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NOTE: Since at the Paris hearing a dispute occurred between the Parties regarding translation of certain mining terms (such as: banská činnosť, ťažba, 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:...".

09:00

Wednesday, 14th September 2016

2 (9.04 am)

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

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

9 THE PRESIDENT: Thank you.

10 So, Mr Pekar.

11 MR PEKAR: Thank you very much.

12 (9.05 am)

13 DR ONDREJ ROZLOZNIK (continued)

14 (Evidence interpreted)

15 Cross-examination by MR PEKAR (continued)

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

21 So, Mr Rozloznik, I was explaining that this morning
22 we have added a few documents into the binder that you
23 had before you yesterday, and there is also another,
24 third binder, a small one. I believe that, just for
25 convenience, we will start with the documents which are

09:06 1 in the third bundle, so that everybody can get rid of it
2 and then work with the second binder that we had
3 yesterday.

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

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

12 A. It's correct.

13 Q. Thank you.

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

18 A. Yes.

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

24 "On the basis of the height difference between the
25 valley and the deposit the opening from the Dlhá dolina

09:09

1 can be accomplished either by a winze or a pit.

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

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

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

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

22 A. That is correct.

23 Q. I would also ask you for clarification of one point.
24 I seemed to understand yesterday that you were saying
25 that you were planning to build a decline or winze with

09:11

1 a smaller profile than in 1998. Is that correct?

2 A. Correct.

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

11 Do you have any comment, sir?

12 A. Let me have a look at it first, how many square metres
13 it was in the previous one. However, we always were
14 saying that there was a rough and a light profile, there
15 are two different profiles. So if there is
16 a difference, if it is true there are 20.25 and
17 18 square metres, I see no problem in that difference,
18 because the profile of that corridor or tunnel is 4 by
19 4.5, as it also was according to the plan before.

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

23 A. I will explain it as follows. As I was explaining
24 yesterday, we were planning half-profiles, so 12 square
25 metres instead. That can be consequently agreed upon

09:13 1 with the Mining Office, that we are going to go ahead
2 with a different profile and the District Mining Office would
3 just approve it consequently. So it was a sequence of
4 events within certain deadlines by which we wanted to
5 lengthen the profile. That is why we initially used the
6 data from the first POPE.

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

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

14 Q. It's tab 23.

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

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

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

09:15

1 profile and shorter distance of the winze.

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

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

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

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

Q. Sir, if we look at the text of this section 1.2.3.3,

09:18 1 I will read from it. My understanding is that actually
2 you are proposing two options. One option, which is
3 called in the English translation "Alternative 1", is
4 winze -- and the translation I suppose is supposed to be
5 the adit -- and "Alternative 2" is still the old one,
6 winze or decline; and I would call it a chimney, because
7 that's the one thing I can visualise the easiest.

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

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

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

19 Q. So the adit was not supposed to be here. This is
20 probably also because, as you state at the very
21 beginning of this part, you presented this as the next
22 steps or step in the opening work, so far without actual
23 executive design documentation in alternative form. So
24 this was not binding in any way; you did not submit the
25 documentation necessary to have it approved, right?

09:19 1 A. Yes, correct. We never submitted it to neither the adit,
 2 nor the pit (shaft).
 3 Q. Further down it says that:
 4 "According to [you] Alternative 1 [with the adit]
 5 represents the only optimal solution for the
 6 problem-free economical mining of the deposit."
 7 And then there is another sentence which I find
 8 interesting:
 9 "The decision on implementation of one of the
 10 alternatives will be taken by the investor ..."
 11 That's Rozmin, I take it:
 12 "... after evaluation of the results of work from
 13 the implemented winze."
 14 Could you please explain this sentence?
 15 A. Of course. As long as we would be proposing later,
 16 submitting design documentation for adit, we would have
 17 to consult with the owners, because that would result in
 18 increasing investments. It's a 4.2-long excavation,
 19 which requires -- calls for increased funding. We have
 20 discussed this with the investors and they have agreed
 21 with that, and we have agreed that during drilling the
 22 winze, we will already begin submitting application for
 23 approval of the adit. So they have agreed that we can
 24 meanwhile prepare the documentation for approval.
 25 Q. Okay. Sir, would you agree with me that you would not

09:21 1 have been able to commercially operate the mine until
 2 you prepared the second opening or the second entrance
 3 to the mine, either the chimney or the adit?
 4 A. I'm not sure I understand exactly what you mean.
 5 Q. Apologies, I am advised that there was incorrect
 6 translation, so I will repeat my question.
 7 Would you agree, sir, that you would have been able
 8 to commercially operate the mine only after the second
 9 entrance, second opening or second point of access to
 10 the mine is prepared?
 11 A. It is not precisely so, because by having -- gaining
 12 access through the winze to the deposit, being able to
 13 take the necessary multi-tonne large samples, that would
 14 give us a certain image of the deposit much better than
 15 laboratory tests, and I am convinced that the tests
 16 would end up being positive. So that was already
 17 background for making the overall alternative for opening of the
 18 deposit more precise.
 19 It is not a problem that if you -- as long as you
 20 have arranged for zoning permit for the adit and have
 21 everything approved, and then take the sampling from the
 22 first alternative, from the laboratory multi-tonne
 23 tests, would end up being negative, then you're going to
 24 have to decide whether you're going to continue on the
 25 deposit, whether the deposit has such positive value.

09:23

1 It's quite commonplace.

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

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

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

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

24 Q. But the chimney was not approved under the authorisation
25 of mining activities issued in May 2004, was it?

09:25

1 A. It was not approved. However, as I say, you may always
2 have submitted a request for additional approval,
3 submitting additional documentation. When you locate
4 the chimney somewhere in the forest, you again have to
5 approach the forest administration to gain permit from
6 them, you need to build access road to the chimney -- shaft.

7 However, it was not yet necessary to be involved in
8 that work. That was sufficient to be left for later,
9 when it would be necessary to resolve all the ownership relations.
10 Because design -- in theory we have had
11 everything prepared already: hydrogeology, conditions,
12 everything that was already prepared beforehand. So all
13 you need to do [is] to de-conflict the conflict of
14 interest.

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

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

18 A. "Conflict of interest": not really a conflict as such,
19 but it's an encounter of interests rather than conflict.
20 It means various organisations which are somehow
21 related to land, or whatever else they need to approve,
22 for you to be able to conduct any work, let's say in
23 a forest. They need to approve it. Let's say it's
24 an environmental agency, it's hydrogeology issues, there
25 is forest land, it's forest owners. So it's a complex

09:27

1 of varied encounters of interests from varied areas
2 which you need to beforehand, before you get
3 authorisation and the approval of the Mining Office,
4 which you need to also obtain permit from.

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

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

10 Q. Do they have an obligation to do so?

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

13 Q. There may be a translation issue.

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

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

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

19 THE PRESIDENT: Is it really 1.4 or 1.2.4?

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

22 The English translation again uses the word
23 "Excavation", which is forbidden, but it comes from the
24 Claimants. I will use it in Slovak then. It says
25 "[Dobývacie] methods, information on their approval,

09:29

1 justification of use, special measures for introduction
2 of new excavation methods".

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

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

13 In order for you to be able to start excavating, you
14 need to demarcate, by mining works, an area which is optimum, which
15 contains more than 60% of talc, and that's where you do
16 mining work. As proposed here, it is also graphically
17 depicted here where you begin drilling and you demarcate
18 the place -- that is the block -- that is limited by mining works, in
19 the middle and underneath. That's where the part is
20 which whoever is going to be excavating the deposit,
21 that is the part that you are going to have to excavate
22 out. And then yield is calculated according to
23 individual blocks. So they know the volume and the
24 tonnage, how much from each block they need to excavate
25 out.

09:31

1 Q. And the block was located deep under the surface?

2 A. It was on the ground.

3 Q. And you needed the winze to get to it; correct?

4 A. Yes, of course. The initial design -- I was explaining
5 yesterday, when the winze was classified as the main
6 mining works, and we got to the top of the deposit,
7 afterwards there needed to be a spiral bore drilled.
8 After each 25 metres you would bore a horizontal work.

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

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

17 Q. I will maybe shorten the discussion of this point. Did
18 you ever start the dobývat in accordance with this plan?

19 A. Well, according to this plan, I do not know what
20 precisely you mean under the term "dobývanie", because
21 we were conducting mining activity.

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

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

09:34

1 that correct?

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

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

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

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

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

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

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

22 Q. Okay. Now I will ask you to go to the following tab,
23 still in binder 3, it is tab 48. It does not have a C-number
24 because it is a reprint of a table that we submitted on
25 page 10 of our Rejoinder, which, Mr Rozloznik, is

09:36 1 a filing in this arbitration. I appreciate that you
2 have never seen the document, and I will not ask you any
3 questions about this document; I will just use it.

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

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

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

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

24 MR PEKAR: I just showed it.

25 DR GHARAVI: You just showed it? You think that's

09:38

1 a cross-examination question, showing a page of your
2 memorial to a technician?

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

5 A. That's correct.

6 PROFESSOR STERN: What's the exhibit number?

7 MR PEKAR: C-27. It is dated May 31st 2004.

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

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

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

Q. That's what I think I said. Apologies, November would be too late.
January.

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

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

25 That we mentioned:

09:40

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

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

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

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

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

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

23 A. Well, eventually we've paid. I'm not going to go into
24 any detail on that. The way how we did it, it doesn't
25 make any difference. We have paid the €33.

09:42 1 Q. But it was paid only later; correct?

 2 A. Yes, perhaps several days or so.

 3 Q. Then in point B there are some missing documents.

 4 Then in point C there is an identification of problems

 5 with the plan. Problem number 1 is that the requirement

 6 of securing two entrances -- the one we discussed

 7 a while ago -- is specifically mentioned. Then under 2

 8 there are some other, I would say, more technical

 9 problems mentioned there.

 10 Is that correct? Did your plan have those

 11 deficiencies?

 12 A. Well, I wouldn't say "deficiencies". We didn't know

 13 about these annexes. Nevertheless we made them, we

 14 submitted them and we sent it to the Mining Office.

 15 Everything was delivered to them as required.

 16 Q. If we go down to the second paragraph after the list, it

 17 mentions that:

 18 "The applicant by its submission, which was

 19 protocolled on the mining office on 11.03.2004 ...

 20 [amended] its preceding submission ... for the requested

 21 requisites."

 22 So this is what you alluded to in your previous

 23 response, when you said that you provided all the

 24 information which was required by the Mining Office; is

 25 that correct?

09:44 1 A. Yes, that is correct. We have eventually provided
2 documents.

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

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

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

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

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

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

19 Q. Please go to page 2. It states:
20 "For the execution of the authorised mining activity
21 are determined these special technical conditions: ..."

22 A. Yes.

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

25 A. Yes, well, quite certainly this was my understanding. And we

09:46 1 have added them, respective experts who were authorised
 2 and who were tested in front of the Mining Office,
 3 eventually did it.

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

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

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

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

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

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

 25 THE PRESIDENT: He must have some knowledge of the legal

09:48

1 obligations when he submits a request for
2 an authorisation.

3 Go on, Mr Pekar.

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

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

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

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

24 A. Well, it clearly says that, "The decision was made that
25 we permit mining activity". These are the very words.

09:50 1 MR PEKAR: Okay, I will go to something which may be easier.
2 Right after the list, you have the paragraph which says:
3 "By this decision are not affected rights and duties
4 according to special regulations comprised in decisions
5 and statements of other authorities of the state
6 administration."
7 Can you see that? This is right after the numbered
8 list.
9 A. The documentation which was prescribed by the Mining
10 Act --
11 Q. Sorry, there is a list running from 1 to 6, and then
12 there is a new paragraph, which states:
13 "By this decision are not affected rights and duties
14 according to special regulations comprised in decisions
15 and statements of other authorities of the state
16 administration."
17 Can you see that?
18 A. I am reading what you are referring to. It's written
19 the way it's written.
20 Q. What is your understanding of the meaning of this
21 provision, sir?
22 A. I am unable to respond to that, simply.
23 Q. You don't know. Sir, I represent to you that it means
24 that if there is another decision issued by another
25 Slovak authority which prohibits mining activities, or

09:52

1 which imposes conditions on those mining activities,
2 then this authorisation issued by the District Mining
3 Office does not prevail over such other decision.

4 Did that refresh your memory, sir?

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

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

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

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

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

19 Can you see that, sir?

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

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

24 A. I no longer remember. But if there were, we would have
25 resolved them.

09:55 1 Q. We will come to that later. But I will show you
 2 a decision, which was applicable at the time, which
 3 actually prevented you from starting mining works until
 4 you finish and commission the water treatment
 5 facilities.

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

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

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

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

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

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

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

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

 22 PROFESSOR STERN: Exhibit number?

 23 MR PEKAR: It is R-57.

 24 If you start from the end of the document, you have
 25 "Recorded by: [Mr] Baffi". And then I think it's the

09:56

1 third paragraph from the bottom:

2 "Rozmin has performed and performs works related to
3 the completion of surface water management construction
4 due to the limitation of performance of mining activity
5 by Decision of Roznava District Authority, Environment
6 Department no. ..."

7 And there's a number of the decision:

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

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

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

16 A. You would have to show me.

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

18 "Rozmin has performed and performs ..."

19 Still performs:

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

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

24 A. Look, I have already explained this to you: that
25 Rima Muran had not put to use a single surface

09:58

1 structure. It was Rozmin who was making all the
2 arrangements, getting all the final approvals, including
3 a bridge which I explained about yesterday. It was all
4 done by Rozmin. And also putting to use a water
5 treatment facility for the mined-out water. All was
6 arranged by us. It was all in accordance with what you
7 are saying.

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

11 A. Certainly. I'm not sure whether it still pertained even
12 to some electrical lines. We were making all the
13 arrangements because we were purchasing high-voltage
14 line from Rima Muran, which was made accessible. But
15 later problems had occurred. We gave them a 1 million
16 crown deposit, because we wanted to purchase it for
17 4 million. They made it accessible, but then they have
18 withdrawn from the contract. And other structures,
19 everything worked as it was supposed to.

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

25 This document is the contract for work that you

10:00 1 signed with Siderit, the company which was supposed to
2 build the winze. (Pause) I will represent to you this
3 is the agreement you signed with them.
4 This agreement also attaches in Annex no. 4 -- this
5 is the first sticker -- the annex is called "Mining,
6 building, and water-law related decisions".
7 Then if you go to the second sticker in the English
8 version, it states "Mining Permits", but this is
9 actually bad translation. So I would ask the
10 interpreters to go to the equivalent in the Slovak
11 language and confirm that the correct translation would
12 have been "Water-Related Permits". Again, it's one of
13 the stickers further down in the text. (Pause)
14 Okay, so under this tab we have various decisions,
15 and before going to the decision in question we may go
16 to the last one actually, the last sticker. (Pause)
17 Actually it's the last page before the Slovak version;
18 that may be the easier way to find it. (Pause) It is
19 the decision of the District Office of Environment in
20 Roznava which was issued on October 26th 2004. Correct?
21 Is everybody on the right document? (Pause)
22 There basically I will read it to you because the
23 Water Authority here recaps the status of various
24 permits:
25 "[The] District office ..."

10:04

1 This is the paragraph after some space left blank:

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

11 Then the second paragraph states:

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

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

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

22 Then it states:

23 "The Work can be used only upon the Final Approval
24 Decision. Builder, within 15 days of completion of the
25 Work, shall submit a proposal for final approval of the

10:06 1 Work to the state water administration authority under
2 the building act in effect and the Water Act."
3 Then at the very end:
4 "Conditions of the Permit to the temporary use of
5 the structure CS 024 -- Mine Waters Treatment Plant
6 dated July 28, 2004 ... which defined conditions for the
7 use of the [Mine Waters Treatment Plant], shall be met
8 by October 30, 2004."
9 Can you see all of that, sir?
10 A. Yes, certainly. It's exactly as you said.
11 Q. Is my understanding correct that the surface structures
12 which were to be built, and which were the subject
13 matter of this decision, actually are in two categories:
14 category 1 is the one water structure, which is
15 mentioned in the last paragraph; and then all remaining
16 ones are subject to the first three paragraphs? Is that
17 correct?
18 A. Look, all I can say to that is: that which was not
19 completed with regard to the water-related works, we
20 have completed it. It was done by second contractor,
21 Siderit, who had completed the water treatment plant
22 which was not completed by Rima Muran with drainage into
23 the creek over the entire period. We had guards there
24 who would measure drainage amounts, water -- amounts of
25 water, temperature of water. And an appropriate

10:08 1 hydrogeologist also was available, with whom we had
2 a contract, who would be sampling at regular basis the
3 wastewater, had them analysed and supplied reports about
4 the analysis which we provided to the Water Authority.
5 Everything was in order.

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

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

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

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

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

24 A. Can I say something about this? I'm not sure why we are
25 evolving this particular topic --

10:09 1 Q. Okay, I think I know why I do that. This refers to --
2 do you remember, sir, that you submitted requests for
3 approval or for construction permits for several water
4 treatment-related construction objects?

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

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

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

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

21 A. Yes, it is here.

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

24 A. Yes.

25 Q. Now if we go back to the permit that we were discussing,

10:11

1 the remaining seven construction structures --

2 PROFESSOR STERN: Can you help us where we are, please,

3 because we are completely lost.

4 A. I too am lost.

5 THE PRESIDENT: 2002?

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

7 DR GHARAVI: I would appreciate if you can continue your

8 efforts to be patient with this witness, because if the

9 Tribunal doesn't follow, you can imagine the stress, the

10 age of this witness.

11 MR PEKAR: I apologise, I didn't realise that the Tribunal

12 was not on the right page.

13 What I was taking the witness to, on the first page of the

14 2002 permit, was the list of structures. We agreed that

15 there are eight structures on the list, and the mining

16 wastewater treatment plant is just one of them, the last

17 one. Therefore this was in the response to the

18 witness's question that in the document that we were

19 discussing right before, he did not understand or did

20 not remember what the first three paragraphs referred to, or actually
all the document except the last

21 paragraph refers to, which deals specifically with the

22 mine water treatment plant.

23 Have I refreshed your memory, sir?

24 A. Certainly. You have to remember what is this CS 024:

25 it's been the most important mining wastewater treatment

10:14 1 plant that was completely completed, which was not
 2 completed by Rima Muran, it was completed by Siderit,
 3 and it was approved by the appropriate authority. What
 4 needs to be said as well: at that time we were not yet
 5 conducting any drilling, any mining works. That was
 6 still at the original state.

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

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

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

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

24 Am I right to say that the permit for the temporary
25 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

1 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

10:20

1 repeat my question exactly as I asked it.

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

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

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

9 A. Yes.

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

11 A. Yes.

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

14 A. Yes.

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

17 A. Yes.

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

21 A. Yes.

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

25 A. Yes.

10:22

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

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

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

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

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

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

22 A. Yes, it did allow.

23 Q. I will refresh your memory on that point.

24 I believe it's tab 36 (C-244). This is the decision
25 which authorised the temporary use of this plant;

10:25

1 correct? Please go -- in the English translation it is
2 page 4. There is 9, 10, then II, A: it authorises the
3 temporary use of this one, CS 024 mining wastewater
4 treatment plant. Then in the following paragraph it
5 states in English:

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

9 And I put emphasis on "tunneled so far".

10 Does it refresh your memory, Mr Rozloznik?

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

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

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

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

23 A. This is a wording of the Water Administration Authority,
24 "tunneled so far". I am again quite confused, not sure
25 where you are aiming with your questions. I cannot

10:27 1 understand it, because these are very technical and very
2 easily resolved things.
3 Q. Okay. Let's go back to the first seven documents from
4 the list we have on page 1 in the 2002 decision. It is
5 called in English: "Sump", "Settling Tank and Surface
6 Water Drainage from the Tailings Pile", "Drainage of
7 Forest Road over the Tailings Dump", "Stream
8 Adjustment", "Water Tower", "Water distribution" and
9 "Sewer".

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

14 A. (Not interpreted).

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

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

25 Q. Going back to the decision in 2002, it lists eight

10:29 1 structures. One of them, the last one, was authorised
2 for temporary use; the other seven were not. Do you
3 agree with that?

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

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

11 A. Certainly I have.

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

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

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

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

22 Q. Okay, let's go back -- and this is the last time we go
23 there -- to the decision from October 2004. This is the
24 one which was at the very end of document tab 37
25 (C-259).

10:32

1 Here, as we have gone through it, in the biggest
2 paragraph you are being given a deadline to finish --
3 no, I'm sorry, I need to get to the English version --
4 you are being given a deadline to finish:

5 "... surface structures -- water works implemented
6 as part of the work 'Drifting of the Winze -- Talc
7 Deposit of Gemerská Poloma', to May 30, 2005."

8 Correct?

9 A. Yes, certainly.

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

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

18 Q. Thank you.

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

22 If you go to page 3 of this document -- I'm not sure
23 if it is also in Slovak page 3, because in the
24 translation it is the very end -- you have IV,
25 "Obligations of the Work Investor". This is Rozmin,
26 right? Are you with me, sir? And then if you go to
27 condition 5, please. I will read it to you:

10:35 1 "The Investor may re-launch the mining operations
2 yet after having had the surface structures
3 commissioned, when the conditions for operating of the
4 Work will be set out."

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

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

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

17 (Pause to resolve a technical problem with interpretation)

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

25 And I have hinted what you should discuss with

10:37 1 experts from Mining Office: that they did not consider
2 and do not consider surface structures as mining
3 activity. So we could have continued drilling the winze
4 without putting these structures into use. So
5 I disagree with your -- with that, but that is how it is
6 construed. It's a legislative some kind of a --
7 Q. Do I understand correctly that you are telling us that
8 the drilling of the winze is not mining activity?
9 A. I never said that. Mining activity is not surface
10 structures.
11 MR PEKAR: I agree with that.
12 Okay. May we have a little short break now? I will
13 try to reorganise my questions.
14 THE PRESIDENT: Yes, 15 minutes.
15 MR PEKAR: Thank you, Mr Chairman.
16 (10.39 am)
17 (A short break)
18 (10.59 am)
19 THE PRESIDENT: Mr Pekar.
20 MR PEKAR: Thank you, Mr Chairman.
21 Mr Rozloznik, we will continue. Please go again to
22 document tab 37, Exhibit C-259, but this time we will
23 speak about the agreement itself and not the decisions
24 of state authorities which were attached to it.
25 First I would like to correct one issue which is

11:00 1 a pure translation issue. At page 9 of it, the date in
2 the English version is incorrect. It states May 11th
3 2004, but I believe it is uncontroversial that in fact
4 it's 5th November 2004. Do you agree with that, sir?

5 A. Yes, I do.

6 Q. Thank you.

7 Then please go to Article IV, which is on page 2.
8 Oh, you don't have the Slovak version? I apologise.
9 Okay, I will then ask a question to you: is it your
10 recollection, sir, that the contractual price for
11 Siderit's work was agreed to be 76 or almost 77 million
12 Slovak crowns?

13 A. Yes, exactly.

14 Q. Did you have that money on your account, sir? On
15 Rozmin's account, I mean.

16 A. On the account, this amount of money was not in its full
17 on our account. But within the agreement, we have
18 provided immediately 4 million crowns to Siderit to
19 begin preparatory work; and gradually, as the work would
20 progress, the owners would transfer necessary funding to
21 pay for the invoices.

22 Q. Do you remember, sir, how much money you had on Rozmin's
23 account after paying those 4 millions? If I have my
24 math right, 77 minus 4 is 73 million Slovak crowns that
25 you still needed to pay. So how much money did you have

11:02 1 on your account after paying the 4 million?

2 A. I don't remember. But I do know that besides the

3 4 million, we gave Rima Muran 1 additional million for

4 the high-power electrical line. But how much we had in

5 our accounts, I don't remember. It was not a large

6 amount.

7 Q. According to the financial statements that you signed,

8 Rozmin had cash of 294,000 Slovak crowns, which is less

9 than €10,000.

10 A. Why would it surprise me?

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

12 A. I am unable to respond to that. But I am convinced that

13 consequently, if any payments were necessary to be made,

14 the owners would transfer the necessary money for those

15 payments.

16 Q. Now, please, let's go to Article 7.1 of the agreement.

17 It's on page 6. And here I will read it out loud for

18 the translators to translate it for you, because you do

19 not have the Slovak version. It states:

20 "The Contractor shall keep a Site Diary for the

21 purposes of construction documentation, which will

22 include all activities on site, with the date, time and

23 description. The work shift manager is required to keep

24 the Site Diary in the prescribed 'Site Record Book' and

25 this will always be available for examination at the

11:04 1 site. The response and signature of the person
2 specified by the Customer is required for recording
3 fundamental changes in the technical execution of the
4 works and other fundamental facts."

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

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

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

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

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

22 Q. Again, I think I will read that for you, because the
23 Slovak version is handwritten. So if you have any
24 difficulty understanding the handwriting, just let me
25 know and --

11:06

1 A. It's well-written.

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

3 A. On the 29th, yes.

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

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

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

11 A. Correct.

12 Q. Then we have entries for October and November. So if
13 you turn -- it's like the third page from the one that
14 we were at, we see the works performed on 25th November
15 2004 and 30th November 2004?

16 A. Yes.

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

19 A. Yes.

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

23 "Inspection of above-ground objects with the
24 attendance of DMO, [Rozmin] and the production director
25 of SIDERIT ..."

11:08

1 Can you see that?

2 A. Yes.

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

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

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

10 Then nothing for a month. The next entry is
11 17th January 2005, and the task performed on that date
12 is:

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

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

19 So, sir, would you agree with me -- generally does it correspond to
your

20 recollection of the works which were done at the site?

21 A. When I am looking over it, yes.

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

25 A. Well, it is written so in the diary and it is so.

11:10 1 Q. Which was after the inspection of Mr Baffi; correct?

2 A. Correct.

3 Q. There are several things which I find somewhat odd, sir.

4 The first one relates to 8th December 2004. Do you

5 agree with me that the entry does not mention any work

6 being actually performed, it only mentions the

7 inspection?

8 A. Well, it is clearly written down in the protocol: with

9 participation of Mr Baffi, and the time and date when it

10 occurred, just like it is in the record.

11 Q. I agree with you that we will come to the protocol in

12 a moment. But isn't it odd that the site diary would

13 not record any activities?

14 A. I am unable to explain why it's not written down here

15 that the workers actually performed some work there.

16 Q. If you go one page back, no work had been performed for

17 one week before the inspection; correct?

18 A. What do you mean, no work was performed? In the diary

19 it's not written, but do realise, please, that it was

20 winter. There was a metre of snow, 20° centigrade below

21 freezing point. So it was not easy to work under those

22 conditions.

23 Q. Then there is three days of activity in December, 14th

24 to 16th, and nothing until the second half of January.

25 Would you agree with me, sir, that this does not look

11:13 1 like a very intense work?

2 A. Look here, during this period it was known that in the

3 commercial journal it was published that we shall be

4 taken away from us the excavation area. So you can

5 realise under what psychological stress we would be

6 under such circumstances, including the investor and the

7 contractor.

8 Q. The announcement was published on 30th December. Would

9 you agree with me that it cannot explain the lack of

10 activity in December?

11 A. 30th December?

12 Q. The announcement of the tender was published on

13 December 30th. Would you agree with me, sir, that it

14 cannot explain the lack of activity in December?

15 A. It was in the journal on the 30th. However, when was it

16 sent to be published?

17 Q. Sir, are you suggesting that the public or you were

18 informed of the dispatch of the announcement to the ...

19 A. I was not informed of the dispatch of such an

20 announcement, but there were some hints already

21 available; I could feel them.

22 Q. If we go to the second half of January, Siderit started

23 pumping the water out of the winze. How is that consistent

24 with what you have just said: that because of the

25 publication of the tender, you were holding back?

11:15 1 A. Well, because we still believed that the removal is not
 2 final yet. We still were convinced that there will be
 3 another solution presented.

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

 10 A. Yes, we have it.

 11 Q. You state in paragraph 63 that:
 12 "... Director Baffi conducted an inspection of the
 13 deposit, which lasted over two hours and led him to
 14 conclude that everything was in good standing and to
 15 confirm that Rozmin was authorized to continue mining
 16 activities until November 2006."

 17 A. Yes.

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

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

 23 Q. You refer, I assume, to the last sentence of this
 24 document, which says:
 25 "During today's inspection no facts were discovered

11:18 1 indicating breach of legal regulations in force."
2 Correct?
3 A. Correct.
4 Q. What legal regulations was Rozmin breaching as of
5 8th December 2004 with respect to the assignment of the
6 excavation area?
7 A. They did not violate any regulations.
8 Q. Then let's go to paragraph 67 of your witness statement.
9 We are done with this document tab 12. Do you have the
10 Slovak version of it?
11 A. Yes.
12 Q. When I read the Slovak version of it, I must say that
13 I am completely confused, sir, because -- could you
14 please read out loud the first sentence.
15 A. "The Mining Act of 2002 enabled the removal of rights of
16 mining activity in case that any interruption of this activity
17 would exceed the period of three years."
18 To me this should be "excavation area" instead.
19 Q. So could you please reformulate the sentence so that
20 it's accurate in Slovak?
21 A. "The Mining Act of 2002, in accordance with the act,
22 enabled the revocation of mining (in Slovak language version:
23 dobývacieho) area in the event of
24 interruption of this activity for a period exceeding
25 three years."
26 Which is not fully correct either, because it should

11:20

1 be written that "in case, according to law, the
2 excavation shall not commence". The word "excavation"
3 is key. From my side it's an incorrect wording.

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

7 A. Let me correct it again.

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

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

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

24 A. "In this regard, the consequent mining act [of 2007],
25 with force of June 1, 2007, clarified that the 'mining

11:22

1 activities' under the 2002 Mining Act did not mean
2 excavating."

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

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

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

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

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

24 Q. What I meant is whether you feel competent to answer my
25 questions regarding the wording of the decision of the

11:24

1 Supreme Court.

2 A. You should not be asking me this question.

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

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

6 (11.25 am)

7 Re-direct examination by DR GHARAVI

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

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

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

24 A. We begin with extraction. It is written exactly in the
25 protocol the way it was. I did participate there in

11:27 1 person and it was discussed in the protocol. But

2 whether we should begin extraction (in Slovak language version: ťažba),
he never said that.

3 Q. Okay. Then let's go to the inspection. C-28, tab 31 of

4 the opening bundle. You must have the Slovak version.

5 If you go to the second page. In between, I should add,

6 your October [meeting] and this inspection, there was

7 a notice to commence work. Then there is this

8 inspection.

9 In the first page there is reference to the May 31st

10 2004 permit that was valid until November 13th 2006. It

11 lists you and Mr Baffi as the participants. And in the

12 second page it says:

13 "It was found onsite that since 18 November 2004,

14 Siderit performed and completed construction work ..."

15 And it goes on:

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

17 Then it goes on to say:

18 "Furthermore, it was discovered that Siderit had

19 performed other works ..."

20 Then at the end:

21 "During today's inspection no facts were discovered

22 indicating breach of legal regulations in force."

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

24 you listening?

25 A. Yes, I'm listening.

11:29 1 Q. Did Mr Baffi, during that site inspection, tell you, "Oh
2 my God, you're only performing this type of work, it
3 should be extraction by now"?
4 MR PEKAR: Mr Chairman, I object to this. This is
5 a completely leading question.
6 A. I never heard him say anything like that.
7 THE PRESIDENT: Dr Gharavi, please avoid leading questions.
8 DR GHARAVI: Did Mr Baffi express to you or not that you
9 were imminently or not breaching any regulation?
10 A. I have not heard anything like that and he definitely
11 never said anything like that.
12 Q. I will move on now to ask you: who is Mr Baffi? Is he
13 the teaboy at the Mining Office? Who is he? What is
14 his function? Do you know?
15 A. Mr Baffi is the chairman of the District Mining Office
16 in the city of Spišská Nová Ves. Chairman.
17 Q. Do you know whether he is retired now?
18 A. I think not. I think he is still working at this
19 position.
20 Q. Then if you go to tab 39, which should be C-36. In
21 response to counsel for Respondent's question regarding
22 this decision, you responded that, "The Supreme Court
23 only confirmed my understanding". And I want to point
24 you to page 25, if you look at the Slovak version.
25 MR PEKAR: Dr Gharavi, the witness expressly refused to

11:31 1 answer my question with respect to this document, and
 2 I respected it.

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

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

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

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

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

 20 DR GHARAVI: Professor Mayer, I think there is
 21 a misunderstanding. The first question that my learned
 22 colleague asked was answered, and then another question
 23 was asked on the ground that there must have been
 24 a misinterpretation. In any event, the answer to the
 25 second question was that, "I'm not qualified to comment

11:32

1 on a decision of the Supreme Court". So it is quite
2 different.

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

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

12 Q. "Afterwards" meaning what year? 2007? I was talking
13 about 2007.

14 A. 2007.

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

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

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

21 For the sake of time, I will just ask you a question
22 in relation to whether or not you are aware of
23 a decision rendered in 2003 by the Main Mining Office
24 that expressed an opinion on the lack of information
25 about the [District Mining Office]'s request for

11:34

1 documentation to Rozmin before approval of
2 authorisations?

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

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

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

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

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

19 THE PRESIDENT: Thank you very much.

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

25 So who is next? Mr Kúkelcík?

11:37 1 MR PEKAR: This is correct, Mr President.

2 THE PRESIDENT: Do you want to have a break? We have just

3 had a break, so I think we can ...

4 DR GHARAVI: Five minutes?

5 THE PRESIDENT: Five minutes, okay. Just before that,

6 I would like to say something on behalf of the Tribunal

7 concerning the future closing arguments.

8 We have the feeling that, after having heard your

9 opening statements, there are many important points

10 which have not been addressed either by one or by the other

11 party, or even by both. And we think that the most

12 important part of your closing arguments should be in

13 fact a kind of reply and rebuttal vis-à-vis the opening

14 statements.

15 Of course your time is limited, one hour and a half.

16 Maybe it could be extended, if you agreed, if we have

17 time. Maybe two hours would be a possibility. Sorry,

18 I have not discussed that with my co-arbitrators, who

19 may be furious against me. But it's so important. And

20 if you have to sacrifice something, we had better have

21 you sacrifice your comments on what was said in the

22 hearing under cross-examination than this reply rebuttal

23 aspect.

24 DR GHARAVI: Thank you, Mr President. On behalf of Belmont,

25 we would like to encourage the Tribunal to put any

11:39

1 questions they may have. As far as we are concerned, we
2 would not be offended if certain questions may suggest
3 a preliminary indication of something. We really
4 welcome that and feel that it would be very useful.

5 THE PRESIDENT: It is possible that we indicate at some
6 further point on which questions particularly we would
7 like to hear you -- but do not count on it, because it's
8 a possibility but it's not certain -- so you are able to
9 know where it hurts in your respective cases and where
10 we would like to hear you.

11 Okay, so five minutes' break. You wanted to add something? No? Ok.

12 (11.40 am)

13 (A short break)

14 (11.50 am)

15 MR PETER KÚKELCÍK (called)

16 (Evidence interpreted)

17 THE PRESIDENT: Good afternoon, Mr Kúkelcík. You appear as
18 a witness in this case called by Respondent. You have
19 a declaration in front of you: can you please read it
20 aloud.

21 MR KÚKELCÍK: Yes, of course I shall read it. Good morning.
22 God bless. Witness statement: I hereby solemnly declare
23 on my honour and conscience that I shall say the truth,
24 nothing but the truth, and the whole truth.

25 THE PRESIDENT: Thank you.

11:51 1 So direct examination.

2 MR ANWAY: If you will just indulge me for a minute, members

3 of the Tribunal.

4 (11.51 am)

5 Direct examination by MR ANWAY

6 Q. Mr Kúkelčík, I note that you are wearing the official

7 miners' uniform.

8 A. That is correct. It is an officially approved mining

9 uniform of the Slovak Republic which, according to

10 protocol, may be used only for prescribed events and

11 significant events, and I consider this one today

12 a significant event. I am wearing uniform with respect

13 to this Tribunal. It dates back to 1312, to a later

14 period of the 14th century.

15 Q. Just very briefly, would you mind telling us the various

16 elements of the uniform?

17 A. They are also prescribed. It does not include any

18 voluntary or any other statutory signs. It is a state

19 employee uniform. On my left hand is state decorations;

20 on the right hand are decorations of my status. The

21 decorations there are both Slovak and Czech Republics;

22 also equally the ones on the right-hand side.

23 MR ANWAY: We have nothing further, thank you. I just

24 thought that was some interesting history the Tribunal

25 might enjoy.

11:52

1 THE PRESIDENT: Thank you very much.

2 Now cross-examination by Dr Gharavi.

3 (11.52

4 Cross-examination by DR GHARAVI

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

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

12 A. In paragraph 3?

13 Q. Yes.

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

16 And then it follows with my further professional
17 growth.

18 Q. I understand. The mining authorisation of Rozmin was
19 revoked on December 2004 -- in January 2005; correct? And I understand
that

20 at the time of revocation -- that is, in January 2005 --
21 you were the deputy head of MMO; correct?

22 A. I was the deputy chairman of the MMO.

23 Q. Then as the head of the MMO, you followed the process,
24 meaning the challenges, the decisions, and some of the
25 decisions in relation to the revocation you rendered

11:54 1 yourself; correct?

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

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

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

15 Q. I understand it was not your full-time job.
16 If you move forward to paragraph 9, you explain that
17 the government had concern about some dormant
18 excavations. In paragraph 8 you mentioned that the goal
19 of the Republic of Slovakia was development of the mining
20 industry and contribution, benefits to the economy. And
21 explaining the history behind the 2002 amendment, you
22 say that the situation -- if you look at paragraph 9:
23 "According to its provisions ..."
24 The previous law:
25 "... in order to preserve rights to an excavation

11:57

1 area, it was sufficient for an entity to apply for the
2 authorization for mining activities within three years
3 from the assignment of an excavation area. No actual
4 activity was required."

5 Then you go on and say:

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

9 The question I have for you is: wasn't there
10 a progress made if mining companies were simply required
11 to undertake any work, any activity? Because before the
12 2002 amendment, according to you, one could just merely
13 apply, and have no actual activity.

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

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

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

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

11:59

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

6 DR GHARAVI: Well, sir, maybe I can put it in a more simpler
7 way. It is your statement at paragraph 9. You say:

8 "... it was sufficient for an entity to apply for
9 the authorization for mining activities within three
10 years from the assignment of an excavation area". Then you say: "No".
11 actual activity was required."

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

18 A. In paragraph 9 I am describing a legal situation prior to
19 the amendment in force in 2002, which was approved by
20 the Parliament under the number 558, and the government
21 may not otherwise describe, other than through laws,
22 activities for relevant organizations. The legal situation prior
23 to this amendment did enable organisations such
24 behaviour that basically, keeping the right of mining (in Slovak
language version: dobývať) at
25 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...

12:00

1 THE INTERPRETER: I apologise, may we ask the witness to
2 repeat the answer? The interpreter has lost the
3 witness. May we stop, please? He's way too fast.
4 I apologise.

5 A. I will try slowly.

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

13 May I continue?

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

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

21 "No actual activity was required."

22 And it's common sense, my question, and it deserves,
23 I think, a yes or no answer, which is: is some activity
24 is better than no activity? You understand that
25 question, right?

12:02

1 A. I hold that we discussed not "an activity" but "mining
2 activity". Mining activity may only be performed based
3 on a permit, based on that which -- when organisation
4 had requested for such permit to be issued. And only
5 professionally apt organisation may request such permit,
6 which holds excavation area. And the request for authorization for
7 mining
8 activity is not an activity itself.

8 Q. Sir, I will move on to the 2002 amendment that you
9 describe in subsequent paragraphs.

10 You say that the 2002 amendment required
11 "excavation", that's the word in the English translation
12 to your testimony; and by "excavation", I understand you
13 mean "dobývanie" in the Slovak language? I apologise
14 for the pronunciation.

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

17 Q. Yes. So you're using the term "dobývanie"; correct?
18 The 2002 amendment, it uses this term; correct?

19 A. Yes.

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

23 A. I disagree.

24 Q. Are you aware of a law or a court decision that defined
25 what was exactly expected, intended, by that term?

12:04

1 A. Yes, I know.

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

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

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

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

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

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

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

25 A. The legislator in 2007 explained the term "dobývanie"

12:06 1 only as it relates to non-activity, and to the
2 requirement adopted at the EU level that obligations and
3 definitions must be laid down for legal and private
4 persons by law only.

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

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

11 Q. Did you agree with it?

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

17 Q. Okay, good.

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

23 "The court of appeal points out the fact that
24 statutory definition of the term mining as of activity
25 of the organization in the mining area through which the

12:09

1 acquisition of mineral from the deposit in mining ways
2 occurs, was introduced in the Mining Act only when
3 amended ..."

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

5 And it says:

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

10 Would you agree with that?

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

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

24 A. Yes.

25 Q. Thank you. If you move on, what about the next

12:11

1 paragraph? It says:

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

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

15 I trust you agree with that paragraph as well?

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

17 Q. Well, maybe I can go back to your own witness statement
18 at paragraphs 8 and 9. I understand that by amendment
19 of the law in 2002, you wanted to make sure that mining
20 companies were not unfairly blocking competition, as you
21 describe, and were serious to move on the project.
22 That's how I understood the philosophy behind the 2002
23 amendment, as you describe it.

24 A. Yes, the main objective of the amendment from 2002 was
25 to avoid artificial and purposeful blocking of

12:12

1 excavation areas.

2 Q. Artificial and purposeful blocking, okay. I will come
3 back to this point. But meanwhile I want to go a little
4 bit into the chronology. 2002 amendment, and then you
5 have the revocation of the mining rights that occurred
6 on January 3rd 2005.

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

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

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

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

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

22 A. Yes.

23 Q. Their testimony at this hearing was that when they met
24 with Mr Baffi in October 2004, there was no indication
25 by Mr Baffi that the expectation of District Mining was

12:15 1 that extraction would be conducted within the month or
2 two that followed. Are you aware of that? I suppose
3 not, because you say you didn't speak to them.
4 A. I do not understand the question.
5 MR ANWAY: I think there was a translation problem. You may
6 just want to repeat the question.
7 DR GHARAVI: Are you aware or not that Mr Baffi had meetings
8 with Mr Agyagos and Dr Rozloznik during the months that
9 preceded the revocation?
10 A. No, I am not aware about such meetings.
11 Q. And I suppose you didn't think it was relevant or you
12 didn't have the time to enquire? Why haven't you
13 enquired?
14 A. Well, because this is not relevant for my work. I do
15 not need to investigate who the chairman of the District
16 Mining Office is meeting with. I am the chairman of the
17 Main Mining Office, and I am not in charge of a District
18 Mining Office.
19 Q. But then after the revocation you ruled on relevant
20 questions about the fairness of the revocation, to whom
21 it should be reallocated in light of the subsequent
22 decisions. At that point of time you didn't think it
23 was relevant to sit down with Mr Baffi to see what his
24 understanding was, in terms of the expectations on the
25 ground, whether or not he communicated that to Rozmin?

12:16

1 You didn't think that was relevant?

2 A. Well, the only relevant fact is what is in the appellate file submitted
3 to the MMO by any DMO and the appeal of the legal entity Rozmin,
4 where the executive and responsible person of Rozmin can
5 write any facts that did take place before the issuance
6 of the relevant decision.
7 In such case we review it all.

8

9

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

14 DR GHARAVI: Thank you, colleague.

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

19 And then more importantly C-28, which is at tab 31,
20 which is a protocol of a site inspection of December 8th
21 2004. When was the first time you saw this document?

22 A. Well, I suppose, as this was a part of the appellate
23 file, this was my first encounter with this document.

24 On the other hand, I also have to state that this
25 issue was investigated from other state administration

12:18

1 bodies which are superior to the Mining Authority,
2 Mining Office. This was investigated based on a request of Rozmin by
the Regional

3 Prosecution Office in Košice, and a complaint was also filed with the
MMO, and consequently also with the Ministry of Economy.

4 So up to this date I do not know

5 on which date I have read these minutes for the first

6 time. But I have seen it, and I am familiar with it.

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

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

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

23 Q. If you go to tab 31. You are at tab 31. Then on the
24 next tab you have Mr Baffi's revocation letter, which is
25 tab 32, it should be.

12:21

1 A. I can see it now.

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

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

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

17 These minutes state only one thing: that at the
18 moment of the control, there was no mining activity,
19 there were [only] construction activities performed.
20 Mr Baffi was not obliged to report or to signal anything
21 other than the violation of regulations. The
22 company Rozmin is an officially entitled company which
23 was perfectly familiar at least for three years since the effectiveness
24 of the law that they have the
25 obligation to excavate.
I do not understand the relevance of questions of a difference between
"dobývanie" and

12:22

1 "tazba", for the purposes of this question.

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

4 He could act only after

5 three years had lapsed, and this is what happened. The
6 key period is 1st January 2005.

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

8 (Pause)

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

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

21 The first thing is that the Supreme Court did not say
22 that the term "dobývanie" emerged in 2007. The term
23 "dobývanie" in the Mining Act has first of all, the
24 first time, emerged in 2007. The term "dobývanie" was
25 explained long before in the safety regulation.

12:24 1 The other issue is the character of the control,
2 inspection, performed. The identified issues are listed
3 in the minutes. There is no law that stipulates that
4 the official state representative should be involved
5 with specific activities of a mining company
6 which are not in breach with valid regulations.

7 The activities of the Rozmin company on 8th December
8 were not in conflict with any regulation.

9 The interruption of activity is not
10 a violation of the law. They have interrupted the
11 mining activity as such, and in the key period they have
12 not performed any activities that would lead towards
13 excavation.

14 MR ANWAY: There's one other correction.

15 MS POLAKOVA: I think it states:

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

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

21 This is what the witness stated.

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

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

25 MR ANWAY: We will be careful not to interrupt unless it is

12:26

1 material.

2 DR GHARAVI: If it's obvious, the mistake, as well, then we
3 can live with it.

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

14 A. No, this is not possible.

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

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

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

24 A. Well, I believe this was explained once, and I am happy
25 to repeat it again.

12:28

1 The District Mining Authority is the first-instance
2 body, they have their own description of work and they
3 perform on-site inspections. It is not the obligation
4 of the District Mining Authority, unless this is
5 requested by the Main Mining Authority, to send us their
6 minutes from relevant meetings. Apart from the fact
7 when on 8th December I was not the chairman of the
8 Main Mining Office, I was only the head of one of the
9 departments, minding the fact that during any other
10 inspection, no other body is responsible or is required
11 to send such minutes to the Main Office unless asked
12 for.

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

20 A. I don't know what dispute on 8th December and
21 3rd January was in place, when all the disputes and the
22 complaints and all the ordinary and extraordinary
23 recourses occurred after this date. If this was in the appellate file,
24 we reviewed it thoroughly. Until then, there was no dispute.

25 Q. Assume Mr Baffi had the same understanding as my client

12:30

1 as to the term. Then Rozmin would not be responsible
2 for this; they had the same understanding as Mr Baffi.
3 Wouldn't that be relevant?

4 A. I don't know how your client understood or Mr Baffi understood this
5 problem. Understanding of the Main Mining Office can
6 only be reflected in a written statement by which
7 an appeal or a complaint is handled.
8 And the procedure was then approved, of
9 notification of non-activity, as the first legal act of
10 3rd January 2005.

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

12 A. No, he is not.

13 Q. What is his function today?

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

16 Q. When did you see him last?

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

18 Q. To prepare for this; correct?

19 A. Of course. But not with Mr Baffi.

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

22 A. I am not aware of him being here.

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

25 A. I personally exclude it.

12:31 1 Q. You personally, but you are not sure?

2 A. I am sure.

3 Q. Where is he? Do you know where he is?

4 A. He is clearly at work.

5 Q. In his office in Slovakia?

6 A. Whether he is in his office, he doesn't need to let me

7 know that. But if he were off work, he would have to

8 let me know. So I do not suppose he is off, and I am

9 100% sure he is at work. He could be in his office or

10 he could be on the road within his district.

11 Q. Who took the decision to revoke, the decision of

12 January, the one you have at tab 32?

13 A. District Mining Office Spišská Nová Ves. It was not

14 a person; it was the District Mining Office Spišská Nová

15 Ves, as a state body.

16 Q. Who takes that decision within the District Mining

17 Office?

18 A. Responsible person, plus head of the department, plus

19 head of the Mining Office.

20 Q. Mr Baffi; correct?

21 A. Mr Baffi could not have addressed this matter as three

22 persons in one. Mr Baffi was the chairman and he signed

23 the decision, bearing full responsibility for it.

24 Q. Did he communicate with the Main Mining Office on the

25 subject prior to notifying us of the decision?

12:33

1 A. No, he did not communicate, at least not with me.

2 Q. Did he receive any instructions from the Ministry of
3 Economy or your office?

4 A. In no event from our office, and I also deem neither
5 from the Ministry of Economy.

6 Q. Can you explain the procedure for one to revoke
7 a licence? How long does it take? Are there meetings?
8 What are the formalities, the duration? How does it
9 work?

10 A. I can. Every District Mining Office is in charge of the
11 appropriate jurisdiction area within which there are
12 mining (in Slovak language version: dobývacie) areas in which there are
13 state deposits of the
14 Slovak Republic, exclusive deposits in the ownership of
15 the Slovak Republic. Every District Mining Office is
16 obliged to observe lapsing of periods of appropriate
17 mining (in Slovak language version: dobývacích) areas, in terms of non-
18 activity, whether mining
19 activity has been approved or not, or whether mining
20 activity is underway or has been suspended.

21 In case of a three-year period having lapsed since
22 the force of act amendment of 01/01/2002, until its next
23 amendment of 2007, it was a period of three years for
24 both underground and above-ground work. Such entity
25 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

12:35 1 three years -- such entity was notified of cessation of its right to
2 (as heard in Slovak) dobývať deposit and the mining (in Slovak language
version: dobývací)
3 area was published in the appropriate journal for the purposes of tender
procedure.
4 Selection procedure proceeds in a way that the independent
5 commission - composition of which may not be influenced - that
6 is composed of at least five members of local
7 administration, state administration and Mining Office will evaluate
8 projects - not companies that submitted the projects - but projects, how
they have dealt
9 with the use of the deposit within the mining (in Slovak language
version: dobývací) area.
10 Based on its evaluation it will set an order.
11 And then the District Mining Office has to
12 respect the order.
13 Q. I am looking more for practical answers, more specific
14 to this case. You revoked the licence on January 3rd
15 2005. Then there was an announcement in the press,
16 before the notification, which was at the end of
17 December. That entails that the decision to revoke and
18 tender was taken at a prior time. And my question is
19 when exactly the decision to revoke the licence was
20 taken for it then to lead to a tender decision, and the
21 posting of it at the end of December.
22 A. First administrative act of the District Mining Office
23 towards Rozmin was made on 3rd January 2005, after having
24 lapsed a three-year period, which was approved by both
25 regional and Supreme Court of the Slovak Republic,

12:37

1 including the Košice Regional Prosecution Office.

2 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
language version: dobývací) area in Gemerská Poloma was the third in
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
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?

12:39

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

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

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

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

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

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

22 End of December, December 30th, there was
23 an announcement of tender of my client's rights;
24 correct? Before that, what happened at the District
25 Mining Office?

12:41

1 A. I don't understand the question. What's supposed to
2 have happened?

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

11 Is that clear?

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

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

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

23 Q. You didn't have the curiosity to enquire at which time
24 the decision to put my client's right to tender was
25 taken, the process? You didn't have this curiosity?

12:43

1 A. I think we don't understand each other. But I do not
2 see the need of making any decision, and the notice to the journal
3 in general is not a decision about rights of your
4 client. It is an announcement about
5 mining (in Slovak language version: dobývacom) area Gemerská Poloma
6 which basically does not
7 include any rights of your client, and by such
8 notice their rights could not have been impacted in
9 any way.

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

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

17 DR GHARAVI: He said "November/December".

18 MR ANWAY: That's right.

19 DR GHARAVI: Yes.

20 What sense does it make?

21 A. I have to keep on asking back. I did not fully
22 understand what decision is Mr Counsel still speaking,
23 dear panel, because the notification publication in the
24 journal, no decision is required for such publication.
25 They will just -- the District Mining Office will just

12:44 1 send the request by a simple letter, and the journal will decide
 2 themselves on what date they will actually publish it.

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

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

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

 22 Take [my colleague] again: I decide myself to fire
 23 him, then I notify him on a certain date; but before
 24 that, I have taken the decision. It has no valid legal
 25 implication yet, but I have taken it; it's a fact.

12:46

1 So when was that meeting/correspondence held that
2 led to that official decision of revocation and
3 publication? You understand me?

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

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

8 This
9 is the distance between 1st January 2002 and
10 1st January 2005. There is nothing else to say; no
11 other steps, no other involvement of state bodies.
12 Nothing else caused the cessation of these rights. It
13 was simply the inactivity of Rozmin on its own, with no
14 involvement of anyone else.

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

22 So I see no reason to argue about what
23 correspondence, what communication. So please state
24 your question clearly. What do you need to know? And
25 if I know, I will definitely share this information with

12:48

1 you.

2 Q. What I want to know is: who decided, and when, to send
3 a letter to the publication journal that published the
4 tender on December 30th? Do you understand that? Who
5 decided to send --

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

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

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

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

12:49

1 the journal". You understand?

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

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

12 After ten years of arguing, it is quite clear that
13 there was no excavation performed by the Rozmin
14 organisation. Whether it was under the term before
15 2007, after 2007, it doesn't make any difference. They
16 are perfectly legally capable of understanding what does
17 it mean. And also they understand that. And if they do not understand,
there is a presumption of understanding of a professionally capable
organization.

18 Q. Let's talk about something different. Why doesn't the
19 District Mining Office, before revoking mining rights,
20 give a heads-up or send a warning to the contractor
21 saying, "Listen, we are at this date: in 40/50/60 days
22 there is going to be an expiration of the term under the
23 2002 amendment, and we notify you of this"? Rather than
24 just sending something like that, publishing first to
25 the journal, and then sending on January 3rd 2005 the

12:51

1 decision.

2 A. May I answer?

3 The DMO has no obligation to signal to

4 an organisation that they will have their rights to (as heard in Slovak)
dobývať revoked

5 given the lapsing of the three-year period, for two

6 reasons. First of all, they know about their rights and

7 duties. They should be perfectly aware about their

8 rights and duties.

9 Second, this is not allowed by the Constitution of

10 the Slovak Republic, which in Article 2 states that

11 state bodies can only act within the spirit of the law,

12 in line with the law and in full meaning of the words of

13 the law. The only exemption is in case of protecting

14 rights and human life under the Geneva Convention, when

15 we are obliged to provide counselling services in case

16 of safety at work activities.

17 Q. Did you read the 2008 Supreme Court decision on this

18 issue? You must have, because you ruled afterwards.

19 A. Yes.

20 Q. Do you recall that that's not the position that the

21 Supreme Court has taken? It said that by notifying it

22 this way, it talks about the right to be heard, right of

23 defence. It talks about the right to express

24 an opinion.

25 I am talking about the 2008 decision: tab 37,

12:53

1 Exhibit C-33. If you turn to it --

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

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

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

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

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

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

21 These are the terms of the Supreme Court:

22 "... procedural misconducts, considerably decreasing
23 the chances of the plaintiff to defense. The basic
24 premise in the rule of law in such a situation is that
25 shortcomings of a public power authority cannot impose

12:55 1 a burden for physical or legal entities."

2 And then:

3 "According to the Supreme Court, this specific

4 matter cannot contravene the generally accepted

5 principles of administrative procedure, such as the

6 right of the participant to be heard, his right to

7 express his opinion to the grounds of the decision, to

8 propose evidence to prove his statement, the right to be

9 acquainted with the reasons of the administrative act.

10 The plaintiff had no chance to use these rights;

11 therefore the procedure had a considerable defect."

12 Have you bothered to read this? And if so, how can

13 you testify the way you have?

14 A. Yes, I have read it.

15 Q. Then how is that reconcilable with the answers you

16 provided to my question as to the absence of warning and

17 giving my client a chance to defend?

18 A. This is not true.

19 Q. What is not true?

20 A. Because your client did receive during the

21 administrative procedure -- which was duly completed

22 basically after eight or nine years -- your client had

23 received all the rights which were awarded to your

24 client by the district and regional court. They had

25 a full possibility to submit evidence. Witnesses have

12:56

1 been heard.

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

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

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

24 DR GHARAVI: No, no. This is completely inappropriate.

25 MR ANWAY: The premise in the question is that he wasn't

12:58

1 warned. That hasn't been established.

2 DR GHARAVI: No, no. First, I do not appreciate

3 interruption. This is unacceptable. I am talking about

4 a notification in writing. Secondly, Mr Agyagos's

5 testimony that you referred to said "starting works"; it

6 had nothing to do with termination because of

7 excavation. So it is not appropriate to interfere like

8 that and suggest a response.

9 So the question, sir, is: why didn't you warn -- the District

10 Mining [Office] warn that it was going to terminate --

11 in writing, if you prefer -- prior to this date?

12 A. Because this is simply not our obligation.

13 Q. There is no obligation. But then what does the court

14 say? I just read the Supreme Court decision. It says

15 the contrary: it says you had the obligation.

16 A. Clearly the Supreme Court decision doesn't state that we

17 have to warn in advance every mining organisation that

18 they have to respect the Mining Act, which is published

19 in the collection of acts and the company is

20 professionally aware, and we also have to presume the

21 knowledge of this act.

22 Q. Okay. I will leave the meaning of the Supreme Court's

23 holding to the Tribunal.

24 I ask you practically: don't you think that prior

25 warning is useful and in the interest of all? Because

12:59

1 if you warn what you are going to do, it's not simply
2 a bureaucratic procedure; it allows the other party to
3 say, "Wait, you are basing it on the 2002 amendment, but
4 the 200[2] amendment doesn't say that, that term doesn't
5 say that. Oh, Mr Baffi, come here. Is that your
6 understanding?" He would say, "No, it's not my
7 understanding", or, "Yes". Then we would say there is
8 a misunderstanding. Then we would ask a court or
9 a mediator.

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

12 A. May I answer?

13 THE PRESIDENT: Yes, please.

14 A. Well, this information Mr Rozloznik, as the responsible person and
15 executive
16 of the organisation, did receive. He
17 only didn't receive it in written from the DMO. This is
18 not the obligation of the DMO.
19 But the Slovak association of miners, the Slovak
20 Chamber of Miners organised briefings, seminars or
21 organised expert meetings, conferences, discussions,
22 where also the representatives of universities and state
23 administration took part, and they did inform the
24 participants that: there is this amendment, this is the
25 legal situation and this is the development that can be
expected. Apologies, it was not done ad hoc for one

13:01 1 organisation; it was done for all the mining
2 organisations which took part.

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

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

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

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

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

17 THE PRESIDENT: Yes.

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

21 MR KÚKELCÍK: Of course.

22 THE PRESIDENT: Thank you.

23 (1.03 pm)

24 (Adjourned until 2.20 pm)

25 (2.20 pm)

14:20

1 THE PRESIDENT: When you like, Dr Gharavi.

2 MR ANWAY: Before we start, I did find the reference that

3 Professor Stern had asked for. You had asked the

4 question about the decree to which Mr Kúkelcík had

5 referred. It is R-165. It is an excerpt from

6 Decree 21/1989. In fact it was slide 5 of my opening

7 statement on the merits from Monday: you will recall

8 there was a slide that said that excavation can only

9 begin after opening works.

10 DR GHARAVI: If we can leave it there.

11 MR ANWAY: Sure, yes.

12 DR GHARAVI: If you allow me, Mr President.

13 THE PRESIDENT: Yes.

14 DR GHARAVI: Good afternoon, sir. We had left off before

15 lunch on the question of advance warning before the

16 decision to revoke is communicated. I want to move on

17 to the next topic, which is a related one. I want to

18 engage with you as to whether or not the decision of the

19 District Mining Authority to revoke Rozmin's rights was

20 wise and in conformity with the spirit of the 2002 amendment, as you

21 describe the spirit at paragraphs 8 and 9 of your first

22 testimony.

23 If you turn to paragraphs 8 and 9 of your testimony,

24 you discuss the intention of the drafter, and I would

25 like you to discuss these two paragraphs and what I will

14:22 1 read you from the Supreme Court decision at page 25,
 2 C-36, tab 39, it's decision of 2011. I will read that
 3 to you, and I invite you to read it together with me.
 4 It starts with, on the English version, let's say the
 5 third paragraph:

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

 12 (Pause to locate the document)

 13 I will start again. Bear with me. It says:

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

 22 Then it goes on to say:

 23 "That is why the administrative body when issuing
 24 an individual administrative act, which undoubtedly
 25 causes an intervention into subjective rights of

14:24 1 individuals, must evaluate this intervention from all
2 perspectives, mainly concerning its conformity with the
3 public interest and proportionality."

4 And finally:

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

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

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

17 Q. Have you seen any analysis in the District Mining Office
18 prior to January 2005 of what I have just read to you:
19 whether it was in the public interest, whether it was
20 not premature, whether they were -- was this the most
21 possible effective use, comparison of profitability of
22 leaving the mining area in question to Rozmin or
23 assigning it to another? Did you see any such
24 evaluation? I think it's no, but I don't want to
25 suggest that to you. It's yes or no. Did you see?

14:26 1 A. I have no concern whether you're going to slip something
2 between the lines to me. But the fact remains that the
3 decision of the Supreme Court which you are quoting from
4 is from 18 May 2011; I don't know on what basis could have the District
5 Mining Office analyzed this acceptance of the Supreme Court. At that
6 time, the District
7 Mining Office was not obliged to analyze.
8 The only thing is the legislator -- who is fully entitled to do so --
9 had issued an
10 Amendment No. 558: where it is strictly stipulated -- the cessation of a
11 right to dobývať exclusive deposit when dobývanie was not commenced or
12 when dobývanie was suspended for a period longer than three years.
13 In the relevant period -- not only
14 Gemerská Poloma but additional 20/30 cases were of
15 similar nature. With regard to assessment of lapsing of the period,
16 I hold that there is no body authorised to judge that;
17 it was stipulated by the legislator.
18 Rozmin fulfilled the subject-matter of the cessation of a right to
19 dobývať the exclusive
20 deposit, and therefore this exclusive deposit was put into tender.
21 All deficiencies identified in the first and second
22 decision were removed in the final decision
23 that was not contested by Rozmin.
24 And also this analysis was performed in that decision.
25 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

14:28

1 Rozmin to pursue or not, and what were the alternatives.

2 Could you confirm that there was no such evaluation
3 in the records of the District Mining Office prior to
4 January 3rd 2005? That's the question. It's yes or no,
5 and I suggest it's no.

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

9 Q. I understand.

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

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

23 Q. Okay. I will move on to --

24 THE PRESIDENT: Sorry to interrupt. While we are on this
25 page 25, I read several times:

14:30 1 "The court of appeal points out ...

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

3 I understand it is in fact the Supreme Court, it

4 speaks of itself, but I would like to have confirmation

5 from both parties.

6 DR GHARAVI: Yes.

7 MR ANWAY: (Nods head)

8 THE PRESIDENT: Yes. Sorry.

9 MR KÚKELCÍK: Mr Chairman, may I have a point of order, back

10 to your question? May I respond?

11 THE PRESIDENT: Yes.

12 A. The Supreme Court is the regular appellate court to the

13 regional court. But above the Supreme Court there is

14 the Constitutional Court as well, even above it.

15 DR GHARAVI: Your testimony, as I understood it, was that it

16 is the District Mining Office who is the exclusive body

17 in charge of the revocation of the mining authorisation,

18 right?

19 A. To notify the cessation of the right to excavate as

20 a result of the time period having elapsed, yes.

21 Q. And your testimony is that it never received any

22 instructions from the Main Mining Office, your office,

23 no instructions from the Ministry of Economy, and it did

24 not communicate with these other organs before taking

25 the decision; correct?

14:32

1 A. Who did not communicate with whom?

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

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

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

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

19 A. No. But if I may be allowed by the panel, you kept
20 asking about communication between Mr Baffi, Rozloznik
21 and Agyagos. Since I have no knowledge of that, you
22 never asked whether I know of somebody else who would
23 have consulted about this issue prior to having issued
24 the January 3rd 2005 decision, because my answer would
25 be: yes. I personally was approached by Dr Rozloznik,

14:34 1 the second Thursday and second Friday of September 2004, at
 2 the official event of the Slovak-wide celebration of
 3 Mining Day, on the matter of Amendment 558 of 2002, in
 4 force on January 1st 2002.

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

8 A. No.

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

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

19 Q. But you were the second person in that office, right?
20 You were the deputy head; correct?

21 A. That is correct.

22 Q. Who was above you?

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

25 Q. And who was following your instructions below?

14:36 1 A. I had my inspectors: Mr Sikora, Mr Durbak. At the time
2 when Ludonski was the head, Mr Ferenz(?) and
3 Mr Iring(?).
4 Q. And who is someone by the name of Dusan^ Cellar?
5 A. You said Mr Dusan Cellar?
6 Q. Yes.
7 A. What about him?
8 Q. I am asking you: what is his rank?
9 A. Mr Dusan Cellar at that time at the Main Mining Office
10 did not work. He never worked there. And due to such
11 a time difference, I'm not sure whether he was still in
12 the position of advisor to the Ministry of Economy or
13 not anymore, because afterwards, after he ceased working
14 as the minister's advisor, he won a tender for District
15 Mining Office Košice head. But I do not remember the
16 date, just to make sure I do not provide you
17 an incorrect date.
18 Q. Where is the gentleman today? What is his function and
19 where is he? Do you know?
20 A. Where he is working, I have the information from --
21 someone told me allegedly in Romania. But I'm not sure
22 in what position, what company or what location.
23 Q. Where is he? Which country did you say?
24 A. Allegedly he is in Romania.
25 Q. Do you know where he was during the January 2005 period?

14:38 1 A. I think he was at the Košice District Mining Office, but
2 I could be wrong. But it could be found out easily from
3 his personal file, which is at the Main Mining Office.
4 But I do not recall it off the top of my head.
5 Q. You didn't try to enquire?
6 A. Why should I?
7 Q. Sir, have you read all the World Bank reports alleging
8 that there is a lot of corruption in the tender process
9 in your country? Are you aware of such reports?
10 A. No, I am not aware.
11 Q. Are you aware of European Commission reports alleging
12 that there is lots and lots of corruption in the tender
13 processes in your country?
14 A. No, I am not aware.
15 Q. Are you aware of reports from the secret services of
16 your country confirming that there is corruption in your
17 country?
18 A. No, I do not know. I am not authorised person who would
19 have access to such information.
20 Q. I'm not from your country, and I'm aware. Because you
21 read and watch television, right? This is in the press.
22 It's your country. It talks about tender. Your
23 testimony is you've never heard of allegations of
24 corruption in the tender process in your country?
25 MR ANWAY: Mr Chairman, I think it was clear that the

14:39 1 witness was simply saying he doesn't have access to
2 secret service information.

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

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

7 May I elaborate on this question, Mr Chairman?

8 THE PRESIDENT: Go on with your questions.

9 DR GHARAVI: Thank you.

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

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

19 Then you say:

20 "I have read the statements in Claimants' Reply
21 dated 29 September 2015. I have prepared this second
22 witness statement to react to what are, in my opinion,
23 false and misleading statements in the Reply concerning
24 delays in obtaining a new authorization of mining
25 activities, which were allegedly attributable to the

14:41

1 bureaucratic process before Slovak authorities."

2 I have strictly no question in relation to the
3 paragraphs that follow in your witness statement,
4 because you address bureaucratic issues in response to
5 the Reply memorial.

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

13 We say at paragraph 464 that:

14 "Days before the appointment of the [selection
15 committee for the tender that followed the revocation of
16 our rights], the bids ..."

17 The bids, the tenders:

18 "... had already been ranked."

19 The tender applicants had been ranked. We say:

20 "Indeed, on April 11, 2005, Mr Cellar disclosed in
21 an email to Mr Keller ..."

22 Mr Keller being from the company Mondo:

23 "... the names of the entities that had so far bid
24 for the project, with specific indications as to which
25 bids were more interesting to the State."

14:43

1 My question to you is: how come you chose to react
2 in your second witness statement in relation to
3 bureaucratic issues, but not on such an important
4 allegation?

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

8 Q. Okay, I understand.

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

21 So I hold: if something like the nature were to
22 occur, the criminal police would have investigated and
23 would have discovered, and would have initiated
24 indictment and criminal proceedings against someone. If
25 you have such information, please disclose this
 information here.

14:45

1 Q. Well, we can. It's an invitation to disclose the
2 documents. But I will stay with my question.

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

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

25 Q. That's not my question. I'm asking you whether or not

14:46 1 you checked what we said was true. Have you talked to
2 Mr Cellar about whether or not he was in contact with
3 other bidders during the selection process in 2005?
4 A. No.
5 Q. No?
6 A. No.
7 Q. Okay. Sir, do you have your files in relation to this
8 dispute, project, from the years 2005, 2006, 2007, or
9 did you classify that?
10 A. Sorry, what do you mean by "did you classify them"?
11 Q. No, do you have your files, your papers, your emails
12 from the years 2005, 2006, 2007 in relation to this
13 file?
14 A. I'm not sure what you're talking about.
15 Q. Sir, you have a costume, you have an office, you have
16 an important position, you have documents, you have
17 a computer; correct? You have a computer in your
18 office? Do you have a computer in your office?
19 A. Yes, in the office I do.
20 Q. Did you receive emails? Did you send emails?
21 A. Yes.
22 Q. Do you have your emails from the years 2005, 2006, 2007
23 in relation to this file, communications you may have
24 had regarding this file?
25 A. With myself, you mean?

14:48

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

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

7 Q. Okay. Do you keep in general your emails from -- if you
8 wanted to find an email from your file, any file, from
9 2005, could you have access to it?

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

13 But I personally do not keep emails. I do not have such e-mails.

14 I have never dealt with something like that with respect
15 to dobývací area - unofficially.

16 All official documents, including emails, are included in file.

17 So if there are emails, they are included in the file.

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

21 A. Could I kindly ask this respected Tribunal to take into
22 consideration the fact that electronic mail, according
23 to Slovak legislation, has a principle which still
24 applies. Every citizen and every legal entity,
25 including foreign legal entities, are authorised to

14:50

1 apply through email any application to any official body
2 in Slovakia. When they do not add it within three days
3 in writing, it is not considered as done.

4 Recently we have been conducting electronisation of
5 state administration. Electronic signature was
6 introduced. Those who do have electronic signature
7 authorised do not any longer have to supply an additional hard copy
8 with the emails within the three-day deadline.

9 So I do not completely understand the question whether
10 our main office archives emails from 2005, '06 or '07, '08
11 because I'm neither an engineer, I have no obligation in
12 this regard; my obligation is to archive files as such.
13 And in case electronic mail, email, was part of any
14 official file, it is then included in the file. This
15 also includes the recipient, the sender, all the other
16 information which is required. Whether it is in the IT
17 system or not, I would need to verify that. I don't
18 think it is unfeasible.

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

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

24 A. Yes.

25 Q. So you have an official from Mondo Minerals by the name

14:52 1 of Keller who writes to Mr Cellar. And Mr Cellar, we
2 submit, works in your office. Correct?

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

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

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

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

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

22 Q. It is the first time? You've never seen it? Nobody has
23 brought it to your attention? You address in your
24 witness statement stamps for application permits, but
25 you have emails of this sort showing contact between

14:54 1 mining companies interested to take our rights, which
2 were not revoked at the time, and you were not shown
3 this email? Is that my understanding? You didn't see
4 this email before? It's the first time?

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

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

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

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

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

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

19 Mondo Minerals, Mr Keller, emails Mr Cellar on
20 13th December 2004 -- this is Exhibit C-357 -- and says:
21 "Thank you for your kind hospitality during my visit
22 to the Gemerská Poloma talc mine ..."

23 Which is our project at the time:

24 "... last weekend and for arranging the meeting with
25 the Deputy Prime Minister of the Slovak Republic and

14:56

1 Minister for Economy, the Honourable Mr ... Rusko.

2 "I hope that the attached PowerPoint Presentation of
3 Mondo Minerals ... will help to illustrate the business
4 and activities of Mondo Minerals. If you have any
5 questions please let me know."

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

10 A. No, I was not aware of that.

11 Q. Does it surprise you?

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

21 Q. Maybe you can explain how it works in your country,
22 because I really don't know. You have Mr Cellar, at the
23 lower District Office, in communication regarding
24 a deposit with the minister, and how come you are not
25 involved in that time? You have your uniform, you exist

14:58 1 as well: you have the right to know, you have the right
2 to participate. Why not you? You exist as well.

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

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

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

25 The situation was as follows. The document that I see

14:59 1 here, the file has not been listed -- this document has
2 not been added to official file. Regarding my position
3 as the chairman of the Main Mining Office, I can assure
4 you that I was responsibly following this case. In case
5 of the court decisions, I was very careful about it,
6 with a special emphasis on the fact that all the
7 requirements of the court would be complied with.

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

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

25 There was another discussion I had with the

15:01

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

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

12 Q. Okay. Now the email is here, you know the information,
13 and you seem to have a very firm idea of what is
14 regular, what is official, what is acceptable or not.

15 Is this an acceptable procedure: that before the
16 official revocation -- you were insisting legally our
17 rights, Rozmin, were revoked only on January 3rd 2005.
18 Is it an appropriate procedure that before that
19 revocation, the District Mining Office, with the
20 implication of the minister, shows our top project to
21 other investors? Is that regular procedure?

22 MR ANWAY: We object to that, Mr Chairman. That has not
23 been established. The members of the Tribunal will
24 recall it excluded a document that the Claimants alleged
25 supported this fact. But that is not established from

15:02 1 this document, nor has it been established otherwise.

2 DR GHARAVI: I'm just working on this document, C-0357, and

3 there is an email --

4 MR ANWAY: The document is not from anyone who works for the

5 government.

6 DR GHARAVI: It's from Mr Keller to Mr Cellar. Are you

7 following, sir? It is C-0357. It's not the first one,

8 it's the second one. Maybe you're confused. I confused

9 you because there were two.

10 MR ANWAY: This is another document from Mr Keller.

11 DR GHARAVI: It's to Mr Keller (sic), okay? From Mr Keller

12 to Mr Cellar. It's the second one I am talking about,

13 hence the confusion. So if you'll allow me, I'll

14 proceed.

15 MR ANWAY: I just want to be clear.

16 DR GHARAVI: C-0357. It's the second document in the tab

17 that you have, 46.

18 MR ANWAY: The document that I have shows it's from

19 Mr Keller --

20 DR GHARAVI: Yes.

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

22 DR GHARAVI: No, of course. But it is from Mondo Minerals

23 to Mr Cellar from the Mining Office.

24 MR ANWAY: I understand what the objection is. The

25 suggestion was made that some correspondence came from

15:04

1 the government. None of these documents shows anything
2 coming from the government.

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

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

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

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

15 Q. Do you know who won the tender?

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

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

19 A. Of course I know.

20 Q. Which company?

21 A. RV Agency Roznava.

22 Q. Is that an international company?

23 A. Why should it be?

24 Q. I'm asking you.

25 A. In the Slovak Republic there is a condition that whoever

15:05

1 wants to take part in a tender needs to comply with
2 three conditions. RV Agency, other Slovak [company] and further
international [companies], they
3 complied with these conditions, and that's why they were
4 part of the tender.

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

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

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

16 DR GHARAVI: Yes.

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

20 DR GHARAVI: Yes, but I moved the subject.

21 THE PRESIDENT: I know, but --

22 DR GHARAVI: What can I do?

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

25 DR GHARAVI: Thank you very much. We appreciate that,

15:07

1 Mr President. Yes, yes, I noted that. Thank you.

2 THE PRESIDENT: You were asking and asking.

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

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

7 A. I don't know.

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

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

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

14 A. You said, "One person".

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

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

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

15:09

1 that was provided for the tender procedure.

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

10 As a follow-up, they have submitted their bids,
11 their projects, which were assessed: they were assessed
12 by an independent expert commission. This commission stated in writing
13 an order,
14 and the DMO
15 had no other possibility other than to decide in line with the order
16 determined by the committee.
17 After assessing the projects -- which
18 was a duty given to me by the Regional Prosecution
19 Office -- we, as the Main Mining Office, which was
20 overseeing the use and protection of mineral resources
21 in Slovakia, we have stated that all
22 the involved contenders complied with the tender
23 requirements. And as regards the
24 expert quality of the proposed bids and
25 projects, with the exception of the RV Agency project,

15:10 1 none of them complied with all the preconditions as they
2 were stipulated as mandatory conditions in the prepared proposal.

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

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

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

25 Q. Sir, in answer to my previous questions on Mr Cellar,

15:12 1 you suggested that had this happened, it would have been
2 irregular for him to interfere in this way prior to the
3 revocation of our rights. Then you testified that you
4 didn't speak to Mr Cellar. Then Mr Baffi, who has
5 signed the protocols, who was involved, you didn't speak
6 to him as to the meetings he had with us, his
7 understanding of the amendment of the law.

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

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

16 A. I'll try and answer this.

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

23 With regard to projects of RV Agency and others, I did inform
24 this Tribunal that I received a written instruction -- if it's
25 not on the file, I can submit it -- that the Prosecution

15:14 1 Office instructed me, as the head of the MMO, to verify all the design projects,
2 all the bids submitted, whether they have met all the
3 particulars. That is why I am aware of these projects:
4 I have had to become familiar with them in much detail,
5 because of this instruction from the Prosecution Office.
6 And they are still on file in a sealed safe.

7 Other issues -- that I claim that I did not
8 speak to Baffi, or that RV Agency had no authorised
9 professionally apt people -- professionally capable people
10 must have been there since RV agency obtained mining permit.
11 Otherwise it would not obtain it. And it does not smell because
12 the same mining permit was issued to Mondo Minerals, just
13 like to Rozmin, who in May 1997 received a mining
14 permit, and consequently the excavation area was
15 transferred one month later from the state company to
16 the Rozmin company with complete documentation. So the same conditions
17 do apply to
18 one and do not apply to another entity?

19 I am an executive body of state administration. I respect what the
20 parliament orders me through the laws. The commission is formed by
21 specialists who on the day
22 of selection proceedings open the sealed envelopes
23 from which they can only see which company submitted its proposal;
24 the content of the proposal and the author of the proposal is reviewed
25 only in the
26 selection procedure.

27 Every bidder has to submit all their

15:15 1 particulars, including their mining permit and aptitude of the designer
2 who prepared the project.

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

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

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

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

25 A. I'm curious when you submit evidence in this respect,
because I claim that that is not possible. If in

15:17 1 official mail, in official archive bids would be opened,
2 envelopes opened before the tender procedure, that is
3 not possible. The way the system is set up, it makes
4 sure that is not possible.

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

10 A. I do not believe in miracles.

11 Q. You don't believe in what?

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

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

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

21 DR GHARAVI: Yes.

22 A. Thank you.

23 DR GHARAVI: Now, the Economy Agency. I put to you that it
24 is owned by an accountant. And you know what happened
25 to Economy Agency: it gave its shares to another company

15:18

1 afterwards.

2 Did that selection process of Economy Agency meet
3 the spirit of the 2002 amendment as you describe it?
4 Was a company that intended, with serious means, to
5 extract minerals, selected?

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

9 Within the lawfully stipulated deadline, after tender
10 procedure went underway, the deposit was opened,
11 prepared and exploited (in Slovak language version: dobývané) within
12 three years' time. These
13 are arguments which are documented and undisputable.
14 Whether the Economy Agency had such-or-such intentions,
15 or wanted to do this or that, that is not up to the
16 powers of Mining Office to view or judge that, or to
17 assess the intentions of some kind of individuals.

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

21 A. I did say some moments ago. Let me repeat that.

22 Economy Agency was selected by independent selection
23 committee composed of seven individuals. The entire
24 matter, except for the Prosecution Office, was also
25 investigated by criminal police. Based on the
Prosecution Office order, I was verifying, as the head

15:20 1 of the Main Mining Office, all the particulars of all
2 the projects submitted as part of the bids.

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

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

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

24 A. No, you may not interpret these words in this way.
25 I did say this clearly. The order was established by

15:22

1 the selection commission, not the District nor the Main
2 Mining Office Mining Office. We only assessed the
3 formal and the legal procedural side of the entire
4 tender.

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

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

19 "... (7 counterparts of a map of surface situation
20 are missing in the proposal)."

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

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

15:24

1 department.

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

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

5 It is based on regulations that are valid in the Slovak Republic and the
author of the

6 project is obliged to respect them and the content shall fulfil
7 what the decree requires. And Mondo Mineral did not have the map
8 on surface situation.

9 Q. Thank you for the clarification.

10 I understand that in the second page it said
11 basically:

12 "According to the indicated ..."

13 That means, I understand, based on the foregoing:

14 "... six proposals ..."

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

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

22 A. No, that is not true. That is not true. This is
23 a document, we have verified formal particulars for
24 Regional Prosecution Office. This is not a document
25 based on which the selection commission was deciding

15:25 1 about the order of bids. In my knowledge -- I hope I'm
2 not wrong -- the commission did not exclude anyone due
3 to the problems in projects or because of missing seven
4 copies. Seven copies is a map of surface area. I'm not
5 sure if you're aware of what it is. It is one of the
6 most significant mapping documents there is.

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

10 DR GHARAVI: He had an opportunity to respond.

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

14 DR GHARAVI: No, it's not, because I said:
15 "'7 counterparts'; is my understanding correct?"

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

25 A. We have not thrown away anyone from the deposit; one

15:26

1 thing. Second thing is: selection commission did not
2 exclude any bid within the tender due to some
3 formalities or substantive particulars missing. The
4 commission judged all the bids submitted and they have
5 made a final decision, and the responsibility for that
6 decision is only held by the commission composed of
7 seven members.

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

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

15:28

1 So

2 is this a progress or is it not?

3 MR ANWAY: Excuse me. I don't know if it's a translation

4 issue or a court reporter issue, but it said, "Rozmin

5 held for three years"; I think he said seven and a half

6 years.

7 MS POLAKOVA: Seven and a half. Maybe we can correct that

8 with the witness.

9 DR GHARAVI: I'm not talking about --

10 A. Seven and a half years.

11 DR GHARAVI: I assume with you that Rozmin is the worst

12 company in the world. Forget about Rozmin, okay? You

13 want to bring somebody that is new, okay? Okay. What

14 did you see in the file that assured you that Economy

15 Agency had the money even to go forward? Did you see

16 anything in the file?

17 A. I saw in the project, technical design of opening,

18 preparation and excavation/dobývanie, I have seen in the

19 technical project the procedure, method of excavation.

20 I saw technical and economic parameters, geological

21 parameters. I saw in the bid project financial side of

22 the whole matter. I saw in the project something

23 I would call -- I'm no expert for economy -- but it's

24 a financial guarantee, a certificate obtained, a pledge

25 of monies provided, a funding provided, which was

15:30

1 calculated based on the technical design proposed.

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

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

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

20 In the 2002 amendment you described the philosophy:
21 you want to kick out losers, or those that have no
22 intention or no means. I think we agree on that. You
23 kick us out. You claim today that we are losers and
24 [don't] have financial means, and we were sitting on
25 that thing idle.

15:31 1 Then you tender and you give it to Economy Agency.
2 And I put it again to you: if that amendment is intended
3 to be applied seriously, to the point of having people
4 kicked out and appointing new ones, then you would
5 expect to see some financial analysis of the company
6 there; not by you necessarily, but by someone in charge
7 of allocating the tender. And my understanding on the
8 file and listening to you is to say that there is zero
9 out there to assess the economic capacity of this Economy
10 Agency to go forward.

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

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

18 I did not ask to be placed as a member of the
19 selection commission. I was only dealing with all the
20 particulars met. And each member of the commission
21 votes with their best conscience and knowledge whom they
22 are going to choose -- not the DMO or the MMO -- and with regard to some
23 particulars, whether it was or was not, whether it had or had not - the
24 result is,
25 that the deposit is opened.
The result being that Mondo Minerals, equally to

15:33 1 other bidders, were also one- or two-man operations.
2 I can't list all the other bidders from the top of my
3 head, but it was VSK. They only had the technical
4 potential themselves. Now, when you refer to how bad
5 the organisation is, or how many people they had, how
6 many people had Rozmin? Three people. How many of them
7 had conducted mining activities? Not one.

8 So if we were to be honest, I admire you, because
9 you are a very smart lawyer, but I don't think you are
10 going to be able to push me to a speculation, into
11 trying to respond to a thought or hearsay or this.
12 Mining officials do not think, do not consider, do not
13 speculate; they act as they are required by law. That's
14 what we have done. We were reviewed by three different
15 revisions, both district and main.

16 The third decision of the DMO and the MMO - why did not
17 they file the extraordinary remedy?

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

25 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

15:36

1 to the tender that warranted a letter from Mondo's
2 attorney addressed to the head office of the district
3 mining. It is dated May 18th 2005.

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

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

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

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

18 Is that true, first? Did you verify whether the
19 company's purpose was brokering, trade activity and
20 accountancy? Is that true? Did you verify that?
21 Because brokerage is not good, huh?

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

25 Q. I will continue while you are reading. It says:

15:39

1 "Given that this is a company that does not have
2 sufficient capital and financial means necessary for the
3 mining of the deposit, it was selected by the committee
4 as first despite the fact that it did not demonstrate
5 financial means necessary for the mining of the deposit,
6 that is estimated at approximately 500,000,000 SK.

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

18 Have you read it now?

19 A. Yes.

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

25 A. This complaint is addressed to the District Mining Office. We

15:40

1 have only verified the consequent objection. So I'm not
2 sure whether DMO did that. We did not review it because we did
3 not have jurisdiction in the first instance.
4 But we dealt with the subsequent complaint that was delivered to us.

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

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

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

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

21 Q. I know. But it was a brokering firm when it applied;
22 correct? Brokering, trade activity and accountancy. If
23 that's the case, then how is that on its face compatible
24 with the 2002 amendment, where you're trying to get out
25 of the intermediary systems, those that are in the

15:42

1 middleman? How is that compatible? It's not, is it?

2 A. Where does the 2002 amendment say that we're trying to

3 get rid of some intermediaries? Your free

4 interpretation of the act strikes me as odd because the

5 2002 amendment says that it was adopted in order to avoid blocking of

6 Slovakia's own deposits, which was a 25-30% occurrence

7 before that amendment. In 2005-06, this blocking

8 dropped down to 4-5%, due to other reasons other than

9 inactivity of companies, because all who were not

10 excavating were -- tendered for these particular mining (in Slovak
language original: dobývacie)

11 areas. There was not a single case in which the court or prosecution

12 would cancel or change

13 the order determined by

14 the selection commission.

15 Q. I understood -- paragraph 8 at the end -- yourself

16 saying that those who were trying to block the deposits,

17 or:

18 "... some could have waited for better market

19 conditions to commence activities or to transfer the

20 areas to other interested party, others were unable to

21 finance the actual mining activities."

22 But anyway, I will move on to the next issue in that

23 document, which is the documents which the companies

24 submitted. Here there is an allegation of one of the

25 five losing bidders saying that the winner didn't submit

15:44 1 anything other than a document that is worth zero; that
2 is not a commitment, but only a commitment to negotiate.

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

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

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

24 Q. Okay. But the response -- I understand it that
25 following this letter there was a committee put in

15:45 1 place, and the result of it is R-0194, namely the
 2 document previously where I was, and the answer was
 3 simply that -- not that, "This agency had the means to
 4 start trade activity and it has the financial means that
 5 we verified", but that the five others were excluded.

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

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

 10 Q. Sir --

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

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

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

 24 Then it points to this document. Okay?

 25 So is it correct, what I just read from your

15:47 1 lawyers' representation: that the Mondo complaint led to
2 the document of 6th September 2005?

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

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

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

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

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

24 One of the complaints is that the application
25 submitted into the selection procedure should have

15:49

1 fulfilled, among other things, the fact that
2 an application must be accompanied by a "relevant mining
3 authorisation", and apparently the winner didn't have
4 it. That is what is implied in the letter of Mondo
5 Minerals.

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

10 A. May I reply?

11 THE PRESIDENT: Please.

12 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
13 definitely had to have this permit, this authorisation,
14 before even submitting their bid for the tender;
15 otherwise their proposal or their bid would not be
16 accepted.

17 This information in the complaint by Mondo Minerals,
18 the fact that they claim that the RV Agency had no
19 mining permit, this is not based on
20 truth, it is not substantiated. I am perfectly informed
21 about this.

22 THE PRESIDENT: Can you explain: they had that
23 authorisation?

24 A. Yes, quite clearly they had the authorisation. One of
25 the conditions in order for an organisation to be

15:51 1 accepted when applying for such a tender procedure, when
2 we are assigning a mining (in Slovak language version: dobývací) area
3 to another mining company due to inactivity -- there are also other
4 possibilities how you can acquire an extraction (in Slovak language
5 version: dobývací) area --
6 well, the basic precondition is quite clearly for the
7 organisation to have a licence which enables them to
8 operate in this economic activity.
9 In case of Slovak territory, if you perform mining
10 activity, it is the mining permit. Mining
11 permit can be obtained only by a Slovak legal
12 entity which employs a professional expert who is
13 professionally authorised to guarantee the professional
14 administration and guidance of mining activity. If they
15 employ such an individual, this chief of mine or this
16 chief of quarry, then the respective District Mining
17 Office issues such a mining permit, such an authorisation.
18 From all the applicants, all of them had this
19 mining permit; otherwise they would not be part of the
20 tender.
21 MR ANWAY: Mr Chairman, I think the following paragraph
22 makes clear that it's two other companies -- NewCo
23 Slovakia and IMI Fabi -- that are the ones that didn't
24 have that permit. It did not relate to Economy Agency,
25 which would be consistent with the testimony just given.
26 THE PRESIDENT: Okay, thank you. So they had the

15:52

1 authorisation; that's what you say.

2 Still, to get the authorisation, isn't there
3 a procedure which takes some time? Can you explain
4 maybe? Because I understand that it was a new company?

5 A. Yes. Well, the procedure is as follows. I'm sure this
6 is not that complicated, and it will not surprise you.
7 The basic preconditions are outlined in the Mining Act
8 51 from 1988, sections 4(a), (b), (c).

9
10 This mining permit, or this process of
11 issuing the mining permit, follows the
12 administrative law for the Slovak Republic. This is the
13 administrative order: this is 71 from the year 1967.

14 According to this procedural document, the District
15 Mining Office has to control all the respective
16 attributes of the applications, which are listed in
17 Act number 51, everything that has to accompany such
18 an application in general.
19 First of all, they have to issue the valid print
20 or valid confirmation about their registration in the Commercial
21 Register as
22 a legal entity in Slovakia not older than three months.
23 Then they have to also confirm they have paid the
24 administrative fee. And thirdly, they need to verify
25 who is the expert authority, if this is not the
 executive of the company. They also

15:54

1 have to issue the certificate of evidence from the
2 criminal registry of Slovakia.

3 If they issue all these documents and everything is
4 complete, on the basis of this application the
5 administrative procedure is concluded and the
6 mining permit is issued. No other
7 meeting or other inspection is required. So it is
8 a purely administrative procedure. These conditions apply for every
company. We do not take into
9 consideration the size or any other attributes of the
10 company.

11 So if you comply with these requirements, we have no
12 other choice but to issue such a mining permit. The
13 whole period is stipulated by the law - that such application fulfilling
14 all conditions has to be processed immediately, but not later than
within 30 days.

15 It is a licence which is
16 issued in a form of a declaratory statement of the state
17 administration -- in this case it is the DMO -- after
18 confirming or after verifying all the attributes, all
19 the particulars.

20 THE PRESIDENT: Am I right if I suppose that it is the
21 presence of Mr Corej which decided the DMO to grant this
22 permit, the presence of Mr Corej in the company or as
23 the husband of the manager?

24 A. Apologies, apologies. I do not know, Mr Chairman, what
25 you mean under "the presence of Mr Corej". Mr Corej is

15:56 1 quite clearly a legitimate expert who has received his
 2 certificate of responsible person a long time before. 15/20 years ago
 3 he
 4 has been authorised as a mining expert. He is
 5 officially registered as a mining expert. In my
 6 understanding he is very known to all the mining bodies.
 7 He is quite notorious as a member of our chamber, as
 8 an active member of our mining community.

 9 Equally --

 9 THE PRESIDENT: Sorry to interrupt. That's precisely why
 10 I was supposing that the reason why the company got the
 11 permit was his presence.

 12 A. Well, I think that the reason was the fact that --
 13 indeed, this was the fact, that Mr Corej owns this
 14 official certificate; but not that his name is Corej.
 15 The fact that he is officially authorised was the main
 16 precondition.

 17 THE PRESIDENT: Of course I was not meaning that it was
 18 because of his name, which could be any name. Thank
 19 you.

 20 A. My apologies, perhaps there are some issues in
 21 interpreting. I thought you were alluding to the fact
 22 that he was himself. No, the District Mining Office
 23 cannot discriminate against anyone, or cannot support
 24 anyone or cannot give priority to anyone, because we
 25 control it by a second instance and we would simply

15:58

1 identify.

2 THE PRESIDENT: I was not implying that. I was simply
3 alluding to the fact that he was precisely someone as
4 you described.

5 Sorry, Dr Gharavi.

6 DR GHARAVI: Thank you, Mr President.

7 How serious is this tender process after revocation?
8 Because I see this Economy Agency registered newly under
9 the name of an accountant. Could the shareholders of
10 Rozmin, after the revocation, have set up a company,
11 called it -- I don't know -- Very Economic Agency, or
12 Rockefeller Agency, and then applied? Would they have
13 been allowed to apply as shareholders of another
14 company?

15 A. Well, yes. As another legal entity, yes. The Slovak
16 legislation enabled that.

17 Q. But then how could it be? Because if a company is
18 kicked out because its shareholders are unable to
19 process, and these same shareholders tomorrow set up
20 a company and apply again for the same deposit, how is
21 that rational?

22 A. I do not understand who is supposed to justify anything
23 to whom. It is not possible for one owner to have
24 several companies; is it not? It's a matter of holding
25 the excavation area, tie that to specific entity having

16:00 1 specific company registration number, which is tied then
2 in turn to specific rights and obligations.
3 Rozmin, by its own inactivity, without any third
4 party's fault, had caused themselves, by themselves, the
5 cessation of their right to mine (in Slovak language version:
6 dobývať) in that area. That is
7 not tied to ownership, to any professional aptitude.
8 Which means, if I were to understand this correctly,
9 though professionally licensed person may no longer
10 operate or exist? They did have the right, they could
11 do it. Why they did not do it, I don't know. Rozmin is
12 not obliged to justify this to us. And Rozmin had other
13 options they could have explored how to resolve their
14 problem; and despite that, they did not do so.
15 Q. The issue that I also have with all this is that Economy
16 Agency, which -- this is our submission -- did not have
17 any means or intention to go forward with the project,
18 was selected in the circumstances that we described, and
19 then, six months/nine months later, gave all of its
20 shares to another company, and it's the other company
21 that moved the project forward. So basically it was
22 a broker there. It just got something ...
23 A. Do you want to say "just like Rozmin"? I don't know
24 what to say else but this. The entire procedure or the
25 entire administrative proceedings aiming at assignment of
26 the excavation area to another company, the entire

16:02

1 tender procedure when the independent selection
2 committee -- that is not subordinated to the DMO or the MMO -- was
selecting from among the bidders the
3 winner, no other entity may enter the powers of this
4 particular selection commission. It was verified twice
5 by Regional Prosecution Office, by criminal police of
6 Slovakia, and twice by judicial review.

7 Neither one of these bodies had come to the
8 conclusion that with these steps of either the selection
9 committee or DMO or MMO, there would be any violation as
10 to the substantive matter at hand. And all the other
11 small shortcomings -- I emphasize that all -- identified in complaints
were
12 subsequently removed in the final decision of the DMO and the MMO. And
Rozmin did not use any
13 extraordinary recourse they had available throughout the
14 period of three years.

15 Q. That's not my -- I don't know if you had many problems
16 with me, but the problem I had with you during the last
17 hours is that everything I ask you to justify, you say,
18 "Oh, there was a procedure in place, everything was
19 correct, was verified". But that's not what all this is
20 about. If it is as simple as that, there would be no
21 purpose of questions and answers. So I try again on
22 this point.

23 Doesn't it bother you the fact that somebody was
24 kicked out, it was given to a company owned by
25 an accountant, in the circumstances we described, and

16:03

1 finally it's not that company that provided the means
2 that moved forward the project and went on and found
3 another who moved then the project forward? That
4 doesn't bother you?

5 A. You know, first of all, I don't have any problem with
6 you. I just said a moment ago that I consider you
7 a very smart lawyer; I mean it seriously.

8 The one thing I have a problem with is that you're
9 wanting me to answer something to speak on behalf of the
10 selection commission. Based on what legal title am I to
11 judge the proceedings made by the selection commission,
12 having done their job based on their best conscience and
13 knowledge back in 2005? I don't know what consideration
14 the selection commission was taking into account.
15 I don't know each one member of the Commission, when
16 they are voting in secret, how they establish in their
17 own minds the order of the bidders.

18 And this envelope, it still remains sealed until
19 this very day. Neither prosecution, nor criminal
20 police, nor the Supreme Court had opened the envelope.
21 You know why? Because they have all found that it is
22 a decision of a collective body which needs to be
23 respected. Because if it's not going to be respected,
24 such a decision of collective body composed of
25 independent entities, there will be anarchy. Neither

16:05

1 DMO nor MMO -- please do kindly take this into
2 consideration -- did not judge this. It was judged by
3 commission, selection commission.

4 The commission was established by law, by the Parliament -- it
5 was put into the legislation.

6 The only thing I can admit is the fact that
7 the legislator did not put into the legislation the 558,
8 those procedural provisions which, even after the
9 experience of having with those selection commissions,
10 were available by Amendment 219 of 2007. If we were to
11 have had these procedural provisions at that time in the
12 law, then the court would not be able to find so many procedural
13 shortcomings they have found, because they have not
14 found them subsequently, with the final decision
15 on the conclusion of the proceedings against which all remedies were
16 available but were not used.

17 Q. If I am smart, then you are my professor, because you
18 did it again to me. I asked you a clear, specific
19 question, and you went out; I don't know where you went
20 out, but you did that throughout. So I return the
21 compliment.

22 The things you said, there are a number of things
23 you said that I have issue with, but I will just pick on
24 one. I'm saying it's not true, it's not true, sir, that
25 when the tender applicants submitted their application,

16:06

1 it was not opened. Because we know and we have alleged
2 that there is a document showing that somebody from the
3 District Office not only opened it, but engaged in
4 commenting on these tenders.

5 Do you have anything to say to that?

6 A. Only that I'm not aware of any commenting.

7 Q. Aren't you interested to find out about that?

8 A. Of course, sorry, at the time of the tender -- I don't
9 know how else to respond to this -- at the time of the
10 tender, at the time when these matters were published in
11 the commercial journal, business journal, and when it
12 was notified to the organisation that their rights have
13 ceased, and what you're describing here, there were some
14 discussions held between -- amongst some entities, I'm
15 not aware of any of that. I've never seen Mr Keller;
16 I don't know him, I have never met him. I don't know
17 who is the representative of IMI Fabi or whatever other
18 entity.

19 That which I do know: I can say that I would never
20 allow myself to say something untrue. I am not here in
21 a capacity of a private person, I'm here as the
22 representative of a state body.

23 Q. You should have. You should have within the context of
24 this procedure, you should have at the time that you
25 were reviewing all these documents, because that thing

16:08 1 is very material, and we invite you to do so in the
 2 future. That document exists and your counsel has it.
 3 In any event, my last question is that your
 4 submission is that there were 50 other companies whose
 5 licences were revoked in the same circumstances as ours;
 6 correct?
 7 MR ANWAY: That was not his testimony.
 8 DR GHARAVI: I'm asking the gentleman if that was his
 9 testimony.
 10 MR ANWAY: No, you represented to him that his testimony was
 11 that there were 50 other companies and --
 12 DR GHARAVI: How many other companies? Because in your
 13 witness statement you mention a number of companies
 14 whose licences were revoked in the same circumstances.
 15 A. Approximately 30.
 16 DR GHARAVI: 30. Could you give them my phone number? No
 17 further questions.
 18 MR KÚKELCÍK: May I? If I were to give them your phone
 19 number, give me your business card!
 20 THE PRESIDENT: Re-direct?
 21 MR ANWAY: I do have some.
 22 (4.09 pm)
 23 Re-direct examination by MR ANWAY
 24 Q. In fact, on that topic, you did indicate, Mr Kúkelcík,
 25 that there were approximately 30 other reassignment or

16:09 1 cancellation procedures in 2005, which was of course the
 2 same year when the Rozmin excavation area was
 3 reassigned. Out of those procedures, how many of
 4 them -- just approximately -- actually led to
 5 cancellation or reassignment of the excavation area?

 6 A. In all cases.

 7 Q. Thank you. And of those, besides Rozmin, how many of
 8 them appealed the decision up to the Supreme Court
 9 complaining that the law was unclear?

 10 A. The Supreme Court only handled one such case.

 11 Q. So Rozmin, out of all of these other companies who went
 12 through a similar procedure, was the only one that
 13 complained to the Supreme Court that the law was
 14 unclear?

 15 A. In 2002 to 2005, yes -- sorry, 2007. I mistook the
 16 year.

 17 Q. Now, you had testified --

 18 A. Apologies, I wanted to say -- I got taken aback by the
 19 wrong year -- there were three or four additional
 20 complaints made to the Regional Prosecution Office for
 21 the procedural matter. They were all stating that the
 22 District Mining Office did not violate any act and it
 23 never went up to a higher instance, even to the MMO.

 24 Q. Thank you.

 25 Now, you testified at some length about the purpose

16:11 1 behind the 2002 amendment. Is it your opinion that the
2 2002 amendment was successful in reducing the number of
3 companies that idly sat on excavation areas?
4 DR GHARAVI: The answer is yes.
5 A. Definitely. It is completely clear from the statistical
6 data, from the fees collected for mined (in Slovak language version:
dobývané) minerals.
7 DR GHARAVI: I will object in the future to leading
8 questions. Was the thing successful? It calls for
9 an answer which is "yes".
10 MR ANWAY: You had, in answering Dr Gharavi's questions,
11 I think mentioned the celebration or some type of
12 gathering within the mining community sometime in 2004,
13 when Mr Rozloznik had approached you and there was some
14 discussion about the 2004 amendment. Dr Gharavi didn't
15 let you finish that answer; I'd like to give you the
16 opportunity to do so now.
17 A. Simple answer: it was not in May 2004 but it was on the
18 second Thursday and second Friday of September 2004, as
19 part of the Slovak-wide celebrations of the Day of the
20 Miners, when I personally have, with good intentions,
21 briefed Mr Rozloznik whom -- I'm sorry, yes -- whom
22 I know very well as a man who is very capable and
23 a responsible person in Rozmin, that there is
24 an amendment in place and that there is a risk which
25 could occur, such problems could occur, when there is

16:13

1 an obligatory proceedings by law or by the DMO. And he
2 gave me a friendly answer: "I'm aware of this and we
3 will be paying attention to that".

4 Q. Once a company has failed to commence excavation within
5 the three-year time period, under Slovak law, is it your
6 understanding that that company can participate in the
7 tender to try to win back the excavation area?

8 A. The Mining Act says clearly it will be transferred to
9 another organisation due to inactivity. So the same
10 company may not bid in a tender for the same mining (in Slovak language
version: dobývací)
11 area. The selection commission would have to respect
12 that stipulation by law.

13 Q. I think I have only one final question for you,
14 Mr Kúkelčík. Do you know whether the successor to
15 Economy Agency opened the mine in accordance with the
16 Economy Agency project plan, the technical solution that
17 they had proposed in their bid?

18 A. Yes, it is so. They have opened in accordance with the
19 project submitted and within the deadline prescribed by
20 law. I know it exactly because we were submitting this
21 evidence to the court as part of our administrative
22 file.

23 Q. So is it fair to say then, just rephrasing the answer
24 you just gave, the technical solution that was proposed
25 by Mr Corej's company in the bid with Economy Agency

16:15 1 ultimately proved successful?

2 DR GHARAVI: That's leading, sir. It's a textbook leading

3 question.

4 MR ANWAY: I will withdraw the question. I have nothing

5 further, Mr Chairman.

6 THE PRESIDENT: Thank you. So this completes your

7 examination. Thank you very much for coming here.

8 Now we will have a 15-minute break before the

9 examination of Mr Corej.

10 MR KÚKELCÍK: Thank you, Mr Chairman.

11 (4.15 pm)

12 (A short break)

13 (4.36 pm)

14 MR PETER COREJ (called)

15 (Evidence interpreted)

16 THE PRESIDENT: Good afternoon, Mr Corej. You are appearing

17 as a witness in this case, called by Respondent. You

18 have a statement in front of you: can you please read it

19 aloud.

20 MR COREJ: Witness statement: I solemnly say on oath to

21 saying the truth, nothing but the truth, and the whole

22 truth.

23 THE PRESIDENT: Thank you.

24 Direct examination?

25 MR ANWAY: Just very brief.

16:37

1 (4737 pm)

2 Direct examination by MR ANWAY

3 Q. Good afternoon, Mr Corej.

4 Mr Corej, are you an employee of the Slovak State?

5 A. No, I am not an employee of the Slovak Republic.

6 Q. Are you here today representing the Slovak State?

7 A. No.

8 Q. Then it may be helpful if you could tell the Tribunal
9 why you are here today testifying.

10 A. I'm here as a witness because legal counsel on behalf of
11 the Slovak Republic had approached me in relation to the
12 ongoing dispute between Slovakia and EuroGas, or the
13 (indistinct) Republic, when they asked me several
14 questions, whether I would be willing to answer those
15 questions, which I did. And based on that, my testimony
16 as a witness was drafted, which is part of the file here
17 submitted.

18 Q. Are you being reimbursed by the Slovak Republic for your
19 lost time and expenses for your work in this
20 arbitration?

21 A. I'm not sure how it works elsewhere, but there are some
22 legal standards applicable in Slovakia which stipulate
23 exactly
24 how expenditures related to witness testimonies of individual witnesses
are being reimbursed.

25 Q. Is it your understanding that the reimbursement the

16:39 1 Slovak Republic is providing you for your lost time and
2 expenses is consistent with the Slovak legislation on
3 reimbursement of witnesses?
4 A. Yes.
5 MR ANWAY: I have nothing further, Mr Chairman.
6 THE PRESIDENT: Thank you.
7 Cross-examination by Dr Gharavi.
8 (4739 pm)
9 Cross-examination by DR GHARAVI
10 Q. Good afternoon, sir. I am counsel for Belmont and I'm
11 going to put some questions to you.
12 I kindly ask you to look at your first witness
13 statement, paragraph 41. You say:
14 "... payments from Rozmin were always late."
15 And that's in relation to the time when you were
16 a shareholder and a contractor of Rozmin in 2001.
17 Then you go on -- even in the above paragraph, at
18 the end of 39, you say:
19 "... Rozmin were always late."
20 Then at paragraph 44, you say in the middle of it:
21 "RimaMuran was getting into bigger and bigger
22 financial problems, we did not have money to pay for the
23 works at the deposit, we owed to our suppliers, and we
24 were under a threat of bankruptcy."
25 When you say here "we were under the threat of

16:40 1 bankruptcy", you mean Rima Muran, right? Not -- it was
2 Rima Muran that was under --
3 A. Yes.
4 Q. It seems that you become bankrupt quite easily, sir,
5 because the amounts you're setting out are not
6 significant amounts, are they?
7 A. The amounts were substantial for such company and for
8 such demanding mining works and mining project we
9 started to implement.
10 Q. How much was outstanding at the period you describe?
11 Let's take May 2001.
12 A. It had stayed at the figure 5,086,000 Slovak crowns.
13 Q. That's in May 2001?
14 A. Let me quote exactly: 5,06[1],812 Slovak crowns. It's
15 €168,000 and some small change. That was the debt of
16 the company Rozmin to Rima Muran.
17 Q. That's not a very significant amount, is it, to become
18 bankrupt?
19 A. Going back to roughly 2000, it was at the time. For
20 such companies in Slovakia in general, it was
21 a substantial amount. 5 million crowns was at that time
22 a big money; it was not a small amount. One realises
23 that the entire project we were to implement had cost
24 71 million crowns.
25 Q. Could we go to tab 18 of the first bundle, which is

16:43 1 R-0169. It's a letter from Rozmin dated July 25th 2001.
2 R-0169. It's sent by Dr Rozloznik to you, I believe.
3 Was it sent to you at that time?
4 A. It was sent to company Rima Muran.
5 Q. Okay. But you reviewed it at the time; correct?
6 A. Yes, definitely.
7 Q. Okay. Do you agree with the conclusions that are set
8 out here? It says that -- there is a table on the
9 top --
10 A. No, I disagree.
11 Q. What items of it do you disagree with?
12 A. With the conclusion and with the amount. Mainly with
13 the amount, because the figure here is definitely the
14 one I mentioned earlier, which is 5,06[1],000 crowns,
15 and it was further confirmed later, because when
16 settlement had occurred of some problematic issues
17 between the two companies, the company -- I think it was
18 EuroGas at that time -- had acknowledged this amount and
19 paid the due amount in this --
20 Q. Yes, but I'm talking at that period of time, sir; we're
21 not going forward. To facilitate that, I propose that
22 you keep that document open and you look at your
23 response dated July 23rd 2001. It is in the pochette,
24 R-0126; it should be the first document.
25 In that letter, in response to R-0169, you say the

16:45 1 line that you find for HV line should be removed. But
 2 it has been paid, so I guess that amount is neutralised.
 3 Then you have an issue only with the payment received in
 4 relation to your invoice of 6 million crowns that is on
 5 the right-hand table of page 29 of R-0169. And my
 6 understanding, you say, "Out of that 6 million amount,
 7 I didn't receive the 3,740,000 indicated in the letter
 8 of Rozmin, but only 2,159,000". Is my understanding
 9 correct?

10 A. I don't remember this exactly, I have to admit.
11 Because, these things were mainly related to the economy
12 of our company, which was the economy department's
13 responsibility. I was in charge of technical
14 implementation of the work and technical supervision
15 over the implementation. So please do not take me
16 precisely with regard to specific figures; and given the
17 time that has lapsed since, I am not able to recall
18 exact figures.

19 I insist -- and we have always required payments due
20 from Rozmin in the amount of 5,086,000 and change, which
21 later was accepted and paid. So these tables I do not
22 take as fully relevant, and I -- even later on, I cannot
23 really respond to those tables anymore.

24 Q. Sir, you know, I didn't invite you to submit a witness
25 statement; the Slovak Republic did. And in your witness

16:47

1 statement you indicate precise dates -- April, May,
2 June, July -- and then you draw a conclusion, or at
3 least an implied conclusion, that it was Rozmin that
4 caused these financial difficulties that your company
5 was undergoing at the time.

6 I point out to a letter, at that time, that was sent to you and the
7 response that you provided under your signature. And
8 the conclusion I draw from that is that you contest only
9 the 6 million invoice in the table, and you said you
10 didn't receive 3,748,000 but you received only
11 2,159,000, which makes it that you have a shortfall of
12 only 3.9 million; which is not much, I suggest.

13 And moreover, it relates, if you look at the table
14 at R-016[9], it's "Advance payment invoices submitted by
15 RimaMuran, [and] not yet covered by actual works carried
16 out". Then if you add to it the amounts also received
17 for your previous invoices -- 1.4 million, 1 million --
18 for advance payments, whereas work was not carried out,
19 and the advance payments set out on the next table,
20 which means 2.73 million, that's your cash positive?

21 A. This is not true at all, because in reality the
22 situation was as I have already described it to you:
23 Rozmin was not paying on a regular basis, and as
24 a result of that we were becoming insolvent.

25 Q. But that's your word, right? That's your word, that's

16:49 1 your testimony. I point out to a document that Rozmin
2 wrote at the time and a letter that you signed.
3 PROFESSOR STERN: Just to be sure I am following, at R-0169
4 it is said it is a letter from Rima Muran to Rozmin, but
5 I guess it is a letter from Rozmin to Rima Muran?
6 Unless I don't understand.
7 DR GHARAVI: Yes, this is a letter from --
8 PROFESSOR STERN: So it's wrong?
9 DR GHARAVI: No. That you should have found in -- okay,
10 yes, yes.
11 PROFESSOR STERN: Okay. I was just sure to be following.
12 DR GHARAVI: Yes, R-0169 is from Rozmin to Rima Muran and
13 R-0126 -- I apologise -- is from Rima Muran to Rozmin.
14 PROFESSOR STERN: Okay.
15 DR GHARAVI: So you see, Mr Corej, you come here a number of
16 years after a dispute that relates to my client and the
17 Slovak Republic, and you bring in your personal issues
18 with Rozmin, you make certain allegations that discredit
19 my client. I put to you two documents, one signed by
20 Rozmin to you and the other in response, that both of
21 them put together show that you were cash-positive at
22 a period of time where you allege in your first witness
23 statement that my client was in payment default; and
24 moreover, that that was causing the insolvency of your
25 company for a very ridiculous amount.

16:51 1 So what do you have to say to that, apart from that,
2 "I don't remember"?
3 A. I will read in detail the letter I wrote:
4 "On 22 May 2001 there was a general meeting held of
5 Rozmin. At this general meeting, among other things, we
6 have discussed the status of funding of work at Gemerská
7 Poloma. Advance spending was approved in the amount of
8 SKK 6,000,000 (see section 4 of the minutes of the
9 general meeting). That amount has not been paid to
10 date. SKK [3.748 million] were paid out of that amount,
11 and the last instalment was paid on 12 July 2001, in the
12 amount of SKK 1,588,500. Under sections 14 and 15 of
13 the contract for work, the contractor is authorised to
14 suspend works in case the customer fails to pay
15 a partial invoice. As of the works suspension date, it
16 has been 62 calendar days. We suspended the works on
17 the basis of that fact.
18 "As to submitted invoices for works actually carried
19 out and payment of those invoices, we have to notify you
20 that
21 "- the provided amounts for the high voltage line
22 cannot be included in other invoices, because a separate
23 contract was concluded for that line,
24 "- the invoices provided in the table cannot be
25 correct because as of 1 July 2001, out of SKK 6,000,000,

16:53

1 only SKK 2,159,5[00] was paid.

2 "The other matters will be handled by taking over
3 the works for April, May, June, July, surface
4 construction, July -- underground works.

5 "We request that you provide with us funds for
6 further continuation of works."

7 So I did not make this up just now, that there was
8 no funding available, clearly, for us to be able to
9 continue our work. Bills were not paid, invoices were
10 not paid for material. And the worst situation occurred
11 in the case at this general meeting. Even though it was
12 promised by the EuroGas executive officer or CEO that
13 amount would be paid in the amount of 6 million total,
14 it was never paid in full; and due to that, or as
15 a result of that, we would gradually be phasing out our
16 works, until full suspension of our works.

17 So I insist, I do insist on the fact that the owing
18 amount of Rozmin, the final amount, towards Rima Muran
19 is the 5.08-and-change million crowns which personally
20 was approved, acknowledged by EuroGas representatives by
21 signing a settlement agreement where this amount was
22 acknowledged by them, and later paid in shareholdings
23 40%, which we handed over to the company EuroGas as the
24 countervalue, 43% shareholding of Rima Muran.

25 I have nothing more to add to that.

16:54 1 Q. I just repeat: my understanding of these documents is
 2 that you were cash-positive, because the only
 3 outstanding invoice at the time was an invoice for works
 4 not yet carried out; and moreover, largely compensated
 5 for other amounts received for works not carried out,
 6 plus the advance payment you received.

 7 So I just don't understand how we could have caused
 8 your bankruptcy, because you were cash-positive; and
 9 moreover, for works that you had not carried out.

10 A. I have to correct you very much. All works during that
11 period with regard to surface construction has been
12 completed and they were handed over. We are discussing
13 now 2001. In 2001, spring, the main ramp began to be
14 drilled, meaning that all surface structures had to be
15 completed by then.

16 So claiming that we have not completed some of the
17 surface structures is completely unacceptable. They
18 were all completed, as it was stipulated by the letter
19 on processing costs per individual structures,
20 above-surface structures. So I cannot agree with you
21 that we would not have completed some of our
22 above-surface structures. They were all completed as
23 defined in the tender terms of reference defined by
24 Rozmin themselves.

25 One exception perhaps would be the fact that some

16:57

1 structures, despite the fact that they were --

2 Q. I'm just talking about cash positions, I'm not talking
3 about a construction dispute. I'm just talking about
4 your cash position and the impact, and I think we
5 covered it.

6 The other question I have for you, sir, is: would
7 you agree with me that there was a dispute also between
8 the parties at the time about the quality of the work?
9 I have no intention, before you answer, to engage with
10 you as to who is right or wrong. I don't want to get
11 into a construction dispute. But do you agree that at
12 the time there was a debate as to the quality of the
13 work your company was providing; yes or no?

14 A. No. I do insist that all works done by us were fully in
15 line with the project documentation, and I can
16 substantiate that with the fact that I have summoned the
17 Rudny Projekt, the design office who produced the
18 design, and they have documented and conducted
19 an authorship supervision over the site, and they have
20 made a record of the inspection they have conducted
21 claiming that all the works have been completed in
22 accordance with the design.

23 Q. Sir, I'm not saying to you who is right or wrong. I'm
24 not asking you this. I'm asking you whether or not,
25 rightly or wrongly, Rozmin was claiming at the time that

16:58 1 the quality of the works you were providing was not
 2 good, was bad. Was Rozmin claiming that the works you
 3 were doing were bad at the time?

4 A. With regard to the above-surface structures no. They
 5 only had one single reservation against the mining
 6 works.

7 Q. May I deduce from your previous answer, since you
 8 commissioned the work to verify or not whether your
 9 works were good, that means there was an allegation by
10 Rozmin that the works were not good? Can I conclude
11 that, and move on to my next question?

12 A. It cannot be understood as that because also the
 13 organisation, the company Rima Muran, having performed
 14 this work, did have their own authorised supervision
 15 with regard to the above-surface structures. It was not
 16 necessary for mining work because the supervision was
 17 conducted by myself in person. And from the side of
 18 Rozmin for above-surface structures, I'm not sure who
 19 conducted the supervision there; but for mining work,
 20 they had a gentleman conducting the supervision.

21 I keep insisting that the only, from their side,
22 declared problem was the decline of the mining works,
23 and it's a very simple problem.

24 Q. There were problems. And the question I have now --

25 A. There were no problems, because those problems did not

17:00

1 pertain at all to Rozmin as a company.

2 Q. Could we agree that Rozmin was also claiming that your
3 company was going over budget? And again, I don't want
4 an answer that there were additional works, and
5 a justification. Were there claims made by Rozmin at
6 the time that your company was going over budget? Just
7 a yes or no question.

8 A. Yes. But one thing needs to be explained. I have to
9 explain one substantial fact.

10 Q. I am not interested in -- I don't want to defend the
11 position of Rozmin. I am just trying to find out
12 whether or not there was a claim on their side. Maybe,
13 if you think that is relevant, counsel for Respondent
14 will allow you to elaborate.

15 Would you agree with me that some of the
16 shareholders of Rozmin had issues with you in your
17 capacity as a shareholder?

18 A. I don't know what exactly you have in mind.

19 Q. Were you in dispute with Mr Rauball or other
20 shareholders at the time in your capacity as
21 a shareholder? Not as a contractor; forget about [as]
22 a contractor.

23 A. We did have one problem, yes.

24 Q. Okay, thank you. Then may I also suggest that your exit
25 from Rozmin was a sour exit, that you perceived it at

17:02

1 the time as being a very sour experience? Again,
2 rightly or wrongly, it was not good, huh?

3 A. Leaving who from where? You mean my person?

4 Q. When I read your statement and when I see your presence
5 here, I understand -- maybe rightly so -- that you were
6 upset, because you are claiming moreover that it caused
7 you bankruptcy, you didn't sell in good conditions. And
8 I am just asking you whether that's a fair conclusion to
9 draw from your testimony, that all this left a sour
10 taste in your mouth.

11 A. Certainly it was difficult for me to say goodbye to that
12 project, because I dedicated some 20 years of my
13 professional life to that. So it's not simple to leave
14 such a project, and even under such circumstances.

15 Q. I understand. I am not challenging whether you were
16 right or not.

17 May I move now to paragraph 54 of your first witness
18 statement. Here you are talking about the year 2004.
19 You say:

20 "According to my knowledge, no further works were
21 performed at the deposit until the moment when Siderit
22 ... came to the deposit in 2004. I personally notified
23 representatives of Siderit to be aware of finances and
24 to always ask an advance payment and not to perform any
25 work unless they are first paid."

17:04

1 Why are you going out of your way, in relation to
2 a project that you left years ago, first, to follow up
3 the project; and two, to write to our contractor to
4 discredit us? Here in this arbitration I understand
5 it's the Slovak Republic that contacts you. But back
6 then, why are you following up and why are you trying to
7 discredit us?

8 A. One thing: the project Gemerská Poloma was, is and shall
9 remain an issue close to my heart. That's a side
10 comment.

11 As per your question with regard to Siderit, not
12 myself have contacted Siderit, but it was the other way
13 around. Siderit contacted me, asking me: what kind of
14 people are these with whom they are to go into some kind
15 of business? I only told them the truth, what
16 experience our company had with them, and nothing going
17 out of my way I told them.

18 Q. So if I understand you correctly, paragraph 54 was that,
19 "I personally notified representatives of Siderit in
20 response to their enquiry"; correct? Because you say
21 they contacted you to be aware of finances. You
22 received a call, basically, from Siderit? So they
23 contacted you, right?

24 A. Yes.

25 Q. You didn't mention that in paragraph 54. You forgot,

17:06 1 I guess, or you didn't find that necessary.

2 A. If we were to debate over the entire history of this

3 problem, we would need much more time for that.

4 Q. I asked you a very direct and simple question. They

5 approached you to ask comments about the financial

6 strength of Rozmin, you didn't approach them; correct?

7 A. Definitely not me them.

8 I did not have any reason for that.

9 Q. Who approached you and when, the first time, from

10 Siderit?

11 A. Just to make one thing clear --

12 Q. Sir, I asked you a question. Who approached you from

13 Siderit and when? Can you give me a name and

14 an approximate date?

15 A. It was Mr Bolacek, who at that time performed the job of

16 economist of the company.

17 Q. And what year was that, what month? Do you remember?

18 A. It was in 2004, for sure.

19 Q. First half, second half of 2004?

20 A. Please do not catch me for my word, because I no longer

21 recall that precise information.

22 Q. It was during one of the 365 days of that year; that's

23 how I should understand it, right? Did he contact you

24 in writing, by phone, by email?

25 A. No, we met somewhere, some social occasion. I don't

17:08 1 know exactly how it was. But we just debated in person
2 on this topic and he told me that they were approached
3 to join this venture. And he asked me -- they wanted to
4 know from me with whom, what, and under what conditions.
5 Simply they were asking more details about the project,
6 knowing that I had much more details available which
7 they did not.

8 Q. Now that you know that it was a social occasion, do you
9 remember which social occasion and approximately when in
10 that year? It's a meeting you had. You remember it to
11 a point to put it in writing in a testimony.

12 A. I was meeting these people basically every other day, so
13 please do not ask me to -- they are even my neighbours,
14 some of them. Director of Nižna Slaná Oravetz is my
15 neighbour, Bolacek was another neighbour, Bernard(?) was
16 another neighbour, just like Mihók. So I would meet
17 these people on a regular basis, quite frequently. So
18 we would discuss this topic on more occasions. But
19 officially mainly I debated this with the gentlemen
20 I already mentioned.

21 Q. But you don't recall at which social occasion? I will
22 move on. If you don't remember, you don't remember.

23 A. I am unable to answer what occasion it was, because
24 there were many such occasions.

25 Q. Here you made a representation to Siderit about our

17:09 1 financial capacities. I understand you warned them,
2 from paragraph 54, basically. Why did you write to the
3 government to badmouth us at the time?
4 A. Because I was asked to provide information.
5 Q. You were asked to provide what information, by whom and
6 at what date? Please don't tell me, "It was a social
7 occasion, I don't remember".
8 A. It was Mr Bolacek, who was the economic director of the
9 company Siderit.
10 Q. No, no, I apologise. I am talking about something else
11 now, sir. Let's forget about Siderit.
12 Why did you write to the Government of Slovakia in
13 2004 to badmouth, say bad things about Rozmin in 2004?
14 A. I don't know what you mean. In 2004? What government?
15 Q. The Government of Slovakia, you wrote to them and you
16 badmouthed us. You discredited us.
17 A. I don't know what you have in mind.
18 MR ANWAY: Mr Chairman, I think there's a foundation that
19 has to be laid here first: that such a letter was
20 written, the date of the letter, and we can move on from
21 there. We seem to have skipped a step.
22 THE PRESIDENT: That's right.
23 DR GHARAVI: Sir, did you write or not in 2004 to any organ
24 of the Slovak Republic to discredit Rozmin in relation
25 to the talc deposit?

17:11 1 A. I don't remember, but I think more likely not.

2 Q. Okay. Then could you look at the second document in the

3 pochette. It's R-247. It's a document of November 24th

4 2004. It's a letter from you to the Ministry of

5 Economy. It says:

6 "Dear Minister,

7 "I have taken the liberty to address you in the

8 matter of arrangement of a meeting of the foreign

9 companies ... represented by ... Kolárik, and Mondo ...

10 represented by Dr Keller, who authorized me to arrange

11 the meeting with you.

12 "These companies do business in the mining sector.

13 In particular, they belong to two most significant

14 companies in extraction, processing and sale of the talc

15 raw material in Europe.

16 "They expressed an interest in the talc deposit in

17 the Eastern Slovakia in the locality of Gemerská

18 Poloma ... the presence of which has been known already

19 for several years. They unsuccessfully tried to acquire

20 this deposit already in 1990. Currently, the excavation

21 rights to this deposit are owned by the company Rozmin

22 ... from 1997. Works on this deposit were commenced in

23 1999, and subsequently due to the lack of funds they were

24 discontinued in 2001 and this situation lasts until

25 today."

17:13

1 So why are you writing to the government to
2 discredit us, Rozmin at the time?

3 A. I don't know what is discrediting about this. These are
4 facts based on truth.

5 Q. First I would like to come back to a declaration that
6 you made. You said, "I continued to follow the project,
7 it was close to my heart". Can I add that it was also
8 close to your pocket and to your bank account; that you
9 had also some financial motivations, some greed.

10 Would you agree with me that also ...

11 A. No.

12 Q. So it was purely emotional, purely sentimental, your
13 approach?

14 A. My only effort was to open up the deposit, which I have
15 succeeded in doing.

16 Q. Okay. But emotionally you have feelings towards talc, and this
17 project in particular, no financial considerations;
18 correct? That's how I should understand your testimony?

19 A. No.

20 Q. I will go back to this letter R-247. You said in
21 response to my enquiry that, "I said the truth to the
22 minister". I have two questions. One is: assume it's
23 the truth. Why are you writing to the minister to
24 discredit us? Even if you think the facts are true, why
25 are you writing to the minister?

17:15 1 A. The reason the letter was written: because Mr Keller
2 asked me to do that. It was not my own initiative.
3 This gentleman had expressed interest in this deposit.
4 He wanted to meet the minister, and he asked me to try
5 and organise a working meeting he would like to attend.
6 That's all I can say to this.

7 Q. But that's the upper part of the letter. My question is
8 from the last paragraph. Why do you make that statement
9 that works on this deposit were commenced in 1999, and
10 you add, "subsequently due to lack of funds they were
11 discontinued in 2001 and this situation lasts until
12 today"? Why are you making that representation?

13 A. Because it's the truth, or it was the truth at that
14 time.

15 Q. I understand. I understand. We will get to that. But
16 I am asking you: why are you bringing this issue to the
17 attention of the minister? Why are you notifying of
18 a default situation that you are --

19 A. Because it was the truth.

20 Q. Yes, because it's the truth. Is it your business to
21 write to people to detect the truth? Are you
22 an investigator? Are you a philanthropist? I don't
23 know why. Why you are doing it? I suggest to you that you
24 are doing it for the government to start a process to
25 take it away from us and to give it to you and Mondo.

17:17 1 Is that a fair conclusion?

2 A. Very incorrect. I disagree.

3 Q. Okay. Then tell me: why are you bringing to the

4 attention of the government that we are or may be in

5 default? What is your objective by doing that?

6 A. Because it was the truth.

7 Q. Yes, but that answers the second question I am going to

8 ask you: whether or not it was the truth. I am asking

9 you why you are bringing this alleged truth to the

10 attention of the government.

11 A. Because it was my personal decision.

12 Q. Okay. Personal decision to snatch that mine from Rozmin

13 and to get it, as you ultimately succeeded in doing.

14 It's the facts. You triggered the process, they revoked

15 our mine, and you got it. You triggered, and you were

16 a beneficiary of this.

17 A. No one removed rights from Rozmin. Rozmin did it

18 themselves by not performing excavation activities for

19 which they had a licence.

20 Q. Sir --

21 A. What was my impact on their revocation of rights? What was my

22 fault? Working hard, together with my miners, not

23 getting paid for it? I had to make redundant

24 100 people. 3/400 families were put on the floor.

25 Q. So you're sour. That's where I was going. I am asking

17:18 1 for an event in 2004. You signed a protocol, you moved
2 on, and you go back. You have never recovered from that
3 period. I am here, 2004. Be with me, 2004.

4 I will move on to the next question. What makes you
5 think that the situation that you describe is lasting
6 until that day of November 24th 2004? Based on what
7 information do you draw this conclusion that, "Works on
8 this deposit ... were discontinued ... and the situation
9 lasts until today"? And don't tell me you are talking
10 about extraction. You say:

11 "Works ... were discontinued ... and ... lasts until
12 today."

13 A. Because it is the real truth, or it was real truth at
14 that time.

15 Q. You just mentioned that Siderit approached you,
16 enquired. That suggests that Siderit may have concluded
17 or may be about to conclude a contract; and in fact did,
18 at the time you mentioned, enter into a contract,
19 received downpayments. It had been working since
20 September of that year on special specific orders. It
21 had no bills outstanding. It had no allegation of the
22 sort you raised that you had when you were the
23 contractor.

24 So I ask you again: why are you saying that the
25 works were discontinued at the time? Is it an error or

17:20

1 a lie?

2 A. It is truth that the works were discontinued. Of course

3 I meant works on making accessible the deposit, which

4 was necessary for mining (in Slovak language version: ťažba) to begin.

5 Q. That's not what you mean, because listen: you say works

6 on this deposit commenced and subsequently were

7 discontinued, and this situation lasts until today.

8 You're saying that there are no works undergoing. So

9 the situation lasts today. You use the term "works"

10 that have been discontinued. You're saying this thing

11 is idle?

12 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 and 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.

13 would, not being familiar with the issue and that

14 deposit, is not going to play with words with me,

15 imagining something else other than excavation for the

16 purpose of exploiting talc.

17 Q. I can't let that go, sir. You say the situation has

18 been discontinued, but there is a contract in place with

19 that objective set. That objective may not have been

20 met at the time, but that contract is in motion; there

21 is a downpayment, works have started. Maybe I'm far

22 away from your definition of the 2002 amendment, which

23 I leave aside a minute. But works intended to go to

24 that direction are ongoing, were ongoing at that time?

25 A. It depends what works were underway, because the most

17:22 1 significant moment on this deposit was the high-power
 2 line. At that time, when allegedly Siderit was present,
 3 the line was in our ownership, and I don't know based on
 4 what they would have conducted what kind of work without
 5 having access to electricity. If they conducted this
 6 using diesel generators, it's in violation with the
 7 water proceedings, because it's a third-degree water source
 8 protection area where there are very strict measures
 9 applicable when handling petrochemical products.

10 So I'm convinced that without the high-power line,
11 it was not possible to initiate or to continue drilling
12 for the purpose of achieving -- or reaching, rather the
13 deposit as declared by Rozmin.

14 Q. Could you look at paragraph 29 of your statement. You
15 said on March 16th 1998 you let go of -- you say:

16 "... we concluded, for the purpose of realization of
17 this transaction, contracts on the transfer of
18 shareholding interests from the individual shareholders
19 of RimaMuran to EuroGas, which had thus become the
20 holder of a 55% shareholding in RimaMuran ..."

21 And you say:

22 "The shareholding interests were sold for
23 SKK 1 million ..."

24 But you received 1.55 million deutschmarks, on
25 March 23rd 1998.

17:24 1 Turn to Exhibit C-284. It's in the pochette. This
2 is an acknowledgement of receipt of 1.55 million
3 deutschmarks:
4 "... as consideration for the sale of 56% ..."
5 I think it should have said "55%":
6 "... member's share in RimaMuran ..."
7 It's C-284, in the pochette. It should be there.
8 If it's not, here it is.
9 MR ANWAY: This is C-284 you've just handed up?
10 DR GHARAVI: Yes.
11 MR ANWAY: Counsel, before you ask a question, we're going
12 to get the exhibit for our side too.
13 DR GHARAVI: Yes. (Pause)
14 So you may wish to amend paragraph 29 to say you
15 received not 1 million crowns but 1.55 million
16 deutschmarks.
17 A. I do insist on everything that I have written in my
18 witness statement.
19 Q. Okay. But that one you have written as well, but this
20 I have written for you. 1.55 million, it's not me that
21 has written it; you have written it. You have
22 acknowledged receipt of 1.55 million deutschmarks.
23 A. I am not the author of this document.
24 Q. Who is the author of this document?
25 A. I do not know.

17:27 1 Q. It has your signature, your name on it.

2 A. The signature looks like mine, but I cannot fully

3 confirm that it is also authentically my signature. It

4 is a copy, and what I could only confirm would be

5 an original if I would see it.

6 Q. Well, your name is on it, you would agree with me, under

7 your signature? And I have the signature of your

8 witness statement -- sir, I have the signature of your

9 witness statement, and I have the Slovak original with

10 your name on it, and it looks very consistent. I mean,

11 it looks like you have kept consistently that signature

12 throughout the years; no?

13 A. Again, I haven't received

14 this, probably I haven't even signed it. That signature

15 does look like mine; however, I cannot confirm 100% it

16 is my signature.

17 Q. Okay. It is the first time you see this document?

18 A. No, I'm not seeing it for the first time. I believe

19 I have already commented on it before.

20 Q. So you don't know whether you received 1.55 million

21 deutschmarks on behalf of yourself and three other

22 people; is that your testimony?

23 A. Yes.

24 Q. You rehash things about €100,000 of invoice that cause

25 bankruptcy, and then you don't remember

17:29

1 1.55 million deutschmarks?

2 A. Again, I'd like to state that I have not taken this
3 amount, I have not received this amount, never.

4 Q. Then it's a forged document; correct? If you have not
5 received it, then -- but you say you have not received
6 it, but then you say, "I'm not sure whether it's my
7 signature". That's what bothers me, and I have to
8 engage a little bit with you further.

9 I would understand if you said, "I haven't received
10 that money and I'm sure it's not my signature". But to
11 say, "I have not received that money, but I'm not sure
12 it's my signature", that means you're not excluding it
13 could be your signature; and if you're not excluding it
14 would be your signature, it means you would have cashed
15 that amount.

16 You're a wheeler-dealer, aren't you?

17 A. Again, allow me to state that I have never received in
18 cash an amount in this volume from Mr Rauball, never.

19 Q. In cheque, in bonds, in gold, in talc. Did you receive
20 1.55 million deutschmarks at the time from anyone, let's
21 say, how about that, that year?

22 A. No.

23 Q. Okay, so I ask again. Are you sure or not whether that
24 is your signature on that letter?

25 A. It looks like my signature. I cannot confirm because

17:30

1 this is not an original that I'm seeing in front of me.

2 Q. Yes, but, sir, do you understand how grotesque the
3 situation is? Because if you're sure that you didn't
4 receive 1.55 million deutschmarks, you could only be
5 100% sure that it is not your signature. That's the
6 problem.

7 A. Can you repeat, please?

8 Q. I said: you say you're sure that you didn't receive
9 1.55 million deutschmarks. Then how can you have doubts
10 as to whether or not this is your signature as contained
11 in that letter, where receipt of 1.55 million
12 deutschmarks is mentioned?

13 A. Once again, and I hope for the last time, this amount
14 was never given to me by Mr Rauball in cash, as he
15 states in his witness statement. This document, I dare
16 to say, may be a forged document.

17 Q. "May be". Did you discuss this letter with the other
18 [two] persons that are named?

19 A. I don't know these people, I don't know who that is.

20 Q. Frankly, I am astonished. You know why? Because we
21 submitted that with our statement of [claim], which is
22 more than 18 months, the Memorial, and you have not
23 bothered to enquire whether it's a forgery or not, and
24 you provide a first/second witness statement talking
25 about bills of ridiculous amounts.

17:33

1 You took that money, sir, and you didn't declare it
2 to anyone. That is the truth; correct?

3 A. No, that is not the truth.

4 THE PRESIDENT: Dr Gharavi, I think the Tribunal has
5 understood the point.

6 DR GHARAVI: Okay, I will move on.

7 Do you know when the rights of Rozmin were revoked?

8 A. In my honest opinion, the rights of Rozmin were never
9 taken away from them. They have lost them by their lack
10 of activity, because they simply failed to start the
11 mining activity (in Slovak language version: ťažba) in the prescribed
12 period.

13 Q. Okay, I reformulate. I don't want to engage in a legal
14 battle with you, Mr Corej, but only on factual
15 questions. So I will reformulate, so that you feel
16 comfortable.

17 Prior to January 3rd 2005, how many times did you
18 meet with Mr Dusan Cellar from the Mining Office to
19 discuss this talc deposit?

20 A. Perhaps twice.

21 Q. Is that regular, normal, lawful, to meet with a state
22 representative in relation to a talc deposit when there
23 has been an authorisation granted or a right granted to
24 another contractor? Is that in compliance with the law?

25 A. I believe it is fully legal.

26 Q. You believe. Are you sure? Is that an opinion, is that

17:35

- 1 a wish? What is that?
- 2 A. I am certain.
- 3 Q. How many times did you meet with Mr Kúkelcík prior to
- 4 January 3rd 2005?
- 5 A. About 100 times.
- 6 Q. No, to discuss the talc deposit. To discuss the talc
- 7 deposit. Let's be more specific: in
- 8 November/December 2004, two months before --
- 9 A. Not a single time.
- 10 Q. Okay. How about in January 2005?
- 11 A. I do not recall; perhaps not a single time. There was
- 12 no reason for that.
- 13 Q. And Mr Cellar, who you met, I understand, in
- 14 November/December 2004 -- is that correct, that you met
- 15 in November/December 2004?
- 16 A. Again, please rephrase the question. What's the point?
- 17 Q. It's not a point, it's a question. How many times did
- 18 you meet Mr Dusan Cellar in the months of
- 19 November/December 2004?
- 20 A. I had -- again, I have said perhaps twice.
- 21 Q. Twice. Where?
- 22 A. Well, one meeting was in Košice, if I recall, and the
- 23 second meeting in Bratislava.
- 24 Q. Who was with Mr Cellar?
- 25 A. When?

17:37 1 Q. Well, the two times you met him.

 2 A. Well, I believe he was always accompanied by Mr Keller.

 3 Q. Mr Keller. Anybody else from the District Mining Office

 4 or the Main Mining Office?

 5 A. I am certain that was not the case.

 6 Q. So Mr Cellar was alone representing either the District

 7 Mining Office or the Main Mining Office?

 8 A. Mr Cellar was not on behalf of nor the MMO nor the

 9 District Mining Office. He was there as a private

 10 individual.

 11 Q. He had a function at the time?

 12 A. Well, that doesn't -- the fact that he was an official

 13 doesn't bar him from meeting privately other people.

 14 Q. This I can understand: thank God, being an officer or

 15 a civil servant doesn't bar him to meet others. But to

 16 discuss this talc project, he was discussing it at the

 17 time with you in his personal capacity, you mean?

 18 A. According to my opinion, he was there on his own behalf.

 19 Q. But how can he be on his personal capacity to discuss

 20 an official talc deposit with a potential candidate to

 21 the succession of Rozmin?

 22 A. Because nothing bars him from such meetings. There is

 23 no legal document or no law which would ban him from

 24 meeting and talking about these things. He is a mining

 25 engineer; what am I supposed to talk with him about,

17:39 1 medicine?

2 Q. Where did you meet again, the two times? In his
3 offices, in a café? What was your testimony on that?
4 You said you met him twice: November, December. At what
5 precise location? You mentioned the cities, but not
6 whether it was in your office, in the restaurant,
7 a social gathering.

8 A. You mean Mr Cellar?

9 Q. Oh, yes, we're on the same subject. You know who
10 I mean.

11 A. Twice in Košice, I believe.

12 Q. Please be more specific: in a restaurant, in
13 a discotheque?

14 A. Well, I can give you a precise answer. This was in
15 restaurant Letná in Košice.

16 Q. Okay. Was it the second time or the first time? This
17 is easy.

18 A. Perhaps the first time.

19 Q. Okay. The second time?

20 A. This was again a meeting in Košice, I believe.

21 Q. You are buying more time to think of the location.
22 I know it's not easy when you are making it up. You're
23 making it up, aren't you?

24 A. Once again, when I entered this room I read a statement
25 claiming that I will testify according to -- this is

17:41 1 what I am saying, this is the truth: the way how I have
 2 met, I have experienced it, the way how I have lived it.
 3 That's what I am giving you; nothing else, nothing more.
 4 Q. That's okay. You met him where, the second time? You
 5 met him at what precise --
 6 A. Again, this was in Košice. Once again, Košice.
 7 Q. The first time you had a meal. The second time
 8 probably, if he invited you, you probably invited him to
 9 a restaurant again, or this time to your house. If you
 10 don't remember, you can get it out of the way, say,
 11 "I don't remember".
 12 A. I recall the second meeting was in the house of
 13 technology in Košice.
 14 Q. The house of technology? What is that? A ministry?
 15 A. It's not a ministry. It is a building dedicated to
 16 technology.
 17 THE INTERPRETER: The interpreters add: it is a building in
 18 Košice.
 19 A. It is not a state official building. It is called
 20 Dom techniky, that's just the common term for it.
 21 DR GHARAVI: Okay. What did you discuss at those two
 22 meetings?
 23 A. The first meeting was initiated by Mr Keller, the
 24 before-mentioned Mr Keller. Mr Cellar took part in this
 25 meeting, myself and Mr Benhoda(?). This was a meeting

17:42 1 organised on 11th December 2004 in Košice, in the
 2 restaurant Letná.

3 Q. Do you think you answered my question sincerely? Is
4 there a translation problem? I said: what's the content
5 of the discussion? You repeat now: you met at
6 a restaurant at the initiative of Mr Keller. What was
7 the content? You didn't meet to just eat food, did you?

8 A. No, this was not only about food. Mr Keller came with
9 a [certain] proposal to me, because he knew me from the
10 past. We have met before at the deposit during the
11 Rozmin period. And he knew me as a person who worked
12 there for many years, and considered me an expert in the
13 given field. And that's why he wanted to propose me --
14 which he did propose me -- a certain cooperation, should
15 the situation occur that there will be a tender called
16 for the reassignment of the mining facility or mining (in Slovak
17 language version: dobývací)area
18 to another entity.

18 (Pause)

19 Q. But for Mr Keller to come with a proposal, there must
20 have been a prospect of a tender. So what made
21 Mr Keller believe that there was a prospect at that
22 point in time for the deposit rights to be re-tendered?

23 A. As I mentioned already, Mr Keller had been observing the
24 project for many years. And I suppose quite certainly
25 he was in contact with Mr Rauball at that time when at

17:45 1 the location, since 2001 to 2004 there was no work
2 conducted there. Let me point out: no work related to
3 opening the deposit and drilling work. And since he was
4 familiar with Slovak circumstances, knowing that
5 an amendment was adopted, I think it was in 2002, about:
6 organisation which has mining (in Slovak language version: dobývací)
7 area assigned to it or obtained it by a transfer, is
8 obliged to commence drilling (in Slovak language version: ťažba) within
9 a 3-year statutory period.
10 Based on this act, in December it was almost clear
11 that Rozmin is not going to commence drilling (in Slovak language
12 version: ťažba) - dobývanie. I call
13 it "excavation". Professionally, "dobývanie", that's
14 the key word from my experience. So he expected, once
15 this situation shall occur, we shall submit a proposal;
16 would I be willing to enter in cooperation of a certain
17 kind with him once this situation shall occur?
18 Q. Understood. Let's pause there. Mr [Keller] was
19 interested in his personal capacity or on behalf of
20 Mondo to do this? On behalf of Mondo; correct?
21 A. He acted as a representative of Mondo Minerals. But
22 it's difficult to say now whether it was his personal
23 interest or whether it was the interest of Mondo
24 Minerals as a parent company. But I had rather viewed
25 this as his personal interest.
26 Q. Okay, in his personal interest. Was he also emotional
27 about talc, or sensitive towards talc, or had he
28 a financial perspective, based on how you perceived it

17:47 1 at the time? It's a valuable mine, isn't it; there's
2 a lot of money that could be generated out of this?

3 A. We could talk for hours about this topic.

4 First of all, it's not as valuable,
5 because there were certain stages of geological survey
6 conducted, and mainly only surface bores were drilled,
7 and based on these surface drillings, calculations were
8 made with regard to the size of the deposit. Z1, Z2 and
9 Z3, there are maybe 85,000 kilotonnes, and 146,000
10 kilotonnes of the non-balanced deposit. And I did
11 claim, and I continue to claim, that these are very
12 distorted views upon the deposit, because the drills
13 were done within a network or a grid based on which
14 no one can have a perfect overview of what's the size
15 and yield of that deposit. So that's why I continue --

16 Q. My fault entirely, because I threw a question at you
17 that was so vague, and I understand why you want to go
18 into details, especially that you are passionate
19 probably about this.

20 But let me put it this way: it was sufficiently
21 financially appealing to both you and Mr Keller, in his
22 personal capacity on behalf of Mondo, that it warranted
23 Mr Keller coming in, and you or him setting up, with
24 a representative of the District Mining Office,
25 a meeting to consider the prospects of a re-tender;

17:48

1 correct? I think you can agree on this.

2 A. I disagree with that, because that is not the truth.

3 Whether the motivation of Mr Keller was a financial
4 gain, I cannot answer that, because I did not see inside
5 his soul. I can only say on my own behalf: I have never
6 seen a personal financial gain in this.

7 I have seen a certain realisation, implementation or
8 continuation of my work which had begun before; nothing
9 more and nothing less. The financial benefit: you can
10 have someone who invests his own money, a miner having
11 a return on his investment in time. They may speak of
12 whether or not the deposit was or was not beneficial or
13 profitable. But whether it was a high grade deposit, to
14 say now at this stage is very premature.

15 Q. Sir, can you tell us why Mr Cellar was present? Because
16 your testimony is that Mr Keller came to submit
17 a proposal to you. How does that explain Mr Cellar's
18 involvement at the first meeting?

19 A. I suppose that due to the reason that Mr Cellar was --
20 I'm not sure at that time whether he was already the
21 Košice District Mining Office head. And they have known
22 each other from the past, so I guess he just approached
23 him and he came. And I have to say that Mr Cellar does
24 have at least very little information about this
25 deposit; I would say almost zero.

17:50 1 Q. So what was Mr Cellar's input at that meeting at the
2 restaurant? The first time was at a restaurant;
3 correct? So what was the input of Mr Cellar?
4 A. Basically none.
5 Q. He was sitting there?
6 A. Basically, yes, he would just sit there. He doesn't
7 speak German in fact, so he would have nothing to
8 discuss. If he said something, I just tried to help him
9 translate it.
10 Q. So what was he there for? It doesn't make sense, does
11 it? Sir, I put to you --
12 A. It's his personal decision. He was there as
13 a representative of the Mining Office in the region.
14 Keller knew him from the past, so he came. It was
15 a courtesy call.
16 Q. Sir, may I put to you --
17 A. It's quite legitimate.
18 Q. Sir, may I put to you that this is a valuable mine. You
19 know it. You are a sour former shareholder and
20 contractor. And you set that meeting with Mr Keller to
21 set the basis to have Rozmin's rights revoked, a phoney
22 tender organised for your phoney company that you set up
23 in the name of your wife, who is an accountant with
24 a company that does brokerage, with no financial
25 backing, to then be allocated the tender. Isn't that

17:52 1 the truth? That's the case that I am putting to you:
2 that all this was set up, thanks to you, and the
3 complicity of members of the government.

4 A. That is your opinion, and I am not objecting against
5 that. Because you put ten fragments into a single
6 sentence, I'm not sure it even makes sense to try and
7 answer it. But I think further development will show
8 that we shall get to the individual partial topics.

9 Q. Was Mr Cellar reporting what was going on to Mr Baffi?

10 A. It's a question to Mr Cellar. So, excuse me, I have no
11 professional relation with Mr Cellar. He is the head of
12 the Mining Office. What relations would there have been
13 between Mr Baffi, Cellar and others is not a question to
14 me.

15 Q. How about the Minister of Economy? You wrote to the
16 Minister of Economy, there was a meeting set with the
17 Minister of Economy, I understand, as well, right?

18 A. Yes, that meeting took place, correctly. It did take
19 place. It was a courtesy letter from my side, whether
20 or not the Minister of Economy would accept such
21 a meeting to take place.

22 Q. Okay. And it took place when?

23 A. The meeting took place, if I remember correctly, on
24 12th December in Košice.

25 Q. And Mr Cellar was present as well?

17:54

1 A. Yes, he was.

2 Q. So there were three meetings with Mr Cellar: one at the
3 restaurant; one with the Minister of Economy, you and
4 Mr Keller; and a third at the house of technology during
5 that period of November/December. That makes three, not
6 two.

7 A. Once again, at the time we referred to I have met him
8 twice in December, twice in Košice. So the 11th in the
9 evening and the 12th in the morning. What I have in
10 mind is the period of December 2004.

11 Q. Okay. So you met him twice in November and once in
12 December; is that your testimony?

13 A. I have met him twice in December. I repeat again: once
14 on 11th December, and the second time on 12th December.
15 Once together with Keller, Benhoda and myself; and on
16 the 12th with Mr Rusko in the house of technology.

17 Q. Okay. So the meeting with the minister took place at
18 the house of technology; is that how I should understand
19 it?

20 A. Yes, yes, exactly.

21 Q. And the minister was here in his personal capacity as
22 well?

23 A. He was there personally.

24 Q. I know he was personally. Do you mean physically? Of
25 course he was there physically personally. But was he

17:55

1 as a minister or was he as a layman?

2 A. Certainly he was there as the Minister of Economy, at
3 that time responsible for the sector of mining as well.
4 But he was not motivated by -- his participation was not
5 only motivated by this meeting alone, because they have
6 had some kind of other meetings there at that time which
7 coincided time-wise. So he was able to schedule and
8 thus be able to meet us on that day. We just happened
9 to have worked out time-wise on that day.

10 Q. I listened carefully to what you say; I just don't
11 understand. So the minister was here in his capacity as
12 minister. Then Mr Cellar was there in his personal
13 capacity, or was he then also in his professional
14 capacity? Because you mention personal capacity --

15 A. We are discussing two different things. I am talking
16 about the 11th December meeting. It was Mr Cellar as
17 a private person, together with Mr Keller. On
18 12th December he was likely there as a representative of
19 the mine administration, the District Mining Office,
20 because he was there with the minister to whose ministry
21 the mining sector belongs. I suppose Mr Cellar was
22 there in his official capacity.

23 Q. But the first time he was there personally? The first
24 time, December 11th -- in November, the first time.

25 A. It was in the evening. It was a regular working

17:57 1 meeting. And it was informal. It was not binding,
2 there was no record or minutes made of this meeting. We
3 just were discussing things: what if? And there were no
4 conclusions reached during the meeting. There was
5 a model proposed, and there was a model proposed between
6 Mr Keller and -- not even myself proposing it to
7 Mr Keller: it was Mr Keller proposing me a model for
8 cooperation.

9 Q. Okay. Did you meet Mr Baffi in January 2005 or in
10 December 2004?

11 A. I think not, because even though my organisation --
12 because there are District Mining Offices, and each
13 organisation has jurisdiction into the appropriate
14 Mining Office. But at that time I don't think I had any
15 contact with him and I would not be meeting with him
16 during that period. Even though I say that, there could
17 have been a working meeting. But I think rather not.

18 Q. With Mr Baffi?

19 A. Yes, with Mr Baffi.

20 Q. Again, I apologise, I cannot understand how you cannot
21 remember -- because that's a key period just before the
22 revocation of Rozmin's rights -- whether or not you met
23 Mr Baffi. Because Mr Baffi is the signatory of the
24 revocation letter. He was following the process. Can
25 you make an effort to come with a clear position? Did

17:59 1 you or not meet Mr Baffi in December 2004?

2 A. I say clearly: I have not met with Mr Baffi in

3 December 2004.

4 Q. In November 2004?

5 A. Nor in November 2004.

6 Q. In January 2005?

7 A. Nor in January 2005.

8 Q. Okay. When did you learn of the intention of the

9 District Mining Office to put the deposit in tender?

10 A. It was published in the journal for public tenders;

11 that's where I read it.

12 Q. Sir, you have been meeting, you've been soliciting, you

13 have been triggering the process. There is your letter

14 of November 24th 2004. There are meetings at

15 restaurants, at the house of technology, in relation to

16 the talc project. And you want me to believe that you

17 found out about the tender only when it was published on

18 December 30th; that's your testimony?

19 A. I can say with certainty that I knew about the act being

20 applicable. But whether the Mining Office shall make

21 such steps they did, don't ask me to tell you that

22 I would be aware of Mining Office making such a step.

23 I did not have knowledge of that.

24 Q. What about Mr Rozloznik? I saw in a few paragraphs --

25 I can find them if you want me to direct you to these

18:01

1 paragraphs -- that you value him as a person and as
2 a professional. Is that a correct understanding?

3 A. I have to correct you. I used to appreciate
4 Mr Rozloznik very much. We have known each other for
5 many years as professionals, from sporting activities,
6 we would meet frequently. I nearly had a father-and-son
7 relation with him. Until a situation had occurred where
8 he disappointed me, and unfortunately now with hindsight
9 I have to say that that person has disappointed me
10 greatly.

11 Q. Well, that's at a personal level. How about
12 professionally: do you value his judgment? Do you
13 recognise that he is an industry specialist in the
14 Slovak Republic, a mining industry specialist?

15 A. No, because he is no miner originally. It's difficult
16 for me to judge the work of a geologist. I only knew
17 him as such on one, maybe two or three projects. But it
18 is difficult for me to judge his professional know-how
19 in the area of geology because I have studied deep-mine
20 mineral and non-mineral mining (in Slovak language version: dobývanie)
21 as a profession; it's
22 a fairly different profession. So I would not assume to
23 judge his professional expertise and know-how as
24 a geologist.

24 Q. He came and testified that the term "dobývanie", as set
25 out in the 2002 amendment, does not mean "extraction"

18:03 1 but, as he understood it at the time, to mean "mining
2 works", to start the opening of the mine. Now --
3 MR ANWAY: Mr Chairman, we object to that characterisation
4 of his testimony and it should not be represented to our
5 witness that that was the testimony of Mr Rozloznik.
6 THE PRESIDENT: Could you yourself suggest what you
7 understood from Mr Rozloznik on the definition of
8 "dobývanie"?
9 MR PEKAR: You mean when he was answering my questions or
10 when he was answering Dr Gharavi's question?
11 THE PRESIDENT: Well, both; and if they are different, we
12 are interested in both.
13 DR GHARAVI: I can move on, because there is no material
14 point; it was just a introductory point. I will get to
15 the Supreme Court decision.
16 Have you read the Supreme Court decision? Because
17 you seem to be very much following this, especially
18 after what happened and you became the beneficiary of
19 all this. So did you read the 2011 decision of Supreme
20 Court? I can walk you through it: it basically said
21 that it's only in 2007 that it was provided an
22 explanation as to what the term "dobývanie" meant.
23 Do you recall reading that decision?
24 A. Is that the first one or the second one?
25 Q. So you follow, good. There are three decisions. It's

18:04 1 the one of 2011. My colleague will show you that
2 decision. It was the only one that discussed this
3 point.

4 MR ANWAY: Tab?

5 DR GHARAVI: It should be tab 39, I think. But I don't want
6 to insist too much on that; I am just curious to see
7 whether he has read it. It is on page 25 of tab 39 in
8 the English version, C-36. It should be underlined in
9 the Slovak version. Page 25:

10 "The court of appeal points out the fact that
11 statutory definition of the term mining as of activity
12 of the organization in the mining area through which the
13 acquisition of mineral from the deposit in mining ways
14 occurs, was introduced in the Mining Act only when
15 amended [in reference to a law of 2007] effective since
16 1st June 2007, that is why restrictive explanation of
17 term 'start of mining' of the exclusive deposit, which
18 was adopted by administrative bodies in December 2004,
19 is not correct without an appropriate reasoning."

20 Do you recall having read that decision? Or you
21 didn't care because you got the mine anyway?

22 A. I might have read it, but I do no longer remember its
23 content.

24 Q. Okay, fine. Let's move on.

25 Assume with me that Rozmin's right was rightly

18:06

1 revoked, and I think you would have no problem in
2 proceeding based on that assumption. There was
3 a tender. Let's forget about your meetings in December
4 and November; and the tender, let's assume it was
5 regular.

6 How do you explain that the company that you set up,
7 Economy Agency, with your wife, managed to win that
8 tender? How do you explain that?

9 A. It's a question to the selection commission which made
10 a decision about that.

11 Q. Yes, but you see, I work on the presumption that all
12 this is a phoney and is a big joke, in the meaning that
13 the whole practice is corrupt, because it doesn't make
14 sense for the government to get rid of a contractor that
15 is not serious and then to take a company created by
16 an accountant, whose husband also claims bankruptcy for
17 €100,000.

18 So I'm asking you what you think. It's not
19 a lottery. You can understand why you won a lottery:
20 you took a number and your number fell. But this is
21 a tender. There's the 2002 amendment.

22 A. No one revoked Rozmin his mining (in Slovak language version: dobývací)
23 area; they did it
24 themselves -- due to their inactivity. Everybody which was involved
25 knew very well
26 about this, including Mr Rozložník; he did not speak to
27 one expert but to many. And they told him that unless they will
28 commence

18:08

1 dobývanie/excavation, they will be revoked their (as heard in Slovak)
2 dobývací area pursuant to the new law and that a selection procedure
3 will be initiated to assign (as heard in Slovak) dobývací area
4 to another organisation,
5 which did occur in fact due to objective reasons,
6 because Rozmin did not excavate anything. That is why
7 that tender was called for assignment of this (as a heard in Slovak)
8 dobývací area to
9 another organisation.

10 So the tender was called. It's difficult for me to
11 doubt something which is legally established in Slovakia
12 by law, because it was a legally made procedure, fully
13 accepted and fully published in the journal. I have
14 read it, and exactly to the last point I have met the
15 conditions of the brief in order to be able to
16 participate in that tender.

17 So I suppose and I think even that my project was
18 assessed as the best one due to the reason also that
19 perhaps I was the best familiar with the issue of the
20 deposit because I have been involved in it
21 professionally for the 20/24 years previously.

22 Q. What financial support -- first, let me step back. Why
23 your wife? Why send your wife on the battlefield?
24 Economy Agency, your wife is an accountant: you put her,
25 and you put her as the bidder. Why not yourself?

26 A. Okay, well, my wife is not an accountant, she is
27 an engineering econom[ist], but she is very familiar
28 with accounting as well, and appropriate laws relating

18:09

1 to accounting.

2 With regard to my decision of doing it not
3 through -- it is a misleading information that I have
4 done it through my wife. I have only done it through
5 a company which was in the ownership of my wife having
6 met all particulars in order to be able to participate
7 in the tender.

8 It was my honest decision, after having had the
9 experience previously with Keller, with Rauball, to be
10 able to decide freely like this, and to do it right; and
11 proof to having done it right was the successful outcome
12 of the tender. And in my opinion, based on the bid
13 I have submitted, works were conducted, and today the
14 deposit is opened and there is an excavation underway.
15 That is the most important part.

16 Q. You just said, "I thought it was better to do it in the
17 name of my wife, in a company owned by my wife". I'm
18 just trying to understand when you took the decision to
19 put that company in the name of your wife, and why did
20 you proceed this way.

21 So, first question: when did you decide to create
22 Economy Agency?

23 A. Economy Agency was not established before, it has been
24 a long-standing company by then. So I have to correct
25 you on that. It was only one thing which occurred:

18:11 1 every company wanting to participate had to hold
 2 a mining permit.

 3 So I extended the scope of business of Economy Agency to cover the
 4 mining permit based on my
 5 professional aptitude for performing mining activities and activities
 6 conducted by mining means.

 7 So that is why I legitimately was able to participate in
 8 this tender.

 9 Q. That I understand. But why a company in the name of
 10 your wife? This I don't understand. This is what
 11 I want you to help me with.

 12 A. There were several options available, as I already
 13 mentioned. With Keller, Keller all of a sudden at the
 14 last moment had refused cooperation; he said he will
 15 participate or he will bid by himself. I could continue
 16 in the tender with my former company. In the former
 17 company, the shareholders were no longer interested.
 18 I could have found a new company.

 19 I was approached by Belmont that they would be very
 20 happy if I were to join them in the tender, regardless
 21 of through which company, but if I were to succeed with my
 22 project, to get in touch with them, and then we will go
 23 into it together. So after having had the previous
 24 experience and after having made up my mind, I have
 25 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

18:13 1 go with the others, but why you created a company and
2 put it in the name of your wife and proceeded this way.
3 But I'll move on.
4 The question now I have for you is --
5 MR ANWAY: I would just object to that characterisation. He
6 did not say he created it and put it in the name of his
7 wife.
8 DR GHARAVI: The question I have for you is: what was the
9 financial plan? What was the financial backing? You
10 say you won because you had the best proposal, technical
11 proposal. But financially speaking, what was the
12 backup? What guarantee did you give to the government
13 that you would yourself -- "yourself" meaning the
14 Economy Agency -- proceed with the project?
15 A. Well, first of all, the decision was not made by the
16 government but a selection committee which was appointed
17 by the District Mining Office which was responsible for
18 this dobývací area, for this location. The fact that
19 the parameters for the selection procedure are defined
20 by law, also the fact that the committee assessed the
21 bids as they have assessed them, I couldn't have any
22 influence on that, nor have I tried to influence it.
23 This was a legitimate decision of the committee.
24 Q. Sir, that was not my question. Every time I ask
25 a question to a witness of the Respondent, they say this

18:14 1 law was applied. Yeah, yeah, yeah.

2 My question is: what was the financial proposal?

3 The letter you sent on 24th November 2004, for example,

4 the one that we had read, R-0247, mentioned that the

5 above-mentioned companies -- you were talking about

6 Mondo -- expressed an interest in investing

7 40/50 million. And the goal, I understand, of the 2002

8 amendment was precisely not to allow companies that

9 didn't have the means to secure the project. That's why

10 I'm asking you.

11 It's a very direct question, sir. Did you have that

12 money sitting in the account? Do you have a lot of

13 money and you put that as a guarantee? What did you

14 say?

15 A. Well, this is clearly defined in the project. A project

16 has a part which talks about a financial backing. We

17 had the credit pledge of a bank; I think this was enough

18 for the selection committee. I had also backup plans in

19 my head, because I had several investors who were

20 approaching me.

21 Q. I was not talking about your head. Let's stop there.

22 You said you had a pledge from the bank. What was

23 the content of that document? Who issued it? What were

24 the terms of it?

25 A. I think it was issued by Tatra Banka branch office in

18:16

1 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
5 takes tens of millions of dollars, you commit to it; you
6 talk to a bank institution, it issues a letter, you
7 submit that. And you say you don't remember, and you
8 come up with these bills again, dating from a long time
9 ago, of petty cash. How can you not remember the terms
10 of the letter? Please make an effort.

11 A. Once again, it was a credit pledge from the bank that if
12 we succeed in the selection procedure, they will finance
13 the project.

14 Q. They would finance the project or they would sit down
15 with you to discuss possible financing of the project?
16 They are two different things.

17 A. You are correct, it's not the same. I don't know how
18 much you are familiar with my project, but my project
19 included all the required parameters as they are
20 required for a project, including a business plan
21 covered with the financial backing, who will do what and
22 when. On the basis of this project I approached the
23 bank, and on the basis of this business plan I have
24 received a promise from the bank that, yes, according to
25 their opinion, this project can be implemented. I don't

18:17 1 think that they will issue a pledge like that just, you
 2 know, on the basis of nothing.

 3 Q. Do you still have it? Would you agree to show it to us,
 4 by curiosity? We would like to see it. Do you have an
 5 objection? I mean, of course your lawyer would say
 6 whether it's appropriate or not to provide it. But do
 7 you have a copy of it?

 8 A. Well, I certainly don't.

 9 Q. You don't, with archives as well? What is that? What
 10 is this? How can you be sure you don't have it?

 11 A. Well, I am quite certain I don't have it because the
 12 bank issued it to me, the document is one original, this
 13 original is a piece of the project bid, and I suppose
 14 the bank might have it in their archive.

 15 Q. You didn't do a photocopy of it?

 16 A. No.

 17 Q. Okay, let us move. And I think we should have five more
 18 minutes, not more, I think.

 19 Sir, what was your intention when you submitted the
 20 bid? Was it your intention for the Economy Agency,
 21 directly or through you -- not talking about third
 22 parties -- Economy Agency, directly or through you,
 23 Mr Corej, [to] implement the project, or was it for you
 24 to get it and then sell it to somebody or bring in
 25 somebody to do it? I'm not talking about what you did;

18:19

1 I'm talking about your intention and what you
2 represented. What did you represent and what did you
3 intend?

4 A. My main motive and single motive was the following: to
5 make sure that I will successfully pull this project.
6 I was unfortunate enough that during the '90s, all the
7 way up to 2004, I was meeting investors who were behind
8 companies such as Belmont and EuroGas, and I was
9 disappointed that this significant project in terms of
10 employment, in terms of mining activities for the
11 district of Rosnava, this project has failed.

12 For that reason, when in 2004 I started to consider,
13 on the input or on the incentive of Mr Keller, or taking
14 another angle on this project, I was again disappointed
15 also by Mr Keller. And just before the selection
16 procedure, when Mr Keller cancelled all the agreements
17 that we had, I took a decision on my own that I will
18 enter this tender procedure on my own and I will prove
19 to everyone that I can pull this project through.

20 The result is that I have succeeded. The project
21 that I have elaborated was the basis for the final
22 opening, and it is perfectly functional. I have
23 nothing to be ashamed of. I am very glad that this
24 deposit is finally serving its purpose.

25 Q. Maybe that's the case, but you still have not answered

18:21

1 my question. My question was a simple one.

2 When you applied, when you submitted your
3 application, did you intend for Economy Agency to carry
4 out the project directly itself, without any financial
5 support, or through you, Mr Corej, without any
6 third-party investors; or did you intend to take that
7 project, once you won, sell it or bring in another
8 partner, and for that other partner to do all the
9 financing and carry it out?

10 A. Definitely no. Because in my business plan the idea is
11 clearly outlined, what was my idea on the implementation
12 of this project. Already before in the history, and
13 also in the case of this project, my intention was to
14 employ my employees, those people who had to be laid off
15 in the year 2000. So I was employing them at other
16 jobs, other contracts. And therefore I was very glad
17 that in 2005 the selection procedure concluded as it
18 did, and I had a very clear business plan on how to make
19 the best use of my employees for these works.

20 Later, when I have merged with another applicant,
21 Mr Engel, who approached me with a proposal to
22 cooperate, we finally opened this talc deposit. And the
23 main part of surface and opening works, and also the initial approach,
24 was done by my company. And that's why I am happy that
25 I found jobs for my employees, who could succeed in the

18:23

1 case of opening this talc deposit. And now they are
2 working for another company, and at least they have
3 partially covered their fees and their employment for
4 the current day. This was my leitmotif.

5 Q. I understand that your testimony is that once you
6 obtained the project, you engaged into new negotiations
7 with other companies, including with Mr Rauball, for
8 Mr Rauball to possibly step in to provide financial
9 support. Is that correct?

10 A. This is quite misleading. Mr Rauball -- not
11 specifically -- Mr Agyagos -- had approached me
12 during the process of preparing the project with
13 a proposal to write a project and, if I would be
14 successful, to join them, or to merge with them, and we
15 would create a joint group, under certain conditions,
16 and we would continue to work on this project.

17 But I understood quite quickly that this is just
18 a sidestep from Mr Rauball's side. Because when I asked
19 him how will he guarantee the financial backing of this
20 project, he said, "Just behind the corner there is
21 a bank which will finance it". It was quite clear to me
22 that he had no idea; or at least from his behaviour, it
23 was quite clear that this cooperation with me is [not]
24 serious.

25 That was the reason for me to refuse his proposal.

18:24

1 This was a proposal by means of a company I was not
2 familiar with, and he wanted me to transfer this mining
3 area or excavation area to this company I was not
4 familiar with. So I am very glad I have merged with
5 Mr Engel and we have fulfilled this project to
6 a successful end.

7 Q. But you did meet Mr Rauball after the selection process,
8 once you were awarded the tender, to discuss his
9 proposal, correct? You listened to him?

10 A. No, I was talking to Mr Preuss. That was a man who
11 approached me, and he offered me a cooperation on this
12 project.

13 Q. Could you turn to paragraphs 40 and 41 of your second
14 witness statement. At paragraph 40 you say:

15 "After the selection procedure I was contacted by
16 Mr Preuss, as the authorized person of the group
17 EuroGas. I knew Mr Preuss because he often represented
18 Mr Rauball at meetings, and he also acted on behalf of
19 the company EuroGas ..."

20 Then 41:

21 "At the meeting in Vienna, Mr Preuss submitted to me
22 an offer for cooperation, this time with the company
23 Transunited Corporation, which had its seat in
24 Liechtenstein, to ensure financing of the works at the
25 deposit. When leaving the meeting I also met

18:26 1 Mr Rauball. During a short discussion, he told me that
2 it is no problem to ensure money for financing the
3 project. I was willing to listen to his proposal."

4 Then you say, 42:

5 "After exchange of drafts of the cooperation
6 agreement, however, I realised that Mr Rauball could not
7 demonstrate and commit to financial support of the
8 project and that there is actually no money for the
9 works at the deposit."

10 What I don't understand is that you don't believe in
11 EuroGas, in Mr Rauball. You say that he is the cause of
12 your misfortunes in 2001. Then you write to the
13 government, you say, "These guys are losers, they don't
14 have the money". You have a project to move this
15 forward. There is the 2002 amendment, you get the
16 project, then you sit down with Mr Rauball to discuss
17 project financing to move forward? What sense does that
18 make?

19 A. I think you have talked initially about the year 2001,
20 not 2004. This was the beginning of our problems with
21 Mr Rauball. Well, it was an offer from their side.
22 I thought that Mr Rauball is now a more serious trading
23 partner. However, when we have started to discuss
24 particulars of this project, I again saw misleading, and
25 this would bring me to a dead end. And I did not want

18:27 1 to relive the situation from 2001, when I was in a very
 2 unfortunate situation, given the collapse of the
 3 project. And I was very sorry for that, because this
 4 project has a certain perspective.

5 Q. But you did say that you exchanged drafts of
6 cooperation; paragraph 42. And I wanted to draw your
7 attention to one of the drafts that you mention, which
8 is R-250, in the pochette you have. And you mentioned
9 in your testimony that you didn't think all this was
10 a serious proposal.

11 I want to cover the content with you. The draft
12 says: Transunited Corporation with Economy Agency. "The
13 company TC", which is Transunited, moves forward:

14 "... is interested in cooperation ..."

15 Item 3 says it:

16 "... provide[s] funds to open the deposit ...
17 SKK 300,000,000, of which SKK 50,000,000 will [go to]
18 ... EA ..."

19 Which is Economy Agency.

20 Then at 6 it says:

21 "The company EA ..."

22 Which is yours:

23 "... will be prepared, after completion of the
24 opening works, to transfer its ownership interests to
25 the company ... in the amount of 100% ..."

18:29 1 So what I understand is that Transunited here is
2 proposing with you, in this draft, for it to finance the
3 project, with 50 million upon signature of this
4 agreement, then proceed, and at the end it will get the
5 100%.

6 So what would you get out of this? You were going
7 to pocket that 50 million and keep it? May I suggest
8 that?

9 A. You totally fail to understand me.

10 Q. What's the rationale of this agreement?

11 A. If you have read this agreement well, I do believe that
12 there is a clear bottom line. My intention was the
13 following: to finally open the deposit, and to make sure
14 that we will finally start the excavation; nothing less,
15 nothing more. I wanted to make sure that I, as someone
16 who is very familiar with this issue, who has spent many
17 years on this site, who has managed various openings on
18 various borehole drills, what I wanted was to have the
19 authorship/oversight over of this project, and also to
20 be responsible for one thing, namely to make sure that
21 the funding will be available. And once the deposit
22 would be open, I was willing to transfer the ownership
23 to this company Trans-whatever, but let's call it
24 Mr Rauball. This was my only and single wish.

25 It took a different shape at the end. I am no

18:31

1 longer working on this deposit anymore. So the opening
2 works are completed and the raw material is excavated.
3 I am satisfied.

4 Q. We heard that, but I am there now. When did you win the
5 tender? The tender result, when was it? It was
6 April 2005; correct?

7 A. I believe so.

8 Q. So immediately when you win, who you start negotiating
9 with is with Mr Rauball?

10 A. Correction, correction. There is a mistake. This is
11 not 22nd April 2005; this was supposed to be
12 22nd May 2005. There was a mistake. This was on
13 22nd May, not 22nd April.

14 Q. Well, I have the Slovak version and it says 22nd April.
15 And in your testimony it refers to also -- this document
16 doesn't have a date. But anyway, it doesn't matter;
17 April/May.

18 You win the tender. There is this amendment of the
19 law that requires you to move forward the project. You
20 say that that matches your heart. Then you just kicked
21 out -- rightly, let's say -- Rozmin, that is owned
22 directly -- let's say claimed to be owned -- by
23 Mr Rauball at the time, or his group of companies. And
24 then you immediately not only meet with him to listen,
25 but you engage in exchanging drafts. So I find that extraordinary.

18:32

1 I think that it is untenable that this whole story that
2 you put forward makes sense.

3 But I'd like to move on and understand the rationale
4 behind this. Under the draft, what were you going to
5 get? What was Economy Agency going to get? The way
6 I read it, you were going to get 50 million, you were
7 going to pocket it. The other one was going to finance
8 it, open it. And then you would ...

9 A. This is a totally misleading interpretation and you have
10 absolutely failed to understand the content of this
11 document.

12 I would like to repeat that I have bound myself,
13 when I have entered this tendering procedure, that if
14 I succeed, I have promised to myself that I will pull
15 through this project. This, in my understanding, was to
16 make accessible this deposit, open up this deposit. And
17 for me it doesn't matter whether it would be excavated
18 over 50 years, 100 years, whatever.

19 And one other comment. Rozmin did not lay me off.
20 I was not made redundant. I never was an employee of
21 Rozmin.

22 Q. What I was trying to understand -- I will ask you one
23 more time -- is: what was your consideration? What are
24 you going to get financially? I don't want the
25 emotional consideration. Financially, what were you

18:34 1 going to get, according to the draft that we just read?

2 A. Well, I suppose I was paid for a certain work. I was

3 supposed to perform expert oversight. This is what

4 I was supposed to receive my remuneration for. For me

5 this was a lot.

6 Q. So you were going to get the project, immediately give

7 it to the hand of somebody else, without any financial

8 contribution, and you were going to go get a salary from

9 that company?

10 What is your present deal? Let's move on. What's

11 your present deal? After that, you gave it to

12 a company, right? So what was your deal with that

13 company?

14 A. I never gave anything to anyone. In the tender we had

15 seven companies involved. And the company which was

16 second in the overall, I think this was Východoslovenské

17 Kamenolomy a.s., the owner of this company approached me

18 after the tendering procedure, whether I wouldn't be

19 interested in working together on opening this deposit,

20 and he guaranteed financial backing of this project.

21 Q. Okay. But what's exactly your deal with VSK Mining?

22 What's your deal? What's the exact term? What is your

23 contribution? What are you receiving financially?

24 A. There was a merger of these companies, and eventually

25 only VSK Mining ended up as the final company, because

18:36 1 they had a gypsum deposit and one other deposit. I have
2 agreed with these transfers that they had within the
3 company. But my condition was that in any case I have
4 to perform the authorship/oversight/supervision over the
5 project.

6 Q. I am asking you: what did you get? You merged. How
7 much did you get in cash upon signature of the
8 agreement? How much did you get? What did your wife
9 get? How much did you get, directly or indirectly?

10 A. Nothing.

11 Q. Nothing?

12 A. Nothing.

13 Q. So what was the consideration? What was your financial
14 reward for that?

15 A. In my case, this was the honour of the miner, the
16 tradition. My father was a mining engineer. My brother
17 is a mining engineer --

18 Q. I don't care about --

19 THE PRESIDENT: Don't interrupt, please, Dr Gharavi.

20 A. Personal profit on this project was not my motivation,
21 nor is it a motivation today. My intention was
22 a certain personal ambition, a personal promise which
23 I have carried out, and this cleans me.

24 And I have to say one thing: that this makes me very
25 proud, that this project is implemented as I have

18:37 1 projected it. Up to 99%, this is my project. I haven't
2 failed in a single thing: nor projecting the initial
3 shaft, nor projecting the distance. I have [not] failed
4 in 7%; we are talking about 4,160 metres. I haven't
5 failed in projecting the main directions, the main
6 angles. So all my projects, everything was done.
7 4,000 metres were drilled in 24 months.

8 MR ANWAY: Again, Mr Chairman, just the issue of time.

9 I know we are past our --

10 DR GHARAVI: We are finishing, which will be a few minutes
11 maximum.

12 THE PRESIDENT: First. I think there is a correction to be
13 made in the transcript: I suppose it is, "I have not
14 failed"? Yes, okay.

15 Not too long, Dr Gharavi. We can go on tomorrow.

16 DR GHARAVI: No, I really would like to finish.

17 THE PRESIDENT: Yes, but quickly then.

18 DR GHARAVI: Yes, but it depends on the answers, you
19 appreciate that. I don't feel --

20 THE PRESIDENT: It depends on both the questions and the
21 answers.

22 DR GHARAVI: Yes. If I get an answer to my question which
23 is very simple, what you got in return, if it's zero
24 I am fine and I will move on.

25 But is that what you say? Is your testimony that

18:39 1 you received zero from the 100% merger? I want to make
2 that clear. Is my understanding correct? You
3 transferred the 100% share and you got zero direct and
4 indirect financial benefit?

5 A. Allow me to restate and reformulate. No, my personal
6 miner's honour is more to me than any financial profit
7 from such activity.

8 DR GHARAVI: That means, "I don't want to answer".

9 THE PRESIDENT: Well, that's his answer.

10 DR GHARAVI: But what do I understand from the answer?

11 THE PRESIDENT: That's an answer.

12 DR GHARAVI: Okay.

13 A. I believe I have answered your question. I haven't
14 looked for any personal profit. This is valid today,
15 and it was valid before.

16 Q. You say at paragraph 61 -- and I will end with that:
17 "The works were completed sometime in 2009 and in
18 this period, I presume in April, the first ton of talc
19 was extracted."

20 So within this time, your definition of extraction,
21 dobývanie, when did you achieve that? Do I understand
22 that it should mean in April 2009?

23 A. If it has a date, I believe that was the situation.
24 I don't think I have inserted this in my witness
25 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 Q. That's what you say, sir. So that I understand, what's
6 the start date for the running of the three-year period?
7 We agree on an approximate date -- and I give you that
8 it's not a scientific date -- April 2009, extraction
9 started. When did the three-year period start to run?

10 A. I cannot answer this question. This is a question for
11 the Mining Office. I am not a representative of the
12 state mining administration.

13 Q. But you --

14 A. I am an expert on mining technology. The deadlines and
15 the different stipulations of law have to be followed by
16 legal experts. My task was different: I was supposed to
17 solve the technical problems, which are much more
18 complicated.

19 DR GHARAVI: Sir, I will continue tomorrow, if you will
20 allow me.

21 THE PRESIDENT: So the cross-examination is not completed,
22 and there may be re-direct from the other side. So you
23 will have to come back to this room tomorrow morning at
24 9 o'clock, and in between you are not to talk about this
25 case with anyone, please. That's the rule for

18:42

1 witnesses.

2 MR ANWAY: I think we also may have agreement that tomorrow
3 we may try to end a little bit earlier, since these have
4 been relatively long days. Counsel, you can confirm,
5 but I think the hope is to try to end around 6-ish
6 tomorrow.

7 DR GHARAVI: It depends on the answers, but we will try.

8 THE PRESIDENT: Tomorrow, after Mr Corej, we have Ms Jarvis.
9 Will they be together, Mr Gardiner and Ms Jarvis, or in
10 succession?

11 MS BURTON: I think they will have to be in succession.

12 THE PRESIDENT: So we will start with Ms Jarvis?

13 MS BURTON: My understanding is that they are presenting her
14 first, then Mr Gardiner, then Mr Anderson.

15 MR ANWAY: No, I don't think we've ever had any prior
16 discussion about whether they'd be heard together or in
17 succession. Our understanding is they would be heard
18 together, since it was a joint report.

19 MS BURTON: Well, the first report wasn't.

20 MR ANWAY: Put another way, Mr Gardiner did not issue
21 a report without Ms Jarvis. The only report he ever
22 issued was with her.

23 THE PRESIDENT: You could have her first alone, and then the
24 two together.

25 MS BURTON: That would make more sense, I think.

18:43

1 MR ANWAY: If that's the case, then the questions when only

2 Ms Jarvis would be here would have to be limited to

3 matters covered in her first report.

4 MS BURTON: Right.

5 THE PRESIDENT: Okay, thank you. See you tomorrow.

6 (6.44 pm)

7 (The hearing adjourned until 9.00 am the following day)

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