteed financial backing of this project.

Q. Okay. But what's exactly your deal with VSK Mining?

What's your deal? What's the exact term? What is your contribution? What are you receiving financially?

A. There was a merger of these companies, and eventually only VSK Mining ended up as the final company, because
they had a gypsum deposit and one other deposit. I have agreed with these transfers that they had within the company. But my condition was that in any case I have to perform the authorship/oversight/supervision over the project.

Q. I am asking you: what did you get? You merged. How much did you get in cash upon signature of the agreement? How much did you get? What did your wife get? How much did you get, directly or indirectly?

A. Nothing.

Q. Nothing?

A. Nothing.

Q. So what was the consideration? What was your financial reward for that?

A. In my case, this was the honour of the miner, the tradition. My father was a mining engineer. My brother is a mining engineer --

Q. I don't care about --

THE PRESIDENT: Don't interrupt, please, Dr Gharavi.

A. Personal profit on this project was not my motivation, nor is it a motivation today. My intention was a certain personal ambition, a personal promise which I have carried out, and this cleans me.

And I have to say one thing: that this makes me very proud, that this project is implemented as I have
projected it. Up to 99%, this is my project. I haven't failed in a single thing: nor projecting the initial shaft, nor projecting the distance. I have [not] failed in 7%; we are talking about 4,160 metres. I haven't failed in projecting the main directions, the main angles. So all my projects, everything was done. 4,000 metres were drilled in 24 months.

MR ANWAY: Again, Mr Chairman, just the issue of time.

I know we are past our --

DR GHARAVI: We are finishing, which will be a few minutes maximum.

THE PRESIDENT: First. I think there is a correction to be made in the transcript: I suppose it is, "I have not failed"? Yes, okay. Not too long, Dr Gharavi. We can go on tomorrow.

DR GHARAVI: No, I really would like to finish.

THE PRESIDENT: Yes, but quickly then.

DR GHARAVI: Yes, but it depends on the answers, you appreciate that. I don't feel --

THE PRESIDENT: It depends on both the questions and the answers.

DR GHARAVI: Yes. If I get an answer to my question which is very simple, what you got in return, if it's zero I am fine and I will move on.

But is that what you say? Is your testimony that
18:39 you received zero from the 100% merger? I want to make
that clear. Is my understanding correct? You
transferred the 100% share and you got zero direct and
indirect financial benefit?

A. Allow me to restate and reformulate. No, my personal
miner's honour is more to me than any financial profit
from such activity.

DR GHARAVI: That means, "I don't want to answer".

THE PRESIDENT: Well, that's his answer.

DR GHARAVI: But what do I understand from the answer?

THE PRESIDENT: That's an answer.

DR GHARAVI: Okay.

A. I believe I have answered your question. I haven't
looked for any personal profit. This is valid today,
and it was valid before.

Q. You say at paragraph 61 -- and I will end with that:
"The works were completed sometime in 2009 and in
this period, I presume in April, the first ton of talc
was extracted."

So within this time, your definition of extraction,
dobývanie, when did you achieve that? Do I understand
that it should mean in April 2009?

A. If it has a date, I believe that was the situation.

I don't think I have inserted this in my witness
statement. I don't think I have specifically stated the
18:40

1 date when the first tonne was excavated. I haven't
2 specifically mentioned a date when the first tonne was
3 excavated in my witness statement. I believe this might
4 have been in April 2009.
5
6 Q. That's what you say, sir. So that I understand, what's
7 the start date for the running of the three-year period?
8 We agree on an approximate date -- and I give you that
9 it's not a scientific date -- April 2009, extraction
10 started. When did the three-year period start to run?
11 A. I cannot answer this question. This is a question for
12 the Mining Office. I am not a representative of the
13 state mining administration.
14
15 Q. But you --
16 A. I am an expert on mining technology. The deadlines and
17 the different stipulations of law have to be followed by
18 legal experts. My task was different: I was supposed to
19 solve the technical problems, which are much more
20 complicated.
21
22 DR GHAZI: Sir, I will continue tomorrow, if you will
23 allow me.
24
25 THE PRESIDENT: So the cross-examination is not completed,
26 and there may be re-direct from the other side. So you
27 will have to come back to this room tomorrow morning at
28 9 o'clock, and in between you are not to talk about this
29 case with anyone, please. That's the rule for
MR ANWAY: I think we also may have agreement that tomorrow we may try to end a little bit earlier, since these have been relatively long days. Counsel, you can confirm, but I think the hope is to try to end around 6-ish tomorrow.

DR GHARAVI: It depends on the answers, but we will try.

THE PRESIDENT: Tomorrow, after Mr Corej, we have Ms Jarvis. Will they be together, Mr Gardiner and Ms Jarvis, or in succession?

MS BURTON: I think they will have to be in succession.

THE PRESIDENT: So we will start with Ms Jarvis?

MS BURTON: My understanding is that they are presenting her first, then Mr Gardiner, then Mr Anderson.

MR ANWAY: No, I don't think we've ever had any prior discussion about whether they'd be heard together or in succession. Our understanding is they would be heard together, since it was a joint report.

MS BURTON: Well, the first report wasn't.

MR ANWAY: Put another way, Mr Gardiner did not issue a report without Ms Jarvis. The only report he ever issued was with her.

THE PRESIDENT: You could have her first alone, and then the two together.

MS BURTON: That would make more sense, I think.
MR ANWAY: If that's the case, then the questions when only Ms Jarvis would be here would have to be limited to matters covered in her first report.

MS BURTON: Right.

THE PRESIDENT: Okay, thank you. See you tomorrow.

(6.44 pm)

(The hearing adjourned until 9.00 am the following day)