

Progress Report

The Slovak Republic submits the Third Progress Report in accordance with decision VI/8i in the light of the findings and recommendations of the Aarhus Convention Compliance Committee to the case ACCC/C/2013/89/Slovakia

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Introduction

*The Third Progress Report was prepared by **the Nuclear Regulatory Authority of the Slovak Republic** (hereinafter 'ÚJD SR') which pursuant to Article 29 of Act No. 575/2001 Coll. on the organization of government activities and the organization of the central state administration as amended is a central government authority for the area of nuclear regulation in the Slovak Republic in cooperation with **the Ministry of Environment of the Slovak Republic**. The Slovak Republic hereby submits the Progress Report to the Aarhus Convention Compliance Committee (hereinafter 'Committee').*

On 20 June 2017, the Slovak Republic received findings concerning the communication ACCC/C/2013/89 regarding access to justice with respect to an extension to the Mochovce nuclear power plant. In paragraph 103 of the findings, the Committee found that 'the Party concerned has failed to comply with Article 4, paragraph 4 as well as Article 6, paragraph 6 in conjunction with Article 4, paragraph 4 of the Convention by providing access to nuclear-related environmental information.'

The above mentioned finding concerning communication ACCC/C/2013/89 was incorporated into the Meeting of the Parties's Decision VI/8i.

The submitted Progress Report has been prepared under the obligations of the Slovak Republic as the party of the Aarhus Convention and in accordance with decision VI/8i on compliance by the Slovak Republic, registered under reference No. ECE/MP.PP/2017/2/Add.1¹, endorsed and adopted by the Parties at the sixth session of the Meeting of the Parties to the Aarhus Convention (MOP 6) on 11 – 13 September 2017 in Budva, Montenegro.

Decision VI/8i reads as follows:

The sixth session of the Meeting of the Parties to the Aarhus Convention, acting under paragraph 37 of the annex to its decision I/7 on the review of compliance,

Taking note of the findings of the Committee under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters on communication ACCC/C/2013/89² concerning compliance by Slovakia in connection with public participation in decision-making and access to justice with respect to an extension to the Mochovce nuclear power plant, including paragraphs 74 and 75 thereof,

Encouraged by the willingness of Slovakia to discuss in a constructive manner with the Committee the compliance issues in question,

- 1. Endorses the finding of the Committee that in the context of a decision-making procedure subject to article 6 of the Convention, and with respect to requests for information under article 4 generally, the Party concerned has failed to comply with article 4, paragraph 4, and also article 6, paragraph 6, in conjunction with article 4, paragraph 4, of the Convention:*

¹ The full text of addendum to the report of the sixth session of the Meeting of the Parties (ECE/MP.PP/2017/2/Add.1), available at: http://www.unece.org/env/pp/aarhus/mop6_docs.html#/.

² ECE/MP.PP/C.1/2017/13.

- a) By adopting an approach in the Directive on Sensitive Information whereby whole categories of nuclear-related environmental information are unconditionally declared as confidential and for which (contrary to the general legal regulation in the Freedom of Information Act) no release is possible;
 - b) For failing to require that any grounds for refusal are interpreted in a restrictive way, taking into account the public interest served by disclosure and whether the information relates to emissions into the environment;
2. *Recommends* that the Party concerned take the necessary legislative, regulatory and administrative measures and practical arrangements to ensure that when providing access to nuclear-related information within the scope of article 2, paragraph 3, of the Convention, any grounds for refusal under article 4, paragraph 4, of the Convention are interpreted in a restrictive way and taking into account the public interest served by disclosure and whether the information requested relates to emissions into the environment;
3. *Requests* the Party concerned:
- a) To submit to the Committee detailed progress reports on 1 October 2018, 1 October 2019 and 1 October 2020 on the measures taken and the results achieved in the implementation of the above recommendations;
 - b) To provide such further information as the Committee may request in order to assist it to review the progress of the Party concerned in implementing the above recommendations;
 - c) To participate (either in person or by audio conference) in the meetings of the Committee at which the progress of the Party concerned in implementing the above recommendations is to be considered;
4. *Undertakes* to review the situation at its seventh session.

The Slovak Republic, considering the non-confrontational, non-judicial and consultative nature of the findings and recommendations (Article 15 of the Aarhus Convention), took note of the Committee's findings and recommendations regarding the Slovak communication ACCC/C/2013/89. The Slovak Republic, as a party to the Convention, fully avows its principles, and will continue to act to fulfil its obligations arising therefrom.

As requested in the decision VI/8i, the Slovak Republic submitted to the Committee the First Progress Report on 1 October 2018, the Second Progress Report on 1 October 2019. The Slovak Republic, as further requested, submits the Third Progress Report to the Aarhus Convention Compliance Committee Secretary on time, i.e. 1st October 2020.

Recent development

On 3 March 2020, the Committee issued its Second Progress Review where it addressed observations regarding paragraph 2 of decision VI/8i. This was followed by the audioconference held during the 66th meeting of the Committee on 13 March 2020 with active participation of the Ministry of Environment of the Slovak Republic, ÚJD SR, communicants and observers in the case at hand (GLOBAL 2000, OEKOBUERO, Mr. Haverkamp – representing Greenpeace Slovakia). The purpose of the audioconference was to provide an opportunity for an open discussion among the interested parties concerning the findings presented by the Committee in the Second Progress Review. During the course of the session, all the participants were invited to ask questions, or to provide comments on the examined subject matter. The representatives of the Slovak Republic contributed to the discussion with some clarifications on the questions posed by members of the Committee, communicants and observers. In addition to that, the position of the Slovak Republic summarizing statements presented at the audioconference was delivered to the Secretariat on 26 March 2020 in written form.

The Slovak Republic would hereby like to provide the Committee with information on recent development of its legal framework following the recommendations articulated in decision VI/8i. In the interest to provide the Committee with a detailed overview of evidence proving that the Slovak Republic took the necessary measures as requested, the Third Progress Report is structured into two parts. The first section covers measures that were taken in order to ensure that the text of the Directive on Sensitive Information is compliant with the principles enshrined in the Aarhus Convention. The second part reflects on the Committee's observations with regard to the amendments of the Atomic Act. Both sections contain findings that intend to demonstrate necessary steps taken in this respect.

1 Directive on Sensitive Information

The Slovak Republic reported on amendments of the Directive on Sensitive Information that entered into force on 14 June 2019 in its Second Progress Report.³ The Committee positively evaluated the amendments of the Directive on Sensitive Information and noted several improvements. In particular, the Committee described the inclusion of the definition of environmental information to the wording of Article 3 (2) of the Directive as “significant progress towards meeting the requirements of paragraph 2 of decision VI/8i”.⁴

Nevertheless, the Committee identified certain aspects of the Directive that needed to be revisited. *In concreto*, Article 3 (4) of the Directive provided an exhaustive list of information that was not to be considered environmental within the meaning of Article 2 (3) of the Aarhus Convention. The rationale behind the exclusion of listed categories of information

³ Second Progress Report, available at: https://www.unece.org/fileadmin/DAM/env/pp/compliance/MoP6decisions/VI.8i_Slovakia/Correspondence_with_Party/Second_progress_report/frPartyVI.8i_30.09.2019_2nd_progress_report.pdf.

⁴ Second Progress Review, available at: https://www.unece.org/fileadmin/DAM/env/pp/compliance/MoP6decisions/VI.8i_Slovakia/Correspondence_with_Party/Second_progress_report/Second_progress_review_on_VI.8i_Slovakia_adopted.pdf, para. 33.

was explained on the grounds of public interest.⁵ The Committee did not accept such formulation given that it considered listed categories of excluded information labelled rather broadly, which in its view left room to cover elements falling under the scope of Article 2 (3) (c) of the Aarhus Convention.⁶ The Committee further noted that despite the restrictive approach taken in drafting of the Directive, it did not by itself satisfy the requirement stipulated in Article 4 (4) of the Aarhus Convention. Under the provision of Article 4 (4) of the Aarhus Convention, in case a competent authority receives a request for environmental information, it must bear in mind that the refusal to disclose such information must be interpreted restrictively. The public interest served by the disclosure and whether the information relates to emissions into the environment must also be considered.⁷

It was further indicated that in order to comply with Article 4 (6) of the Aarhus Convention, the Directive should clearly define the individual approach of the competent authorities when dealing with the exemptions from disclosure of environmental information.⁸

Based on the Committee's endorsement, ÚJD SR promptly proceeded with the amendment of the parts of the Directive at issue. The Ministry of Environment of the Slovak Republic along with ÚJD SR identified paragraphs that required adjustments in accordance with the Committee's findings and drafted new provisions that would substitute them. With the objective to conduct a transparent and constructive dialogue in this matter, the relevant representatives of the civil society in Slovakia were approached by the Ministry of Environment in the process of drafting the text of the Directive prior to its advancement to the approval process. The representatives of civil society did not object to the approach taken in the revised text of the Directive. Considering this, the drafted text went through the regular adoption procedure of internal acts of ÚJD SR. As a result, the amended text of the Directive entered into effect as of 1 May 2020. The Committee was informed about the adoption of the amendment via the Secretariat on 11 May 2020.⁹ The Slovak Republic also provided the text of the Directive with highlighted passages that were subject to the amendment *inter alia* with the intention to inform all interested parties in the case about the changes undertaken in this regard.¹⁰ The Secretary to the Compliance Committee in e-mail from 28 May 2020 confirmed that the information about the amendment of the Directive was also forwarded directly to the communicants and observers in the pertinent case. As of this day, no interested party raised any objection to the amended text of the Directive.

In contrast to the repealed text, the amendment added a paragraph to the definition of sensitive information as laid down in Article 3 (1) of the Directive. The Slovak Republic took into consideration the Committee's indication that it is necessary for the Directive to explicitly

⁵ *Ibid.*, para. 34.

⁶ *Ibid.*, para. 35.

⁷ *Ibid.*, para. 38-39.

⁸ *Ibid.*, para. 40.

⁹ Available at:

https://www.unece.org/fileadmin/DAM/env/pp/compliance/MoP6decisions/VI.8i_Slovakia/Correspondence_with_Party/frPartyVI.8i_11.05.2020_cov_email.pdf.

¹⁰ Available at:

https://www.unece.org/fileadmin/DAM/env/pp/compliance/MoP6decisions/VI.8i_Slovakia/Correspondence_with_Party/frPartyVI.8i_11.05.2020_en.pdf.

provide for procedural requirements applying a restrictive approach to any applicable grounds for refusal of disclosure of environmental information.¹¹ Therefore, general considerations were further accompanied by an explicit assertion on the individual approach in handling the requests for information. The amended text of the Directive thus introduced a provision addressing the practical application of restrictive approach for assessment of individual requests to access information.¹² The Directive in Article 3 (1) newly stipulates an explicit procedural obligation for ÚJD SR employees which is applicable to situations when decisions on requests for access to information are being made. In the light of the outlined approach, as long as the documentation contains information which cannot be disclosed in its entirety due to security reasons, environmental information must be made available upon the removal of sensitive information from such documentation.

In relation to Article 3 (4) of the Directive, the classification of listed information that were not considered environmental information was removed by the amendment. Article 3 (4) of the Directive now instead provides a list of documentation that is considered as documentation that may contain sensitive information within the meaning of Article 3 (1). Therefore, information that falls within the scope of Article 3 (2) and (3) of the Directive (environmental information), and information not falling within the meaning of Article 3 (1) (sensitive information) must be made accessible. In case that the competent authority determines that the requested documentation contains sensitive information it must proceed with its removal and the rest of the documentation requested must be made accessible following the procedure outlined in Article 3 (4) of the Directive. In other words, following the procedural steps prescribed in Article 3 (4) of the Directive, the competent authority must evaluate whether the requested information contains environmental information within the meaning of Article 2 (3) of the Aarhus Convention. If so, any grounds of public safety to withhold such information must be interpreted in a restrictive manner, taking into consideration the public interest in its disclosure, and whether it relates to emissions into the environment as per the Committee's interpretation.¹³

Such an approach seems to reflect the Committee's view that including a list of sensitive information as an exemption from disclosure into its legal framework remains acceptable, as long as none of that information is considered environmental information within the meaning of Article 2 (3) of the Aarhus Convention.¹⁴ In addition, Article 3 (4) reiterates that any restriction to access to information due to security reasons must be interpreted restrictively, taking into account the public interest served by disclosure of environmental information and whether it relates to emissions to the environment.¹⁵

In the Second Progress Review, the Committee invited the Slovak Republic to clarify the duplication in legal effect that Article 3 (2) and Article 3 (3) of the Directive on Sensitive Information created.¹⁶ The reason behind the duplication of the definition on environmental

¹¹ Supra note 4, para. 39.

¹² Article 3 (2) Directive on Sensitive Information.

¹³ Supra note 4, para 38.

¹⁴ *Ibid.*, para. 37.

¹⁵ Article 3 (4) Directive on Sensitive Information.

¹⁶ Supra note 4, para 31.

information in the Directive on Sensitive Information is the fact that ÚJD SR aimed to provide the terms as stipulated by respective legal provisions existing under the Slovak legal order. While Article 3 (2) contains verbatim of the definition on environmental information as provided by the Aarhus Convention, Article 3 (3) takes over the definition of information on the environment as articulated in Article 2 (1) (a) of the Act No. 205/2004 Coll. on collecting, keeping and disseminating environmental information and on amending and supplementing some acts as amended. The two definitions are not supposed to create legal duplicity, instead they intend to complement one another in laying down the substantive provisions regarding the terms in the Directive.

By removing the disputed parts of the Directive and adjusting its text in line with the Committee's observations, the Slovak Republic believes that it may serve as tangible evidence of its endeavour to achieve compliance with the provisions of the Aarhus Convention. The fulfilment of restrictive approach as formulated in the Directive is also secured under the provision of Article 111 (1) (a) of the Act No. 55/2017 Coll. on civil service as amended, which obliges the employees of ÚJD SR to observe and apply the applicable legal framework. Since the Directive on Sensitive Information is binding on the employees of ÚJD SR conducting the evaluation of requests for consulting information in the documentation, it represents a practical arrangement for implementing the recommendations enshrined in decision VI/8i.

The new wording of the Directive on Sensitive Information is therefore believed to be an important fragment in meeting the requirements established under Article 3 (1) of the Aarhus Convention.

2 The Atomic Act

Turning to the second part of the report, among other developments, the Slovak Republic reported on the amendments to the Atomic Act in the Second Progress Report. The Committee in the Second Progress Review considered the inclusion of “telecommunications secrets” or “postal secrets” to the provisions of the Atomic Act as non-compliant with the grounds for refusal laid down in Article 4 (3) or 4 (4) of the Aarhus Convention.¹⁷ Based on such understanding, the Committee invited the Slovak Republic to either explain how are the added exemptions consistent with the Aarhus Convention, or report on its removal.¹⁸

The Slovak Republic strives to amend the problematic provisions of the Atomic Act. As a matter of fact, ÚJD SR is currently drafting the new Atomic Act which should represent a comprehensive amendment of legislation in the field of peaceful use of nuclear energy (hereinafter “new Atomic Act”). The draft of the new Atomic Act is ought to cover topics such as the implementation of findings from the IRRS Mission held in 2012, reduction in number of issued decisions regarding modifications at a nuclear installation, reduction in types of authorizations (licenses), access to information concerning the environment by the public and public participation in the decision-making process, e-Government, cyber security, sensitive information, adjustment of procedural provisions, as well as implementation of provisions of

¹⁷ *Ibid.*, para. 50.

¹⁸ *Ibid.*, para. 51.

international agreements governing peaceful use of nuclear energy. In order to bring the legal framework in compliance with recommendations of the Committee specified in the Second Progress Review, ÚJD SR has incorporated provisions reflecting on the substantive reservations formulated in the President's decision into the forthcoming comprehensive amendment of legislation in the field of peaceful use of nuclear energy. The draft legislation is expected to provide a rather broad and complex reform of the legal framework in this respect. Given its comprehensiveness, the draft of the new Atomic Act was proposed to the plan of legislative tasks of the Government of the Slovak Republic for the VIII. election period in the fourth quartal of 2021.

Recently, there was an amendment of the Act No. 575/2001 Coll. on the organization of government activities and the organization of the central state administration as amended that introduced a shift in the competence of legislative initiative from central governmental authorities to the Government Office of the Slovak Republic.¹⁹ The change was introduced by the Government Programme Objectives for years 2020 – 2024. As a result, ÚJD SR was left with the competence to prepare substantive materials for the legislative process falling under its regulation, however the procedural autonomy over the legislative process was assigned to the Government Office of the Slovak Republic.²⁰

In accordance with the recommendations of the Committee to delete the terms “telecommunications secrets” and “postal secrets” from the Atomic Act, the Slovak Republic arranged their removal in the new Atomic Act that is currently being drafted by ÚJD SR. The new Atomic Act will undergo the regular legislative procedure for the adoption of laws and thus will involve public consultations.

Since the legislative procedure preceding the new Atomic Act is estimated to be initiated in 2021, ÚJD SR views a partial amendment of the current Atomic Act as a possible solution to achieve earlier compliance in this matter. The Slovak Republic would like to assure the Committee that in case of such partial amendment to the Atomic Act, ÚJD SR will insist on the removal of the controversial provisions from the legislation. The Slovak Republic will undertake best efforts to adopt partial amendment to the Atomic Act by May 2021 in order to react to the reservations of the Committee articulated in the Second Progress Review in this regard and to achieve compliance with the Aarhus Convention in the pertinent case.²¹

¹⁹ Act No. 134/2020 Coll. amending and supplementing the Act No. 575/2001 Coll. on the organization of government activities and the organization of the central state administration as amended.

²⁰ See the relevant provisions of the Act No. 134/2020 Coll. amending and supplementing the Act No. 575/2001 Coll. on the organization of government activities and the organization of the central state administration as amended in Attachment 1.

²¹ In such case, the partial amendment would to a great extent correspond to the draft § 15 of the new Atomic Act, which removes the reference to postal and telecommunications secrets. The draft text is only a working version and it can be still subject to change in the process leading to the initiation of a legislative procedure. See the draft text in attachment 2.

Conclusion

The disclosure of environmental information remains of paramount importance in regulatory practice of ÚJD SR. This can be demonstrated by the fact that ÚJD SR constantly tries to improve its communication policy towards meeting the highest transparency standards. The Slovak Republic values the observations submitted by the involved parties. Based on the Committee's evaluation and taking into consideration the positions of communicants and observers, the Slovak Republic conducted the necessary adjustments to the disputed paragraphs of the Directive on Sensitive Information in order to bring them in compliance with the provisions of the Aarhus Convention.

The Slovak Republic, therefore, assumes that the existing framework laid down by the Directive on Sensitive Information provides a firm ground for the adequate handling procedure of individual requests for access to information. It stipulates the essential substantive and procedural clauses that enable the employees of ÚJD SR to classify whether the requested information in the documentation falls within either the definition of environmental information or sensitive information, and correspondingly apply the necessary measures. In case the requested information cannot be disclosed in its entirety due to security reasons, the documentation shall be made available after removal of sensitive information. An employee of ÚJD SR conducting the evaluation is obliged to interpret the grounds for refusal in a restrictive manner, considering the public interest served by disclosure of environmental information, and whether the requested information concerns emissions to the environment.

With regards to the problematic provisions concerning the "telecommunications secrets" and "postal secrets" in the Atomic Act, ÚJD SR carried out their deletion and incorporated the relevant adjustments to the draft of the new Atomic Act. Such an approach intends to demonstrate the efforts of the Slovak Republic to undertake steps to ensure that exemptions from disclosure of information are consistent with the exhaustive list of grounds for refusal within the meaning of article 4 (3) and 4 (4) of the Aarhus Convention. As noted above, the Slovak Republic will undertake best efforts to adopt partial amendment to the Atomic Act by May 2021 in order to react to the reservations of the Committee articulated in the Second Progress Review in this regard and to achieve compliance with the Aarhus Convention in the pertinent case.

In light of the foregoing, the Slovak Republic is convinced that all necessary measures were taken to thoroughly implement the recommendations embodied in decision VI/8i.