

Dear Mrs
Dana Mareková
dana.marekova@gmail.com

Your letter no./dated 4970/2019/ 17 September 2019	Our no. 6813/2019	Executed by/contact Szelecká/ 02 5822 1158	Bratislava 23 September 2019
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Re: Response to the statement of 17 September 2019 - filing

Dear Mrs Mareková,

The Nuclear Regulatory Authority of the Slovak Republic (hereinafter referred to as the “NRA SR”) hereby expresses its opinion on the content of your statement of 17 September 2019. As a preliminary point, the NRA SR states that we do not question the purpose of independent civilian control in connection with the decision-making processes of public authorities. On the contrary, civilian control enhances the quality of decision-making processes by public authorities and contributes to the stabilisation of the level of public participation in environmental proceedings. However, only constructive civilian control can fulfil such a purpose.

In the interest of achieving correctness and completeness in regard to the information mentioned in your statement, it is necessary to supplement some of the points contested by you with the progress over time.

The NRA SR notes that the assessment of compliance of a public authority’s decision-making practice with an international treaty is the responsibility of the competent judicial or non-judicial bodies which have such status under the law or international treaty. Since the issue of the binding nature of the Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental issues (hereinafter referred to as the “Aarhus Convention”) has been explained in the context of communication between the Slovak Republic and the Aarhus Compliance Committee, there is no need to comment on it further.¹

In connection with the reason for the existence of the Directive on the Identification and Removal of Sensitive Information in Documentation to be Made Available to the Public (hereinafter referred to as the “Directive”), the method of its interpretation and subsequent application of these provisions within the NRA SR, it is necessary to note that it is too early to observe their non-compliance, if any, with the Aarhus Convention before issuing a position on the Second Progress Review.

Due to the fact that the Directive was amended in June 2019, it cannot be stated that its non-compliance with the Aarhus Convention could have been declared by the Supreme Court of the Slovak Republic (hereinafter referred to as the “SC SR”) in 2012. It is also not quite correctly stated that the Aarhus Compliance Committee established that all information from proceedings under the Atomic Act is considered environmental information. The Directive’s problem before its amendment was the definition of sensitive information, which, in the opinion of the Aarhus Compliance Committee, did not

¹ Position of the Slovak Republic on the First Progress Review of the Implementation of Decision VI/8i on Compliance by Slovakia with its Obligations under the Convention (First Progress Report), p. 2, available at: https://www.unece.org/fileadmin/DAM/env/pp/compliance/MoP6decisions/VI.8i_Slovakia/Correspondence_wth_Party/frPartyV18.i_15.03.2019_state_ment.pdf.

distinguish environmental information.²

Based on the requirements imposed on the Slovak Republic by the Aarhus Compliance Committee, the NRA SR adopted regulatory measures resulting in an amendment to the Directive, approved on 14 June 2019. Specifically, the amendment introduced a definition framework for environmental information as well as a clear definition of which information is considered sensitive according to the Directive.³ The Directive explicitly addresses the fact that environmental information cannot, by its nature, be regarded as sensitive information.⁴ Furthermore, the Directive explicitly states that environmental information as defined in Article 2 par. 3 of the Aarhus Convention (mainly concerning emissions to the environment, and data on the amount and composition of radioactive waste) must be published without limitations.⁵

Given the fact that Article 8 of the Directive stipulates that it repeals the Directive of 12 August 2016, it is irrelevant to take a position on the repealed Directive. To date, there is no authoritative opinion on the state of compliance of the text of the new Directive with the provisions of the Aarhus Convention, so it is early to draw conclusions in this respect.⁶

Moreover, your statement contains the assertion that the authorization procedure for the Mochovce Nuclear Power Plant units 3, 4 project, which was preceded by an Environmental Impact Assessment under Act No. 24/2006 Coll. on Environmental Impact Assessments and on amendments and supplements to certain acts (hereinafter referred to as the “EIA Act”), should have been repeated, taking into account the judgment of the SC SR. Here, the NRA SR would like to highlight Remonstrance Decision No. 291/2014 of 23 May 2014, which followed the Judgment of the SC SR of 2013.

In the context of the relevant proceedings, the case was referred back to appeal proceedings with broad participation by not only Greenpeace Slovakia but also more of the public. The obligation imposed by the judgment of the SC SR was performed, while the NRA SR dealt with all the relevant objections of the participants in the administrative proceedings, and the procedures of the first-instance body, the first-instance decision, the filed remonstrance and the first-instance body’s opinion on the remonstrance filed by the remonstrance committee were reviewed in detail.⁷ The outcome of the Remonstrance Decision was not contested by the general public.

In this context, it is also necessary to note that on 28 October 2014 the Constitutional Court of the Slovak Republic (hereinafter referred to as the “Constitutional Court of the SR”) issued Judgment III. US 304/2014-88, by which they found a violation of the constitutional rights of Slovenské elektrárne, a.s. (JSC) specifically in the proceedings of the SC SR, which led to the above-mentioned Judgment file no. 5 Sžp 21/2012. The Judgment of the SC SR was not cancelled or referred back for new proceedings by the Constitutional Court of the SR, in particular due to the fact that, at that time, the second appeal proceedings, finalised by the adoption of Decision No. 291/2014 with full public participation, was already closed.

The duration of the permitted operation of nuclear installations may vary in terms of technical and time limitations. There are requirements for the validity of an authorization without time limitation, with time limitation, with technical limitation or with a combination of several limitations.

However, the amendment to the Act, in the part concerning the duration of the permission for the operation of Unit V2 of the Jaslovské Bohunice Nuclear Power Plant as well as of other nuclear installations, **is not a decision of the NRA SR**. The adoption of laws falls within the exclusive powers of the National Council of the Slovak Republic, which results from its position as the highest legislative

² The First Progress Review of the Implementation of Decision VI/8i on Compliance by Slovakia with its Obligations under the Convention (First

Progress Review), par. 18, available at:

https://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.

³ Directive on the Identification and Removal of Sensitive Information in Documentation to be Made Available to the Public [hereinafter referred to as the

“Directive”], Part 3.1 and 3.2, available at:

[https://www.ujd.gov.sk/ujd/WebStore.nsf/viewKey/SCI/\\$FILE/smernica_citlive_informacie.pdf](https://www.ujd.gov.sk/ujd/WebStore.nsf/viewKey/SCI/$FILE/smernica_citlive_informacie.pdf)

⁴ Art. 3 par. 2 of the Directive.

⁵ Art. 3 par. 2 of the Directive.

⁶ Art. 8 of the Directive, “*The Directive on the Identification and Removal of Sensitive Information in Documentation to be Made Available to the Public S 330 019:16, No. 2290/2014 of 12. 8. 2016, is repealed.*”

⁷ Decision of the NRA SR No. 291/2014, p. 29.

body according to the separation of public powers (derived from the citizens). Therefore, the question is whether the facts considered by you as defects of the Act should be attributed to the NRA SR, which according to Article 2 par. 2 of the Constitution of the Slovak Republic acts solely within its scope and whose actions are governed by procedures laid down by law. Your statement also states the need to perform an environmental impact assessment to 'increase the capacity of Units 1,2 of the Mochovce Nuclear Power Plant'. According to the EIA Act, the Ministry of Environment of the Slovak Republic and not the NRA SR is the competent body performing obligations in the field of environmental impact assessments.⁸ It is therefore not within the material powers of the NRA SR to take a position in this respect.

The NRA SR is not aware of any other public concern about its current activities, except for a limited number of non-governmental organizations based mainly in the Republic of Austria. Conversely, the population living around nuclear plants in the Slovak Republic has shown full confidence in the NRA SR in its performance of state supervision of the nuclear safety of nuclear installations in the use of nuclear energy for peaceful purposes.⁹

In view of the abovementioned specifications, it can be concluded that the NRA SR is not in any way restricting the exercise of rights for persons resulting from the provisions of international treaties. It appears to the NRA SR that the alleged defects and errors that you refer to in your statement of 17 September 2019 cannot be attributed to the NRA SR.

Yours sincerely,

Stamp: Nuclear Regulatory Authority of the
SR
Bajkalská 27, P. O. Box 24
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Illegible signature
JUDr. Martin Pospíšil
Director of the Division of Legislation and Legal
Affairs

⁸ Act No. 24/2006 Coll. on Environmental Impact Assessments and on amendments and supplements to certain acts (the EIA Act), Art. 3 k).

⁹ Statement of the Regional Interest Association of Mochovce Towns and Municipalities, available at: https://www.unece.org/fileadmin/DAM/env/pp/compliance/MoP6decisions/VI.8i_Slovakia/Correspondence_with_Observer/frObserver_MunicipalAssoc_18.04.2019_sk.pdf.