
Aarhus Convention Secretariat
c/o Fiona Marshall
Palais des Nations
8-14 avenue de la Paix
1211 Geneva 10,
Switzerland

Vienna, 27.02.2017

**Re: Response to Party Concerned's Comments to Draft Findings in ACCC/C/2013/89 (Slovakia)**

Dear Ms. Marshall,

We would like to respectfully submit the following brief remarks on the Party Concerned's Comments to the Draft Findings in ACCC/C/2013/89 ("Comments). We would also like to apologize to both the Secretariat and the Committee for our delayed reaction. As explained below, we and our partners have significant capacity challenges.

Firstly, on page 2 of the Comments it says that it granted access to information to "all the parties (including the non-governmental organisation Green Peace Slovakia)." Yet the Convention requires participation and the associated right to information for "the public", not merely "parties to" the procedure, which in this case included Greenpeace Slovakia and the local authorities. Thus this still fell short of meeting the Convention's requirements.

Secondly, the Comments suggest on pp. 3-4 and again on pp. 6-7 that, in the wake of the Supreme Court's judgment in Ref. No.3Sži/22/2014, we had an effective domestic remedy to obtain the requested information without being blacked out and/or the Party Concerned came into compliance as a result of this judgment. We vigorously dispute this.

As the Party Concerned notes itself in its Annex 2 ("Notice of initiation of a new appellate procedure on disclosure of the Preliminary Safety Report of MO 3 &4") **the legislation[1] had changed considerably** since the original 2013 judgment which this later Supreme Court

[1] Particularly at issue are the amendments to the Slovakian Law on Access to Information, Act No. 211/2000 Coll. l; the relevant legislative changes are referenced in Annex 2 and Annex 5 of Slovakia's Response to the Draft Findings
.

judgment affirmed. **This legislation meant that, despite that Supreme Court ruling, which might have moved Slovakia towards compliance, information would have again been blackened out or withheld, contrary to Article 6, paragraph 6 in conjunction with article 4, paragraphs 4 and 6**. In this Annex 2 document the Party Concerned acknowledges these changes and says "it must comply with the current legislation" in any new arrangements to provide information.

What is more, in this Annex 2 document the Party Concerned also warned Greenpeace Slovakia that that the requested information was over 7,000 pages of dense text, that the information could not be provided in the statutorily given timeframe, and that Greenpeace Slovakia would be responsible for the costs of reviewing and copying the documents.

Considering that generally the fee is 40 cents per page, this means Greenpeace Slovakia was facing the prospect of paying around 2,800€ for documents that would (given the new legislation) contain mostly blackened-out text. To compare even 1,000€ is far more than the monthly salary of an employee of Greenpeace Slovakia. As made quite clear in the "Greenpeace withdrawal of remonstration in the proceeding", submitted by the Party Concerned as Annex 5 (emphasis added):

"The decision to withdraw the remonstration and thus not to receive the required information is *not due to loss of interest in the required information*, but due to the changes in legislation [...] Given the above, *the funds which we would spend to pay for the 7,000 copies of pages with blacked pages of required safety report without getting any relevant information, we consider for inefficient and unnecessary investment*."

Greenpeace Slovakia's actions in this instance, while not coordinated with others involved in this case, are thus fully understandable. Any apparent "win" at the Supreme Court achieved a moral or paper victory only – the hard reality remained as it was before: Greenpeace Slovakia would not get the requested information. It would have to expend funds it did not have in order to receive yet again a series of blackened pages.

**Accordingly, there was no domestic remedy with respect to the withheld information.**

In fact, in evaluating these circumstances consideration must be given to the fact that they were part of a larger series of campaigns and litigation stretching back as early as 2007, all of which entailed considerable costs and resulted in paper victories. This was all quite difficult for Greenpeace Slovakia, which only had two activists working at the time.

**We find the litigation that culminated in the Supreme Court's order to the nuclear permitting authority to carry out an EIA,** cited by this Committee in its Draft Findings**,** [2] **to be another case in point**. There the Supreme Court agreed with our concerns about the lack of public participation regarding the environmental effects of MO 3 &4 – concerns which were of course the very impetus for submitting this communication to the ACCC. **It seemed that Greenpeace Slovakia "won," this case and the understanding by many was that a new EIA with proper public participation would be conducted, at the very latest prior to operations**.

[2] See paras. 34 and 50 of the Draft Findings

**Yet again, the hard reality is that this will almost certainly not be the case**. The procedure that was conducted in 2009-2010, which involved public participation with respect to safety issues only, has been deemed – rather bizarrely, in our view – to fulfill a court order issued in 2013.

Now in 2017, the procedure to permit actual operations for MO 3&4 is pending. Yet it is unclear to us whether an EIA will be undertaken, and whether public participation regarding the environmental impacts of these reactors will take place. To date we have received no response to our official letter to the Slovakian Environmental Ministry concerning this.

We would like to add that we find the Party Concerned's criticism on page 5 of its Response that the Convention fails to provide sufficient clarity as to what kind of information may be restricted unwarranted. To the contrary, we find the Convention and the ACCC's guidance in this area to be quite clear. Thus, to name but two examples, the Slovakian nuclear permitting authority's practice of refusing information concerning seismic risk and the waste generated seems clearly noncompliant – this is environmental information and there is no factual argument as to why this information could be refused on the basis of public security.

We thank the Committee once again for its thoughtful consideration.

Sincerely,

**Dr. Reinhard Uhrig, GLOBAL 2000**