

**Response  
to the Aarhus Convention Compliance Committee  
on the position of the Slovak Ministry of Environment  
concerning the progress report on compliance VI/8i**

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Amsterdam, 8 April 2019

Dear members of the Aarhus Convention Compliance Committee,

I would like to submit my views in response to the Statement of the Slovak Republic to the “First progress review of the implementation of decision VI/8i on compliance by Slovakia with its obligations under Convention”, undated document, filename implying a date of 15-03-2019 sent to me by email on 3 April 2019.

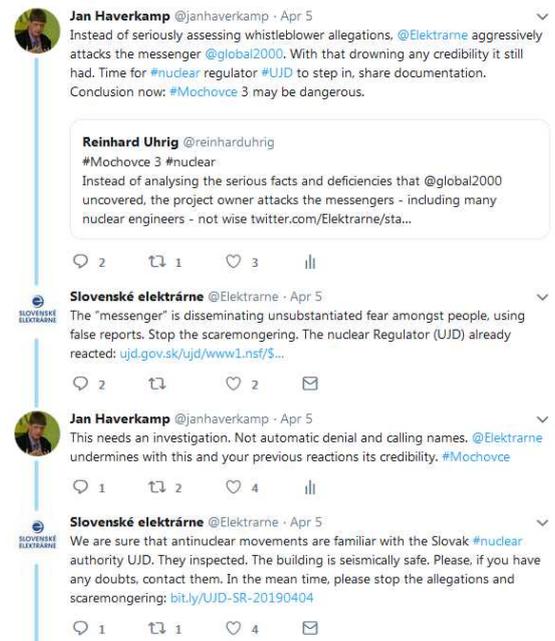
1. The information initially requested by Global 2000, and in earlier stages of the procedures also by Greenpeace Slovakia, who I at that time advised and partially represented, concerned environmental information. This was information that normally spoken also should have to have been included in an environmental impact assessment, to be submitted to public participation – a procedure that never took place, although Slovakia continues to claim against earlier findings from Slovak courts, that a non-binding voluntary environmental impact study and limited public consultation would have fully served that purpose.
2. Among the information refused to Greenpeace and Global 2000 is among much other environmental information, all information relating to seismic risk and seismic robustness (see also the claim in the picture below by operator Slovenské elektrarne that Mochovce 3,4 is seismic safe – a claim that cannot be justified on the basis of public available information), certain emissions of radioactive material (wastes), crucial economic data, risk analyses and related impact studies. Also in the specific documentation subject to this non-compliance procedure – the pre-operational safety report – these types of information have consequently and systematically been blacked out.

It is not the task of the public to define what is and is not environmental information in their requests to authorities, but it is the duty of the relevant authority to follow the definitions of among others the Aarhus Convention and related legislation. The Aarhus Convention gives in art. 2(3) in our view a sufficiently clear definition of what is environmental information and in art. 4(4) sufficiently clear rules for exemptions. It is up to the respective authorities to implement these articles when they decide on exemptions. In principle, all information related to nuclear power stations – given their operational and potential impacts on the environment – falls under the definition of art. 2(3). With its interpretation of art. 4(4a,b,d), Slovakia in our view flatly continues to refuse to comply with the final phrase of art 4(4) *"The aforementioned grounds for refusal shall be interpreted in a restrictive way, taking into account the public interest served by disclosure and taking into account whether the information requested relates to emissions into the environment."*

With that, the Slovak Republic, and more specifically its nuclear regulatory authority ÚJD, has withheld crucial environmental information from the public participating in decision procedures. Whatever the intention is of the public concerning what it wants to do with that information, it has a right to receive it. In this case, Global 2000 and Greenpeace Slovakia intended to use this information in their wide participation within and around decision procedures concerning the Mochovce 3,4 project.

3. The negative attitude of ÚJD and the Ministry of Environment towards public participation and the role of NGOs in particular can be seen in a remark like *"Disclosure of technical details (in particular the designation of technology, rooms, parameters whose publishing would lead to equipment damage) would lead to a change in the assumptions with which the NPP physical protection was designed."* Especially the remark **"parameters whose publishing would lead to equipment damage"**. That remark implies that Global 2000 (or Greenpeace) would intend to use the delivered information to damage equipment in the plant, i.e. it implies that these organisations are terrorist organisations. We strongly protest this characterisation and see this as non-compliance of Slovakia with art. 3(8) of the Convention, as a form of harassment for our involvement in the public discourse surrounding the Mochovce 3,4 project. We demand that Slovakia takes clear distance of such an interpretation.

I want to highlight that over the last weeks, while carefully sharing whistleblower information expressing strong concerns over relevant safety issues at the Mochovce 3,4 project, ÚJD has once more implied ill intentions on the side of Global 2000<sup>1</sup>, and both Global 2000 and I have been without grounds attacked over Twitter by Mochovce 3,4 operator Slovenské elektrárne of scaremongering (see adjacent picture). The alleged non-compliance with art. 3(8) of Slovakia and more specifically ÚJD, has to be seen in a wider context of systematically implying ill intentions from NGOs. I think it is important that compliance of Slovakia with art. 3(8) is assessed within this broader context.



4. Concerning the documentation listed in the first progress report from Slovakia in this compliance case on pages 10 and 11, we find that all of the information as suggested in the titles of these documents falls without any doubt under the definition of environmental information given in art. 2(3) of the Convention. The titles of this documentation indicate that this does not include security sensitive information when shared with the public, but important operational and design information that would help independent experts to assess the risks on severe accidents leading to potentially substantial environmental impacts. Of course, there possibly could be a very small amount of very specific, arguable and justifiable, exceptions of concrete paragraphs. But this is not visible from the titles. Unless, of course the operator hides its password lists under such innocuous titles as *Table 15-1 "RAW inventory from decommissioning of NPP MO 3&4"*.
5. The reference to the Convention on the Physical Protection of Nuclear Material and Nuclear Facilities, art. 2A(3A) (*Responsibility of the State*), art. 2A(3L) (*"Confidentiality: The State should establish requirements for protecting the confidentiality of information, the unauthorized disclosure of which could compromise the physical protection of nuclear*

<sup>1</sup> ÚJD press release from 04/04/2019 [translated from Slovak, JH]: *"UJD SR points out, that the aim of the Austrian NGO is to stop Mochovce 3, 4 (EMO 3, 4) being put into operation by any means, thereby not hesitating to spread false and misleading information and alarming messages."*

I am not involved in this whistleblower case from Global2000, but have intensively followed their communication around it in the last months, and can without doubt state that Global2000 has acted diligently and in good faith, including searching constructive contact with ÚJD.

[https://www.ujd.gov.sk/ujd/www1.nsf/\\$All/036A67AA11D1BC43C12583D2004E0C11](https://www.ujd.gov.sk/ujd/www1.nsf/$All/036A67AA11D1BC43C12583D2004E0C11)

*material and nuclear facilities*”) are in no way interfering with the operation of the Aarhus Convention, as they merely state rational and justifiable reasons for exemptions under art. 4(4) of the Aarhus Convention.

The reference to the European Court on Human Rights is irrelevant because these conclusions are fully covered by the exemptions to access to information as defined by art. 4(4) of the Aarhus Convention.

6. In our view, Slovakia appears to be trying to prevent access to information that could substantiate concerns about insufficient quality of an outdated design nuclear power reactor that is to receive in the coming months permission to operate. In order to prevent access to this type of information, with its positions within this procedure and beyond, it tries to depict the public, and more specifically NGOs, as being driven by ill intentions. With that Slovakia is in non-compliance with art. 3(8) of the Convention.
7. The Slovak Republic could have avoided coming in this situation by implementing a full Environmental Impact Assessment including related public participation in the first place, and search constructive dialogue with NGOs about the project. Instead, in spite of clear rulings from both the Slovak court system and the ACCC in the past (ACCC/C/2013/89), Slovakia chooses to complicate the life of NGOs to fulfil their role of critical public watch dog by withholding opportunities to discuss potential environmental risk, limiting their access to information and depicting them as driven by ill intentions. This is in continuous non-compliance with art. 6(4) in conjunction with art.s 2(3) and 4(4), and with art. 3(8) of the Convention.