

We are sending you the statement of ÚJD SR to the Global 2000 claim consisting of the following parts:

Part I – General statement of the facts,

Part II – Statement on the grounds for the action and substantive reasons for the partial disclosure of information

Part III – Summary statement of ÚJD SR on the action of the party Global

Part IV – Proposal for a decision

Due to the fact that the result of this procedure will directly affect the interests of another party according to Section 41 of SSP – Slovenské elektrárne, a. s., Mlynské nivy 47, 821 09 Bratislava, BIC: 35 829 052, we propose to the court this entity to be included in the proceeding as a party. We also bring to the attention of the court the adjudication of the Constitutional Court of SR III ÚS 304/2014 of 28 October 2014. The Constitutional Court has already stated in the past that the fact that the Civil Procedure Code does not explicitly designate someone as a party to the proceedings does not mean that the court having jurisdiction in the given case cannot act if necessary, if the effects of its procedure or its ruling concern the fundamental rights guaranteed to such person in the Constitution or in an international treaty (I. ÚS 23/01). According to the adjudication of the Constitutional Court, file ref. IV. ÚS 57/2011 of 12 May 2011, part of the content of the right pursuant to Art. 46 par. 1 of the Constitution is not only the right of everyone to claim his/her right in a court or other body of the Slovak Republic, but also the right to be a party to the proceeding, in which its rights and obligations are decided. That means that everyone has the right to be a party to the proceedings where his/her rights and obligations are decided, otherwise he/she cannot protect his/her rights and legitimate interests. These conclusions of the Constitutional Court are also in line with the case law of the Supreme Court (for example: Supreme Court ruling, file ref. 2 Sžo 221/2010 of 17 July 2011, file ref. 3 Sžo 179/2010 of 15 March 2011, file ref. 1 Sžr 7/2011 of 19 July 2011, file ref. 6 Sžo 297/2008 of 17 June 2009, file ref. 2 Sžo 54/2009 of 18 March 2009, file ref. 2 Sžo 221/2010 of 17 July 2011), which has repeatedly held that if the first instance court did not include into the proceedings a party to an administrative proceeding, whose rights and obligations could be affected by abolishing the administrative decision, and then would not consider it as a party to the legal proceedings, with this procedure it would withdraw the right to a trial to a party, who was a party to an administrative procedure and to whom such right it guaranteed by Section 250 par. 1 of the Civil Procedure Code.

### **Part I - General Statement of the Facts**

Terms “general public“ and “overriding public interest“

The Plaintiff, when describing the facts in part I of the claim states that he is convinced that there is an overriding public interest in ensuring that the general public has access to the required information so that it can assess the safety of MO 3&4 NPP and its impact on the health and on the environment.

ÚJD SR does not contest the right of the public to access to information, which is guaranteed in particular by the Constitutional Act No. 460/1992 Coll. as amended (the “Constitution of the Slovak Republic“) and by Act No. 211/2000 Coll. on free access to information and on amendments to certain laws (the “Freedom of Information Act“).

ÚJD SR, having regard to its competencies and tasks entrusted to it by the State must, however, take into account in particular the provision of Article 26 par. 4 of the Constitution of the Slovak Republic stipulating that: “Freedom of expression and the right to seek and disseminate information may be restricted by law, if measures in a democratic society are necessary for the protection of rights and freedoms of others, State security, public order, protection of public health and morality“.

The Freedom of Information Act in Section 11 par. 1 (i) provides that one of the reasons for limiting access to information is when it is a documentation containing information, the disclosure of which could be used to plan and execute activities aimed at causing disruption or destruction of nuclear installation or objects of particular importance and other important objects under special regulations, also referring to the law on the peaceful use of nuclear energy, or in case of information concerning the exercise of control, oversight or supervision by public authority under special regulations (e.g. also under Atomic Act) except information on decision or other outcome of control, oversight or supervision.

The tasks of ÚJD SR are anchored in the Act No. 575/2001 Coll. on the organization of the activities of the government and organizations of the central state administration, as amended, where in Section 29 par. 1 and 2 provides:

(1) “The Nuclear Regulatory Authority of the Slovak Republic is the central authority of state administration for nuclear regulation.

(2) The Nuclear Regulatory Authority of the Slovak Republic provides state regulation over nuclear safety of nuclear installations, including the management of radioactive waste and spent fuel and other phases of the fuel cycle, over nuclear materials, including their control and registration, as well as the physical protection of nuclear installations and nuclear materials provided by the holder of the relevant license/authorization. It provides assessment of intents in the program for the use of nuclear energy and quality of selected equipment and devices of nuclear technology and the obligations of the Slovak Republic arising from international treaties concerning nuclear safety of nuclear installations and the management of nuclear materials.“.

The scope of powers of ÚJD SR is further set forth in the Act No. 541/2004 Coll. on the peaceful use of nuclear energy as amended, (the “Atomic Act“), which in Section 3 par. 16 stipulates that documentation containing also sensitive information is considered to be a documentation, the disclosure of which could be used to plan or execute activities aimed at causing disruption or destruction of a nuclear installation, and thereby adversely affect public security and cause environmental or economic damage. Such documentation is disclosed after excluding sensitive information. Section 3 par. 17 states that documentation containing also sensitive information means documentation listed in Annex 1 point A par. c), point B par. a), b), i), m), point C par. a), d), i), j), s), w) and in Annex 2, point A par. b), point B par. b).

The Plaintiff states in the description of facts that his interest is to “obtain information on the impacts of MO 3&4 NPP on the health, environment and about its safety“. He is convinced that there is an overriding public interest in ensuring that general public has access to the requested information and that it can assess the safety of MO 3&4 NPP and its impact on the health and on the environment.

We consider that the Plaintiff’s arguments does not stand in the light of the following. However, it is clear that the Plaintiff is acting in a clearly declared opposition to nuclear energy, which he states on its website as one of the main goals. As a result, the Plaintiff pursues only one objective with its action, and that is not putting the MO 3&4 NPP into operation – which is hidden under the interest of “broader“ public and the achievement of this goal by any possible way. We perceive the Plaintiff’s conduct as conduct falling under misuse of the right and so

called information filibustering, that is overloading the state authority with requests for information of a large scale or repeatedly in order to prevent that state authority from performing its proper functions. In this case, it is mainly the functions in the exercise of state regulation over nuclear safety, as well as the physical protection of nuclear installations and nuclear materials provided by the holder of the relevant license/authorization.

### **Position of Global as a party to the proceedings**

Party to the proceedings, Global, according to its publicly available website in its state as of 27 February 2018, is an organization, which in the Section “What we do“ takes a clearly negative attitude towards the issues of nuclear energy, which is expressed as follows:

#### **GLOBAL 2000 on energy**

Nuclear power, coal, fossil oil and gas are energy sources of the past, they are harmful for humans and the environment.

#### **GLOBAL 2000 against nuclear power**

In 2008, 15 of the 27 EU states ran nuclear power plants. Their 146 reactors make up a third of the world’s inventory. Questions of safety are often disregarded despite increased risks from aging technology and worn-down materials. Ever since the Chernobyl disaster we know that nuclear power is dangerous. Accidents can happen anytime. Experts say that radioactive materials have to be stored for a period of at least ten half lives to eliminate any environmental hazard. In the case of plutonium, this means from 240.000 to 1.000.000 years. No one can predict the political and geological circumstances in thousands of years. Nuclear waste remains a ticking time bomb for all future generations. That are the reasons why we fight for renewable energy and against nuclear power.

#### **GLOBAL 2000 against nuclear power**

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With such a philosophical set-up of this organization it is only clear that it uses all possible means and ways to achieve its program goal. In the light of these facts it is then also necessary to perceive the position of Global 2000 as a party to proceedings. If in a single administrative process, the parties with the same rights and obligations as antagonistic entities as Slovenské elektrárne, a. s. and Global 2000 being another party, as a rule at a certain point there must come an unsolvable conflict. In case of equal procedural position of two or more entities with different, antagonistic motivation and goals, no proceeding can be closed without a presumed or actual failure to satisfy one or more of the parties to the proceedings.

### **Existence of overriding public interest**

Due to the fact that during the period 16 March 2017 – 30 June 2017, when the MO 3&4 NPP documentation could be consulted, this right was exercised by 5 persons in total, which does not indicate that this would be a “pressing“ not even an “interest“ of the public.

The Administrative Procedure Code does not define public interest in more detail. The concept of “public interest“ can be legally defined only in relation to a particular situation, a specific legal relationship, in which the existence of a public interest is examined. The same

interpretation was adopted also by the Constitutional Court of the Slovak Republic, which stated that *“The concept of a public interest is legally defined only in relation to a specific fundamental right or freedom. If the purpose intended by the limitation of the right to possess property cannot be attained by means, which intervene more moderately into property rights protected by the Constitution, and if the public interest is superior and objectified to the interests of the owner, the public interest condition can be regarded as fulfilled.”* Hendrych, a renowned Czech theorist of administrative law, states in relation to the public interest in the administrative procedure that *“public interest is a type of interest generally beneficial (interest of the State or other public law corporation), the opposite of purely private interest.”*

However, if we consider the State to be a representative of the general public, which has an overriding interest to commission MO 3&4 NPP, which it declared, for example, in the following:

- The Program Statement of the Government of SR for the period 2016 - 2020 states that: *“The Government will create conditions for completion of Units 3&4 of Mochovce NPP. It will analyse possibilities of further procedure in preparation of a new nuclear source in Jaslovské Bohunice site“*
- In the Energy Security Strategy of the Slovak Republic (the “SEB SR“), a document approved by Government Resolution No. 732/2008 one of the priorities is the completion of MO 3&4, mentioning it in several places. The Energy Security Strategy of SR details the significance of power generation from nuclear sources. Section 6.7.8 The development of the production base states that: *“Nuclear power plants will continue to form the basis of the balanced Power System of SR (the “ES SR“), as an important element in ensuring the security of electricity supply and sustainable development. The basic precondition for ensuring sufficient electricity in the long term is the completion of Units 3&4 of Mochovce nuclear power plants. The completion of the nuclear power plant in Mochovce represents the lowest cost invested for ensuring power consumption with low impact on the health and on the environment. An advantage is also the price stability and the possibility of diversifying nuclear fuel. While nuclear power plants require high one-time investments, high requirements for the safety of operation and decommissioning costs, but on the other hand they have low variable costs. They are suitable for covering the base load in the load diagram. Their use for providing ancillary services is limited. After an early shutdown of Units of V1 NPP it should be one of the strategic priorities of the development of the power sector in Slovakia to provide at least 50 % of electricity production from nuclear power plants, if the principles of electricity production at the lowest cost and the long-term conditions for sustainable development are to be followed“.*
- The Energy Policy of the Slovak Republic (the “EP SR“), dated 5 November 2014, approved by the Government Resolution No. 548/2014. This strategic document, defining the main goals and priorities for the energy sector until 2035, with a forecast until 2050 declares that the EP SR is part of the national economic strategy of SR, because securing sustainable economic growth is conditioned by a reliable supply of affordable energy. The aim of the EP SR is to ensure long-term sustainable Slovak energy sector and thus to contribute to sustainable growth of the national economy and competitiveness. From this point of view, the priority is to ensure and reliability and stability of energy supplies, efficient energy use at the optimum cost and the protection of the environment. The EP SR is in line with the main objectives of the Lisbon Treaty and builds on the core European objectives of the Europe 2020 strategy in the energy sector. As Slovakia belongs to the category of vulnerable countries in terms of energy security, therefore for the sake of stability, the development of the national economy, as well as for the benefit of the consumer and consumer protection, it supports such an energy architecture that creates the

conditions for increasing energy self-sufficiency, pro-export capacity in electricity, transparency and optimal energy mix with low-carbon technology, or increasing energy efficiency. The EP SR emphasizes the optimal use of indigenous sources of energy and low-carbon technology, such as renewable sources of energy and nuclear energy. Among the priorities of the EP SR there is also use of nuclear energy as carbonless source of electricity and increasing safety and reliability of nuclear power plants. For increasing energy security, among others, the priority has been set – use of nuclear power stations and enhancing the level of nuclear safety and reliability.

**In section 2.3.2 Increasing the level of nuclear safety and reliability of nuclear power plants it is stated that:**

1. Slovakia uses and continues to plan to use nuclear energy in its energy mix, with the issue of nuclear safety being an absolute priority. The safety of nuclear installations in SR in terms of external influences, seismic resistance, as well as from the view of other safety aspects is at the required level and being continuously monitored. The level of nuclear safety is regularly, comprehensively and systematically assessed in the context of operational experience and the latest knowledge of science and research, and safety-enhancing measures are being taken on a continuous basis.
2. Following the accident at the nuclear power station in Fukushima in March 2011, the EC adopted a decision to perform a comprehensive risk assessment and assessment of resistance of nuclear power plants under extreme conditions.
3. The aim of the stress tests was to determine the degree of external risk that the nuclear power plant can resist without serious damage to nuclear fuel in the reactor core or without significant release of radioactive materials to the environment. Testing of Slovak nuclear power plants, including V-2 NPP and Mochovce 1&2 and 3&4 NPP was mainly carried out in a form of engineering analyses, calculations and opinions. During the stress tests, extraordinary external events were analysed, such as earthquakes, floods and consequences of other initiating events potentially leading to multiple loss of safety functions of the power plant. On 31 December 2011, the final National Report was submitted to ÚJD SR, the assessment of which by the ENSREG group was completed on 26 April 2012. Subsequently, Slovenské elektrárne, a. s. developed an Action Plan to implement measures as lessons learned from events at Fukushima nuclear power station. The fact that there is no need to take any immediate action to ensure nuclear safety at the nuclear power plants in Slovakia, has been confirmed by an independent international expert team, as well as the final report of the European Nuclear Regulators Group.

**Measures to increase energy security:**

- Completion of Mochovce 3&4 NPP and construction of a new nuclear source in Jaslovské Bohunice,
- Maintaining the highest level of nuclear safety in line with the EU and the IAEA standards.

**Section 3.5.3 entitled The forecast of the development of available electricity production in SR by 2035, states:**

The decisive expected increase in the output by 2020 is currently under construction. These are Units 3&4 of Mochovce NPP being completed, with an installed capacity of 2 x 471 MW. Upon putting this source into operation, the Power System of SR will have a more pronounced surplus or pro-export power balance after a longer period of time.

In the light of this forecast it is clearer what pressing interests and for what broader public the Plaintiff actually represents. However, certainly not for the Slovak public and especially from the immediate vicinity of MO 3&4 NPP, which is sufficiently informed and therefore does not require further information.

## **Part II – Statement by ÚJD SR on the grounds of the complaint and substantive justification of the partial access to information**

In the grounds of the complaint the Plaintiff complains that by the decision of the defendant (wrongly stated in the text of the action “by the decision of the plaintiff”) he was curtailed in his right to access to information, resulting from the Freedom of Information Act and from the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the “Aarhus Convention”), which was published in the Collection of Laws of the Slovak Republic under No. 43/2006 Coll., and that the decision of the defendant (wrongly stated in the text of the action “decision of the plaintiff”) is based on an incorrect legal assessment of the case.

On this part of the claim ÚJD SR states the following:

The Plaintiff received information in a timely and proper manner, in the form he has chosen and to the extent, which is established for ÚJD SR by the legal regulations of SR, internal guidelines of ÚJD SR, as well as the international legal regulations both binding and recommending in their nature. The non-disclosure of the requested information in its entirety was duly justified by ÚJD SR. ÚJD SR does not agree with the claim of the Plaintiff that when assessing the request it proceeded contrary to the obligations arising from the Aarhus Convention and the Directive of the European Parliament and Council 2003/4/EC. As the Plaintiff mentions, the Slovak Republic subject to the proceeding ACCCC/2013/89, however, the Compliance Assessment Committee to assess compliance with the Aarhus Convention stated that the Slovak Republic acted in accordance with its legal framework. It should be noted that the Aarhus Convention, its committee and opinions do not provide a legally binding and enforceable framework, unlike Directive 2003/4/EC.

Slovakia has already argued on several occasions that the scope and level of disclosure under Aarhus Convention and the exceptions to such an approach have never been sufficiently clarified by the Committee.

ÚJD SR points out that neither a global (IAEA) nor a European (within the EU) framework exists for a unified process and licensing of nuclear facilities. There are only IAEA requirements to be met by the operator of a nuclear installation (technical, technological, software, personnel, organizational, quality management systems, ensuring physical protection, etc. <http://www.ns.iaea.org/standards/default.asp?s=11&l=90>).

There are also framework requirements for the existence, status, independence and powers of a regulator. Similar infrastructure requirements for the regulator are enshrined in the EU law (Directive 2009/71/Euratom as amended by 2014/87/Euratom, Directive 2011/70/Euratom and Directive 2013/59/Euratom.) However, there is no worldwide or European legally binding document that would unify the licensing process, as well as the content or the structure of the licensing documentation. Therefore there would be a case to case approach by every State and ACCC has no reference, to which assess such availability or non-availability of information about the environment in the licensing documentation of a nuclear installation. It is also necessary to have a uniformly interpreted (uniformly anchored) procedure and examples of how to fulfil individual points in Article 4 par. 4 of the Aarhus Convention.

ÚJD SR expressly insists that unless unity is achieved in this interpretation, unanimously confirmed by all the State parties, until then there will be a dispute over which data from the technological documentation is or is not information on environment. **Until such unification is effected, ÚJD SR insists that it has proceeded correctly in elimination of sensitive information and did not breach anything.**

The authorization for ÚJD SR to exclude sensitive information is formally and legally governed in the Atomic Act, with a direct reference to the Aarhus Convention. Materially and legally it is defined in the law and a specific procedure, which specific information from the licensing documentation and for what reasons (the level and line of security risk) is sensitive information, which is subsequently stipulated in the internal directive, which is available on the website of ÚJD SR. There is no world-wide or European unified or harmonized legally binding document on how a licensing documentation for a nuclear installation should look like. So no one can authoritatively say what should be in it and what should not. ÚJD SR would not have to require such extensive licensing documentation in terms of international obligations, it could be solved by on-site inspections only, but since the safety of nuclear power plants is of prime importance, ÚJD SR tries to ensure that the documentation from the applicant or the operator was as extensive as possible and contained all evidence necessary for the proper issuing of the decision about commissioning.

In general terms, ÚJD SR wants to point out that the Aarhus Convention does not explicitly define certain concepts and activities related to nuclear facilities. Article 2 defines the concept “information on environment“, but only in general terms and it is not clear what environmental information is in case of nuclear facility. The problem is also the list of activities in Annex I, according to which activities include nuclear power stations and other nuclear reactors, including their dismantling or decommissioning. These two areas in the Aarhus Convention create major problem in its application to nuclear installations. As an example, we can mention construction of a nuclear power plant, where during the construction itself (we believe that logically, the whole construction is a single activity) there are normally changes in the construction and the Convention does not indicate clearly when in case of such change an impact assessment is required and from that resulting public participation in the proceeding. Such changes are common in every country, where nuclear power station is being built, but it is inconceivable that every change in construction should lead to a separate proceeding with public participation, as it is in no way a change in activity.

### **Directive 2003/4/ES**

As regards the Directive, the violation of which by the defendant the Plaintiff refers to, it may be noted that SR has never been the subject of infringement proceedings against the Member State's obligations when transposing Directive 2003/4/EC into its legal system. However, in the judgement in case C-340/06 of 5 July 2007, the subject of which was default by the Member State – Failure to adopt all laws, other legal regulations and administrative provisions needed to achieve compliance with the Directive of the European Parliament and the Council 2003/4/EC of 28 January 2003 on public access to environmental information, repealing Council Directive 90/313/EEC (O. J. EC L 41, p. 26; Extra. issue 15/007, p. 375) – the court stated that: “Republic of Austria, by failing to adopt all laws, other regulations and administrative provisions necessary to comply with Directive of the European Parliament and Council 2003/4/EC of 28 January 2003 on public access to environmental information, repealing Council Directive 90/313/EEC within the prescribed period failed to fulfil its obligations under this Directive.“.

ÚJD SR also notes that within its competence its acts in a dual role. The legal order of SR entrusted it both with the competence to regulate nuclear safety of nuclear installations under the Atomic Act, and with the competence of other building authority for the construction of nuclear facilities under Section 121 of the Building Act. The exercise of these competences must be strictly separated in terms of social consequences. While acting as a regulator over safety of nuclear installations, its acts exclusively as a technical safety authority, in the case of acting as a building authority, its decisions far outweigh only the technical safety aspects of the licensed nuclear installation, but also have other (more extensive) economic and social consequences.

### **The position of the European Court of Human Rights (“ECHR”) on the provision of information on the nuclear power plant:**

Since both the Plaintiff and the defendant have their procedure, rights and obligations based on the same legislation, an important position has the judgement and the case-law of the ECHR, which is the highest instance in the field of human rights, to which the complainant may turn after exhausting all domestic law resources. Thus, the judicial authority, by its nature, is comparable with the European Court of Justice (the “ECJ”).

The ECHR has stated that nuclear facilities and information about them, by their nature and because of security, are largely out of the nature of common information. In case No. 19101/03 – The South Bohemian Mother Association v. the Czech Republic, dated 10 July 2006, the ECHR declared unanimously a complaint for breach of Article 10 of the European Convention on Human Rights as inadmissible and its reasoning was the following: “The Court notes that the decisions issued by the Czech authorities are well grounded and cannot be considered arbitrary. It notes that the circumstances of the case differ markedly from those relating to restriction in press freedom, which has repeatedly recognized the existence of the right of the public to receive information. This case, however, concerns access to information relating to nuclear power station, which is a very complex facility requiring an exceptionally high level of protection (see, *mutatis mutandis*, *Wretlund v. Sweden*, Complaint No. 46210/99, Admissibility Decision dated 9 March 2004). The court considers that Article 10 of the Convention cannot be interpreted as guaranteeing an absolute right of access to all technical details relating to the construction of a nuclear power station,“

.... Neither can the argument of the public authorities on the need to protect the contractual obligations and business secret be rejected, which was involved by the builder of the power station, and to ensure security of the facility against external attack. Where the exercise of the right to receive information may compromise the rights of others, public security or health, the scope of the right of access to such information is limited by the provision of the second paragraph of Article 10 of the Convention“.

The Plaintiff, in the grounds of the complaint further complains that the defendant ÚJD SR has acted in breach of the obligations arising from the Aarhus Convention and Directive 2005/4/EC category ÚJD SR guideline No. 4460/2016 on the identification and removal of sensitive information in the documentation for public disclosure, hereinafter only as “ÚJD SR Directive“ are very broadly formulated.

ÚJD SR does not endorse the argumentation of the Plaintiff and stresses that it acted within the framework of rights and obligations stipulated by the legislation of SR, that in its review it proceeded with due diligence, individually and not on a blanket application basis. The ÚJD SR guideline has been assessed and evaluated also by the US Nuclear Regulatory Commission (US NRC) as very detailed and providing a good framework for assessing the potential sensitivity of different types of information.

The Plaintiff further complains that the defendant sought to claim that he had individually assessed each of the information requested and despite of extensive second instance decision (122 pages), this assessment was general and did not take sufficient account of the public interest in making information available, and that they relate to the emissions to the environment. It is not clear to the defendant what, in addition to disclosing the requested information to the Plaintiff in its entirety, would suffice. Since neither the first instance decision, in which ÚJD SR properly substantiated its decision in the form of summary information and provided to the Plaintiff as annex the entire internal directive of ÚJD SR, did not satisfy the Plaintiff, the same way as a detailed justification on each piece of information that was not made available in its entirety. In the defendant's view, such conduct by the Plaintiff carries an unambiguous features of information filibustering and is an abuse of right by the Plaintiff.

The Plaintiff complains that the defendant has acted too excessively in not making information available. This argument loses weight only when comparing the provisions of the Slovak legislation with the relevant Austrian legislation, where the Plaintiff is domiciled.

Directive 2003/4/EC was transposed into the Austrian legal order in the legal regulation of Austria, entitled: „Bundesgesetz über den Zugang zu Informationen über die Umwelt (Umweltinformationsgesetz-UIG), which clearly states in its Section 6 exceptions to the access to information as follows:

„Section 6

(1) It is permissible not to disclose environmental information, if:

1. an internal communication is requested for disclosure;
2. Request for information is a clear nonsense;
3. Request for information is too general;
4. Request for information includes documents, or data that have been not completed (in their final form);

Other requests may be provided if they their disclosure does not negatively affect:

1. Maintaining public security or comprehensive national defence;
2. The protection of the environment, which is subject of information;
3. The protection of personal data;
4. The protection of business secret or industrial secret where provided under national law, or Community law to protect legitimate economic interests, including the public interest in maintaining statistical and tax data;
5. The protection of intellectual property;
6. The protection of secrecy of the conduct of bodies subject to the obligation to provide information, where it is provided by special law;
7. A fair trial and right of the person to a fair trial or the ability of a public institution to carry out a criminal or disciplinary review“ (working translation of ÚJD SR).

It is clear from the above that the regulation of the free access to information in Austria is more restrictive than in the SR and therefore ÚJD SR does not see the reason, why the Plaintiff considers that ÚJD SR has proceeded too excessively in its decision-making.

At the same time it is striking how the Plaintiff is understating the potential threat of misuse of the information provided in a terrorist attack, since such threat is perceived as real also by organizations of a similar nature as the Plaintiff (Greenpeace), who have recognized the sensitivity of safety information and have not therefore disclosed the “Report on the safety of nuclear reactors and spent fuel storage facilities in France and Belgium, and on related reinforcement measures“ in full, but only in part (only the Preface of the Report – the first 5

pages) exactly because they do not want to jeopardize the safety of nuclear installation and the public.

Alarming and incomprehensible for ÚJD SR is the a loose attitude of the Plaintiff to incidents of nuclear terrorism, especially in the light of the fact that one of the first in the world is dated before 1974 in Austria, when the radioactive isotope of iodine was placed in a railway wagon.

The legitimacy of non-disclosure of all requested information is recognized, among others, also by the following:

- The IAEA Safety Standards (International Atomic Energy Agency) on Communication and Consultation of Regulatory Authorities with Authorized Parties, where page 10 of section 2.17 entitled “Availability of Information“ states that all authorized parties should have sufficient access to safety-related information, for which the regulator cares. “The Regulator should facilitate and promote public awareness and involvement so that information is available. If sensitive information is not made available (e.g. if they relate to nuclear safety or other legally protected information), this limitation has to be set to a minimum and fully justified by national legislation“.
- Discussions of the Slovak Government on documents that are classified, such as for example, Proposal to update the inclusion of structures and buildings in the category of objects of particular importance or in the category of other important objects for defence of the State, the way of their protection and defence – current Government Resolution No. 453/2017.
- The Aarhus Convention in Article 4 par. 4 (Public access to environmental information) states: “A request for environmental information may be refused, if its disclosure would adversely affect:
  - a) Confidentiality in the conduct of a public authority, where such confidentiality is governed by national law;
  - b) **international relations, defence of the State or public security;**
  - d) confidentiality of commercial and industrial information, where such confidentiality is protected by law, in order to protect legitimate economic interest.“.

In the Implementation Guide to the Aarhus Convention (the Aarhus Convention, An Implementation Guide, United Nations, 2014) on Article 4 par. 4 of the Aarhus Convention it is stated: “The interests set out in article 4, paragraph 4, are exceptions to the general rule that information must be provide upon request to members of the public. Parties are not required to incorporate these exceptions into their implementation of the Convention. For the exceptions Parties do accept if the Parties may provide criteria for the public authorities to apply within their discretion, or may categorically exclude certain information from disclosure.“ Therefore, Slovakia used this option and set such exceptions to the right of access to environmental information into the law, in particular, to Section 3 par. 16 and 17 of the Atomic Act.

[http://www.unece.org/fileadmin/DAM/env/pp/Publications/Aarhus\\_Implementation\\_Guide\\_interactive\\_eng.pdf](http://www.unece.org/fileadmin/DAM/env/pp/Publications/Aarhus_Implementation_Guide_interactive_eng.pdf)

Article 6 par. 6 Aarhus Convention – Public participation in the decision-making states: “Each Party shall request the relevant public institutions to provide the involved public for review purposes, upon request, as required by national law, free of charge access, and as soon as possible, to all information relating to the decision-making process referred to in this Article,

which is available during the public participation phase, without prejudice to the right of the Party to refuse to disclose certain information under Article 4 paras 3 and 4.“ .

The right to information therefore cannot be regarded as an absolute right, which also follows from the Constitution of the SR, which though in Article 26 par. 1 guarantees the right to information, but at the same time in Article 26 par. 4 in justified cases allows this right to be restricted: “Freedom of speech and the right to search and disseminate information may be restricted by law, if measures are necessary in a democratic society to protect the rights and freedoms of others, security of the State, public order, protection of public health and morality“. The Regional Court in Bratislava in the Judgement No. 3S/142/2010-212 dated 14 May 2013 states: “The subject of the right to information may be any information other than information subject to the limitation under Art. 26 of the Constitution of SR. Thus, the right to information may be restricted, if the law so provides, but only in the case of measures in a democratic society necessary for the protection of rights and freedoms of others, security of State, public order, protection of public health and morality“.

Legal theory and case-law require fulfilment of certain conditions for the application of this constitutional limitation. The Constitutional Court of the Slovak Republic has interpreted these conditions in its verdict, file No. Pl. ÚS 15/1998 dated 11 March 1999: “Limitation of the right to information in accordance with the Constitution is permissible only if the formal condition of the law and two cumulative material conditions are met. Under no circumstances the Constitution allows for waiving all three conditions of restrictions on freedom of speech and the right to information. The formal condition means that the limitation will be adopted by the National Council of SR in a legal regulation having force of a law. The term “law“ does not refer to a single generally binding legal regulation with a force of a law, but an indeterminate number of generally binding legal regulations with a defined degree of legal force.“ In this case it is Section 3 par. 16 Atomic Act. The fact that anchoring such possibility is very important is suggested in that in all three basic regulations, whether at the national level (Constitution of the SR), the international level (Aarhus Convention), but also at the level of the European Union (Directive 2003/4/EC), which govern the fundamental right of individuals to information, the possibility of limiting this right is also enshrined.

The Constitutional Court of SR in its verdict, file No. Pl. ÚS 15/1998 dated 11 March 1999 states: “The first material condition is the requirement that the restriction serves to protect the rights and freedoms of others or to protect the security of the State, public order, public health or morality. In order to meet the first material condition, it is sufficient to prove the existence of one of the cited interests. The second material condition is a condition for the necessity of adopting restriction.“. There is no doubt that the misuse of information could lead to a threat to the security of the State, the population, but also the health. ÚJD SR has carefully considered the interest of the public in making documentation available, but also the interest of not jeopardizing public safety and avoiding any possible environmental or economic damage. Since it is clear that both international law, and the European legislation allow in specific cases to restrict the right of the public to make documentation available, ÚJD SR considers that in this case its conduct complied with these regulations and acted in public interest, even though part of the documentation was not made available. ÚJD SR concluded that the interest of not threatening public security and avoiding the possibility of causing environmental or economic damage by its nature exceeds the interest of the public in making documentation available. However, it has also made available such limited documentation in accordance with the law.

The above facts are also supported by the case-law of the European Court of Justice and the questions of preliminary rulings, in particular:

- Opinion of the Attorney General on the issue of public access to environmental information within the meaning of Directive 2003/4/EC, expressed in document CELEX 62010CC0071 in part 22, where it says that: “The right to environmental information does not apply in an unlimited way. Request for information may be refused under Article 4 Environmental Information Directive, if the disclosure would adversely affect certain interests expressly mentioned in this article. The interest served by rejection of request must, however, be weighed against the public interest in disclosing the relevant information.”
- In the judgement of the General Court No. CELEX 62011TJ0111 of 13 March 2013 in the case of ClientEarth with its seat in London (United Kingdom) v. the European Commission in its part 92 stated that the Union is bound by the Aarhus Convention. However, as regards the grounds for refusing **request for access to environmental information, this Convention in terms of its content is not unconditional and sufficiently precise within the meaning of the verdict stated in point 91 above (Judgement of the Court of Justice of 21 December 2011, Air Transport Association of America and other, C-366/10, Coll. p. I-13755, point 50)**

**Justification for non-disclosure of requested information to the Plaintiff – summary in individual points:**

The Plaintiff requested disclosure of the following information:

- Designation of operational sets that are the sources of fire water and of buildings where these operating sets are located and on system parameters, as well as information on the power supply,
- the fire water system scheme, where the fire water sources are located and what routes are used to transport fire water and the buildings, where these operating sets are located,
- description of fire extinguishing equipment, their location and designation of fire extinguishers that are sources of fire water and the buildings, in which these operating sets are located,
- designation of operating sets and location of fire extinguishers, their function and the method of activation of fire extinguishers, sources of fire water and locations with the fire water,
- designation of an operating system that provides for the supply of fire water,
- designation and functions of fire extinguishers that are sources of fire water,
- designation of a system providing fire water supply to indoor hydrants,
- designation of a building containing fire water pumping station, which is the source of water for seismically not resistant system,
- designation of a building object, in which the waste water monitoring system is located,
- designation of an equipment, which is part of the waste water monitoring system and serves for continuous monitoring of the chemical pH parameter,
- designation of an equipment, which is part of the waste water monitoring system and serves for continuous monitoring of the chemical CHSK<sub>cr</sub> parameter – chemical consumption of oxygen by chroman,
- designation of an equipment, which is part of the waste water monitoring system and serves for continuous monitoring of the chemical N-NH<sub>4</sub> parameter – ammoniacal nitrogen,
- designation of an equipment, which is part of the waste water monitoring system and serves for continuous monitoring of the chemical parameter – sulphates,

- designation of an equipment, which is part of the waste water monitoring system and serves for continuous monitoring of the chemical parameter – nitrates,
- designation of an equipment, which is part of the waste water monitoring system and serves for continuous monitoring of the chemical parameter – conductivity,
- designation of waste water treatment system and water from the impure condensate tanks,
- designation of equipment of systems, which are the source of neutralized regenerative waste water, one of the components of the technological waste water,
- designation of equipment of systems, which are the source of waste regenerative water from a purification plant, one of the components of conditionally active waste water,
- designation of equipment of systems, which are the source of waste washing and regenerative water, one of the components of conditionally active waste water,
- designation of a facility in the operational object, which is the source of laundry waste water from the washing plant, one of the components of conditionally active waste water,
- designation of facilities in the systems, which are source of sludge, one of the components of inactive waste water,
- designation of equipment of systems, which are the source of oily waste water, one of the components of waste water recycled back to the technological process,
- designation of equipment, which is the source of waste water from blowdown and sludge that is recycled back to the technological process,
- designation of facility for treatment of waste water from blowdown and sludge that is recycled back to the technological process,
- designation of facility in the system, which when flushing it is the source of one of the components of the technological waste water,
- designation of systems, which is the source of waste water from pickling, degreasing or de-conservation of equipment of the given system, one of the components of technological waste water,
- designation of system equipment and operating sets of the I&C system, which is part of the process of liquid radioactive waste management,
- designation of the technological unit, which is part of the process of liquid radioactive waste management and defines the control method, the description of automatic protections and blocking devices of the system and on the designation of buildings and rooms, in which the facilities are located,
- designation of equipment, technological units that are part of the liquid radioactive waste management process, defines the method of control, description of automatic devices and blocking system devices,
- assign elected equipment into safety class,
- assign selected equipment into safety class (seismic resistance),
- designation and description of a set of system components to mitigate the consequences of severe accidents (“SA“), their functionality, numbers of buildings and devices,
- a more detailed description of one group of system components to mitigate the SA consequences, system functionality, numbers of buildings and equipment,
- a more detailed description of the operation of individual system components to mitigate the SA consequences in the regime of normal operation and during design-basis accidents and their designation,
- assigning the system for mitigation of SA consequences to the category of seismic resistance,

- description of the main system components for mitigation of SA consequences,
- description of the main system components for mitigation of SA consequences, system links to mobile and external sources of coolant and system function,
- description of the requirements for system operating parameters, such as volume, temperature, concentration and description of activities to maintain these parameters within the required limits,
- information on the activity of fission products, which will be placed in the spent fuel storage pool and interim spent fuel storage after their removal from the nuclear reactor. This is an indication, from which it is possible to derive information on the amount, activity and location of future radioactive waste/spent nuclear fuel.

This information was not disclosed to the Plaintiff because:

- Knowledge about the location and designation of buildings, facilities, technological units and structures allows a potential attacker to estimate the efficiency of the facility and the process, provides a reliable orientation in the area when planning and executing an attack, for scheduling time for attack, optimizing the sequence of actions to achieve the goal and then selecting the tactics for the attack and allows the potential attacker to verify and validate information obtained in another way and thus overcome protective measures to ensure proper operation of the facility without detecting such actions by the plant staff, thereby causing the facility to be deactivated and thereby create “domino effect“ conditions ending in a failure or accident having negative impact on the health and lives of employees and residents, and cause limited efficiency of the equipment with acute or potential consequences of a technological failure or accident type.
- Knowledge of individual groups that provide individual system functions and knowledge on their location or functionality makes it possible to estimate their functions and significance for nuclear installation in connection with nuclear safety in mitigating the consequences of severe accidents. Knowledge of the main components, system functions and their location would make it easier to perform an attack, select attack tactics and allow a potential attacker verify and validate information obtained in another way. It could also help to damage during attack sets of components and systems that are needed to mitigate the consequences of severe accidents or consequences caused by possible attack on a nuclear installation;
- Knowledge of the main system components, their location, link to other systems at the site of a nuclear power station, links to external systems for supply of coolant allow the potential attacker to estimate the significance of the equipment for ensuring nuclear safety in case of severe accident on a nuclear installation. Positioning, knowledge of components, links to other technological systems can make it easier to disable the system.
- Knowledge of functionality of individual component groups (or knowledge of designation of individual groups of components), which provide various system functions makes it possible to estimate their functions and significance for the nuclear installation in relation to nuclear safety when mitigating consequences of severe accidents. Knowledge of components, system features and their designation would make it easier to carry out an attack, select attack tactics and allow a potential attacker to verify and validate information obtained in another way. It could also help during attack to damage groups of components and systems that are needed to mitigate the consequences of severe accidents, or consequences caused by possible attack on the nuclear installation.
- Knowledge of system operating parameters and activities to maintain these parameters within the required limits, allow a potential attacker to estimate the significance of the

equipment for ensuring nuclear safety in case of severe accident on a nuclear installation. Knowledge of system operating parameter can make it easier to disable the system.

- Knowledge of safety classes of selected equipment allows to estimate their functions and significance for the nuclear installation in relation to nuclear safety. Knowledge of safety classes of individual selected equipment would make it easier to execute an attack, select attack tactics and allow a potential attacker to verify and validate information obtained in another way.
- Knowledge of assigning system components into safety classes allows a potential attacker to estimate the significance of equipment for ensuring nuclear safety in case of severe accident on a nuclear installation. Knowledge of safety class can make it easier to disable the system.
- Knowledge of seismic resistance of selected equipment allows to estimate their significance for the nuclear installation in relation to nuclear safety. Knowledge of seismic resistance of different selected equipment would make it easier to execute an attack, select the attack tactics and allow a potential attacker to verify and validate information obtained in another way.
- Knowledge of category of seismic resistance of the system to mitigate SA consequences allows a potential attacker to estimate resistance of the equipment. Knowledge of the category can make it easier to execute an attack and choose a tactics for the attack.
- System functionality information is a trustworthy information for a potential attacker to detect dependencies and based on that deduct potential places for damaging the system.
- Knowledge of the amount, activity and location of fission products allows a potential attacker to choose the tactics for a terrorist attack.

**Justification for non-disclosure of requested information to the Plaintiff – more detailed substantive and technical explanation on individual points:**

The Plaintiff in its action under points 1 to 8 in Part 1 The Facts, states the information that he requested from ÚJD SR to be made available. As a reason for their availability he states a pressing public interest in order to assess the safety of Units 3&4 of the nuclear power station, and their impact on the environment. ÚJD SR has decided on partial non-disclosure of requested information, namely the information requested under point 2 (information marked with codes 312 to 319) and information requested under points 1, 3, 4, 5 and 6.

**II The reason for the action, par. 1.1**

The Plaintiff states on this point that ÚJD SR mechanically stated for each classified partial information an identical justification in order to arose an impression of individual assessment of each particular requested information, but in fact that assessment was not individual, but a blanket one. To this we state that according to Section 3 par. 16 of the Atomic Act, a documentation containing sensitive information is considered every documentation, the disclosure of which could be used to plan and execute activities to disrupt or destroy the nuclear installation, and thereby adversely affect public security and cause environmental or economic damage. This implies, when ÚJD SR can mark an information as a sensitive information and not provide it to the public. For this reason, the rationale for non-disclosure of information provided next to the refused information identical, despite the fact that it was carefully assessed by ÚJD SR whether the given information can be disclosed. ÚJD SR cannot refuse to disclose the information for any other reason than the potential threat to physical security and the possibility to use the information to plan and carry out activities to disrupt or destroy the nuclear

installation, so it cannot give any other reason. It should also be noted that ÚJD SR does not even examine or assess any other reasons than the reasons for non-disclosure of information. ÚJD SR also adds that already in the first case of non-disclosure of information it proceeded strictly individually and individually assessed each undisclosed information. For each undisclosed information there was a code, which resulted from individual assessment. For the appeal procedure and re-assessment of requested information, even a more detailed list of codes was used to indicate the reasons for non-disclosure of information.

## **II The reason for the action, par. 1.2**

According to the Plaintiff's view, even when accepting the fact that the non-disclosed information was individually assessed, it is not possible to agree with the arguments and conclusions of ÚJD SR, according to which all non-disclosed information does not concern environment, are unrelated to emissions and are not relevant for the environmental impact assessment. As an example of incorrect approach by ÚJD SR, the Plaintiff refers to deleted category of information concerning the description, parameters, marking of equipment related to safe operation of the nuclear installation. ÚJD SR is of the opinion that this information can be used without any doubt to plan an attack on the nuclear facility and its threat. From the description of a nuclear facility it is possible to clearly identify its importance for the safety of nuclear installation, the weakest points, the location, as well as the most appropriate part of the system for its total disabling. From the parameters it is possible to identify the amount of media as well as their parameters to ensure the safety of nuclear installation, and thus as in the previous case, to determine the extent of the possible attack. It is possible to decrypt the single marking system from the marking of the equipment and then to obtain important information about the system belonging to a specific Unit of the power station or that it is a common system for both Units of the power station. This marking is also important in terms of orientation in the area itself and in the building objects of the nuclear power plant, and therefore also in terms of clearly identifying equipment in case of physical attack. Not knowing them, on the contrary, almost excludes the possibility of identifying a facility or would require a person with a high degree of knowledge of a nuclear power plant. Based on the above information, ÚJD SR insists on its position that it is highly sensitive information with high potential for abuse.

The Plaintiff also argues that it is an excessive degree of classified information and too hypothetical considering any such information as usable for a terrorist attack. In the opinion of ÚJD SR, this claim is demonstrated by a fact that the Plaintiff is unaware of the seriousness of this information for the safety of nuclear installation and also raises concerns that because the Plaintiff is not bound by confidentiality when keeping such information and can make it available to third parties, there is a potential significant increase in the risk of executing a physical attack on a nuclear installation.

In the next part of the action the Plaintiff describes what information has been requested and was not made available and why it is necessary for environmental impacts assessment.

The information requested under point 1 ÚJD SR states that it is a document related to the fire-fighting system of the power plant, a list of fire water pumps and a document on seismically not resistant systems of supplying fire water. According to the Plaintiff, we quote: "The fire water and the fire-fighting system are essential to prevent incidents and accidents in the power station. In the nuclear power station loss of cooling has almost immediate catastrophic consequences. This was demonstrated in 2011, when the tsunami wave in Japan disabled the cooling water pumps in Fukushima NPP, resulting in the loss of cooling for the three reactors and all four nuclear fuel pools with a subsequent disintegration of three reactors and explosions in two fuel tanks. Seismic qualification and resistance of the cooling water

pumps are therefore extremely important for the operation of the nuclear power station.“ ÚJD SR without objections endorses the claim of the Plaintiff about extreme importance of seismic qualification and resistance of the cooling water pumps for the operation of a nuclear power plant and the principal significance of the fire water and the fire-fighting system for the prevention of incidents and accidents in the power plant. It is based on this opinion, which is shared by both the Plaintiff and the defendant that ÚJD SR has decided that the information in question is sensitive, could be used to plan the attack on a nuclear power plant, and therefore decided not to disclose it. It is undeniable that for example, the knowledge of the seismic resistance class of the system enables a potential attacker to identify the importance of the given system for the safety of nuclear installation and thus to facilitate identification of the potential target for the attack. At the same time we note that the information provided to the Plaintiff included information about the seismic resistance of the equipment, naturally in accordance with the statement the designation allowing clear identification of the system was deleted. As an example, we state the document No. PNM3436107504\_S\_C01, par. 6.07.01 “Fire water“, p. 54 and 55/88.

ÚJD SR also maintains its position that for the environmental impacts assessment it is not necessary to know the number of pumps, their marking in the system of single marking system and their physical location, including the numerical designation of the building. ÚJD SR considers that not knowing the numerical designation of the pumps and of the building object, where they are located, their flow-rate and the type of medium the pump in no way affects the possibility of assessing the environmental impacts of the nuclear power plant (this information is given in Table 6.7.1.6-1, which the Plaintiff requested and ÚJD SR refused to disclose it).

On the information requested under point 2 the Plaintiff states the following: “... requested information on the amount of industrial waste water and on the activity of radioisotopes in the water discharged by the nuclear power station. This information should be accessible to the public in full, since their disclosure will in no way damage the protection of the power plant from possible terrorist attacks.“

ÚJD SR again endorses the claim by the Plaintiff, and therefore also provided all the required information, such as the activity of waste water discharged into the Hron river, its annual limit, categorization of the system into a safety class and seismic category, the distribution of waste water in terms of its chemical composition, in terms of activity, as well as from the environmental view, and also the amount of industrial waste water with an annual use of installed capacity. All of this information is contained in the document PNM3436107504\_S\_C01, par. 6.7.1 Water Management, p. 67, 68 and 69/88, which was provided to the Plaintiff. Information that was blacked out once again concerned the system of marking and designation of buildings, which is not important for the assessment of environmental impacts.

Under point 3 the Plaintiff requested information relating to the liquid radioactive waste management, namely part “Instrumentation and Control Systems“. As a reason for provision the Plaintiff states the possibility to assess the quality of I&C systems in various possible situations. At the same time, he argues that not providing information on grounds of not having any relation to the emissions to the environment is incorrect, because the wastes themselves are emissions.

ÚJD SR **does not state** in any place in its reasoning for non-disclosure of information that the **wastes are not emissions and information on the estimated amounts of produced waste was provided to the Plaintiff**. However, it considers that Information on the power supply for the I&C systems is not information on the environment pursuant to Art. 2 par. 3 of

the Aarhus Convention, is not related to emissions to the environment and is not relevant for the environmental impact assessment of the nuclear installation.

ÚJD SR is also convinced that the disclosure of information on power supply and the I&C system for relevant and not relevant equipment and their backup, main parts, functions and connection with the safety systems allows to plan an attack in order to limit the efficiency of the facility with acute or potential consequence of the type of technological failure or an accident. Knowledge of designation of equipment, technological units and rooms provides reliable orientation in the area when planning and executing an attack, allows to estimate the efficiency of the facility and process, the time to execute an attack and also to override protective measures to ensure proper operation of the facility.

Under No. 4, the Plaintiff requested the disclosure of the document “Systems for the mitigation of severe accidents“. As important for assessing impacts on the environment he states, for example, information on seismic resistance of individual parts of the power plant and information on partial components of the main components. Information provided in this document is information related to:

- Assigning equipment into safety classes,
- Description and designation of equipment that are relevant for the safe operation of a nuclear facility,
- Functionality of systems to manage the safety systems.

Making available data on the main components and operating modes of the reactor shaft flooding system and potential consequential misuse of these data to disable or cause other damage to the relevant systems for mitigation of consequences of severe accidents, would lead to a significant increase in the risk of adverse effects on the environment. To illustrate this increased risk, the data from the Probabilistic Safety Assessment studies, level 2 (PSA L2) for Unit 1 of Mochovce NPP (EMO Unit 1) can be used for the status/situation of this Unit prior to implementation of measures for severe accident management and after implementation of these measures. In case of MO3&4 NPP, the measures related to severe accident management are an integral part of the NPP design, and are therefore included also in the PSA L2 study for the MO3&4 project. So the results of PSA L2 for MO3&4 are not available, without considering such measures. Comparing of results of PSA L2 prior and after the implementation of measures for severe accident management therefore cannot be done directly for MO3&4 NPP. However, following the implementation of measures for severe accident management on the Units of Mochovce NPP in operation, from the view of PSA L2, EMO Units 1&2 and MO3&4 NPP are analogous. Therefore it is legitimate to assume that correct and complete operation of measures for severe accident management in MO3&4 has an analogous effect on reducing the risk as the contribution of implementing measures for severe accident management to risk reduction at EMO1&2 NPP, or that in case of incorrect or incomplete functioning of these measures MO3&4 NPP, the risk significantly increased. The PSA L2 for EMO Unit 1 study that takes into account implementation of measures for severe accident management (by RELKO, s. r. o, September 2016) shows that systems and guides for severe accident management have significantly contributed to reducing the risk for full reactor power. For example, the early large release frequency for full reactor power, after introducing systems and guides for severe accident management (SAM), have been reduced 30-times compared to situation before introducing these measures ( $LERF = 1.62E^{-7}/y$ , before introducing systems and guides for severe accident management it was  $LERF = 4.93E^{-6}/y$ ).

Sensitivity analyses for full reactor power that were carried out in the quoted study also show that the efficiency of external reactor pressure vessel (RPV) cooling is dominant in terms

of risk. After eliminating the influence of external RPV cooling, the early large release frequency returns almost to the original value that has been quantified for the Unit without introducing systems and guides for severe accident management. Flooding of reactor shaft is a necessary condition for efficient external cooling of the RPV. Therefore ensuring the correct and complete functionality of the system for flooding reactor shaft according to the basic design is critical and allows minimizing the effects of nuclear installation on the environment in case of severe accident.

Knowledge of seismic resistance of selected equipment and knowledge of the main components, system functions and their location would facilitate performing an attack, selecting attack tactics and allows the potential attacker to verify and validate information obtained in another way. It could also help to damage during attack sets of components and systems that are needed to mitigate consequences of severe accidents or consequences of possible attacks on the nuclear installation. On the basis of the above, ÚJD SR considers that all cleared information was not disclosed because of legitimate reasons and could be misused to plan and execute attack.

Information requested under point 5 concerned the system for supply of coolant for severe accidents. Information contained in this document is of the same nature as information required under point 4, and in terms of sensitivity the same characteristics apply, as those already mentioned. On this information the Plaintiff states that the loss of coolant is one of the most unfavourable catastrophic scenarios for the operation of a nuclear power plant, and that the ability to cope with the loss of coolant in case of severe accidents is vitally important.

ÚJD SR fully agrees with the opinion of the Plaintiff on the importance of this system and it is because of this reason that it has not disclosed the relevant information, because they included information on the classification of the system in the seismic resistance category, description and designation of equipment having relevance for a safe operation and the number of building objects. In all cases it is clearly sensitive information that could be misused to plan and execute a terrorist attack. However, it is possible to identify from the information provided that the system is classified in the category of seismic resistance, but without disclosing a particular class. ÚJD SR considers that knowledge about the class would allow the potential attacker to estimate the resistance of the equipment and thus to plan the necessary intensity of the attack or to identify the weakest element.

Under point 6, the Plaintiff requested information concerning the activity of fission products. Table 11.2-1 on page 9/54 of the document PNM3437396506\_S\_C01, the contents of which was not disclosed, includes fission product activity in the fuel and under cladding. That information was identified by the Plaintiff as vital for the general public in order to assess the expected effects of isotopes on the health. This is an indication, from which information on the amount, the activity and location of future radioactive waste/spent nuclear fuel can be derived. Knowledge of the amount, activity and location of fission products allows the potential attacker to choose the tactics for the terrorist attack. It follows from the above that it is sensitive information with information value for a potential attacker. For this reason, ÚJD SR decided not to disclose the relevant information.

At the conclusion of point 1 the Plaintiff submits that having regard to the Aarhus Convention and the EU Directive, and having regard to the public interest in making the information requested by the Plaintiff available, the information requested cannot be classified as “sensitive information“.

ÚJD SR takes the view that it is in the public interest, in particular, to ensure a high level of safety of operation of the nuclear installation and with regard to Art. 4 par. 4 (b) of the Aarhus Convention, according to which “...request for environmental information may be refused if its

disclosure would have an adverse effect on the international relations, state defence or public security“, that all undisclosed information was marked as “sensitive“, and therefore has not disclosed it.

The Plaintiff asks the court to bring an application for a preliminary ruling before the ECJ.

**The ÚJD SR does not agree with this proposal by the Plaintiff.** We consider that the court is able to deal with the subject matter of the dispute itself and that the arguments of both parties are sufficient. We consider the proposed question by the Plaintiff to be too general, and also answered by the existing case-law that it seems unnecessary. However, if the court considers for necessary to pose the prejudicial questions to the ECJ, we ask the court to pose the following questions to ECJ:

1. Does it mean if the Aarhus Convention has preference before the national legislation that it also means loss of validity/cancellation of the national legislation implementing the provisions of the Aarhus Convention?
2. What is meant by environmental information, in particular in the documentation required to issue an authorization for commissioning of a nuclear installation. It is the designation, location, description of the equipment or its output, emissions and other numerical results of operation given in measurable units (e.g. litre, Megawatt, meter)
3. In order to maintain equality of parties in their rights and obligations, to which the Aarhus Convention applies to, if the applicant for information has the right to request information and to obtain it only at the cost of material, the provider has the obligation to provide the information and at the same time consider whether the interest of the public in obtaining this information is more important than protecting the security of a strategic object and subsequently security and defence of the state. Therefore we ask ECJ to give its opinion on the fact that the applicant should also be held responsible for possible negative consequences for public security, caused by dissemination of information, which has been obtained in terms of free access to information and its dissemination.

### **Part III – Summary statement of ÚJD SR to the action brought by the party Global**

We agree with the Plaintiff’s proposal for a hearing of the case pursuant to Section 182 par. 1 (g) of the Administrative Procedure Code, and we also agree with the petition part of the Plaintiff where he proposes that the defendant is entitled to full compensation of costs of the proceedings.

ÚJD SR also requests oral hearing in this case.

It is not clear from the Plaintiff’s arguments, how he arrived to a conclusion that the ÚJD SR decisions are based on incorrect assessment of the case, while referring to the same legal regulations and their provisions, as the ones on which ÚJD SR based its decisions.

These are:

- Constitution of the SR, which in Art. 26 par. 4 regulates that: the freedom of expression and the right to search for and disseminate information may be restricted by law, if measures in a democratic society are necessary to protect the rights and freedoms of others, the security of the state and public order, protection of public health and morals;

- Directive 2003/4/EC of the European Parliament and Council of 28 January 2003 on public access to environmental information, repealing Council Directive 90/313/EEC, which in Art. 16 lays down the rules and exemptions for the disclosure of such information;
- Convention on Access to Information, Public Participation in the Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention), which was published in the Collection of Laws of the Slovak Republic under No. 43/2006 Coll., including its “Implementation guide“, which in its Art. 4 par. 4 (b) provides that: “A request for environmental information may be refused, if its disclosure could adversely affect international relations, defence of the state or public security“;
- Regulation of the European Parliament and Council (EC) No. 1367/2006 of 6 September 2006 on the application of the Aarhus Convention on access to information, public participation in the decision-making and access to justice in environmental matters to Community institutions and bodies;
- Act No. 71/1967 Coll. on administrative procedure (Administrative Procedure Code) as amended by Act No. 215/2002 Coll., Act No. 527/2003 Coll., Act No. 122/2006 Coll., Act No. 445/2008 Coll., Act No. 204/2011 Coll., Act No. 176/2015 Coll., Act No. 125/2016 Coll. and Act No. 149/2017 Coll.
- Act No. 211/2000 Coll. on free access to information and on amendments to certain laws (Freedom of Information Act) as amended, which in Section 11 par. 1 (i) provides that one of the reasons for limiting access to information is when it is a documentation containing information, the disclosure of which could be used to plan and execute activities to cause disruption or destruction of a nuclear installation or objects of special importance and other important objects under special regulations, also referring to the Act on peaceful use of nuclear energy or information concerning the exercise of control, supervision or regulation by a public authority under special regulations (e.g. also under the Atomic Act) besides information about a decision or other result of inspection, supervision or regulation.
- Atomic Act, which in Section 3 par. 16 stipulates that documentation containing also sensitive information is considered to be documentation, the disclosure of which could be used to plan or execute activities to cause disruption or destruction of a nuclear installation, and thereby adversely affect public safety and cause environmental or economic damage. Such documentation is made available after excluding sensitive information. In Section 3 par. 17 it states that documentation containing also sensitive information means documentation listed in Annex 1, point A (c) point B (a), (b), (i), (m), point C (a), (d), (i), (j), (s), (w) and Annex 2 point A (b), point B (b),
- ÚJD SR Directive No. 4460/2016 on identification and removal of sensitive information in documentation intended for public access.

In view of the wording of Section 3 par. 16 and 17 of the Atomic Act, ÚJD SR considers that by non-disclosing sensitive information it did not violate the Aarhus Convention. It is clear from the very wording of the Convention (see Article 4) and also from the Directive 2003/4/EC that in certain cases the states are entitled to restrict the right of entities to information, in order to ensure the security of the state or even a legitimate economic interest. The nature of information, not disclosed in the licensing documentation, satisfies both of these requirements.

The list of persons who are bound by the confidentiality obligation concerning information obtained in the exercise of their profession, is limited by law. We are therefore concerned that disclosure of information also to other persons, whether legal entities or individuals, who are associated, would realistically jeopardize the safety of nuclear installations, as these persons are not legally bound by confidentiality obligation, or sanctioned

for breach of this duty. We therefore consider broadly defined obligation to make information available to the public and not restricting its further dissemination and sharing as unbalanced, as opposed to the non-existing obligation of the public to maintain confidentiality and not to disclose/disseminate information that could endanger the security and defence of the state and the population.

Information about:

- Identification and designation of equipment and structures, numbers of rooms and description of their location;
- Description, parameters and designation of equipment and technology;
- Resources and their location;
- Numbers and description of technological units;
- Category of seismic resistance;
- System functionality, parameters and components and its backup

is not environmental information pursuant to Art. 2 par. 3 of the Aarhus Convention, are not related to emissions to the environment and are not relevant for the environmental impact assessment of a nuclear installation. This is operational information of a facility/structure.

ÚJD SR, when considering the disclosure of requested sensitive (removed) information from the above documentation to the Plaintiff concluded that this is not environmental information. Not disclosing such information is in the interest of protecting the public, which would be exposed to an undue risk in the event of a terrorist attack, and therefore this interest outweighs the interest of the plaintiff/public in the disclosure of that information.

ÚJD SR decided, following a thorough individual assessment of all relevant facts that non-disclosure of information in order to ensure physical security of a nuclear power plant and thereby also ensuring protection of the health of staff and the public, as well as protection of working environment and environment, outweighs the interest of the applicant in obtaining the given information.

ÚJD SR considers that both the first instance and the second instance proceedings were conducted in accordance with all national laws, the EU legislation and other international regulations. ÚJD SR assessed the individual parts of contested application, stated clearly that facts that were used as a basis for its decision, what considerations it made in the decision-making, how it tested the proportionality between the interest of the public in disclosing the information and the protection of public safety. ÚJD SR accurately stated the legal regulations that governed its decision and how it satisfied the objections by the Plaintiff. This explanation it considers as exhaustive and beyond the obligations of the ÚJD SR, resulting from the above mentioned legislation, even though it considers the interest of the Plaintiff in making information available as formal, indefinite and insufficiently proven.

ÚJD SR is a regulatory body for nuclear safety of nuclear installations and its scope of powers is given as a framework in Section 29 of the Act No. 575/2001 Coll. on the organization of government activities and organization of the central state administration as amended, and then in more details in the Act No. 541/2004 Coll. on peaceful use of nuclear energy (the Atomic Act) and on amendments to certain laws as amended. However, this does not mean that it is placed in an isolated environment without any influences, context or implications of its decision-making. The ÚJD SR decisions, from the security and technical aspects are covered exclusively by the ÚJD SR, but with their importance, impact and implications they affect the whole spectrum of socio-economic relations. The law calls for such a decision to be fully

justified in the light of specific circumstances. However, the law does not impose any limitations, methods, instruction, criteria how such decision can be duly substantiated.

**Part IV...- Proposal for a decision:**

On the basis of the above mentioned facts, ÚJD SR proposes that the Regional Court in Bratislava, after taking evidence,

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and if the court decides that the documentation in question should be made available to the Plaintiff in its entirety, to oblige the Plaintiff to compensate the costs actually paid to increase the protection of the nuclear installation in question, until the need for increased protection ceases to exist.

Yours truly,

Ing. Marta Žiaková  
Chairperson