

Bratislava, 12 June 2019

Dear Honourable Members,

In the coming week the Committees (the Economic Affairs Committee and the Constitutional and Legal Affairs Committee) will discuss a draft amendment to Act No. 541/2004 Coll. on the Peaceful Use of Nuclear Energy (the Atomic Act).<sup>1</sup> **I would like to ask you to vote against the points of the legislative proposal given below on the basis of the facts stated in this letter and in the attached documents.**

As a lawyer and activist, I have been dealing with environmental issues, especially in terms of effective civic participation, since 1999. Although decision-making under the Atomic Law is extremely complicated, the impact of these decisions is great and potentially devastating for each of us. Therefore, I believe that any undermining of transparency and possible public control of decision-making by the Nuclear Regulatory Authority of the Slovak Republic is dangerous and contradictive to both national and international legislation.

In this context, it is relevant that precisely because of the restriction to access to information by the Atomic Act, the Slovak Republic is already in breach of the so-called Aarhus Convention.<sup>2</sup> Proceedings against the Slovak Republic in this regard are conducted by the United Nations' bodies in order to align Slovak legislation with the said Convention<sup>3</sup>. The fact that the current legislative proposal is heading in precisely the opposite direction (although the explanatory memorandum declares "respect for international and European commitments" and explicitly mentions the Aarhus Convention) may lead to further international disgrace.

I support my request to delete the following points of the proposal with the attached opinion of the Law Office of Kristína Babiaková working together with the Via Iuris civic association.

<sup>1</sup>Parliamentary Papers No.: 1372

<https://www.nrsr.sk/web/Default.aspx?sid=zakony/cpt&ZakZborID=13&CisObdobia=7&ID=1372>

<sup>2</sup>Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters: <http://www.minzp.sk/eu/medzinarodne-dohovory/aarhusky-dohovor/>

<sup>3</sup><http://www.unece.org/environmental-policy/conventions/public-participation/aarhus-convention/tfwg/envppcc/implementation-of-decisions-of-the-meeting-of-the-parties-on-compliance-by-individual-parties/sixth-meeting-of-the-parties-2017/slovakia-decision-vi8i.html>

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1. Non-disclosure of "sensitive information", specifically a "postal and telecommunications secret", stated as "the supplementation of Article 8 to include paragraphs 11 to 13" in the draft Act:

More specifically, it concerns par. 4 of the draft Act - the proposed wording of Article 8 par. 11 of the Atomic Act. I consider enshrining the possibility of non-disclosure of the "postal and telecommunications secret" in the proposed paragraph 11 to be very risky, as it may lead to the concealment of important information from administrative proceedings or the concealment of documents sent to the Nuclear Regulatory Authority of the SR by other authorities or participants in the proceedings.

Moreover, the application of the "postal secret" and the "telecommunications secret" in the conditions of administrative proceedings is fully inappropriate, inadequate and could potentially be a dangerous precedent for other administrative proceedings. The purpose of protecting "postal secrets" and "telecommunications secrets" is not to conceal the information contained in official documents.

2. Exclusion of extraordinary reliefs - a new trial and review of the decision outside the appeal proceedings, stated as "Article 35 par. 1" in the draft:

More specifically, it concerns par. 6 of the draft Act - the proposed wording of Article 35 par. 1 of the Atomic Act. Excluding the possibility of filing a motion for a new trial and a motion to review a decision outside the appeal proceedings in specific proceedings under the Atomic Act (e.g., including proceedings to issue permission to commission a nuclear installation or permission to operate a nuclear installation) is absolutely unjustified and potentially dangerous. This would significantly undermine the possibility of legal protection against possible unlawful decisions on nuclear installations that have a tremendous impact on human health and the environment. If the paragraph of the draft Act is approved, these reliefs could not be used even in serious cases, such as if it were found that the decision is based on false evidence, if new evidence appears that could have significant effects on the decision-making, if it were found that the decision was issued as the result of an offense - e.g., corruption, or if the persons affected by the authorization of a nuclear installation were deprived of the right to participate in the proceedings.

In conclusion, I would like to emphasise that the need to strengthen the effectiveness of proceedings and the principle of legal certainty justifying the present draft amendment to the Act cannot serve as justification for weakening the control of legality, significant weakening of transparency, public participation in decision-making and public control of decision-making in proceedings under the Atomic Act that would result from the adoption of the above stated paragraphs of the draft.

The relevant draft amendment to the Act comes at a time when we can observe serious and even dangerous errors committed by the Nuclear Regulatory Authority of the Slovak Republic in practice. However, specific cases of decision-making on nuclear matters abroad and in Slovakia show that it is public control of decision-making that significantly strengthens the quality of decision-making, which leads to an increase in the safety of nuclear installations.

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At the same time, the draft Act comes at a time when the Slovak Republic should strengthen the public position (access to information and access to decision-making) in proceedings under the Atomic Act, as we are no longer performing the obligations of international law arising from the Aarhus Convention<sup>4</sup>.

As the representatives of us, citizens, in the supreme legislative body, you are obliged to adopt legislation that does not endanger us and which will ensure compliance with the commitments by which the Slovak Republic is bound. In addition, the Aarhus Convention is an international treaty on human rights and fundamental freedoms that takes precedence over the law according to Art. 7 par. 5.

For these reasons, I kindly ask you to delete the controversial points of the relevant legislative proposal.

Dana Mareková  
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Annexes:

1. An analysis of the draft amendment to the Act prepared as an opinion of the Law Office of Kristína Babiaková working with the Via Iuris civic association
2. First progress review of decision VI/8i on the compliance of Slovakia with its obligation under the Convention, by the Compliance Committee to the Convention on Access to Information, Public Participation and Access to Justice in Environmental Matters (Aarhus Convention), posted on 26.02.2019

<sup>4</sup> However, the position of Slovakia reflected in the first "Progress review" is alarming - it implies in fact the ignoring of the decision of the Aarhus Implementation Committee and the fact that the NRA SR wrongly assumes that the Aarhus Convention is not binding in nature:  
[http://www.unece.org/fileadmin/DAM/env/pp/compliance/MoP6decisions/VI.8i\\_Slovakia/Correspondence\\_with\\_Party/First\\_progress\\_review\\_on\\_VI.8i\\_Slovakia\\_adopted\\_21.02.2019.pdf](http://www.unece.org/fileadmin/DAM/env/pp/compliance/MoP6decisions/VI.8i_Slovakia/Correspondence_with_Party/First_progress_review_on_VI.8i_Slovakia_adopted_21.02.2019.pdf)

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