

Statement of the UJD SR on the Observer Statement concerning the implementation of the UNECE decision VI/8i of 30 May 2021, supplemented by 2 June 2021 filed by Mr. Daniška, Director of the “We Want a Healthy Country” NGO, and for the further submission of Mr. Mihók, a member of the CEPTA NGO, of 24 May 2021.

Both submissions were addressed to the Compliance Committee and the Secretariat of the Aarhus Convention in relation to Decision VI/8i in Case ACCC/2013/89/Slovakia (further only "submissions").

On point 1 of Mr Daniška's submission

The draft proposals of the new Building Acts were submitted for the interdepartmental comment procedure by the Deputy Prime Minister for Legislation and Strategic Planning. The draft proposals were not discussed with the Nuclear Regulatory Authority of the Slovak Republic (further only “NRA”) prior to the official interdepartmental comment procedure and the NRA was not a member of the Commission for the preparation of these laws. NRA could only make comments within the interdepartmental comment procedure. NRA interacted with the representatives of the submitter of these laws during the interdepartmental comment procedure. Negotiations with the submitter of the draft proposals were held on 20 May 2021 at the Government Office of the Slovak Republic and on 25 May 2021 at the Ministry of Economy of the Slovak Republic. At both negotiations, the NRA clearly stressed that the draft proposals are not in compliance with the Aarhus Convention and do not continually follow up on the Act No. 24/2006 Coll. on Environmental Impact Assessment and on amendments to certain laws as amended (further only “Act on EIA”). These comments of the NRA were also sent officially via the Slov-lex portal.

Similarly, the other statements in this paragraph are misleading. The authorization process within the meaning of the Act No. 50/1976 Coll. on Spatial Planning and Building Regulation (further only “Building Act”) clearly recognizes and allows for public participation in all relevant proceedings. The public is informed about the initiation and conduct of these proceedings through the standard NRA’s channels (official electronic notice board, website, Central Public Administration Portal available at www.slovensko.sk), as well as through the relevant municipality’s official boards participating in the proceedings. Within the building proceedings for the construction of nuclear facilities administered by the NRA a number of other administration bodies participates in the licensing process by issuing opinions, binding opinions, decisions or other statements according to special regulations. These authorities simultaneously inform the public about their partial sub-procedures or parallel proceedings through their publication and communication channels. This system creates the conditions for comprehensive and timely information to the public with a view to its optimal involvement in decision-making processes.

The participation of the public in oral proceedings related to local survey and inspection in the case of early use of the PS-45 incinerator plant or inspection of the files in the construction proceedings of the NRA related to the PS-45 incinerator plant, and also to the completion of storage capacities of the Interim Spent Fuel Storage Facility (further only "ISFS") is a real example of the public having information about construction procedures at its disposal, actively participating in these procedures and taking advantage of the possibilities of involvement/intervention. Within these activities, the public submits their observations, suggestions, opinions and comments, which become part of the files on the above

administrative proceedings, and the NRA further deals with them in detail in the course of the decision-making process.

Almost all NRA's proceedings related to the issuing of permits pursuant to Art. 5 (2) and (3) of the Atomic Act, as well as the issuing of consents, approvals or other decisions pursuant to Art. 4 (2) of the Atomic Act, are preceded by the environmental impact assessment process (further only "EIA process"). For instance, in the field of radioactive waste management (RAW), Annex 8, Table 2 of the Act on EIA, which sets out the so-called proposed activities, explicitly prescribes a limitless mandatory assessment for all RAW management activities, while additionally prescribing a screening procedure for all facilities for the management of any type/activity class of RAW. The public's right to participate in these proceedings is undeniable and it is ensured by the application of the requirements stipulated by the Act on EIA. According to the provisions of the Act on EIA, the public has the exclusive status of a party to proceedings with all opportunities to participate in proceedings, to participate in decision-making, to influence the course of proceedings and to express its views (the public holds the same status in the proceedings as the party who is the initiator of the proceedings/applicant for the relevant decision). The public shall be informed in the prescribed manner of the initiation of the relevant administrative procedure; may inspect the contents of the file; make copies of the documentation in so far as its nature permits; may monitor internal communication between the participating professional services of the administrative body; it may acquaint it with the basis of the forthcoming decision and the reasons which led the administrative authority to issue it in that form; it shall also have access to the views and observations of the other authorities concerned where they have participated in the procedure in question in any way; may comment on the draft of the forthcoming decision and, having become aware of the published decision, may pursue ordinary/extraordinary remedies against it. The use of these possibilities by the Slovak public can be documented on the examples of recent proceedings led by the UJD SR in connection with the approval procedure for the Integral RAW Storage Facility, with the construction procedure for the expansion of ISFS storage capacities, with proceedings for early use of the construction of the PS-45 incinerator plant, etc.

In addition, from the point of view of the NRA, it should be noted that even in proceedings that are not preceded by the EIA process, or that are not administered in accordance with the Building Act, the public's right to participate and protect its interests is guaranteed. A specific example is the ongoing procedure pursuant to the Atomic Act concerning the issue of a RAW shipment permit, where the public obtained published information about the start/course of the proceedings and, upon delivery of the decision via public notice, it further exercised its rights and filed an appeal against the decision.

On point 2 of Mr Daniška's submission

The Parliamentary draft proposal amending the Atomic Act was first submitted on 26 February 2021, However, it was subsequently withdrawn by the submitters. In the supplementary statement of 2 June 2021, the attention is drawn to another parliamentary draft proposal in the same matter, which was submitted to the meeting of the National Council of the Slovak Republic on 28 May 2021 (ČPT 594). Likewise, it is a parliamentary activity that the NRA has no way of influencing, as it can only be involved in the upcoming interdepartmental comment procedure after the 1st reading. In our view, the draft proposal

additionally satisfies the reservations of the Committee and the President's veto of 2019 as it removes the disputed reference to "telecommunications secrecy and postal secrecy" from the currently valid text of Art. 8 (11) of the Atomic Act.

On point 3 of Mr Mihók's submission and point 3 of Mr Daniška's submission

JAVYS is a joint-stock company in which the sole holder of the entire 100% of shares is the Slovak Republic, represented by the Ministry of Economy of the Slovak Republic. Its establishment in the Slovak nuclear energy environment in 2006 was a consequence of the privatisation process of SE, a. s., when JAVYS was given a portfolio of nuclear facilities that were not subject to privatisation - either there was no interest on the part of the privatizer (e.g. NPP V-1) or they were of strategic importance to the Slovak Republic (e.g. the National RAW Repository and ISFS). JAVYS also continued the decommissioning of the A-1 nuclear power plant and the operation of a wide range of RAW management technologies. In the framework of the transposition of the Council Directive 2011/70/EURATOM, JAVYS became quite logically an element through which the Slovak Republic ensured the fulfilment of its obligations resulting under this Directive, since it had the necessary equipment, licenses, technological and personnel equipment. These were mainly long-term responsibilities in the field of spent fuel management (further only "SNF") and RAW, as well as in the field of decommissioning of nuclear facilities in its territory, which the Slovak Republic performs through JAVYS. In addition to these activities, there is also the process of implementing, coordinating and developing the deep-geological disposal programme, which is also addressed by the Council Directive 2011/70/EURATOM.

Specified information obligations in relation to the public are applicable to JAVYS as well. (e.g. obligations of the holder of the permit in the Atomic Act to inform the public about the state of nuclear safety of nuclear facilities and on the handling of RAW and SNF, but also information obligations in accordance with the Act on Radiation Protection and obligations arising from the legislation of the Ministry of Environment in connection with the performance of post-project analysis in the implementation of proposed activities, etc.).

The NRA properly fulfils its information obligations towards the public in accordance with the Freedom of Information Act. During the period since 2020, the NRA received a total of four requests for information from the public with dozens of questions and sub-questions falling within the area of the RAW management. These questions were exhaustive, very detailed and put a significant strain on NRA's staff capacity. In many cases, preparing responses to such requests meant collecting data from different sources, requiring compilation from multiple materials, and as a result, each such response was a document within a range of several pages of professional text, overview tables, etc. Since the questions, in terms of time, focused on a relatively long period (they also went 20 years into history – e.g. AKV incinerator plant PS-06 from 2000 and an overview of RAW treatment from that date), it was necessary to re-study the archived files and therefore in some cases to extend the period for answering the inquiries. Nevertheless, the NRA always tried to provide all the data at its disposal and in certain cases went even beyond its obligations under the Freedom of Information Act and additionally processed and edited the requested information in order to come as close as possible to the spirit of the inquiry. In certain cases, the NRA was unable to provide the requested response, as it either did not have the data in question or was

required to adjust the response in the light of the possible content of sensitive information or personal data.

In the submissions, the reference is made to two specific submissions (of 27 November 2020 and 23 February 2021) where the public allegedly unsuccessfully requested data on the combustion of RAW and data on the contamination of washing water by radionuclides in flue gases. The NRA responded to both of these queries with comprehensive answers from 22 December 2020 and 15 March 2021, in the range of about six pages with multiple attachments, where it fully provided the information at its disposal. This was also the case for the request to provide information related to the processing of foreign RAW, when the NRA provided the applicant with the data it had at its disposal and through which it sought to demonstrate a balance/proportions of the imported and exported activity. The figure was provided for all imports of foreign radwaste made during the period considered.

On point 4 of Mr Daniška's submission

The facts referred to in point 1 cannot be considered as hindering the effective public access to information. It is not physically possible for a civil servant who has his standard professional agenda, prescribed time limits and deadlines for the performance of other tasks, to be available at any time requested by the public to provide information. Such time limits are in practice quite common in any other authority (registry office, tax office, court) and their validity is not called into question. NRA provides the possibility for all parties to the proceedings to come to consult the respective administrative file on the basis of an agreement between a nuclear safety inspector who is in charge of the administrative proceedings in question and the party that requests to consult the file. NRA's office hours during working days are from 9:00 a.m. until 2:00 p.m., which does not mean that by mutual agreement the consulting of the file can be carried out only at this time. In case an interested party requests a longer period of time, the time for consulting the file may be extended upon agreement with the responsible nuclear safety inspector. Similarly, if there is a large volume of documentation, a party interested in studying the documentation may, by agreement, come to look at the file in question several times as necessary. Observer Mr. Daniska consulted the documentation for the administrative procedures pursuant to the Building Act and the Atomic Act on 26 April 2021, while responsible employees of the NRA were present during the whole duration of documentation consulting until necessary, not only until 2:00pm as stated in the submission.

Online access to the entire licensing documentation is problematic not only from technical point of view but also with regard to capacities of the NRA. The licensing documentation contains a large amount of sensitive information that needs to be redacted before consulting the file. For this reason, only the modified documentation following the removal of sensitive information would be eligible to be uploaded online. However, given the scope of the documentation, it is rather problematic.

The mentioned 16-day time limit for processing a request under the Freedom of Information Act is not the standard legal period, it is an extended period, especially for particularly large-scope inquiries. This period is entirely in accordance with the Freedom of Information Act.

The statement in sub-point 2 concerning the only option for studying the documentation during the oral hearing with the site examination in some cases is misleading. This process is preceded by a sufficiently long period of time from the notification of the commencement of the administrative procedure concerned, where standard procedures of getting acquainted with the documentation, such as inspection of files, getting acquainted with the documents, making excerpts and copies, etc., can be used by the public. The time limits for administrative proceedings led by the NRA are determined by the law, therefore they are known to the public in advance and the public is also acquainted with the course/current state of the proceedings. In addition to that, construction proceedings and proceedings pursuant to the Atomic Act administered by the NRA are mostly preceded by (or run in parallel to) related proceedings administered by other state administration bodies (e.g. environmental impact assessment processes at the Ministry of the Environment of the Slovak Republic, authorization processes of nuclear facilities falling within the scope of radiation protection at the Radiation Protection Authority), in which partial licensing according to specific regulations is carried out, and thus the public also has the opportunity to get acquainted with the information related to these areas. Mr Daniška referred to the specific procedure for the early use of the building which was preceded by the administrative procedure for the building permit and in this case it is, therefore, possible to note that the NRA proceeded in accordance with the Building Act.

Mr Daniška appealed against the Decision No. 176/2019 – building permit for the modification of a completed building (about 5 months after the decision became final), in which he also stated that he, together with Mr. Molda, were omitted parties to the proceedings, since they were involved in the EIA process for the construction proceeding in question. From that moment on, he was fully treated as a party to the proceedings.

On 12 January 2021 JAVYS submitted an application for the early use of the building to the NRA (this was in principle a request from Mr. Daniška when he filed an appeal for a procedure for an extension of the completion date of the construction). The public notice concerning the initiation of the administrative procedure for the early use for the building accompanied by the invitation to an oral hearing with the site examination were published by the NRA on 14 January 2021. Due to the adverse pandemic situation, the oral hearing with the site examination was postponed several times (also due to repeated suggestions from Mr. Daniska). The oral hearing with the site examination took place on 7 May 2021, which was duly and timely communicated to all parties to the proceedings and to the authorities concerned.

On 19 April 2021, Mr Daniška requested to consult the file for the above outlined proceedings. However, the NRA does not require the applicant to submit the documentation for the early use of the building, as it issued a building permit for the building on the basis of the documentation submitted at the time. According to Art. 58 (1) of the Building Act, *'The application for a building permit together with the documents and prescribed documentation prepared by the authorized person is submitted by the builder to the building authority and indicates the purpose and method of use of the building, the place of construction and the estimated time of its completion during construction for a certain period of time and the period of use of the building'*.

According to Art. 79 (2) of the Building Act, *"The petition for the final approval of a building is filed in writing. The petition shall indicate the designation and location of the construction, landscaping or site of the extraction works, the estimated date of completion of the construction or landscaping or extraction works, including the clearing of the site and the completion of works on the surroundings of the construction site, and an indication of whether the test run will be carried out and its duration"*.

It follows from the above that it is not the responsibility of the applicant to submit documentation of the actual construction to the application for the early use of the building (small final approval). This is available directly from the applicant and is available for consultation in so called 'red pencil' during an oral hearing with the site examination.

For this reason, Mr Daniška consulted the building permit file, where the complete documentation to the relevant proceedings was at his disposal. NRA provided Mr Daniška with the opportunity to choose any document from the file, and subsequently copies of the requested documents were handed over to him within the agreed time frame. It stems from the aforementioned that Mr Daniška was able to get acquainted with the documents in question prior to the oral hearing connected with the site examination.

Pursuant to Article 80 (2) of the Building Act, *"In the notice of initiation of the final building approval procedure, the building authority notifies the parties and the authorities concerned that objections and opinions may be raised at the latest at the oral hearing, otherwise they will not be taken into account."*

We believe that the NRA, as the competent administrative authority, made no mistake in the communication with Mr. Daniška, and allowed him to inspect the file, despite the fact that the administrative procedure had already been completed. Mr Daniška, as a party to the proceedings, had available information on when the administrative procedure was initiated (14 January 2021), therefore we consider that he had adequate time to exercise his rights and get acquainted with the documentation in question in advance.

As to point 3, we would like to note that the NRA, as an administrative authority, must take the necessary measures in accordance with generally binding legal regulations, not to disclose classified information, banking secrecy, tax secrecy, trade secrets and others in accordance with its legal obligations. NRA proceeds consistently in accordance with the Directive on Sensitive Information, and in the event that the documentation contains information that cannot be disclosed in its entirety due to security reasons, environmental information is made available following the removal of sensitive information. Additionally, the NRA proceeds in accordance with the basic principles of the Convention on the Physical Protection of Nuclear Materials and Nuclear Facilities, namely:

Principle A: *The responsibility for the establishment, implementation and maintenance of the physical protection regime within a State rests entirely with that State.*

Principle L: *The State should establish requirements for the protection of the confidentiality of information, the unauthorized **disclosure of which could** compromise the physical protection of nuclear material and nuclear facilities.*

From these two basic principles, which the UJD SR is obliged to observe, it is clear that the State determines the conditions of physical protection and is obliged to protect documentation that contains information that could be used to plan or carry out activities aimed to cause disruption or destruction of a nuclear facility, thereby adversely affecting the safety of the public and causing ecological or economic damage. This documentation is made available upon the removal of sensitive information (Art. 3(16) of the Atomic Act). As noted above, NRA proceeds consistently in accordance with the Directive on Sensitive Information.