Supreme Court
of the Slovak Republic

273-279
3Sži/22/2014

Stamp:
Nuclear Regulatory Authority
Of the Slovak Republic
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Bratislava
Received: 22/06/2015

JUDGEMENT ON BEHALF OF THE SLOVAK REPUBLIC

The Supreme Court Senate composed of the presiding judge, JUDr. Jozef Milučký and the judges: JUDr. Ivan Ruman and JUDr. Gabriela Gerdová, in the case of Plaintiff, Greenpeace Slovakia, civic association, Nám. SNP 35, Bratislava, legally represented by: Mgr. Kristína Babiaková, attorney, Radničné nám.9, Pezinok, against the Defendant: the Nuclear Regulatory Authority of the Slovak Republic, Bajkalská 27, P.O.Box 24, Bratislava, for review of the legality of the Defendant´s Decision No. 39/2010 dated 1 February 2010, hearing the appeal of the Plaintiff against the judgment of the Regional Court in Bratislava No. k. 3S/142/2010-212 dated 14 May 2013

r u l e d as follows:

the Supreme Court of the Slovak Republic confirms the judgement of the Regional Court in Bratislava No. k. 3S/142/2010-212 dated 14 May 2013.

The court ***does not grant*** the Plaintiff the refund of appeal proceeding costs.

Justification:

I.

By the contested ruling of the Regional Court in Bratislava under Section 250j par. 2 sub-par. a/, e/ of the Civil Procedure (hereinafter only as the "CP") annulled the Decision of the Defendant No. 39/2010 dated 01 February 2010. This Decision rejected the Plaintiff´s remonstration and the first instance decision by the Nuclear Regulatory Authority of the Slovak Republic No. 325/2009 dated 14 December 2009 was confirmed. By this first instance decision the administrative authority did not grant the request of the Plaintiff for disclosure of information, specifically for disclosure of the Preliminary Safety Report of NPP Mochovce Units 3&4 (hereinafter only as the "Preliminary Safety Report" or "required document").

Regional Court in the recital stated that the Defendant in the contested Decision with material conditions (the requirement that the restriction served to protect the rights and freedoms of others or it needs to protect the national security, public order, public health or morals; condition of necessity of adopting restrictions) did not deal with the restrictions on the right to information, applying the broadest possible interpretation of Section 11 par. 1 sub-par. g/ the

Act No. 211/2000 Coll.l. on free access to information and on amendments to certain laws (Freedom of Information Act) as amended (hereinafter only as "Act No. 211/2000 Coll.l."), or the phrase "refers to the exercise of control, supervision or oversight by a public authority" with that not only did not pay attention to presence of a constitutionally mandated interest and necessity of adoption of limitations in this case, but also did not give any reason, why it did not use the less restrictive possibility constraints for providing information. The contested administrative decisions were regarded by the regional court to be issued by an error of law and at the same time unfathomable due to lack of evidence. Subsequent claims by the Defendant in connection with the application of the International Convention for the Suppression of Acts of Nuclear Terrorism and the Convention on the Physical Protection of Nuclear Material and others could not be taken into account by the court of the first instance, since the contested administrative decisions did not contain such arguments. The obligation of the administrative authority in the further proceeding will be to re-assess the Plaintiff´s request for disclosure of information, to take a decision and to justify those decisions properly. The Defendant in the subsequent proceedings shall give a constitutional and Euro-conforming interpretation of the provisions of Act No. 211/2000 Coll.l., while applying also provisions of the Aarhus Convention, especially not refusing a request for information on the grounds that would exceed the limits of Art. 4 par. 4 of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention, the Foreign Ministry Announcement No. 43/2006 Coll.l.), hereinafter only as the "Aarhus Convention ". It will also be the duty of the administrative authority in the event that a decision on non-disclosure of part of the information to separate this part from other parts and to make these available to the Plaintiff, as arising from the provision of Art. 4 par. 6 of the Aarhus Convention or Art. 4 par. 4 of the European Parliament and Council Directive 2003/4/EC, as well as the constitutional principle of not restricting the right beyond what is necessary.

II.

The Defendant filed a timely appeal against the judgement of the regional court. It requested that the Court of Appeal changed the contested judgement of the Regional Court in Bratislava and dismissed the action, or cancelled the contested judgement of the regional court and returned the case for further proceedings. In the grounds of appeal it pointed out that in the judgement dated 25 October 2011 the same Senate concurred with the legal opinion of the Defendant in that the Defendant had the Preliminary Safety Report due to Section 4 par. 2 sub-par. f/ point 2 of the Act No. 541/2004 Coll.l. on peaceful uses of nuclear energy (Atomic Act) and on amendments to certain laws as amended (hereinafter only as the "Act No. 541/2004 Coll.l."), which falls under state regulation, which the Defendant carries out and in the given case it is not possible to apply for the provision of information the Art. 2 para 3 and Art. 6 para 6 of the Aarhus Convention. While the contested judgement dated 14 May 2013 the same Senate rules that the contested decision is not reviewable for incomprehensibility and for lack of reasons. In the Defendant´s opinion no such new arguments or evidence were delivered, which would create space for a completely contradictory court decision compared to 2011.

The Defendant also stated that the Preliminary Safety Report is a document, which by itself is not subject of activity of the Defendant. The Defendant never restricted access to documents that demonstrate its own activity.

In the context of Art. 45 of the Constitution of the Slovak Republic (hereinafter only as the "Constitution") the Defendant stated that it should be an information about the status that is and not one, which purely theoretically could occur, because it is not possible to provide information about the future status, as such information is not known to anyone in the given time. The Preliminary Safety Report cannot be information about the environment, as claimed by the Plaintiff. The Defendant does not exercise control over the energy industry, but in accordance with generally binding legal regulation it discharges oversight over nuclear safety of nuclear installations.

If the Plaintiff bases its rights under the Aarhus Convention, the Defendant in this regard stated that this international treaty is not designed to have direct effects in the Slovak system of law, even as the source of European Union law, or as the source of public international law. The established case-law of the European Court of Justice shows that the provisions of the treaty, which the Council concluded on behalf of the European Community, has a full (horizontal and vertical) direct effect only if given the wording, subject and nature of the treaty contains clear and precise right or obligation, and is unconditional, i.e. does not require adoption of any other act for its implementation. The Aarhus Convention has no direct effect even as a source of public international law. In this regard the Defendant referred to the judgement of the Supreme Administrative Court of the Czech Republic file 9Ao/1/2008 dated 18 September 2008, which shows that from the Aarhus Convention one cannot conclude rights or obligations for national entities without the need for other national measures. This Convention thus is not a directly applicable international treaty. The same conclusion was reached also by the Constitutional Court of the Czech Republic in its resolution, file No I. ÚS 2660/08 dated 02 September 2010.

Under the current legal status at the time of the administrative proceeding on non-disclosure of required document Section 11 par. 1 sub-par. g/ of Act No. 211/2000 Coll.l. provided that the obligor shall limit disclosure of information or not discloses the information, if it relates to the exercise of control, supervision or oversight by a public authority according to special regulations except information about a decision or other result of inspection, supervision or oversight, if its disclosure is prohibited by special regulations. The footnote explicitly mentions the Act No. 541/2004 Coll.l. Under the new legal situation, which entered into force on 01 November 2011 – an amendment to the Act No. 541/2004 Coll.l. - Section 3 par. 14 contains the definition of sensitive information and prohibits disclosure of sensitive information under Act No. 211/2000 Coll.l. In this regard it pointed also to Section 3 par. 15 of the Act No. 541/2004 Coll.l. and Section 11 par. 1 sub-par. h/ of the Act No. 211/2000 Coll.l.

In connection with the inability to deal with the claims of the Defendant regarding the application of the International Convention for the Suppression of Acts of Nuclear Terrorism and the Convention on the Physical Protection of Nuclear Material, as they were not part of

the contested administrative decisions the Defendant stated that nothing was submitted subsequently, as the international conventions and judgements of the courts are generally known and these are objective facts that existed as at the time of issuing the decision on non-disclosure of requested documentation, as well as at the time of court hearing. Referring to international conventions and court rulings it did not complement its Decision, but only used objectively known facts to support its arguments in litigation. The Defendant further stated that from the reasoning of the judgement it is not clear what is the next step regarding the application of the Aarhus Convention and the European Parliament and Council Directive No. 2003/4/ES. In conclusion the Defendant stated that in his opinion the judgement of the first instance court is not sufficiently reasoned, it did not deal adequately with the Defendant´s arguments that the Preliminary Safety Report Mochovce 3&4 is information about the environment and specifically about emissions. The Preliminary Safety Report, according to Section 8 of the Decree of the Nuclear Regulatory Authority of the Slovak Republic No. 58/2006 Coll.l. laying down the details on the scope, content and method of preparation of documentation of nuclear installations needed for the decisions, include the following:

a) Analytical and experimental evidence that the requirements for nuclear safety determined by the reference safety report have been complied with in the design documentation,

b) Quality requirements for the designed nuclear installation including quantification of parameters of nuclear safety, reliability and life cycle,

c) Provisions agenda for inspection of qualified equipment,

d) Specification of information given in the reference safety report and justification of deviations from the original design of the nuclear installation,

e) For a nuclear installation containing nuclear reactor, proposed methodology of probabilistic safety assessment and justification, including preliminary assessment results,

f) A general preliminary safety assessment of the design of nuclear installation verified by an independent organization.

According to the Defendant´s opinion the first instance court has not dealt with his arguments that the Preliminary Safety Report requested by the Plaintiff is not information about environment, and therefore it is not possible to apply the Aarhus Convention. The Defendant does not see a causal link between information on environment and the Preliminary Safety Report, and even the first instance court did not deal with this argumentation. The Plaintiff, according to the Aarhus Convention, has the right only to information about the environment. The Preliminary Safety Report was part of the licensing process for the continued construction of NPP Mochovce Units 3&4. However, in the field of disclosing a specific licensing documentation of nuclear installations there is no such European Union law, and just as well there is no legally binding regulation of the European Union in the area of harmonized, let alone unified licensing (authorization) process for nuclear installations. There is no legally binding document of the European Union that would govern, in a binding manner, the methods, deadlines, form, content and required documentation and the outcome

of the authorization process for nuclear installations. Also it is purely a national regulation that such a document is required by the Nuclear Regulatory Authority of SR, but it cannot be subsumed under the convention of public international law.

The Defendant considers the judgement of the first instance court as unworkable, because it returns it for a new proceeding to the Defendant in June 2013 under the following legal situation:

a) Section 3 par. 14 and 15 of the Act No. 541/2004 Coll.l.;

b) Section 11 par. 1 sub-par. h/ of the Act No. 211/2000 Coll.l.;

c) Section 2 point a/ and Section 12 par. 3 of the Act No. 45/2011 Coll.l. on critical infrastructure;

d) Article 7 par. 1 sub-par. a/ of the International Convention for the Suppression of Acts of Nuclear Terrorism

e) Art. 2 and Art. 2a of the Convention on the Physical Protection of Nuclear Material as amended.

Even in the new proceedings no other condition can be achieved than the one achieved in the initial proceeding.

III.

The Plaintiff, in response to the appeal filed by the Defendant suggested that the Court of Appeal confirmed the contested judgement of the regional court. The reason given was that from the regulations of the European Union clearly define what can be included under the term environmental information. He pointed to Art. 2 par. 3 of the Aarhus Convention, while its wording was transposed to Section 2 par. 1 sub-par. a/ of Act No. 205/2004 Coll.l. on collection, storage and dissemination of environmental information and on amendments to certain laws as amended (hereinafter only as “Act No. 205/2004 Coll.l.“). For this reason in the definition of “environmental information”, which is crucial in the present proceeding, it is no longer necessary to apply the Aarhus Convention. The existence of its direct or indirect effect therefore does not need to be subject of this proceeding. Further it pointed at par. 10 of the Preamble of the European Parliament and Council Directive 2003/4/EC on public access to environmental information (hereinafter only as “Directive 2003/4/EC“), as well as Article 2 par. 1 sub-par. c/, f/ of the Directive. Requested document thus clearly contains information defined by the Aarhus Convention, Directive 2003/4/EC and Act No. 205/2004 Coll.l. Part of the requested document should contain information on emissions produced by a nuclear power plant, another part should describe what radiological emissions will occur in waste management. The requested material is thus environmental information and also in the opinion of the Plaintiff it was demonstrated that the Aarhus Convention applies also to proceedings under Act No. 541/2004 Coll.l. The Plaintiff also stated that neither the Aarhus Convention nor the Directive establish public access to all information without limitation. In this context it point also at Article 4 par. 4, 6 Aarhus Convention and Article 4 par. 2 of the

Directive 2003/4/EC. Said legislation enshrine the principle that only specific information can be classified, the disclosure of which could indeed endanger the set interests, but the remaining information shall be provided to the public (judgements of the European Court of Justice Hautala v. Council T-14/98 [1999] ECR II-2489; JT Corporation v. Commission T-123/99 [2000] ECR II-3269). Directive 2003/4/EC in Art. 4 par. 2 expressly provides that the Member States of the European Union shall not allow rejecting a request if the request relates to information on emissions into the environment.

For the direct effect of the Directives it is also true that if any part of it is not transposed into the Member State´s legislation, this part has direct effect, if it contains clear and precise right or obligation and a provision is unconditional, i.e. its implementation or producing legal effects does not require adoption of another act. Provision of Article 4 par. 2 of the Directive 2003/4/ES has such nature - that is having a direct effect. This is a provision, which was not transposed into the Slovak legislation, while it also clearly states in which cases it is not possible to refuse disclosure of environmental information – if it relates to emissions. For assessing the disclosure or non-disclosure of the requested material the Directive 2003/4/EC should have been applied in preference to the national law of the Slovak Republic. At the same time – because the Defendant decided for general classification of the entire requested safety report, confirmed also non-disclosure of information related to emissions. From the requested material these should have been taken out and only those parts of the document not to be disclosed which fulfil the conditions for restricting access.

Finally, the Plaintiff stated that the Defendant erred in law in the case when refusing disclosure of requested information due to the application of Section 11 par. 1 sub-par. g/ of the Act No. 211/2000 Coll.l. Administrative authority as a public authority is also required to interpret legal norms in favour of fundamental rights and freedoms. From an interpretation provision of Section 11 par. 1 sub-par. g/ of the Act No. 211/2000 Coll.l. in conformity with the Constitution it can be concluded that it would be contrary to the Constitution to subsume under the concept “discharging supervision“ also information that are or have been subject to regulation and therefore the requested safety report should have been made available to the Plaintiff.

IV.

On 18 December 2014 the Defendant delivered to the Supreme Court Decision No. 291/2014 and proposal to discontinue the proceeding. He stated that the judgement of the Regional Court in Bratislava No. 3S/142/2010-212 dated 14 May 2012 annulled the decision of the Defendant No. 39/2010 dated 01.02.2010, by which the Defendant rejected the appeal filed by the Plaintiff against the decision of the Defendant No. 325/2009 dated 14 December 2009. The Defendant appealed against this judgement. The subject of the dispute between the Defendant and the Plaintiff was not disclosing the requested material. In connection with the construction of NPP Mochovce Units 3&4 the Defendant and the Plaintiff were parties to other litigations as well. One of them was a proceeding in the case of the decision of the Defendant No. 246/2008 on permitting change of construction before completion, where the Plaintiff seeks participation in the proceedings. The Supreme Court, by its judgement, file

5Sžp/21/2012 dated 27 June 2013, ordered the Defendant a duty to re-discuss and decide about it with the participation of the Plaintiff, to deal with all the objections of the parties to the administrative procedure and to decide so that the proceedings and the decision corresponds with the provisions of Sections 3, 4 and 47 of the Administrative Code and detailed reasons for its position to the objections. The Defendant therefore re-opened the appellate proceeding, in which it fulfils obligations imposed by the judgement.

In this appellate proceedings the Plaintiff as party to the proceeding was able to consult also the "licensing documentation", part of which was also the "Preliminary Safety Report of NPP Mochovce Units 3&4" in the period 15 October 2013 to 30 November 2013. However, the Defendant made the documentation available to the extent specified in the judgement of the Regional Court in Bratislava No. k. 3S/124/2010-212. This documentation was made available in a form so as not to endanger public safety or environmental or economic damage and in accordance with Section 3 par. 14 of the Act No. 541/2004 Coll.l. the Defendant did not made available information identified as sensitive. Despite the fact that the Plaintiff was able to consult the required documentation, to make copies, or excerpts, he did not use this possibility to the extent, to which he demanded disclosure in lawsuit. The Defendant thereafter in the proceeding for change of construction before completion issued Decision No. 291/2014, which rejected the appeal filed by the Plaintiff. Against this decision the Defendant had a possibility to bring an action within statutory period, which he did not use.

The Defendant contends that the Plaintiff was granted access to the required documentation to the extent determined by the Regional Court in Bratislava and thus fulfilled the requirements of the Plaintiff, which is the subject of the proceedings. Since the Plaintiff has not used this possibility and did not challenge the Defendant´s Decision No. 291/2014, his conduct is contrary to legal interest presented in this proceeding. Given the above, the Defendant contends that the Supreme Court of SR in accordance with Section 104 of the CP discontinued the proceeding maintained under file 3Sži/22/2014.

V.

The Supreme Court of the Slovak Republic as the Court of Appeal (Section 10 par. 2 in connection with Section 246c par. 1 first sentence of the CP) reviewed the contested judgement of the regional court, as well as the proceeding that preceded, in the extent of reasons given in the appeal (Section 212 par. 1 of the CP) without ordering an appeal hearing (Section 250ja par. 2 of the CP) and after the notice on public announcement of the decision published at least 5 days in advance on the official board of the court and on the website of the Supreme Court www.nsud.sk <http:// www.nsud.sk>, publicly announced the judgement (Section 156 par. 1, 3 of the CP).

Subject of the appeal proceeding in the present case was the judgement of the regional court, which the court of first instance annulled the contested decision of the Defendant upholding the first instance decision of the administrative authority on failure to satisfy the request of the Plaintiff to provide required information, specifically to make available the document "Preliminary Safety Report of Units 3&4 of NPP Mochovce".

From the contents of administrative file the Senate of the Supreme Court of the Slovak Republic established that on 03 December 2009 the Plaintiff asked for provision of information. He asked for a disclosure of the document “Preliminary Safety Report of NPP Mochovce Units 3&4“. He stated that investor referred to it in the process of impact assessment of activities on the environment, as the source of information that he does not need to publish again.

The Nuclear Regulatory Authority of SR with its first instance Decision No. 325/2009 dated 14 December 2009 did not satisfy the request of the Plaintiff to provide information on the grounds that the required document meets the criteria for non-disclosure of information according to Section 11 par. 1 sub-par. g/ of the Act No. 211/2000 Coll.l. The second instance Decision of the Nuclear Regulatory Authority of SR No. 39/2010 dated 01 February 2010 confirmed the first instance decision and rejected the remonstration of the Plaintiff. In the recital he stated that the assessment, evaluation, approval, issuing consent and other activities of the Nuclear Regulatory Authority of SR in relation to the documentation submitted by the applicant for a specific type of decision of the Nuclear Regulatory Authority of SR is undoubtedly state supervision according to Section 31 par. 16 Act No. 541/2004 Coll.l., since that provision defines that the “inspection activity conducted in a manner and stated in paragraphs 1 to 15 and exercising powers of the Authority referred to in Section 4 par. 1 sub-par. a/ to e/, j/, k/ and par. 2 and 3 is state supervision“. Documentation submitted by Slovenske elektrárne, a.s. for the procedure for approval of changes in the preliminary safety report of Units 3&4 of the Power Plants Mochovce, is an information concerning regulation by a public authority, and thus fully meets the criteria for non-disclosure of information according to Section 11 par. 1 sub-par. g/ of the Act No. 211/2000 Coll.l.

According to Section 11 par. 1 sub-par. g/ of Act No. 211/2000 Coll.l. the obligor shall limit access to information or shall not disclose an information, if it relates to inspection, supervision or regulation by the public authority under special regulation except information on a decision or other outcome of inspection, supervision or regulation, if its disclosure is not prohibited under special regulations.

According to Section 31 par. 16 Act No. 541/2004 Coll.l. inspection activity conducted in a manner and under conditions set out in paragraphs 1 to 15 and exercising powers of the Authority referred to in Section 4 par. 1 sub-par. a/ to e/, j/, k/ and par. 2 and 3 is a state supervision.

According to Section 1 of Act No. 205/2004 Coll.l. this law regulates the conditions and procedure for the collection, storage and dissemination of environmental information by public authorities and other legal entities and natural persons designated by this Act.

According to Section 2 par. 1 sub-par. a/ of the Act No. 205/2004 Coll.l. for the purposes of this Act environmental information means any information in written, visual, aural, electronic or any other material form:

1. on the status of all elements of environment, such as air, water, soil, rock environment, important habitats of natural environment, such as wetlands, coastal marine habitats and other

habitats of wild plants and wildlife, as well as information on the state of landscape structure, biodiversity and on genetically modified organisms,

2. on factors, such as substances, energy, noise, vibrations, radiation, waste, including radioactive waste, emissions and other releases of pollutants into the environment, polluting, affecting or likely to affect the elements of environment referred in the first paragraph,

3. on actions and measures, including administrative measures, regulations, policies, plans, programmes and agreements on the environment affecting, or likely to affect the components or factors referred to in the first and second paragraph, as well as on activities and measures for the protection of these elements,

4. on reports on the application and fulfilment of conditions of generally binding legal regulations in the area of environmental protection,

5. on cost-benefit analyses and on other analyses and supporting documentation of economic nature used within measures and activities referred to in paragraph 3, or

6. on the state of human health and safety, including possible contamination of the food chain, on physical, chemical and biological factors of the environment in relation to human health, on cultural sites and settlement structures, if they are or may be affected due to the state of the environmental elements referred to in paragraph 1 or through these components for any of the reasons referred to in paragraph 2 and 3.

According to Article 2 of the Directive 2003/4/EC, for the purposes of this Directive:

1 ”Environmental Information” shall mean any information in written, visual, aural, electronic or any other material form on:

a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

b) factors, such as substances, energy, noise, radiation or waste including radioactive waste, emissions, discharges or other releases into the environment, affecting or likely to affect the elements of the environment referred to in a);

c) measures (including administrative), such as policies, legislation, plans, programs, environmental agreements and activities affecting or likely to affect the elements and factors referred to in a) and b), as well as measures or activities designed to protect those elements;

d) reports on the implementation of environmental legislation;

e) cost-benefit and other economic analyses and assumptions used within the framework of measures and activities referred to in c), and

f) the state of human health and safety, including the contamination of the food chain, conditions of human life, cultural site and built structures, inasmuch as they are or may be

affected by the state of elements of the environment referred to in a) or through those elements, by any of the factors or measures referred to in b) and c).

According to Article 4 par. 1 of the Directive 2003/4/EC Member States may provide for a request for environmental information to be refused, if:

a) the information requested is not held by or for the public authority, to which the request is addressed. In such case, where that public authority is aware that the information is held by or for another public authority, it shall, as soon as possible, transfer the request to that other authority and inform the applicant accordingly or inform the applicant of the public authority, to which it believes it is possible to apply for the information requested;

b) the request is manifestly unreasonable;

c) the request is formulated in too general a manner, taking into account Article 3 par. 3;

d) the request concerns material in the course of completion or unfinished documents or data;

e) the request concerns internal communication, taking into account public interest served by disclosure.

Where a request is refused on the basis that it concerns material in the course of completion, the public authority shall state the name of the authority preparing the material, and the estimated time needed for completion.

According to Article 4 par. 2 of the Directive 2003/4/EC Member States may provide for a request for environmental information to be refused, if the disclosure of the information would adversely affect:

a) the confidentiality of the proceedings of public authorities, where such confidentiality is provided for by law;

b) international relations, public security or national defence;

c) the course of justice, the ability of any person to receive a fair trial or the ability of a public authority to conduct an enquiry or a criminal or disciplinary nature;

d) the confidentiality of commercial or industrial information, where such confidentiality is provided for by national or Community law to protect a legitimate economic interest including the public interest in maintaining statistical confidentiality and tax secrecy;

e) intellectual property rights;

f) the confidentiality of personal data and/or files relating to a natural person where that person has not consented to the disclosure of the information to the public and where such confidentiality is provided for by national or Community law;

g) the interests or protection of any person who supplied the information requested on a voluntary basis, without being under or capable of being put under, a legal obligation to do so, unless that person consented to the release of the information concerned;

h) the protection of the environment to which such information relates, such as the location of rare species.

The grounds for refusal mentioned in paragraphs 1 and 2 shall be interpreted in a restrictive way, taking into account for the particular case the public interest served by disclosure. In every particular case the public interest served by disclosure shall be weighed against the interest served by the refusal. Member States may not, by virtue of paragraph 2 a), d), f), g) and h), provide for a request to be refused where the request relates to information on emissions into the environment.

According to Article 4 par. 4 of the Directive 2003/4/EC, where the applicant requested environmental information held by the public authorities or for the public authorities, shall be made available in part, if possible, to separate out any information falling within the scope of paragraph 1 d) and e) or 2 from the rest of the information requested.

According to Article 2 par. 3 Aarhus Convention "environmental information" shall mean any information in written, visual, aural, electronic or other material form on:

a) the state of elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites, biological diversity and its components, including genetically modified organisms and the interaction among these elements;

b) factors, such as substances, energy, noise and radiation, and activities or measures, including administrative measures, environmental agreements, policies, legislation, plans and programmes, affecting or likely to affect the elements of the environment within the scope of paragraph a) and cost-benefit analyses and other economic analyses and assumptions used in environmental decision-making;

c) the state of human health and safety, conditions of human life, cultural sites and built structures, inasmuch as they are or may be affected by the state of elements of the environment or through these elements, by the factors, activities or measures referred to in b);

According to Article 4 par. 3 of the Aarhus Convention, a request for environmental information may be refused, if:

a) the public authority, to which the request is addressed, does not hold the environmental information requested;

b) the request is manifestly unreasonable or formulated in too general a manner; or

c) the request concerns material in the course of completion or concerns internal communications of public authorities, where such an exemption is provided for in national law or customary practice, taking into account the public interest served by disclosure.

According to Article 4 par. 4 of the Aarhus Convention, the request for environmental information may be refused, if the disclosure would adversely affect:

a) the confidentiality of the proceedings of public authorities, where such confidentiality is provided for under national law;

b) international relations, national defence or public security;

c) the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an enquiry of a criminal or disciplinary nature;

d) the confidentiality of commercial and industrial information, where such confidentiality is protected by law in order to protect a legitimate economic interest. Within this framework, information on emissions, which is relevant for the protection of the environment, shall be disclosed;

e) intellectual property rights;

f) the confidentiality of personal data and/or files relating to a natural person where that person has not consented to the disclosure of the information to the public, where such confidentiality is provided for in national law;

g) the interests of a third party, which has supplied the information requested without that party being under or capable of being put under a legal obligation to do so, and where that party does not consent to the release of the material; or

h) the environment, to which the information relates, such as the breeding sites of rare species.

The aforementioned grounds for refusal shall be interpreted in a restrictive way, taking into account the public interest served by disclosure, and taking into account whether the information requested relates to the emissions to the environment.

According to Section 219 par. 1 of the CP, the Court of Appeal confirms the ruling, if it is factually correct statement.

According to Section 219 par. 2 of the CP, if the Court of Appeal in its entirety shares the reasoning of the contested decision, in recital it may confine to stating correctness of reasons for the contested decision or supplement to emphasize the correctness of the contested decision with other reasons.

The Court of Appeal assessed the extent and the grounds of appeal in relation to the contested judgement of Regional Court in Bratislava after getting acquainted with the contents of the administrative and judicial file, and taking into account the provisions of Section 219 par. 2 of the CP, concluded that it found no reason to depart from the logical arguments and relevant legal conclusions together with proper citation of the relevant legal norms contained in the grounds of the contested judgement, creating reasonable basis for the operative part of the judgement. With these the Court of Appeal agrees in its entirety.

The Supreme Court of SR points out that in consideration of the case we cannot exclude application priority of the provisions of the Aarhus Convention to the case, since the Slovak Republic has recognized this priority (Aarhus Convention was published in the Collection of Laws of SR under No. 43/2006, where the National Council of the Slovak Republic in the preference clause identified it as international treaty, which according to Article 7 par. 5 of the Slovak Constitution prevails over the national laws). The Aarhus Convention lays down in Article 4 par. 3 and 4 the possibility to refuse disclosure of information, where after having examined the various points of the requested information cannot subsume under any of the foregoing. At the end of Article 4 of the Aarhus Convention it states that the grounds for refusal are to be interpreted in a restrictive way, taking into account the public interest served by disclosure and taking into account whether the requested information relate to emissions into the environment. In accordance with Article 2 par. 3 of the Aarhus Convention, the content of the information (disclosing the Preliminary Safety Report) is the information relating to the impact of activity of NPP Mochovce on the elements of the environment, i.e. water, soil, land, landscape, energy, emissions, while according to Article 4 par. 4 d/ second sentence, the Aarhus Convention, information on emissions, which are important with regard to environmental protection to be disclosed. Given the fact that the Defendant refused to provide the whole required information he confirmed also non-disclosure of information related to emissions. The Defendant in the contested administrative decisions did not indicate the reason for the requested information not provided as a whole, nor the possibility of a partial disclosure envisaged also by the Aarhus Convention in Article 5. Here the principle is enshrined to classify the specific information, the disclosure of which could really endanger the given interests, but the remaining information shall be disclosed. The analysis of the Aarhus Convention does not show any reason for either rejecting the application of the Aarhus Convention or for making available environmental information relating to the Preliminary Safety Report.

Aarhus Convention can be applied also to the Act No. 541/2004 Coll.l., as the very definition of the term “environmental information“ was implemented from the Aarhus Convention and Directive 2003/4/EC into the Slovak legislation, and therefore it is not necessary to examine the direct or indirect effect of the Aarhus Convention on this law.

The Court of Appeal pointed also to the ruling of the European Court of Human Rights (hereinafter only as “ECHR“) case Guerra and others v. Italy dated 19 February 1998, the conclusions of which show that in the given case the public authorities have not fulfilled their obligation to ensure the applicants´ right to respect for their private and family life, because the applicants had not received the necessary information from the public authorities enabling them to assess the risks, which can threaten them and their families, if they continued to live in the area that is close to the chemical plant.

The same conclusion was taken by ECHR also in the ruling Roche v. United Kingdom dated 19 October 2005 when stating that the State has a positive obligation to provide effective and accessible procedure that would allow access to all relevant and appropriate information that a person is able to assess any risk, to which it is exposed in connection with performance of a certain activity by a third party. The Plaintiff stated in this regard that information requested

by him contain important facts related to public safety and protection, which could help the public better to decide to what extent a construction and operation of a nuclear installation represents a threat to their private life. Requested material also contains information on how it may affect the operation of this type of a nuclear installation on their health and the quality of life and help them decide whether to remain in the place of their current residence.

It is possible to refer also to the ruling of the ECHR in the case Társaság a Szabadságjogokért v. Hungary dated 19 April 2009, which stated that the public has the right to receive information relating to the public interest. ECHR stated that a non-governmental organization that initiated public debate on a certain issue of public interest has the right to access all relevant information relating to the case. The public authorities with their actions should not create administrative obstacles to access to information of public interest and thereby unduly interfere with the rights of the entitled person protected under Article 10 of the European Convention on Human Rights.

Since in the case under examination the subject is the construction and operation of a nuclear installation posing a potential threat to the health and quality of life of people, whose homes are located near the place, where it should be built, so the residents should be provided information by the public authorities on possible risks posed by the construction of a nuclear installation in order to decide, whether to remain in the place of their current residence or not. This fact also relates to the Plaintiff (Greenpeace Slovakia) as an independent international organization, which aims to draw attention to environmental issues and seek solutions to promote an open debate on the options for the society on the environment.

Reasons for refusal of information requests referred to in Article 4 par. 1, 2 of the Directive 2003/4/EC shall be interpreted in a restrictive way. In each particular case it must take into account the public interest in disclosure, that is by considering public interest served by disclosure against the interest served by their refusal, and therefore the Member States pursuant to Article 4 par. 2 of the Directive 2003/4/EC sub-par. a), d), f), g) and h), may not be allowed to reject applications, where the request relates to information on emissions to the environment.

Neither the Directive 2003/4/EC nor the Aarhus Convention confer public access to environmental information in an unlimited scope. The two regulations lay down the principle, according to which only specific information can be specified, the disclosure of which would indeed endanger the safety, and the remaining information shall be disclosed. This widely accepted principle has also been confirmed in the judgements of the European Court of Justice Hautala v. Council T-14/98 (1999) ECR II.2489, or JT Corporation v. Commission T-123/99 (2000) ECR II-3269. In the first of the above cases Member of the European Parliament asked the Working Group of the Council of the European Union for a report relating to exports of conventional weapons, which included clarification of the criteria for their exports. Disclosure of this report was rejected, since the report contained highly sensitive information, whose disclosure would undermine the public interest, namely public security. Disclosure of the document was refused also on the grounds of protecting public interest as regards international relations, since the EU Council argued that disclosure of this document

could damage relations between the European Union and the third countries. With regard to the general principles of democratic participation of citizens in public affairs, the principle of proportionality and the rule that would restrict fundamental rights and freedoms should be interpreted in a restrictive way, the European Court of Justice held that in this case the applicant should be granted partial access to required information.

The Defendant filed a motion for suspension of the proceedings on the grounds that in the appellate proceedings the Plaintiff as party to the proceeding, was provided – in the period from 15 October 2013 until 30 November 2013 – for inspection also the "licensing documentation", which included also the "Preliminary Safety Report of NPP Mochovce Units 3&4" and the Defendant made the documentation available in the extent specified in the judgement of the Regional Court in Bratislava file 3S/124/2010-212. This documentation was made available in such form so as not to endanger public safety or cause environmental or economic damage and the Defendant did not disclosed those information that have been identified as sensitive. The Plaintiff, however, did not exercise its right to inspect the documentation in question to such an extent, which he demanded the disclosure in this proceeding. On the proposal in question the Court of Appeal states that the regime of making information available under the Act No. 211/2000 Coll.l. differs from other concepts. The Plaintiff did not state that he no longer insists on making information available under Act No. 211/2000 Coll.l., as he requested in the application dated 03 December 2009, and therefore the Court of Appeal was unable to satisfy the Defendant´s proposal to discontinue the proceeding.

Given the above, the Senate of the Supreme Court confirmed the judgement of the Regional Court in Bratislava No. k. 3S/142/2010-212 dated 14 May 2013 pursuant to Section 219 par. 1 CP as factually correct.

On the compensation of costs of the appellate procedure the Court of Appeal decided pursuant to Section 224 par. 1 CP in connection with Section 246c par. 1 first sentence CP and pursuant to Section 250k par. 1 CP, as stated in the operative part of this ruling, since the Plaintiff did not assess the costs of the appellate procedure.

This ruling was adopted by the Supreme Court of the Slovak Republic in a Senate by a vote of 3:0 (Section 3 par. 9 of Act No. 757/2004 Coll.l. on the courts and on amendments to certain laws).

Instruction:

Appeal against this judgement is inadmissible.