

**MINISTERSTVO ŽIVOTNÉHO PROSTREDIA
SLOVENSKEJ REPUBLIKY**
812 35 BRATISLAVA, NÁMESTIE LUDOVÍTA ŠTÚRA 1

**THE MINISTRY OF ENVIRONMENT
OF THE SLOVAK REPUBLIC**
812 35 BRATISLAVA, NÁMESTIE LUDOVÍTA ŠTÚRA 1

Mr Jeremy Wates
Secretary
Aarhus Convention
UNECE, Environment, Housing and Land Management Division
Bureau 332, Palais des Nations
CH – 1211 Geneva 10
Switzerland

Bratislava, 2 December 2009
No.: 59506/2009/106 77/2009- 7.3
Ref: ACCC/C/2009/41

Re: Reply to the Communication to the Aarhus Convention Compliance Committee concerning compliance by the Slovak Republic with provision of the Convention in connection with the extension of the Mochovce nuclear power plant (Ref. ACCC/C/2009/41)

Dear Mr Wates,

In response to your letter ref. ACCC/C/2009/41 of 23 July 2009, by which you addressed the National Focal Point with the request to make statement to the above communication submitted by GLOBAL 2000/Friends of the Earth Austria and addressed to the Convention's Compliance Committee, enclosed you will find requested replies concerning compliance by the Slovak Republic with provision of the Convention in connection with the extension of the Mochovce nuclear power plant.

Yours sincerely

Enclosure:

- requested replies

MINISTERSTVO
ŽIVOTNÉHO PROSTREDIA SR
nám. Ludovíta Štúra 1
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JUDr. Natália Liškayová
Director General

Division of Legislation and Coordination of
the State Administration Performance

Question no. 1:

Please explain the decision-making process related to the Mochovce nuclear power plant.

Please provide and explain the legislation applicable permits for nuclear power plants, and clarify in more detail the various different permits referred to in the communication. In particular, explain the legal effects of each permitting decision.

1. History and general facts about the Mochovce Nuclear Power Plant

The Mochovce Nuclear Power Plant (Mochovce NPP) is situated in Southern Slovakia, 120km East of Bratislava in Levice *Okres* (District).

Documentation for the selection of the site of Mochovce was drawn up in accordance with legislation in force at the time in September 1979 and site selection took place in November 1979. 31.01.1980 was the deadline for submission of the study of the complex to the investor by the general designer with a content broader than the scope mandatory under Decree No. 163/1973 Col. on building documentation. The general plan for the site was completed in March 1981. The commission selected the site in November 1979. The project received a land-use decision after land use proceedings conducted at the Levice ONV (District National Committee) on 18.09.1980. This decision was amended in June 1981. The general designer then began preparation of the Design Task in accordance with Decree No. 163/1973 Col. on building documentation and preparation work began in the Mochovce area. The ultimate aim of the operator the Mochovce NPP was to build and operate the power plant with safety levels in line with international practice. To this end, a number of inspections by international experts and organisations were carried out during construction and their results were incorporated into the plans in order to ensure a high level of safety and reliability for the operation of the VVER-440/V213 block.

In 1990–1991 work on the Mochovce NPP was curtailed due to the lack of funds. At that time construction of buildings was 70% complete and commissioning of equipment was 25% complete. Since 1992 work has focussed on preserving and protecting the installation so that if a decision is taken to restart construction it will be possible to put it into effect immediately. In 2003–2005 a safety concept was developed for the completion of blocks 3 and 4 with the aim of incorporating the enhanced security measures implemented for blocks 1 and 2 into enhanced safety requirements for blocks 3 and 4.

The state of work on the blocks meant that foreign investment would be needed. The privatisation of Slovenské Elektrárne a.s. /The Slovak Power Plants, Ltd./ by the Italian company Enel SPa in 2006 reopened the possibility of completion. The decision to complete MO 3 and 4 was taken in February 2007 after negotiations between the Slovak Prime Minister, Mr Róbert Fico, and the General Director of Enel, Mr Fulvio Conti. Work on blocks 3 and 4 commenced officially in November 2008. The start of construction followed the issuing of permission by the Nuclear Regulatory Authority of the Slovak Republic (NRA SR or the Authority) /*Úrad jadrového dozoru SR/ÚJD SR*), in Decision No. 246/2008 approving changes in the building and equipment for the project before completion, which set 31.12.2013 as the deadline for completion of construction. At present it is expected that block 3 will enter service in 2012 followed by block 4 in 2013.

2. Procedure for the granting of consent or permission (permission process) under the Nuclear Act – general

Under the current form of Act No. 541/2004 Col. on the peaceful use of nuclear energy (the Nuclear Act) and the amendment of certain acts (the Act), the competent regulatory body for nuclear safety in nuclear installations and the use of nuclear energy is the Nuclear Regulatory Authority of the Slovak Republic. The Authority is the only body competent to issue permits for the use of nuclear energy and the use of nuclear energy without a permit is prohibited. Section 5 of the Act sets out the activities for which a permit is required. They are:

- a) the construction of a nuclear installation,
- b) the commencement of operation of a nuclear installation,
- c) the operation of a nuclear installation,
- d) a stage of decommissioning,
- e) the closure of a storage facility and institutional control,
- f) the disposal of nuclear waste or irradiated nuclear fuel,
- g) the handling of nuclear materials in a nuclear installation,
- h) the import or export of nuclear materials,
- i) the export of special materials and facilities in accordance with special regulations,
- j) the transport of radioactive materials including international transport; such permission shall not apply to the person who carries out transport if they are not also the transport operator,

- k) specialised training of the employees of the holder of permission under points (b) to (g),
- l) return of radioactive waste under section 21(11)(a) of the Act,
- m) import of radioactive waste under section 21(11)(b) of the Act,
- n) the handling of nuclear materials outside a nuclear installation,

The different types of permit issued by the Nuclear Regulatory Authority are constitutive administrative acts that allow the holder to legally perform the activities set out in the permission.

Under section 121(2)(e) of Act No. 50/1976 on land-use planning and building proceedings (the Building Act), the Nuclear Regulatory Authority of the Slovak Republic is **not only the regulatory authority for nuclear security in accordance with the Nuclear Act but also a specialised building authority for the construction of nuclear installations** and buildings associated with nuclear installations situated in the area defined by the limits of the nuclear installation.

In general, a permit application is submitted to the Authority. The Act defines the particulars that the permit application must contain. Applicants who are natural persons must provide their name and surname, permanent residence and their reference number, if previously assigned by the Authority. Applicants who are legal persons must provide their name, registered office, organisational identification number, the name, surname and permanent residence of the persons who are the statutory bodies or a member of the statutory body and their reference number, if previously assigned by the Authority. The applicant shall also state the purpose, kind, type, scope and location of the activities to which the permit or consent application relates, the period for which the applicant wishes to carry out such activities and the method for the termination of activities.

The application shall include

- a) proof of the good character of a natural person or every natural person who is the statutory body or a member of the statutory body a legal person in the form of an extract from criminal records no more than three months old.
- b) in the case of a legal person, an extract from the companies' register or equivalent register kept in a member state no more than three months old, if the legal person engages in business activity; in the case of a natural person, an extract from the trades register or equivalent register kept in a member state no more than three months old, if the natural person engages in business activity,
- c) the memorandum of association, foundation deed or charter, in the case of newly established subject,

- d) in the case of an application for consent for the location of a storage facility or an application for building permission for a storage facility, proof that the state is the owner of the land on which the storage facility will be situated on built,
- e) proof that the applicant has functional technical equipment for the proposed activity and proof that the applicant has permanent employees with the necessary qualifications,
- f) proof of procedures for the disposal of radioactive waste, including financing, if the proposed activities will produce radioactive waste,
- g) documentation of the ownership and organisational structure of the applicant for consent or permission, if the applicant is a legal person,
- h) documentation required for applications for specific types of consent or permit in accordance with the annexes of the Act,
- i) documentation of the number of permanent employees and their qualifications,
- j) in the case of applications under other regulations, the documentation required under the other regulations (e.g. Act No. 24/2006 Col. on environmental impact assessment and the amendment of certain acts, or Act No. 50/1976 Col. on land-use planning and building proceedings (the Building Act)).

The Authority shall give permission only to natural persons who are competent to perform legal acts and are of good character, and to legal persons whose statutory body or each member of whose statutory body is competent to perform legal acts and of good character and who have functional technical equipment for the proposed activities and an adequate number of qualified permanent employees.

The Authority shall conduct proceedings and issue consent or permits **independently of any other administrative authority**. The applicant is the only party to proceedings. If the Authority finds that the application does not include the particulars required by law, or if the application does not include the required supporting documentation, it shall notify the applicant within 30 days of the need to remedy the deficiencies of the application or supply additional supporting documentation. The notice shall set a reasonable period, not less than 30 days, for the remedy of deficiencies in the application or supplying the necessary supporting documentation. In the notice the Authority shall also inform the applicant of the consequences of failure to remedy deficiencies or provide additional supporting documentation. The Authority shall decide on the issuing of

permission after verifying that the applicant satisfies all conditions laid down by the Act and relevant generally binding regulations issued under the Act. For this purpose, the applicant must allow inspectors from the Authority and persons selected by the Authority to have access to the buildings and other premises of the Applicant and provide necessary cooperation in the performance of inspection verifying satisfaction of the conditions set out in the Act and the permit. In the decision on the permit the Authority shall state the identification data of the applicant and their assigned reference number, define the scope and content of the consent or permit; the decision may include conditions for consent or permission; it may set a time limit or technical limit for the period for which the consent or permit is granted.

If the holder of permission breaches an obligation laid down by Act or generally binding regulations based on the Act or the conditions set out in the decision on consent or permission, the Authority may amend or cancel the granted consent or permission.

The Authority may cancel or amend consent or permission if the holder does not remedy deficiencies identified by the Authority by the deadline set by the Authority or if the holder requests the cancellation or amendment of permission in writing.

Consent or permission shall expire on the death of the permit holder if they are a natural person or when they are declared dead, or on the dissolution of the holder if they are a legal person, or at the end of the period for which the permit was issued or by a decision of the Authority cancelling the permit.

2.1. Location of the building of a nuclear installation

The location for the construction of nuclear installations is governed by general regulations on land-use planning, i.e. Act No. 50/1976 Col. and the competent authority for decisions on the location for construction is the municipality or, if it reserves the power, the regional building authority. The parties to land-use proceedings are the applicant, the municipality, if it is not the competent building authority and others who are recognised as parties under relevant regulations (e.g. Act No. 24/2006 Col. on environmental impact assessment). In addition, legal persons and natural persons shall be parties to proceedings if their ownership or other rights over land and buildings, including residential property, may be directly affected by the decision.

The Nuclear Regulatory Authority of the SR /NRA SR/ has the status of an interested authority in land-use proceedings. It may submit comments and objections in consent issued under section 5(2) of Act No. 541/2004 Col. The general building authority shall take the requirements of the NRA SR into consideration in land-use proceedings as conditions for the location of the building incorporated into the decision on the location of a building.

As regards the conditions governing the opinion of the NRA SR as an interested authority on the location for construction of a nuclear installation, the Nuclear Act sets specific conditions for the issuing of **consent for the location for construction of a nuclear installation**, i.e. a full list of documentation that must be submitted to the Authority together with the application:

- a) an environmental impact assessment for the nuclear installation (in accordance with Act No. 24/2006 Col.), if required under Act No. 24/2006 Col. and an assessment of the potential effect of the surrounding environment on the nuclear installation,
- b) preliminary safety report,
- c) preliminary report on the method for decommissioning,
- d) project outline for the physical and technical design of the facility at the level of a preliminary design,
- e) preliminary report on the method for disposing of radioactive waste and irradiated nuclear fuel,
- f) approval of quality requirements for the nuclear installation,
- g) approval of the proposed limits of the nuclear installation,
- h) approval of the proposed size of the area at risk from the nuclear installation.

The Authority shall decide on the issuing of consent for the location for construction of the nuclear installation on the basis of the submitted documentation and the opinion issued by the European Commission under articles 37 and 41 of the EURATOM Treaty.

2.2. Building permits for nuclear installations

The Nuclear Regulatory Authority of the SR performs the function of a specialised building authority under Act No. 50/1976 the Building Act, as amended. **The Nuclear Regulatory Authority of the SR is the building authority for building permits for nuclear installations** and buildings associated with nuclear installations situated in the area defined by the limits of a nuclear installation.

The Authority shall decide on the issuing of a building permit for the construction of a nuclear installation based on the written application of the builder. In order to obtain a building permit for a nuclear installation, the applicant must attach the following documents to the building permit application:

- a) an interim safety report, documenting the satisfaction of the legal requirements for nuclear safety based on the data assumed in plans,
- b) design documentation necessary for building proceedings,
- c) an interim plan for the disposal of radioactive waste and irradiated nuclear fuel, including arrangements for transport,
- d) an interim conceptual plan for decommissioning,
- e) safety classification of selected installations,
- f) an interim plan for physical protection,
- g) documentation of the quality system and quality requirements for the nuclear installation and their evaluation in accordance with point A(e) of the Act,
- h) an interim internal emergency plan,
- i) interim limits and conditions for safe operation,
- j) an interim programme for inspection of the nuclear installation before it commences operation,
- k) an interim definition of the limit of the nuclear installation providing more specific information than the definition submitted in proceedings on consent for the location of the facility,
- l) an interim definition of the size of the area at risk from the nuclear installation providing more specific information than the definition submitted in proceedings on consent for the location of the facility,
- m) documentation required under the Building Act for the given type of building proceedings.

2.3. Permission to commence operation of a nuclear installation and to operate a nuclear installation

After the granting of a permit, only the holder of the permit for commencing operation and for operation of the power plant may commence operation of the power plant and operate it. Commencing operation shall mean the insertion of the first fuel rod into a reactor, or the start of disposal of radioactive material, radioactive waste or irradiated nuclear fuel in nuclear installations that do not include a nuclear reactor. Operation of a nuclear installation is divided into trial operation and full operation. The Authority shall give consent for trial operation after submission of

a written application supported by a an evaluation report on the commencement of operation in the facility. Such consent includes consent for temporary use of the building for trial operation in accordance with relevant regulations. An application for a **permit to commence operation of a nuclear installation** and a **permit for operation** shall include the following documents:

- a) limits and conditions for safe operation,
- b) a list of selected facilities classified according to safety category,
- c) programmes for testing selected facilities set by the Authority,
- d) programme for the commencement of operation divided into stages,
- e) programme for the operational checking of selected facilities,
- f) documentation of the quality system and quality requirements for the nuclear installation and their evaluation in the previous stage (construction),
- g) operational regulations set by the Authority,
- h) the internal emergency plan,
- i) an operational safety report, providing more specific information than the report provided for the construction stage,
- j) in the case of a nuclear installation with a nuclear reactor, a probabilistic risk assessment for operation when the reactor is deactivated, operating at low power and operating at full power,
- k) the plan for physical security including an agreement with the Police Force in accordance with section 26(8) of the Act and a description of the method for aviation activities above the premises or in the vicinity of the nuclear installation,
- l) a plan for the disposal of radioactive waste and irradiated nuclear fuel, including arrangements for transport,
- m) a conceptual plan for decommissioning nuclear installations from operation,
- n) documentation of financial coverage for liability for nuclear damage, except for storage facilities,
- o) the specialised training system for employees,
- p) training programmes for selected employees,
- q) training programmes for specially qualified employees,

- r) documentation of compliance with qualification requirements for selected employees and specially qualified employees,
- s) documentation of the readiness of the nuclear installation to commence operations, for trial operation an evaluation report on the commencement of operations and for full operation an evaluation report on trial operations,
- t) a plan for the protection of the population in areas at risk,
- u) definition of the limits of the nuclear installation providing more specific information than that given in the previous stage,
- v) definition of the area at risk from the nuclear installation providing more specific information than that given in the previous stage,
- w) documentation required under the Building Act for the given type of building proceedings.

2.4. Other permits necessary for the operation of a nuclear installation

In addition to the permits listed above, activities associated with nuclear installations require additional permits that are directly related to the operation of the nuclear installation in that the nuclear installation cannot be operated without them though they are not directly covered by the terms of the question. The permits in question are:

- a) permit for the disposal of nuclear material in a nuclear installation in accordance with section 5(3)(g) of Act No. 541/2004 Col.,
- b) permit for disposal of radioactive material or irradiated nuclear fuel in accordance with section 5(3)(g) of Act No. 541/2004 Col.
- c) permit for the transport of radioactive materials in accordance with section 5(3)(j) of Act No. 541/2004 Col.

2.5. The decision process for the Mochovce Nuclear Power Plant

2.5.1. Decision on the location for construction of the Mochovce NPP

The Czechoslovak Atomic Energy Commission (CSKAE – the former federal authority for supervision of nuclear safety and the predecessor of the current Nuclear Regulatory Authority of the Slovak Republic) gave consent for a land-use decision on the construction of the Mochovce NPP

subject to the conditions set out therein on 31.07.1980 (document no. 4556/2.3/80). On 2.10.1980 CSKAE gave consent to delay the implementation of condition no. 1 from the preceding consent (under no. 6347/2.3/80/Ko/A).

The construction and land-use planning division of Levice ONV, the competent building authority of the time, gave permission for the location of the building on 22.10.1980 (under no. Výst. 3865/1980) supplemented by decisions issued on 10.7.1981 under no. Výst. 2044/81 and on 28.01.1982 under no. Výst. 3818/81.

2.5.2. Building permit for the Mochovce NPP

An application for a building permit for the Mochovce NPP was delivered to the construction and land-use planning division of Levice ONV (the then competent building authority) on 24.09.1986. On 12.11.1986 the construction and land-use planning division of Levice ONV issued a building permit under no. Výst. 2010/1986, with conditions, for the construction of the Mochovce NPP. One of the conditions was that construction would be completed in 115 months. CSKAE gave consent for the issuing of a building permit with conditions as an interested authority under no. 36/1986.

In 1997 the then competent building authority, the environment division of the Regional Office in Nitra, issued decision no. 97/02276-004 of 05.05.1997, **extending the period for the completion of the building of the Mochovce NPP to 31.12.2005.**

In 2004, in proceedings pursuant to section 68 of the Building Act on changes to a building, the Regional Building Authority in Nitra issued decision no. 2004/00402-07 of 15.07.2004, which amended the original building permit so that point 5 of the mandatory conditions for the implementation of building reads: “the deadline for the completion of the building shall be 31.12.2011”, **thereby extending the deadline for completion of building work to 31.12.2011.**

In 2007, Slovenské Elektrárne, a.s. /the Slovak Power Plants/ as the holders of the building permit for the Mochovce NPP, submitted a series of 10 safety concepts for the completion of blocks 3 and 4 of the Mochovce NPP to the NRA SR (the NRA SR became the building authority for the construction of nuclear installations on 01.12.2004).

The Ministry of the Environment, in letter no. 5071/2008-3.4/hp of 11.2.2008 requested the opinion of the NRA SR on the European Commission’s request for information on environmental impact assessment of blocks 3 and 4 of the Mochovce NPP. The NRA SR gave its opinion on this request on 28.2.2008 in document no. 481/244/320-89/2008. On 27.5.2008, Slovenské Elektrárne a.s. /SPP/ as the holder of the building permit, submitted a request to the NRA SR for permission to

make changes to blocks 3 and 4 of the Mochovce NPP in accordance with the Nuclear Act (Act No. 541/2004 Col.) On the same day the company submitted an application to the NRA SR for a change in the building of blocks 3 and 4 of the Mochovce NPP before completion in accordance with the Building Act (Act No. 50/1975 Col.). The opinions of the following interested authorities were sent to the NRA SR together with the application in these proceedings:

- *The Regional Office of the Environment* issued its opinion on the project documentation on 16.05.2008 under no. 2008/00427 and declared the changes to the project documentation to be small in nature.
- *The regional headquarters of the fire and rescue service in Nitra*, the competent authority in matters of fire prevention gave consent for the fire prevention plan for blocks 3 and 4 of the Mochovce NPP in a letter of 16.5.2008.

The NRA SR began building proceedings on the change to blocks 3 and 4 of the Mochovce NPP before completion, giving notice of this in letter no. 684/320-231/2008, and requesting the opinion of the parties to the proceedings and interested authorities:

- *The Ministry of the Environment* gave its opinion on the need for an environmental impact assessment for the completion of blocks 3 and 4 of the Mochovce NPP in a letter of 08.08.2008, stating that “*the completion of the third and fourth block of the Mochovce NPP cannot be considered to be a new activity nor does it involve a fundamental change in the original design.*”.
- *The Ministry of Health, the Inspectorate of Spas and Springs* declared that it was not an interested state administration authority in letter no. 15804-2/2008-IKŽ of 06.06.2008.
- *Ministry of Interior – Presidium of the Fire and Rescue Service* requested an extension of the period for the assessment of the project documentation and the submission of its opinion in a letter of 04.06.2008. On 18.07.2008 it issued a binding opinion, no. PHZ-15400/2008, giving consent for the issuing of a building permit and setting conditions that should be mandatory for the builder.
- Other interested authorities – *the Civil Aviation Authority of the Slovak Republic, the Labour Inspectorate in Nitra, the municipality of Kalná nad Hronom, the municipality of Nový Tekov, the Ministry of Economy, the Public Health Authority of the Slovak Republic, the Local Office of Environment in Levice and the Regional Public Health Authority in Levice* – **all gave**

consent for the implementation of change to the building before completion or did not submit any objection.

- The opinion of the *European Commission* in K (2008) 3560 of 15.07.2008 stated that the investment in question was in line with the objectives of the EURATOM Treaty provided that the Commission's recommendations were implemented. It emphasised that it was the responsibility of the investor to ensure that the project in question would provide an equivalent level of protection to that provided by "full containment".

The NRA SR issued a decision under no. 246/2008 on 14.08.2009 permitting the change to the building before completion with conditions (under the Building Act) and set the scope of change. The permit holder was required to notify the NRA SR of the date for the start of implementation of the changes to the building and to **complete it by 31.12.2013**. In decision no. 266/2008 of 14.08.2008 no. 685/320-232/2008, the NRA SR gave consent for "the implementation of changes in selected facilities affecting nuclear safety in the nuclear installation blocks 3 and 4 of the Mochovce NPP during construction in the scope set out in the following parts of the documentation for the initial project" (under the Nuclear Act). In decision no. 267/2008 of 14.08.2008, the NRA SR issued "consent for the implementation of changes in the document 'Interim report on blocks 3 and 4 of the Mochovce Nuclear Power Plant' in the proposed scope." under section 4(2)(f)(2) of Act No. 541/2004 Col., the Nuclear Act. The last two above decisions are supporting documentation for decision no. 246/2008 issued by the NRA SR as the supervisory authority for nuclear safety under Act No. 541/2004 Col. the Nuclear Act, as amended, and as a building authority under Act No. 50/1976 Col. the Building Act.

Question no. 2:

Does Slovak legislation ensure opportunities for the participation of members of the public, including environmental organizations, active outside the Slovak Republic (such as the communicant in the present case)?

Act No. 211/2000 Col. on free access to information and the amendment of certain acts, as amended, establishes the right of everyone (both natural and legal persons) to have access to

information that obliged persons hold without proving any legal or other reason or interest for which information is required.

Obliged persons are state authorities, municipalities, higher-tier territorial units and legal persons and natural persons whom the law empowers to decide on the rights and obligations of natural persons and legal persons in the area of public administration within the scope of such decision-making powers. Legal persons established by law and legal persons established by state authorities, higher-tier territorial units and municipalities under relevant laws and other legal persons established by obliged persons are also obliged persons.

Every obliged person shall publish the location, time and method for obtaining information, information on where requests, proposals, motions, complaints and other submissions should be submitted and the price list for administrative fees. A request may be submitted in writing, orally, by fax, by e-mail or other technically feasible means. Ministries, other central state administration authorities and local state administration authorities shall publish material of a programming, conceptual or strategic character and the texts of proposed legislation after their release for interdepartmental review.

In Slovakia most documents can be accessed on the website of the obliged person. The websites also provide information on the powers and activities of particular bodies, including their decision-making procedures. The government has adopted a resolution requiring central state administration authorities to publish draft versions of documents requiring government approval on their website so that state authorities and the general public can comment on them. Proposals and complaints submitted by more than 300 (for legislation 500) natural and legal persons should be taken into consideration. Proposals are summarised and taken into consideration in the revision of proposals.

Decisions of the NRA SR are among the most important activities of the Authority as a regulatory authority. Decisions affect supervision, assessment, inspection and the enforcement of rights. All decisions can be accessed on the website of the authority and copies can be given to anyone on request. It is of course not possible to make available information to which access is restricted under Act No. 211/2000 Col. Such restrictions apply to the following types of information:

- a) information constituting an official secret or which is subject to bank secrecy or tax secrecy,
- b) information that must remain confidential for the protection of privacy and the protection of personal data,
- c) information classified as a commercial secret, unless such information relates to a serious effect on human health, the environment or environmental pollution, or the information was obtained with the use of public funds,
- d) information relating to the performance of inspections, regulation or supervision by a public authority under relevant regulations (including, for example, Act No. 541/2004 Col.) except for information on a decision or other result of inspections, regulation or supervision.

In accordance with the above, the public is informed of the start of proceedings, their progress and conclusion, decisions issued by the NRA SR including publication of applicants' applications, decisions of the NRA SR with the exception of material that permit holders must include in every application under the Nuclear Act (safety documentation), which is part of an official decision-making process, and information that is excluded from the duty to provide information such as personal data or official secrets. The material included in applications often includes official secrets relating to the public interest or state security, commercial secrets and intellectual property rights.

The public has access to a wide range of sources of information on nuclear power plants. There are the monthly magazines "*Slovenská Energetika*" and "*Atom Plus*" for employees, the monthly magazine "*Atom.sk*" for those living in the vicinity of the Jaslovské Bohunice and Mochovce nuclear power plants, leaflets, various brochures on nuclear power plants, the annual reports of the operators and the Nuclear Regulatory Authority of the SR. A great deal of information is provided through electronic media, the internet, information centres in Jaslovské Bohunice and Mochovce, the NRA SR information centre and public hearings on important matters.

As regards the participation of environmental organisations in the decision-making process, the only participant in proceedings under the Nuclear Act is the applicant. On the other hand, the Nuclear Act defines proceedings of the NRA SR on the construction of nuclear installations as proceedings of a building authority under the Building Act, with the participation of the public, and requires environmental impact assessment in accordance with Act No. 24/2006.

Detailed general rules for public participation in procedures for permits are set out in section 14(2) of Act No. 71/1967 Col. the Code of Administrative Procedure; specific rules for public participation in environmental impact assessment are given in sections 26 and 27 of Act No. 24/2006 Col. and specific rules for public participation in building proceedings are given in section 59 of the Building Act.

Under section 14(1) and (2) of the Code of Administrative Procedure, participants in proceedings are:

- a person whose rights and legally protected interests or obligations are the subject matter of proceedings or whose rights, legally protected interests or obligations may be directly affected by a decision,
- a person who claims that their rights, legally protected interests or obligations may be affected by the decision until it is proven otherwise and
- a person recognised as a participant under more specific law.

In Act No. 24/2006 Col. on environmental impact assessment, **before the amendment of act by Act No. 287/2009 Col. in force from 01.09.2009**, public participation is governed by sections 24 to 27. The interested public is those sections of the public who have an interest or may have an interest in environmental decision-making procedures. The interested public comprises

- a) civic initiatives,
- b) civic organisations promoting environmental protection,
- c) organisations promoting environmental protection established under special regulations which have been active for more than two years (non-governmental organisations promoting environmental protection)

A civic initiative is at least 500 natural persons over 18 years of age, of whom at least 250 persons **have permanent residence in the affected municipality** who sign a joint opinion on a proposed activity assessed under the act. A civic initiative shall be documented in the form of a list of signatories showing the name, surname, permanent residence, year of birth and signature of persons who support the joint opinion. The civic initiative shall deliver the list of signatories under the opinion in accordance with the requirements set out in section 23(4) and section 35(3) of Act No. 24/2006 Col. to the competent authority for environmental impact assessment.

Section 26 of Act No. 24/2006 defines *a civic association promoting environmental protection* as a group of at least 250 natural persons over 18 years of age, **of whom at least 150 have permanent residence in an affected municipality**, who establish a civic association in accordance with relevant regulations to provide continuing support for a civic initiative or directly for the purpose of environmental protection and **submit a written opinion in accordance with section 23(4) or section 35(3)**. Such a civic association shall be **a party to proceedings under the Building Act** relating to activities listed in Annex No. 8 (list of proposed activities requiring an environmental impact assessment). Such an association is considered to be a subject whose rights to an environment adequate to their health and well-being may be affected by a decision.

A non-governmental organisation promoting environmental protection satisfying the conditions set out in section 27 of Act No. 24/2006 Col. **that submits a written opinion on a plan for an activity listed in Annex No. 8 in accordance with section 23(4) of Act No. 24/2006 Col. has the status of a party to proceedings** in proceedings under the Building Act. Such a non-governmental organisation is considered to be a subject whose rights to an environment adequate to their health and well-being may be affected by a decision. Proof of the registration of the non-governmental organisation promoting environmental protection shall be submitted to the permitting authority together with the written opinion on the plan for the proposed activity.

Section 59 of the Building Act defines the parties to building proceedings as follows:

- the applicant for the permit,
- persons who have ownership or other rights over land and buildings on the affected land or adjoining land and buildings , if their ownership or other rights over land or buildings would be directly affected by the permit,
- **other persons assigned this status by relevant regulations** (e.g. Act No. 24/2006 Col. – i.e. the interested public, if they satisfy the conditions set out in sections 25 to 27 of Act No. 24/2006 Col.)
- a building surveyor or qualified person
- the designer, in those parts that relate to the design of the building.

Finding of the Constitutional Court no. PL ÚS/14/01 stipulates that this list is definitive for the purposes of building proceedings and expansion of the scope for participation based on section 14 of the Code of Administrative Procedure is impermissible.

Question no. 3:

Please indicate whether the decision-making leading to the construction permit, modification permit and report permit complies with the article 6 of the Convention, and if so, how.

The Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the Aarhus Convention) published as Notice of the Ministry of Foreign Affairs of the Slovak Republic No. 43/2005, was ratified on 31.10.2005 and entered into force in the Slovak Republic on 5 March 2006. The objective of the Convention is to establish the rights of access to information, public participation in decision-making and access to justice in environmental matters.

Article 6 of the Aarhus Convention sets out conditions for public participation in decisions on specific activities. Referring to Annex 1 of the Aarhus Convention, which sets out the activities about which the public should be informed, it states that the parties to the Convention may decide whether to inform the public about other activities than those listed in the annex. According to Annex I of the Aarhus Convention, the activities that the public must be informed about include nuclear power plants and other nuclear reactors including their dismantling or decommissioning, installations for the reprocessing of irradiated nuclear fuel, the final disposal of irradiated nuclear fuel and so on. Furthermore, Article 6(1)(a) states that the Aarhus Convention applies to decisions on whether to permit proposed activities.

The permit for the construction of the Mochovce NPP was issued under the laws in force in the years 1980–1986, at a time when the Aarhus Convention had not been agreed and could not apply. Decision of the NRA SR No. 246/2008 is a permit for a change in a building before completion. The change relates to a permit granted in 1986 rather than a new building. It is the continuation of an existing project that was suspended in 1990 for financial reasons.

Question no. 4:

Please indicate whether the construction started before the completion of the EIA/environmental impact assessment and/or the opportunities for participation of the public in the decision-making. If the construction of the nuclear power plant started before opportunities for members of the public to participate in the decision-making were provided, then please explain why and if the Government considers this to be in line with the Aarhus Convention.

We would like to point out that the term “**construction**” used in the question is inappropriate in both the legal and material sense in reference to work on the nuclear installation. It would be more appropriate to use the term “**continuation of construction**”. On this issue, it should be borne in mind that a permit existed for building work throughout the period 1986–2008. After 5 September 2008, when Decision of the NRA SR No. 246/2008 permitting change to the building of blocks 3 and 4 of the Mochovce NPP before completion came into force, building work could continue only in accordance with the revised project documentation. In our opinion it is therefore irrelevant and legally insignificant to consider whether it was possible or impossible to continue building work before, during or after the EIA process because the ongoing EIA process, including the public hearings that have been held (18.09.2009 – Bratislava, 25.09.2009 – Vienna, 12.10.2009 – Esztergom) relate to proceedings referred to above on the commencement of operations under the Nuclear Act and on final approval for the buildings under the Building Act.

The permit for the construction of the Mochovce NPP was granted in 1986 in accordance with laws then in force in the Czechoslovak Socialist Republic. The law currently in force, Act No. 24/2006 Col., which came into effect on 01.12.2007, repealed the previous law in this area, Act No. 127/1994 Col. on environmental impact assessment, as amended. It also incorporated the following legislation of the European Communities into the Slovak law:

- Council Directive [85/337/EEC](#) of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ L 175, 5.7.1985) as amended by Council Directive 97/11/EC of 3 March 1997 amending Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (OJ L 73, 14.3.1997)

and Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC (OJ L 156, 25.06.2003).

- Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment (OJ L 197, 21.07.2001);

Slovenské Elektrárne a.s., /Slovak Power Plants, Ltd./ as the permit holder, submitted a *Plan for an Environmental Impact Assessment* to the Ministry of Environment in December 2008 for the purposes of obtaining a permit to commence operation of the nuclear installation in future. In spring 2008 Slovenské Elektrárne a.s. requested the Ministry of Environment, as the competent authority for environmental impact assessment under section 3(g) of Act No. 24/2006 Col. to state whether an environmental impact assessment under Act No. 24/2006 was necessary for the proposed completion of blocks 3 and 4, when the project has a valid building permit but received it before the above legislation came into force.

Decision of the NRA SR No. 246/2008 of 14.08.2008 permitted change to the building of blocks 3 and 4 of the Mochovce NPP before completion. The opinion of the Ministry of Environment given in letter no. 7451/2008-3.4/hp of 08.08.2008 was that *“the changes resulting from changes of technological components do not change the function of systems and equipment but rather increase their safety, reliability and useful life. The implementation of the changes to the project for blocks 3 and 4 of the Mochovce NPP will not lead to any change in the scope of activities, the value of installed capacity or the permitted value for outputs to the environment such as the waste water released from the plant at Mochovce into the River Hron.”* The changes have been made to satisfy requirements for nuclear safety, reliability, physical security, disaster preparedness and fire prevention for nuclear installations. **It is therefore not possible to consider the completion of the Mochovce NPP a new activity or a significant change in the original project** In view of the fact that administrative proceedings on the permit for the above activities under special legislation began before the act on environmental impact assessment came into effect, the act cannot be applied to activities that began before it came into effect. **The granting of a permit by the NRA SR for the commencement of operations in blocks 3 and 4 of the Mochovce NPP will require an assessment of the nuclear installation under Act No. 24/2006.** The Ministry of Environment stated the same in its opinion of 08.08.2008 cited above.

The possibilities for public participation were described in the answer to **Question no. 2** on the possibilities for the participation of the “interested public”.