

Communicant's response on the submission of the party concerned from 1. December 2014 answering the ACCC questions following the public hearing in September 2014

8. December 2014

Questions for the Party concerned and its responses:

1) Please provide an English translation of the ruling of the Slovak Supreme Court of 27 June 2013. Please also provide your understanding of the meaning of the Court's ruling.

Our interpretation and understanding of the meaning of the ruling of the Supreme Court of the Slovak Republic Ref. No. 5Sžp/21/2012 is that the verdict part of the ruling cancelled the Nuclear Regulatory Authority of the Slovak Republic Decision No. 79/2009 which was the second-stage decision of the appeal against the Decision No. 246/2008 on the permit to change the MO34 construction before completion, and returned the issue to start new proceedings with the obligation to involve Greenpeace Slovensko as a participant of the repeated appeal proceedings into the proceedings. The Nuclear Regulatory Authority of the Slovak Republic (hereinafter referred to as "NRA SR") fulfilled the obligation and immediately opened the new appellate proceedings on 21 August 2013. NRA SR proceeded strictly in line with the verdict of the Slovak Supreme Court and acted promptly towards fulfilment of the ruling. According to NRA SR, obligations explicitly defined in the verdict part of the ruling are legally enforceable and binding. These were:

- a) cancellation of the NRA SR Decision No. 79/2009,*
- b) return of the issue to the further proceeding,*
- c) payment of costs of the proceedings to a plaintiff's lawyer.*

All the aforementioned obligations were immediately fulfilled by NRA SR. Reasoning of the Slovak Supreme Court that the environmental impact assessment had to be performed before issuance of the ruling was fulfilled already before pronouncement of the verdict in 2009 - 2010.

Enclosures:

- *Original version of the ruling of the Slovak Supreme Court Ref. No. 5Sžp/21/2012*
- *English version of the ruling of the Slovak Supreme Court Ref. No. 5Sžp/21/2012*

Comments by the communicant

After the cancellation of the original second instance decision of the Nuclear Regulatory Authority by the Supreme Court of the Slovak Republic in June 2013 the Nuclear Regulatory Authority re-opened the appellate procedure. The Party concerned argues that the NRA "fulfilled the obligation and immediately opened the new appellate proceedings on 21 August 2013". This is, however, only half truth. The NRA re-opened the proceedings, but at the same day it issued a very special, rarely used decision: the NRA excluded suspensive

effect of the appeal. That means that the appellate procedure was carried out without interrupting the construction of the power plant itself. Normally, the administrative appeal has suspensive effect on the decision. This can be excluded if there is urgent public interest, or if there is a danger that by applying suspensive effect party to the proceedings or somebody else could suffer irretrievable harm. Greenpeace Slovakia argued that this was not the case and we filed a petition to the General Prosecutor Office as well as to the Regional Court. The General Prosecutor refused our petition, the Court had not decided on the petition yet (though it was filed in October 2013 !!).

Thus the NRA followed the court decision only formally, without fulfilling its substance.

2) With respect to the requirement in article 6, paragraph 6, of the Convention to give the public concerned access to all information relevant to the decision-making, please provide your position on the following:

a) If “sensitive information” under the Nuclear Act¹ happens to be “environmental information” in accordance with article 2, paragraph 3, of the Convention are there legal provisions or institutional arrangements guiding how the requirements of the Convention should be applied in such cases? Alternatively, is the application of the Convention excluded in the case of “sensitive information”? To support your answer, please provide the text of the relevant legal provisions (together with an English translation thereof) and/or an explanation of the relevant institutional arrangements.

Yes, there are.

At first, we would like to point out that the Slovak legislation provides, in accordance with provisions of article 6 paragraph 6 of the Aarhus Convention, access to all information in the permit proceedings while protecting classified information, bank secret, tax secret, business secret and a lawfully accepted obligation to maintain confidentiality (article 23 of the Administrative Procedure Act; article 4 paragraph 4 of the Aarhus Convention).

In line with article 29 of Act No. 575/2001 Coll. on organisation of activities of the government and organisation of the central state administration as amended, NRA SR is a central state administration authority for nuclear supervision. It ensures execution of the state supervision of nuclear safety of nuclear installations, including radioactive waste and spent fuel management and later fuel cycle phases, nuclear materials, including their inspection and registration, as well as physical protection of nuclear installations and nuclear materials ensured by a respective licence holder. It ensures assessment of plans of nuclear energy utilisation programmes and quality of classified equipment and nuclear technology instruments and obligations of the Slovak Republic resulting from international treaties related to nuclear safety of nuclear installation and nuclear material management. This obligation is detailed in Act No. 541/2004 Coll. on Peaceful Use of Nuclear Energy (Atomic Act) as amended.

¹ The Nuclear Act is in response of the Party concerned (SR) referred to as the Atomic Act.

However in addition to the national legal regulations, the Slovak Republic as a member of several international organisations and associations of countries is bound by the European Union legislation but also by many other international treaties. One of such treaties is just the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention) that was ratified by the Slovak Republic with the validity as of 5 March 2006 (notice of the Ministry of Foreign Affairs of the Slovak Republic No. 43/2006 Coll. on Adoption of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters). The Convention is only one of several international documents regulating the right for free access to information that the Slovak Republic is bound by.

The Slovak Republic fully realises the nature and importance of the right to information as a basic human right and thus it guarantees the right also in the Constitution of the Slovak Republic (Constitutional Act No. 460/1992 Coll. Constitution of the Slovak Republic as amended) as the basic and the highest legal act of the Slovak Republic (article 26 paragraph 1 “Freedom of speech and right to information are guaranteed.”) as well as in other regulations, namely in particular in the Act No. 211/2000 Coll. on Free Access to Information as amended (hereinafter referred to as “Act on Free Access to Information”) as the general regulation regulating this right.

*Despite the basic human right is concerned, **the legal theory and practice acknowledge existence of legitimate reasons based on which this right can be limited.** Since it represents a serious intrusion into the right guaranteed by the Constitution as well as by other international documents, the authorisation to perform such limitation is included also in article 26 paragraph 4 of the Constitution of the Slovak Republic “The freedom of speech and the right to retrieve and distribute information **can be limited by legislation** if measures in a democratic society are concerned **which are necessary for protection of rights and freedom of others, state security, public order, protection of public health and morality.**” while The Constitution of the Slovak Republic **requires having this limitation included in the legislation in the form of Act.***

The Aarhus Convention itself respects rights and individuality of individual signatory member states, and enables to refuse provision of information by certain reasons. The article 4 of the Aarhus Convention enumerating reasons enabling to refuse an application for environmental information is in particular concerned.

*The Slovak Republic, taking into account potential threats, considers **safety as the top priority** in the field of use of nuclear energy. Thus, it has utilised the option regulated in article 4 paragraph 4 of the Aarhus Convention and article 26 paragraph 4 of the Constitution of the Slovak Republic and stipulated an obligation not to publish information, which might be used for “planning and performance of activities with the aim to violate or damage a nuclear installation and thus adversely affect safety of the public and evoke an environmental or economic damage” in **article 3 paragraph 14 of the Atomic Act.** Since the Aarhus Convention requires a restrictive interpretation of article 4, the Slovak Republic defines this limitation by enumeration of documentation to prevent its free distribution and incorrect interpretation in article 3 paragraph 14 of the Atomic Act. The Atomic Act calls this documentation the documentation containing sensitive information. Sensitive information relates to such details in the nuclear installation documentation the*

loss, misuse, modification of which or an unauthorised access to which can endanger nuclear safety and physical protection, and thus the public interest.

All limitations of access to the documentation containing sensitive information are based on the principle that withhold of certain information to the general public is necessary from the viewpoint of their protection and safety. An individual right of a person for information, whatever legitimate it would be, must not endanger other individuals of the society, safety of the country and neighbouring countries. The aim of limitation of the right to information is not the prevention of access to this information itself, but an effort to ensure protection of other interests of the society that the state represented by public authority bodies evaluated as primary after review of fulfilment of legislative conditions of limitation of the right to information. It is therefore a certain looking for a balance between two or even more different rights, even though an individual whose right was limited in favour of preservation of other right may consider it a breach of his right.

*The National Council of the Slovak Republic agreed by its resolution No. 1840 dated 23 September 2005 with the Aarhus Convention adopted on 25 June 1998 in Aarhus, and decided that the Aarhus Convention is an international treaty **taking precedence over the legislation pursuant to article 7 paragraph 5 of the Constitution of the Slovak Republic.** Thus, any legal provision in contradiction with the Aarhus Convention will be not applicable with regard to priority of the Aarhus Convention.*

*The reference in article 3 paragraph 14 of the Atomic Act to article 4 paragraph 4 of the Aarhus Convention has therefore **only an informative value.** Legislative rules of the Slovak Government regulating rules of development of general binding legislative rules in paragraph 22 of Annex 5 say that “Footnotes to respective references are not part of the regulation; they have an informative value. Thus, they must not contain facts of normative character.” Also with regard to the aforementioned, the intention of NRA SR as a proposer of the Act No. 350/2011 Coll. amending and completing the Act No. 541/2004 Coll. on Peaceful Use of Nuclear Energy (Atomic Act) and on alterations and amendments to some acts as amended, which completed the Atomic Act by definition of documentation containing sensitive information, was to **refer to the document based on which such limitation of the right to access to environmental information could have been implemented in the national legislation.***

Under these circumstances and to prevent occurrence of serious damages, a restrictive limitation of the access to information is applied in accordance with article 4 paragraph 4 of the Aarhus Convention. It means that in the case of a potential conflict between environmental information and sensitive information in licence documentation of nuclear installations, the access to sensitive information will be limited, and such sensitive information will be excluded from the documentation to be opened to the public.

Comments by the communicant

It is not clear what Party concerned tries to say by this. The Aarhus Convention is international treaty with precedence over the national laws. Therefore it is irrelevant whether specific law contains reference to the Aarhus Convention or not, the fact is that any legislation must be applied and interpreted in accordance with the Aarhus Convention. It means that Article 4 par. 4 of the Aarhus

Convention shall apply also on definition of the restricted information pursuant to the Nuclear Act.

Furthermore, it appears that Slovakia has misinterpreted the word “restrictive” in art. 4(4) of the Convention. Slovakia interprets it by stating it has the right to restrict access to information further than necessary when taking into account the public interest served by disclosure, whereas the Convention says exactly the opposite: the exemptions have to be interpreted restrictively and when there is a public interest served by disclosure or when information relates to emissions into the environment, wider access has to be granted. We argue that the reduction of risk of emissions of radioactive substances from a new or, as in this case, re-started earlier de-facto abandoned project is an overriding public interest that should lead to a high level of access to information. We agree that certain information may be kept confidential if this information is not already available in the public domain and could directly be used for malevolent attack on a nuclear installation resulting in emissions of radioactive substances. However, the information withheld by NRA does for the over-largest part not fall into this category.

To be able to apply a particular exclusion of sensitive information, the NRA SR directive on identification and removal of sensitive information from documents to be opened to the public was adopted. The directive is used as an internal procedure and was used also at removal of sensitive information from the MO34 documentation opened to the public in the repeated appeal proceedings from 15 October 2013 to 30 November 2013.

Comments by the communicant

This NRA “Directive” is solely an internal document. It is not a generally binding legal regulation, it was not published in the collection of laws – which is inevitable condition for legislation to become generally binding regulation. Such a “directive” is binding only for employees of the NRA. This “directive” was not published in a way that public could have access to it.

Moreover, such “directive” is still too general and not specific enough. But, the most important is that it is upon exclusive discretion of the NRA which information will be considered secret and with will be disclosed to the applicants.

Furthermore, the NRA has excluded virtually all sensible information from its (already insufficient) public participation procedure. This included information which in no way or only in an extremely indirect way could be used by members of the public for “planning and performance of activities with the aim to violate

or damage a nuclear installation and thus adversely affect safety of the public and evoke an environmental or economic damage.

Given the complicated opportunity for access to information (around 100.-000 pages available only for insight in the Mochovce visitor centre), we were only able to collect around 100 pages that are illustrative. These pages are representative of the documentation as we have been able to see.

Examples (see attachments) include:

- 001 – information about potential extreme weather situations
- 002 – seismic data of the site
- 003 – differences in seismic and extreme weather data between Mochovce 1,2 and Mochovce 3,4
- 005 – seismic frequencies at Mochovce
- 007 – a table describing technical (not malevolent) failure sequences and their results in general categories – only the number of the sequence is given, impacts are whited out – this includes the risk of emission of radioactive substances
- 009 – descriptions of the risk of external flooding
- 010 – location of (radioactive emission) monitoring devices and proposals for new monitoring devices
- 012 – estimation of the chance of the fall of an aircraft on the power station and justification to exclude this from further assessment (all data blocked out)
- 018 – a description how the population is to be prepared for an accident
- 019 – "Overview of norms and standards used in case of a projected (= design based) [BLACK]"; We are not even allowed to see the word "incident" or "accident"!
- 020 – the overview of categories and classification of seismic safety systems
- 021 to 024 – overview of redundant cooling systems
- 025 – overview of used literature in the possession of Slovenske Elektrarne
- Document 1 - Table 14.5.2-3 Production of radioactive waste in Mochovce 1,2
 - Type radwaste - burnable - compressible metals - other compressible substances - solid waste
 - for concrete containers - solid waste for separation - large metal parts - conditionally non-active
 - air-filter pads

Enclosures:

- *Act No. 541/2004 Coll. on Peaceful Use of Nuclear Energy (Atomic Act) alterations and amendments to some acts as amended (extract from article 3 paragraphs 14 and 15)*
- *Directive on identification and removal of sensitive information from documentation to be opened to the public*

In this point, the Slovak Republic would like to clarify application of the legal framework for execution of the rights of a participant to the proceedings that is a legal entity (including environmental organisations having the form of non-governmental organizations (NGOs) in the Slovak Republic).

The NRA SR informed Greenpeace Slovensko, other participants of the proceeding, affected authorities and the general public by its letter Ref. No. 5589/2013 dated 21 August 2013 published in parallel on the website of the NRA SR, on an electronic official board of the NRA SR, and on the website of Kalná nad Hronom and Nový Tekov municipalities, that the appeal proceedings against decision on permitting the change of the construction before completion No. 246/2008 was re-opened. By this letter, it enabled also other potential participants of the proceedings from the general public to familiarise with the documentation serving for the permit proceedings within the period from 15 October 2013 to 30 November 2013 in the Mochovce Nuclear Power Plant information centre where this documentation could have been studied.

Within this period, no other mail named as an application was sent to the NRA SR. After the licence documentation was made available, the NRA SR registered only natural persons in the Mochovce information centre who did not show any affiliation to the Greenpeace Slovensko. On the first possible day of making the documentation available in the MO34 site, i.e. on 15 October 2013, the Legislative & Legal Division Director of the NRA SR instructed briefly all present natural persons of process and material and legal aspects of studying the documentation in attendance of nuclear safety inspectors of the NRA SR in duty and administrative officers of the NRA SR. He explicitly noticed the participants that if they represented legal entities (such as for instance NGOs), they should have attached a power of attorney/authorisation signed by statutory body of a respective legal entity to the report on an administration act.² In accordance with the report on the act in

² According to the register of NGOs kept by the Ministry of Interior of the Slovak Republic, Greenpeace Slovensko is the NGO. Pursuant to article 2 paragraph 3 of Act No. 83/1990 Coll. on association of NGO as amended, NGOs are legal entities. Pursuant to article 20 of Act No. 40/1964 Coll. Civil Code as amended (hereinafter referred to as “Civil Code”) those can act on behalf of a legal entity “who are authorised by an agreement on establishment of a legal entity, by a foundation charter or by act (statutory bodies). Legal acts can be performed on behalf of the legal entity also by other its employees or members if specified in internal regulations of the legal entity or if it is usual with regard to their work positions.” Moreover, the Civil Code knows also the institute of representation on the basis of a power of attorney and says in its article 31: “At legal act, it can be represented by a natural person or a legal entity. For these purposes, the mandator will issue the power of attorney to the attorney where it must define the extent of the attorney’s authorisation.” According to article 14 paragraph 2 of Act No. 71/1967 Coll. on Administrative Proceedings (Administrative Procedure Act) as amended, “the legal entity acts by its bodies or by its representative” in the administrative proceedings. The Administrative Procedure Act in their article 17 paragraph 3 regulate an obligation of such representative to show a power of attorney to the administrative body based on which he acts. “The authorisation to represent shall be proven by a written power of attorney or a power of attorney

the proceedings and despite the notice, the present natural persons acted on behalf of themselves, mentioned their personal data and did not submit any power of attorney/authorisation based on which it would have been evident they acted on behalf of any NGOs. These facts were recorded in reports with registration No. 6918/2013, No. 6920/2013 and No. 6922/2013. All the three natural persons mentioned their own personal data in the reports without any powers of attorney/authorisations to act on behalf of legal entities signed by statutory bodies of these legal entities –NGOs.

Comments by the communicant

This part of statement of the Party concerned proves that Party concerned (specifically the NRA) acts formally, but without following the substance of the law and the Aarhus Convention and it's intention. The truth is that there were members of Greenpeace Slovakia at the visitors' centre at Kalna nad Hronom who were studying the documentation. The responsible persons of the NRA were fully aware of this fact. But – what is more important – it is without any legal consequences whether they were visiting the centre and studying the documentation. There is no reason to constantly point out this information – but it appears the NRA mostly stresses on irrelevant information. Important is that the party to the proceedings wanted to get acquainted with the documentation, but could not since most of the relevant parts were either whitened or blackened.

Furthermore, to request a power of attorney at the place – several hours drive from Bratislava – is a futile question. Should the people who came partly from Vienna, partly from Bratislava return to get one? The people present were known as working for Greenpeace and Global2000 / Friends of the Earth Europe and had not been informed that such a power of attorney was necessary. This illustrates that NRA attempted to restrict access to information, even by using non-relevant formal means.

During the study, the natural persons studied the documentation in the extent of the preliminary safety analysis report of MO34, chapters 1 to 15 and the entire list of technical part – civil part, and two of them made also copies of a part of the documentation, namely in the extent of 31 pages (for free) and 60 pages (against payment). Based on their statements they had copies prepared to be able to ask for other particular documentation after their detail studying and also because of this reason, they have arrived to the Mochovce site on

*declared in a report. However, none of the persons who studied the licence documentation submitted such power of attorney. It results from article 32 paragraph 1 of the Civil Code that “If it does not follow from the legal act that somebody acts on behalf of the somebody else, it is assumed that he acts in his own name.”*In general, the administrative bodies enable participation in the proceedings to anybody, i.e. to natural persons and legal entities. However, if a legal entity acts, it has to act in the abovementioned manner and by authorised natural persons so these acts evoke legal effects towards the legal entity and the proceedings themselves.

the first day of this period. Despite the possibility to study the documentation repeatedly in more detail, these persons did not come again to consult the documentation, in addition to the first day (namely in the extent of app. three hours), and they did not individually ask for another documentation.

It results from the aforementioned that Greenpeace Slovensko as a non-governmental organisation (legal entity) did not use the possibility to consult the documentation within the period defined by the NRA SR despite the fact that in the past it repeatedly asked for an access to the given documentation.

Comments by the communicant

As stated above – this statement of the Party concerned is not correct, the truth is that there were members of the Greenpeace Slovakia visiting and studying the documentation. This fact is well known to the NRA and the party concerned. There was no reason for the communicant to visit the centre again (it is approx. 140 kilometres from the seat of the Greenpeace Slovakia, as well as from the seat of the NRA). After the members of Greenpeace Slovakia received most of the documentation whitened or blackened out, there was no reason to drive for almost two hours for copies of documentation that would be also hidden.

The Nuclear Act stipulates that natural person or legal entity that is a party to the proceedings based on its participation in the EIA (i.e. the public) **has limited access to documentation within a nuclear procedure – the law says that the NRA shall refuse to disclose requested information if their disclosure is likely to adversely affect public safety** (Section 8 paragraph 3 of the Nuclear Act). **It must be emphasized that the law does not restrict access to information to other parties to the proceedings (like owners of the neighbourhood property, direct neighbours..), only to public claiming their participation rights pursuant to the EIA Act.** In other words – public is party to the proceedings pursuant to the Nuclear Act only after preceding EIA process. And only these participants (public) have limited access to relevant documentation. The law does not limit access to documentation to other participants of the proceedings.

*The NRA SR did not deal with the possibility of making the licence documentation in an electronic form available since **neither Greenpeace Slovensko nor any other participating of the proceedings asked for an access to the documentation in this form.** The Act on free access to information regulates the method of accessing the information in article 16 paragraph 1 as follows: “Information are made available in particular in oral form by consultation of a dossier, including the possibility to make an extract or a copy, by copying information on a technical data carrier, by accessing of copies of background materials with required information, by a call, fax, mail or an electronic mail. If the information cannot be made available by the method defined by an applicant, a person liable will agree another method of making the information available with the applicant.” The NRA SR enabled*

persons who studied the licence documentation to make extracts or copies, which was utilised by two natural persons.

Comments by the communicant

Natural persons (member of the Greenpeace Slovakia) were provided with the blackened or whitened copies. What would be the reason of requesting blank papers?

Since extensive documentation containing sensitive information in compliance with the Atomic Act is concerned, the NRA SR had to modify this documentation so to made sensitive information not accessible to the public. Greenpeace Slovensko did not ask for accessing the licence documentation in a particular form, and in such case the Act on Free Access to Information does not define an obligatory method. Thus, the NRA SR chose the method of making the licence documentation available in its “physical form” because it is a natural form of making the documentation available. Greenpeace Slovensko did not have any objections against this method either later.

Comments by the communicant

We argue that the “natural”, or maybe rather logical, form to make documentation available, especially when large amounts are concerned, is over the internet, which enables the public to study material in a more easy and accessible way and does not force the public to travel large distances to gain access. The situation was ridiculous to such an extent that it did not seem to make sense any longer to file other objections towards NRA as no constructive response could be expected.

b) Was article 4, paragraph 4, of the Convention, including the last sentence of that paragraph, applied to any of the information that was redacted from the documentation made available to the public for inspection between 15 October and 30 November 2013, and if so, how.

Yes, it was.

The article 4 paragraph 4 of the Aarhus Convention was applied to exclusion of sensitive information from the document Preliminary Safety Analysis Report and the Basic Design of MO34. The exclusion of this sensitive information was made by physical removal (blacking of sensitive information) from hard copy of the accessed documentation in the Mochovce site in accordance with rules mentioned in the Atomic Act and mentioned in the Directive on identification and removal of sensitive information from documentation to be opened to the public. NRA SR heeded to make the exclusion of sensitive information in the restrictive manner and in particular to access non-technical summarisation of the project pursuant to article 6 paragraph 6 letter d) of the Aarhus Convention. However, Greenpeace

Slovensko has had permanent interest not in non-technical summarisation but in the entire technical documentation.

Comments by the communicant

Since whitening / blacking the “sensitive” information is solely upon discretion of the NRA, it is impossible to prove this statement of the Party concerned (“NRA SR heeded to make the exclusion of sensitive information in the restrictive”). And – as above stated – there is no reason to refuse providing access to documentation to one part of the participants.

That’s why Greenpeace Slovakia requested access to documentation in the same way as other participants have, i.e. not only to “non-technical summarisation”.

3) With respect to article 9, paragraph 3:

a) You submit that members of the public concerned can be granted the status of a Party to the proceedings in procedures conducted under the Nuclear Act. Is this submission based on your interpretation of Slovak law or on jurisprudence related to the Administrative Procedure Act and/or Nuclear Act? Please support your answer with concrete references to the Administrative Procedure Act, the Nuclear Act and jurisprudence.

The mentioned interpretation of the party to the proceedings is also the result of jurisprudence – decision-making of the Slovak courts. In the issue of proceedings according to the Atomic Act, the ruling of the Slovak Supreme Court No. 5Sžp/21/2012 dated 27 June 2013 was issued. Other rulings in other issues (not related to nuclear activities) were mentioned in the Presentation by the Slovak republic as the Party concerned for the Aarhus Convention Compliance Committee 46th meeting in Geneva on 24 September 2014. Concerning the legislation, all relevant facts were mentioned in a wide written reply of the Slovak Republic related to the communication ACCC/C/2013/89/Slovakia on 23 December 2013. In particular article 14 of the Act No. 71/1967 Coll. on Administrative Proceedings (Administrative Procedure Act) as amended is concerned.

“Article 14 of Act No. 71/1967 Coll. on Administrative Proceedings (Administrative Procedure Act) as amended defines:

(1) The party to the proceedings is a person whose rights, right-protected interests or obligations have to be discussed or whose rights, right-protected interests or obligations can be directly affected by the decision; the party to the proceedings is also a person who represents that he can be directly affected by the decision as far as his rights, right-protected interests or obligations are concerned, until the opposite is proved.

(2) The party to the proceedings is also a person whom such position is credited by a special act.”

Comments by the communicant

The Party concerned omitted to mention provision of section 8 paragraph 3 of the Nuclear Act stipulating: “A natural person or legal entity shall be party to the permission proceedings, that was preceded by EIA, if it is based upon special regulation”. This definition means that participation in the proceedings pursuant to the Nuclear Act is regulated by this Act. The Administrative Procedure Act is general legislation regulating administrative proceedings. If there is a special law in specific procedures (such as Nuclear Act regulating nuclear permission proceedings), such a special law has priority over general legislation.

b) Has any member of the public sought to be granted the status of a party to proceedings under the Nuclear Act since 2011? If so, what was the outcome of those applications?

As we have mentioned already several times (also in the oral hearing in Geneva on 24 September 2014), the NRA SR administers annually several hundreds of proceedings on changes in the nuclear installation according to the Atomic Act. These result in app. 1,000 decisions about approval of changes in the nuclear installation issued according to the Atomic Act per year. All opened, on-going and finished proceedings, including final decisions of the NRA SR are published in the NRA SR website and on the electronic official board of NRA SR. Since 2011, no member of the public concerned has tried to become a party to the proceedings in any such opened proceeding, nobody has submitted any comments, any proposals, nobody from the public concerned has been interested in a particular proceedings on approval of changes in the nuclear installation according to the Atomic Act, and thus there has not been any outputs from participation or non-participation of the general public since nobody has been interested in any proceeding.

Comments by the communicant

Since we did not see any chance in getting standing in respective procedures we have not tried that.

It must be emphasized that participation is a right, not an obligation of public. There are certain proceedings that are of interest of Greenpeace Slovakia, but Greenpeace is not capable nor obliged to watch all procedures implemented by nuclear regulatory authorities.

The communicants from the moment of the restart of the Mochovce 3,4 project sought the legal implementation of the right of the public on public participation on environmental matters in the decision making on this restart of a de-facto already closed project, e.g. over a formal EIA procedure. The Communicants' complaints for lack of public participation were made in the only legally formal way possible under Slovak law. Both this genuine attempt as also the relation to the need of an EIA was acknowledged by the High Court in its ruling. The NRA tried to divert the attention from this conclusion by restarting a limited public participation procedure about a limited part of the entire public participation problem, i.e. only safety technology related issues concerning one of its given permissions. And even there, by restricting access to information, it made public participation relating to environmental matters impossible. This was a decision by NRA, not a choice in any way coordinated with the communicants and therefore the full responsibility of NRA. When instead of a limited safety-technical procedure a full EIA would have been started (as should have been the

logical conclusion from both the earlier ACCC conclusions and the Court ruling), it is certain that a large amount of members and organisations of the public would have shown interest in participation.

*For the sake of completeness we add that in the appellate proceedings on the permit to change of the construction before completion of Mochovce NPP Units 3&4, individual persons (including the communicants Greenpeace Slovensko and GLOBAL 2000) exercised the right of the party to the proceedings. **However, the mentioned proceedings were not the proceedings according to the Atomic Act but according to the Building Act.** The persons applied the right of the party to the proceedings by raising written comments and proposals, studying the accessed design documentation and participation in the public discussion.*