

ECLI:SK:KSBA:2023:1017202100.2

Proc. No. **IS/305/2017** - 221FIN: **1017202100**

JUDGMENT ON BEHALF OF THE SLOVAK REPUBLIC

Regional Court in Bratislava, composed of the President of the Chamber, JUDr. [REDACTED], and the members of the Chamber, JUDr. [REDACTED] and JUDr. [REDACTED], in the proceedings before the Court of First Instance in Bratislava, in the legal case of the Plaintiff: **GLOBAL 2000**, Neustiftgasse 36, 1070 Wien Österreich (Austria) ZVR: 593 514 598, represented by: Mgr. [REDACTED], lawyer, [REDACTED] Banská Bystrica, against the Defendant: **Nuclear Regulatory Authority of the Slovak Republic**, Bajkalská 27, P.O. BOX 24, 820 07 Bratislava, *in the presence of*: **Slovenské elektrárne, a. s.**, Mlynské nivy 47, 821 09 Bratislava, ID No.: 35 829 052, for review of the legality of the Defendant's Decision No. **387/2017 of 16/10/2017, No. 6289/2017 to file No. 6137/2017**,

Decided as follows:

Regional Court in Bratislava **dismisses** the action.

The Court **does not award** the Defendant the costs of the proceedings.

Statement of Reasons

1.

The Administrative Proceedings

1. On 30 August 2017, the Nuclear Regulatory Authority of the Slovak Republic, Bajkalská 27, P.O. BOX 24, 820 07 Bratislava (hereinafter also referred to as the "Obligated Person" or also as "the Defendant"), received a written request for access to information pursuant to Section 2(1) of Act No. 211/2000 Coll. on free access to information and on amendment and supplement to certain laws (Act on Freedom of Information) as amended (hereinafter also referred to as "Freedom of Information Act" or "Act No. 211/2000 Coll."), and that is by the *Applicant*, GLOBAL 2000, Neustiftgasse 36, 1070 Wien, Österreich (Austria),

ZVR: 59 351 598 (hereinafter also as the "Applicant" or also as "Plaintiff"), submitted through Dr [REDACTED], who requested access to information from the documentation relating to the application by Slovenske elektrárne, a.s. for the commissioning permit for Mochovce Units 3&4, permit for the early use of the building, permit for the management of radioactive waste and spent nuclear fuel, and permit for the management of nuclear materials in the nuclear installation, to obtain information on the impact of NPP Mochovce Units 3&4 on the health, the environment and on its safety (hereinafter referred to also as "documentation").

2. The Applicant has requested access to the following information from the documentation:
 - 1) From the document, Document Part File Number: PNM3436107504_S_COI, from Section 6.07.01 "Fire Water", the complete and unredacted text contained on pages 53 to 57/88, including the information in Table 6.7.1.6-1 ("List of fire water pumps in the respective fire water systems", page 54/88) and including the full text on page 56/88 (2) Fire Water Pumping Station ...- seismically non-resistant fire water supply systems").
 - 2) From Document, File ID: PNM3436107504_S_COI, from Section 6.07.01 "Fire Water", the complete and unredacted text contained on pages 67-69/88, including the information in Table 6.7.1.6-2 ("Amount of Industrial Wastewater at Annual Installed Capacity Utilization of 7,875 hrs. yr." p. 69/88).
 - 3) From Document, Document Part File No.: PNM3436109706_S_COI, from Section 6.11. the complete and unredacted text contained on page 15/49 ("Instrumentation and Control Systems").
 - 4) From Document File ID: PNM3436109805_S_COI, from Section 6.12.1.1.4, the complete and unredacted text contained on pages 11 to 13/69 ("Main Components").
 - 5) From Document File Registration Number of Document Part: PNM3436109805_S_COI, from Section 6.12.3.1, the complete and unredacted text contained on page 29/69 ("Main Components" relating to the Severe Accident Coolant Delivery System; "Operating Modes").
 - 6) From the document, File Part Number: PNM3437396506_S_COI, from Section 11.02, full and unredacted text contained on page 9/54 (in Table 11.2-1 Fission Product Activity in core and under PP Coverage...")
 - 7) From Document File ID: PNM3436177109_S_COI, from Part 14, the complete and unredacted text contained on pages 76 to 77/82 (in tables 'Balance of RAW produced during the operation of Units 3&4 of Mochovce NPP until MO3&4 is decommissioned' and 'Balance of RAW produced during the decommissioning of Units 3&4 of Mochovce NPP').

8) From document, File ID No.: PNM3436113809_S_COI, from Part 15, complete and unredacted text contained on page 13/52 (from Table 15-1 'RAW inventory from the decommissioning of NPP MO3&4 ").

3. The Nuclear Regulatory Authority of the Slovak Republic (hereinafter also referred to as the "first instance authority"), by Decision No. 346/2017 of 12 September 2017, ID No: 5630/2017 (hereinafter also referred to as the "first instance decision"), as the obliged person, after examining the content of the application, decided pursuant to the provisions of Sections 18 (2) and 22 (1) of the Act on Free Access to Information in conjunction with Sections 46 and 47 of the Act No. 71/1967 Coll. on Administrative Proceedings (Administrative Procedure Code), as amended (hereinafter referred to as the "Administrative Procedure Code"), *to partially withhold the requested information, namely the information requested in point 2 (information coded 312 to 319) and the information requested in points 1, 3, 4, 5 and 6 of the request for information, as it contains sensitive information.*

4. The first instance authority, having assessed the content of the application of the Applicant, who requested access to the full and unredacted text of the documentation related to the application of Slovenské elektrárne, a.s. for a permit for the commissioning of the Mochovce Units 3 and 4 nuclear installation, for a permit for the early use of the building, for a permit for the management of radioactive waste and spent nuclear fuel, and for a permit for the management of nuclear materials at the nuclear installation, *reached the legal opinion*, that there is a reason in relation to the requested information which prevents it, as the obliged person, from proceeding to provide some of the information requested in the request in question. In this connection, the Authority referred to Section 11(1)(i) of the Freedom of Information Act, pursuant to which the obliged person shall restrict the disclosure of the information or shall not disclose the information if it is documentation containing information, the disclosure of which could be used for planning and carrying out activities to cause disruption or destruction of a nuclear installation or objects of special importance and other important objects pursuant to special regulations - e.g. Section 27 of the Act No 319/2002 Coll. on the defence of the Slovak Republic, as amended by the Act No. 330/2003 Coll. 3(14) and Annexes 1 and 2 of the Act No. 541/2004 Coll. on the peaceful use of nuclear energy (Atomic Act) and on amendments to certain laws as amended (hereinafter also referred to as Act No. 541/2004 Coll. or also as the "Atomic Act").

5. The Authority argued that the documentation related to the application of Slovenské elektrárne, a. s. for a permit for the commissioning of the nuclear installation of Mochovce, Units 3&4, for a permit for the early use of the building, for a permit for the management of radioactive waste and spent nuclear fuel and for a permit for the management of nuclear materials in the nuclear installation, *contains sensitive information*, the disclosure of which could be used to plan and execute activities to cause the disruption or destruction of a nuclear installation or critical and other important facilities. Therefore, pursuant to Sections 3(14) and 75 of the Atomic Act and in accordance with the Nuclear Regulatory Authority Directive No. 4460/2016 on the identification and removal of sensitive information in documentation for public disclosure effective from 12 August 2016 (hereinafter also referred to as "Nuclear Regulatory Authority Directive No. 4460/2016"), the relevant documentation has been anonymised (blacked out) for the general public).

6. Following the information requested in the application, the first-instance authority gave detailed reasons in the decision for not disclosing the anonymised (blacked-out) information, for the reasons set out below.

- Knowledge of the dislocation and marking of buildings, equipment, technological units and structures enables a potential attacker to estimate the effectiveness of the equipment

and process, provides reliable orientation in space when planning and executing an attack, planning the available time for the execution of the attack, optimizing the sequence of actions to achieve the goal and subsequently selecting the tactics of the attack, and enables a potential attacker to verify and validate information obtained by other means and thus overcome the protective measures to ensure the proper operation of the equipment without the detection of this action by the staff of the facility, which may render the equipment inoperative and thereby create the conditions for a domino effect resulting in a malfunction or accident with negative impact on the health and lives of employees and the public, and cause a limitation of the effectiveness of the equipment with an acute or potential consequence of a technological failure or accident. Knowledge of the individual groups that provide the individual functions of the system and knowledge of their location or functionality enables an assessment of their function and relevance to the nuclear installation in relation to nuclear safety in mitigating the consequences of severe accidents. Knowledge of the main components, system functions and their location would facilitate the execution of an attack, the selection of attack tactics and allow a potential attacker to verify and validate information obtained by other means. It could also help to ensure that the sets of components and systems that are needed to mitigate the consequences of a severe accident, or the consequences caused by a potential attack on a nuclear facility, are damaged in an attack.

- Knowledge of the main components of the system, its location, its connection to other systems at the site of the nuclear power plant, and its connection to external coolant supply systems allow a potential attacker to assess the importance of the facility for ensuring nuclear safety in the event of a severe accident at a nuclear installation. Location, knowledge of components, linkage to other technological systems may facilitate the possibility of taking the system out of readiness and rendering it inoperable.
- Knowledge of the functionality of the component groups (or knowledge of the marking of the individual component groups) that provide the individual functions of the system allows estimation of their function and relevance to the nuclear installation in the context of nuclear safety in mitigating the consequences of severe accidents. Knowledge of the components, system functions and their marking would facilitate the execution of an attack, the selection of attack tactics and allow a potential attacker to verify and validate information obtained by other means. It could also help to ensure that groups of components and systems that are needed to mitigate the consequences of a severe accident, or the consequences of a potential attack on a nuclear facility, are damaged in an attack.
- Knowledge of the operational parameters of the system and actions to maintain these parameters within the required limits allow a potential attacker to assess the importance of the facility for ensuring nuclear safety in the event of a severe accident at a nuclear installation. Knowledge of system operating parameters may facilitate the possibility of taking the system out of readiness and rendering it inoperable.

- Knowledge of the safety classes of the classified equipment enables an estimate to be made of their function and relevance to the nuclear installation in the context of nuclear safety. Knowledge of the safety classes of the classified facilities would facilitate the execution of an attack, the selection of attack tactics, and allow a potential attacker to verify and validate information obtained by other means.
- Knowledge of the classification of system components into a safety class enables a potential attacker to assess the importance of the equipment for nuclear safety in the event of a severe accident at a nuclear installation. Knowledge of the safety class may facilitate the possibility of taking the system out of readiness and rendering it inoperable.
- Knowledge of the seismic resistance of the classified equipment allows to estimate its relevance to the nuclear installation in the context of nuclear safety. Knowledge of the seismic resistance of each classified equipment would facilitate the execution of an attack, the selection of attack tactics, and allow a potential attacker to verify and validate information obtained by other means.
- Knowledge of the seismic resistance category of the SA consequence mitigation system allows a potential attacker to estimate the resilience of the equipment. Knowledge of the category can facilitate the ability to execute an attack and select attack tactics. Information about the functionality of the systems presents credible information for a potential attacker to identify dependencies and, based on this, deduce possible points of damage to the system.
- Knowledge of the quantity, activity and location of fission products allows a potential attacker to select the tactics of a terrorist attack.

The first instance authority concluded, in considering the public disclosure of the requested sensitive (blacked-out) information from the above documentation, that not disclosing it was more in the public interest than exposing the public to the risk that disclosure of the information would entail. In relation to the remainder of the request, the Applicant was granted and the remaining information was made available to the Applicant by letter dated 12 September 2017.

7. Against the first-instance decision of the Nuclear Regulatory Authority of the SR (hereinafter also referred to as the 'second-instance authority') No. 346/2017 of 12 September 2017, ID No: 5630/2017, the Applicant filed an appeal on 2 October 2017, delivered to the Nuclear Regulatory Authority of the Slovak Republic on 4 October 2017.

8. The Chairperson of the Nuclear Regulatory Authority of the SR (hereinafter also referred to as "The second-instance authority") issued on 16 October 2017 Decision No. 387/2017, ID No. 6289/2017 to File No. 6137/2017 (hereinafter also referred to as the 'second-instance decision'), by which it rejected the Plaintiff's appeal against the first-instance decision of the Nuclear Regulatory Authority of the SR No. 346/2017 of 12 September 2017, No.: 5630/2017 on the partial non-disclosure of the requested information. The second instance authority reasoned that the requested information was not provided to ensure the physical security of the nuclear power plant, its disclosure could be used to plan and execute a terrorist attack, and further that the requested information is not environmental information and is not related to emissions to the environment, the requested information is not essential for the assessment of the environmental impact of the nuclear installation, and the interest of protecting the public and the employees of the nuclear power plant from a terrorist attack outweighs the Applicant's interest in obtaining the requested information.

9. On 17 October 2017, the Plaintiff received the second instance decision No. 387/2017 dated 16 October 2017, ID No. 6289/2017 to file No. 6137/2017, rejecting the Plaintiff's appeal against the first instance decision No. 346/2017 dated 12 September 2017, ID No: 5630/2017.

II. The Action

10. By a timely filed Action dated 15 December 2017, delivered to the Regional Court in Bratislava (hereinafter also referred to as "the Regional Court" or "the Administrative Court") on 18 December 2017, the Plaintiff sought review of the legality of the Defendant's Decision No. 387/2017 of 16 October 2017 (hereinafter also referred to as 'the contested decision') and requested the Regional Court to annul the contested decision in its entirety and to refer the case back to the Defendant for further proceedings.
11. In the statement of facts in Part I of the Action, the Plaintiff stated that he believed that there was a compelling public interest in the general public having access to the requested information and being able to assess the safety of the Mochovce Nuclear Power Plant with regard to the issue of a permit for the commissioning of the Mochovce Units 3&4 Nuclear Power Plant and its impact on health and the environment.
12. In Part II of the Action the Plaintiff puts forward the substantive and legal reasons for the Action.
13. In Part III of the Action, the Plaintiff summarised its arguments, setting out the proposed grounds for the Decision.
14. The Plaintiff considered that the contested decision deprived the Plaintiff of its right of access to information under the Freedom of Information Act and the International Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (hereinafter also referred to as the "Aarhus Convention").
15. He objected that the contested Decision is based on an incorrect legal assessment of the case and referred to Section 11(1)(i) of the Act No. 211/2000 Coll. on Free Access to Information, according to which *the obliged person shall restrict the disclosure of information or shall not disclose the information if... it is documentation containing information the disclosure of which could be used for planning and carrying out activities with the aim of causing disruption or destruction of a nuclear installation or objects of special importance and other important objects pursuant to special regulations, with the proviso that its application is further regulated by the Act No. 541/2000 Coll. (Atomic Act) as in force from 1 August 2017- Section 3 (16) and (17).*
16. He pointed out that the Defendant withheld the requested information on the basis that the requested information fell within the categories of sensitive information marked "T", "P" and 'L' by Directive (respectively its annexes) No 4460/2016 of the Nuclear Regulatory Authority of the SR.
17. The Plaintiff stressed that when interpreting and applying the above-mentioned legal provisions, it is necessary to take into account and apply the Aarhus Convention, which is part of EU law and which was published in the Collection of Laws under No 43/2006 Coll., is part of the Slovak legal order and, as an international human rights treaty, takes precedence over the laws of Slovakia.
18. He stated that Article 4 (4) of the Aarhus Convention sets out the grounds for non-disclosure of

environmental information.

19. He argued that in interpreting and applying the above-mentioned statutory provisions it is also necessary to take into account and apply Directive 2003/4/EC of the European Parliament and of the Council on Public Access to Environmental Information (hereinafter also referred to as 'Directive 2003/4/EC of the European Parliament and of the Council'), which expressly provides in Article 4(2) that *“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”*.
20. The Plaintiff took the view that the Freedom of Information Act and the Atomic Act must therefore be interpreted in accordance with the Aarhus Convention and Directive 2003/4/EC of the European Parliament and of the Council in such a way as to ensure that the interpretation does not contradict the objectives and content of the Convention or the Directive. Thus, in interpreting the provisions of the Freedom of Information Act and the Atomic Act, account must always be taken of the public interest in disclosure of information relating to the environment and whether the information requested relates to emissions into the environment.
21. The Plaintiff argued that by withholding the requested information on the basis that it fell within the description and definition of categories 'T', 'P' and 'L' (contained in the Annexes to Directive 4460/2016 on the Identification and Removal of Sensitive Information), the Defendant acted contrary to its obligations under the Aarhus Convention and Directive 2003/4/EC of the European Parliament and of the Council. The categories 'T', 'P' and 'L' contained in the annexes to Directive No 4460/2016 of the Nuclear Regulatory Authority of SR are very broadly formulated.
22. The Plaintiff further argued that the Defendant failed to take into account the public interest in disclosure of the information requested and the fact that the information requested related to emissions into the environment.
23. In connection with the above, the international Aarhus Convention Compliance Committee, based in Geneva, also expressed its disagreement with the Defendant's practice in classifying the information in its Award No. ACCC/C/2013/89 of 19 June 2017 in paragraphs 103 and 104.
24. The Plaintiff argued that the Defendant provided identical reasoning in the contested decision for each of the classified sub-information and that, despite its attempt to give the impression that the Defendant had individually assessed each of the specific information requested and despite the length of the second-instance Decision, which ran to 122 pages, the assessment was in fact not individual, but blanket, and did not take sufficiently into account the public interest in disclosure of the information and the fact that the information requested was related to emissions into the environment.
25. He also stated that even if he accepted that each piece of classified information was indeed individually assessed by the Defendant, for many of the classified pieces of information, there was no way that the Defendant's arguments and conclusions that the information sought was not environmental information could be accepted, the requested information is not related to emissions to the environment, the requested information is not relevant to the environmental impact assessment of the nuclear facility, and the interest in protecting the public and nuclear plant employees from terrorist attack outweighs the Applicant's interest in obtaining the requested information. As an example, he stated that the Defendant had deleted all the information falling under the category of *“Description, parameters, identification of equipment related to the safe operation of a nuclear installation”* (TI category of Annex 6 of Directive

4460/2016 on the Identification and Removal of Sensitive Information), arguing that it is information that could be used in a terrorist attack.

26. He considered that such an excessive classification of information leads to a denial of the purpose of public participation in the decision-making process on the authorisation of a nuclear power plant, since without the information on the marking of the individual facilities mentioned in the text of the documents, many of the documents made available often lose their clarity and thus their explanatory and informative value for the public, and it is not possible to understand the meaning of the remaining information that has not been cleared and has been made available without it.
27. He was of the opinion that too broad an interpretation allows for the secrecy of all facilities and technological units in a nuclear power plant, because in theory every object and facility in a nuclear power plant has some relationship to the safety of the nuclear power plant. The Defendant's approach, which argues on the basis of overly hypothetical possibilities that the information could be used in a terrorist attack, is manifestly contrary to the requirement of the Aarhus Convention and Directive 2003/4/EC of the European Parliament and of the Council that the limitations be interpreted restrictively and that the public interest in disclosure of the information be taken into account.
28. He argued that the Defendant's argument that the requested information does not relate to emissions to the environment does not stand, as much of the requested information clearly relates to emissions to the environment.
29. The Plaintiff stressed that, having regard to the Aarhus Convention and Directive 2003/4/EC of the EP and of the Council and having regard to the public interest in disclosure of the information requested by the Plaintiff, the information requested by the Plaintiff cannot be classified as 'sensitive information'. The Plaintiff considers that the contested decision of the Defendant is therefore unlawful on the ground of an erroneous legal assessment of the case.
30. The Plaintiff gave the following reasons for its request for access to information:
 - Under item 1 of the request for information, he requested access to a document related to the plant's fire-extinguishing system, a list of fire water pumps, and a document on seismically-resistant fire water supply systems. The fire water and fire protection system are essential for the prevention of incidents and accidents at the power plant. In a nuclear power plant, loss of cooling has almost immediate catastrophic consequences. This was demonstrated in 2011 when the tsunami in Japan disabled the cooling pumps at the Fukushima NPP, resulting in the loss of cooling of three reactors and all four nuclear fuel pools, with subsequent meltdowns of three reactors and explosions in two fuel pools. The seismic qualification and robustness of the cooling pumps is therefore extremely important for the operation of a nuclear power plant.

Redundant cooling pumps ensure the continuation of the cooling function even if one of the pumps is not working due to, for example, blockage of the filters with leaves, moss or other materials (as has happened many times in NPPs in Europe). It is therefore necessary for the public to have access to the information that has been blacked-out in the documentation. Therefore, the public interest in making this requested information available clearly prevails. He further stated that, in addition, the course and method of accident containment affects the release of both active and inactive substances into the environment. The overall reliability of the fire protection system, the amount of fire water, its availability and its timely use in the right place has a significant impact on what substances will be released into the environment and in what quantities - and thus this information is clearly related to emissions to the environment.

- In item 2 of the request for information, he asked for information on the quantity of industrial waste water and on the radioisotope activity in the water released by the nuclear power plant. This information should be made available to the public in its entirety, as its disclosure would in no way undermine the protection of the power plant against possible terrorist attacks. At the same time, there is currently an intense and extensive medical debate on the release of radioisotopes in the normal operation of nuclear power plants, with many indications pointing to an increase in leukaemia and cancer cases in the vicinity of NPPs (e.g. the KiKK study). Releases of radioactive substances to the environment - albeit within the prescribed levels given by the current regulatory framework - need to be disclosed and specified so that potential interactions with other releases, including with the currently operating EMO 1&2 reactors, can be assessed. Therefore, the public interest in disclosure of this required information clearly outweighs.
- In item 3 of the request for information, he asked for access to a document relating to the management of liquid radioactive waste, specifically the section 'Instrumentation and Control Systems' on the supply of electricity to the plant's Instrumentation and Control System and back-up capacity in the event of incidents and accidents. Information on the supply of electricity to the plant's Instrumentation and Control System and back-up capacity in the event of incidents and accidents must be made publicly available so that the public can assess the quality of these systems in a variety of possible situations. In particular, information on back-up systems in the event of failure or loss of one system is important. Therefore, the public interest in making this information available clearly outweighs. The Defendant's assertion that the waste and the manner and reliability of its treatment is *'unrelated to emissions to the environment'* is plainly incorrect because the waste itself is an emission and thus the information sought is clearly related to emissions to the environment.
- In item 4 of the request for information, he asked for access to the document "Severe Accident Mitigation Systems". It is clear from the title of the requested document that this is environmental information relating to emissions. Severe Accident Mitigation Systems are important in accidents to prevent the emission of radioactivity. Important, for example, is information on the seismic resistance of individual parts of the plant, which also proved to be particularly important in the Fukushima NPP accident in Japan. Information on the sub-components of the main components of the system are, however, completely blacked-out. It is therefore impossible to assess the nature of the sub-components. However, this information must be made available to the general public so that the public can assess the accident resilience of a nuclear power plant. Therefore, the public interest in making this requested information available clearly outweighs.

- In item 5 of the request for disclosure of a document relating to the severe accident coolant supply system. The loss of coolant is one of the most adverse catastrophic scenarios for nuclear power plant operation, as demonstrated by the four concurrent accidents at Fukushima in 2011. The ability to cope with the loss of coolant in the event of severe accidents is therefore vital. It is therefore very important that the public is made aware of this capability. Therefore, the public interest in making this requested information available clearly outweighs this. The information requested is environmental information and relates to emissions to the environment, as it is information on the avoidance of radioactive emissions in the event of accidents.
- In item 6 of the request for information, he asked for access to a document relating to the activity of fission products. Radioactive isotopes are the main waste of NPPs during routine operation (apart from the generation of nuclear waste in the form of spent fuel rods). Information on the isotopes expected to be released from the facility is vital for the general public to be able to assess the expected health effects of the isotopes and to best protect the public in the case of certain isotopes such as Iodine-131, Tritium /H-3 a Carbon-dioxide C-14. Therefore, the public interest in making this requested information available clearly prevails. The activity of fission products is also clearly a source of emissions and therefore the requested information is related to emissions to the environment. The environmental impact cannot be assessed without knowledge of the sources of radioactivity.

III.

Request for a Preliminary Ruling from the Court of Justice of the EU

31. Given the complexity of the legal issues which are the subject of this action and which concern the interpretation and application of provisions of EU law which have not yet been interpreted by the CJEU, *the Plaintiff requested* that the Administrative Court consider, pursuant to Section 100(1)(c) of the Act No. 162/2015 Coll. of the Administrative Court Order (hereinafter referred to as 'the ACO'), *to stay the proceedings, and to make a reference for a preliminary ruling to the CJEU* under Article 234 of the Treaty establishing the European Community, the main purpose of which is to ensure the uniform interpretation and application of EU law.
32. The Plaintiff requested that the Administrative Court ask the CJEU to answer the following questions concerning the interpretation and application of European Union law (Aarhus Convention and Directive 2003/4/EC):

It is necessary to interpret Article 4(4) of the Aarhus Convention: 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 emissions into the environment." and Article 4(2) of Directive 2003/4/EC of the European Parliament and of the Council on public access to environmental information: "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") in such a way as to enable the public authorities to disclose the information requested in points 1, 3, 4, 5 and 6 of the Plaintiff's request for information in question and in point 2 (specifically information coded 312 to 319) of the Plaintiff's request for information in question.

IV.

Statement by the Defendant

33. In its statement on Action of 21 March 2018, delivered to the Administrative Court on 22 March 2018, the Defendant maintained its conclusion in the contested Decision and stated that it did not share the Plaintiff's view and stressed that in the contested Decision it had dealt with all the Plaintiff's arguments and objections and was of the opinion that the contested Decision as well as the Decision of the first instance were based on a correct legal assessment of the case.
34. The Defendant has made detailed comments on each of the pleas in law set out in Part I. and II. of the administrative action and was of the opinion that the information was provided to the Plaintiff duly and in time, in the form chosen by him and to the extent provided for by its internal regulations, the legal regulations of the Slovak Republic, as well as international legal regulations of a binding and recommendatory nature. The Defendant stated that it had duly justified the non-disclosure of the requested information in its entirety. The Defendant disagreed with the Plaintiff's contention that it had acted in breach of its obligations under the Aarhus Convention and Directive 2003/4/EC of the European Parliament and of the Council in assessing the application. It stated that the Aarhus Convention Compliance Committee had found that the Slovak Republic had acted in accordance with its legal framework. It stressed that the Aarhus Convention, its Committee and opinions did not provide a legally binding and enforceable framework, unlike Directive 2003/4/EC of the EP and of the Council.
35. The Defendant pointed out that in the period from 16 March 2017 to 30 June 2017, when it was possible to consult the documentation related to the application of Slovenské elektrárne, a. s. for a permit for the commissioning of the Mochovce Unit 3&4 nuclear installation, a permit for the early use of the building, a permit for the management of radioactive waste and spent nuclear fuel and a permit for the management of nuclear materials at the nuclear facility, this right was exercised by a total of 5 persons, which does not indicate that in this case there was a "compelling interest" of the public.
36. The Defendant asked the Court to dismiss the Action as unfounded.

V.

Replica

37. In its replica dated 3 May 2018, delivered to the Administrative Court on 7 May 2018 to the Defendant's statement of 21 March 2018, the Plaintiff maintained all the arguments set out in the legal action and disagreed in their entirety with the Defendant's allegations.

The Plaintiff pointed out that the CJEU has already issued several rulings concerning access to information and the application of Directive 2003/4/EC of the European Parliament and of

the Council, which are also applicable to the present case and which also clearly confirm the jurisdiction of the CJEU to rule on its reference for a preliminary ruling before the CJEU.

VI.

Admission as a Party to the Proceedings

38. The Regional Court in Bratislava, by Resolution No. 1S/305/2017-162 of 24 May 2018, granted the status of a party to the proceedings to Slovenské elektrárne, a.s., Mlynské nivy 47, 821 09 Bratislava, ID No.: 35 829 052, since it is the owner of the documentation related to its application for a permit for the commissioning of the Mochovce nuclear installation, Units 3&4, and from which the Plaintiff requested the disclosure of the requested information pursuant to the Act on Free Access to Information.

VII.

Legal Assessment

39. The Regional Court in Bratislava, as the court with subject matter and local jurisdiction to hear the case (Sections 10, 13 (1) ACO), after examining the contested Decision within the scope of the reasons of the administrative action, concluded that the administrative action is unfounded. It decided the case without holding a hearing pursuant to Article 107(2) of the Administrative Court Order by judgment which was delivered publicly on 16 February 2023.
40. Whoever claims to have been deprived of his rights by a decision of a public authority may apply to a court to review the lawfulness of such a decision, unless the law provides otherwise. However, the jurisdiction of the court must not exclude the review of decisions concerning fundamental rights and freedoms (Article 46(2) of the Constitution of the Slovak Republic).
41. The subject of the judicial review is the examination of the legality of the contested Decision of the Defendant - the Chairperson of the Nuclear Regulatory Authority of the SR No. 387/2017 dated 16 October 2017, ID No. 6289/2017 to file No. 6137/2017 (hereinafter also referred to as "the Contested Decision") in conjunction with the first instance decision of the Nuclear Regulatory Authority of the SR No. 346/2017 of 12 September 2017, ID No: 5630/2017.
42. In cases where a natural or legal person claims that, as a party in an administrative procedure, he or she has been deprived of his or her rights or legally protected interests by a decision of a public administration body and requests that the court review the legality of that decision and of the administrative body's procedure, the provisions of Part Three of the ACO on administrative actions shall be followed.
43. Pursuant to Section 2(1) of the ACO, in the administrative justice system, the administrative court provides protection for the rights or legally protected interests of natural persons and legal entities in the field of public administration and decides on other matters provided for by this Act.

44. Pursuant to Section 6(1) of the ACO, administrative courts in the administrative justice system review, on the basis of actions, the legality of decisions of public administration bodies, measures of public administration bodies and other interventions of public administration bodies, provide protection against inaction of public administration bodies and decide on other matters provided for by this Act.
45. Pursuant to Section 177(1) of the ACO, an administrative action may be brought by a Plaintiff for the protection of his or her subjective rights against a decision of a public authority or a measure of a public authority.
46. According to Article 26(4) and (5) of the Constitution of the Slovak Republic, freedom of expression and the right to seek and disseminate information may be restricted by law if it is necessary in a democratic society to protect the rights and freedoms of others, the security of the state, public order, public health and morals. Public authorities shall be obliged to provide information on their activities in the national language in an appropriate manner. The conditions and manner of implementation shall be laid down by law.
47. Pursuant to Article 152(4) of the Constitution of the Slovak Republic, the interpretation and application of constitutional laws, statutes and other generally binding legislation must be in accordance with this Constitution.
48. Under Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms:
 1. Everyone has the right to freedom of expression. This right includes the freedom to hold opinions and to receive and impart information or ideas without interference by public authorities and regardless of frontiers. This Article does not prevent States from requiring the licensing of radio, TV or film companies.
 2. The exercise of these freedoms, because they involve both duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are provided by law and are necessary in a democratic society in the interests of national security, territorial integrity or public safety, the prevention of disorder and crime, the protection of health or morals, the protection of the reputation or rights of others, the prevention of the leakage of confidential information, or the preservation of the authority and impartiality of the judiciary.
49. According to Art. 1 of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) (hereinafter referred to as the "Aarhus Convention"), each Party shall guarantee the rights of access to information, public participation in decision-making and access to justice in environmental matters in accordance with the provisions of this Convention, with the aim of contributing to the protection of the right of every human being, both members of the present generation and of future generations, to live in an environment adequate for the preservation of his or her health and the attainment of his or her well-being.
50. Under Article 2 (3) of the 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 are likely to affect elements of the environment within the scope of sub-para (a) above, and cost-benefit 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 the elements of the environment, or through these elements, by the factors, activities or measures referred to in sub-para (b) above;
51. Pursuant to Article 4(1) of the Aarhus Convention, Each Party shall ensure that, subject to the following paragraphs of this article, public authorities, in response to a request for environmental information, make such information available to the public, within the framework of national legislation, including, where requested and subject to subparagraph (b) below, copies of the actual documentation containing or comprising such information:
- a) Without an interest having to be stated;
 - b) In the form requested, unless:
 - i) It is reasonable for the public authority to make it available in another form, in which case reasons shall be given for making it available in that form; or
 - ii) The information is already publicly available in another form.
52. According to Article 4(4) of the Aarhus Convention: A 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;
53. Under Art. 2 (3) Aarhus Convention, "environmental information" shall mean any information in written, visual, aural, electronic or other material form
- 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 emissions into the environment.

54. Pursuant to Article 4(6) of the Aarhus Convention: Each Party shall ensure that, if information exempted from disclosure under paragraphs 3 (c) and 4 above can be separated out without prejudice to the confidentiality of the information exempted, public authorities make available the remainder of the environmental information that has been requested.

55. Pursuant to Article 6(6) of the Aarhus Convention: Each Party shall require the competent public authorities to give the public concerned access for examination, upon request where so required under national law, free of charge and as soon as it becomes available, to all information relevant to the decision-making referred to in this article that is available at the time of the public participation procedure, without prejudice to the right of Parties to refuse to disclose certain information in accordance with article 4, paragraphs 3 and 4. The relevant information shall include at least, and without prejudice to the provisions of article 4:

- a) A description of the site and the physical and technical characteristics of the proposed activity, including an estimate of expected residues and emissions;
- b) A description of the significant effects of the proposed activity on the environment;
- c) A description of the measures envisaged to prevent and/or reduce the effects, including emissions;
- d) A non-technical summary of the above;
- e) An outline of the main alternatives studied by the applicant; and
- f) In accordance with national legislation, the main reports and advice issued to the public authority at the time when the public concerned shall be informed in accordance with paragraph 2 above.

56. According to Article 1 of Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC ("Directive 2003/4/EC"), the objectives of this Directive are:

- a) To guarantee the right of access to environmental information held by or for public authorities and to set out the basic terms and conditions of and practical arrangements for its exercise; and
- b) To ensure that, as a matter of course, environmental information is progressively made available and disseminated to the public in order to achieve the widest possible systematic availability and dissemination of environmental information. To this end, the use in particular, of computer telecommunication and/or electronic technology, where available, shall be promoted.

57. Pursuant to Art. 2 of Directive 2003/4/EC of the EP and of the Council, 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 and 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, programmes, 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 the measures and activities referred to in (c); and
 - f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures, inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or through those elements, by any of the matters referred to in (b) and (c).
58. Pursuant to Article 3(1) of Directive 2003/4/EC of the European Parliament and of the Council: Member States shall ensure that public authorities are required, in accordance with the provisions of this Directive, to make available environmental information held by or for them to any applicant at his request and without his having to state an interest.
59. Pursuant to Art. 4 (1), (2) of Directive 2003/4/EC of the European Parliament and of the Council:

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 a 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 (3);
- (d) The request concerns material in the course of completion or unfinished documents or data;
- (e) The request concerns internal communications, taking into account the 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.

2. Member States may provide for a request for environmental information to be refused if 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 of 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 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 has 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.

- 60. Pursuant to Article 4(4) of Directive 2003/4/EC of the EP and of the Council: Environmental information held by or for public authorities which has been requested by an applicant shall be made available in part where it is possible to separate out any information falling within the scope of paragraphs 1(d) and (e) or 2 from the rest of the information requested.
- 61. Pursuant to Section 11(1)(i) of the Act on Free Access to Information and on amendments and supplements to certain laws (Act on Freedom of Information), as amended (hereinafter referred to as "Act No. 211/2000 Coll."), the obliged person shall restrict the disclosure of information or shall not disclose the information if it is documentation that contains information the disclosure of which could be used for the planning and execution of activities with the aim of causing the disruption or destruction of a nuclear installation or objects of special importance and other important objects pursuant to special regulations.
- 62. Pursuant to Section 12 of the Act No. 211/2000 Coll., all limitations of the right to information shall be exercised by the obliged person by making available the requested information, including accompanying information, after excluding that information for which the law so provides. The right to refuse to disclose the information shall last only as long as the reason for non-disclosure lasts.
- 63. Pursuant to Section 22(1) of the Act No. 211/2000 Coll., unless otherwise provided for in this Act, the general rules of administrative procedure shall apply to proceedings under this Act.

64. Pursuant to Section 3 (16) of the Act No. 541/2000 Coll. on the peaceful uses of nuclear energy ("Atomic Act") and on amendments and supplements to certain acts, as amended by later regulations in the wording effective from 1 August 2017 (hereinafter referred to as "Act No 541/2000 Coll."), documentation containing also sensitive information is considered to be documentation, the disclosure of which could be used for planning or execution of activities with the aim of causing disruption or destruction of a nuclear installation, and thus adversely affecting public safety and causing ecological or economic damage. This documentation shall be made available after exclusion of sensitive information.
65. Pursuant to Section 3 (17) of the Act No. 541/2000 Coll. in the wording effective from 1 August 2017, documentation containing also sensitive information shall be understood to be the documentation referred to in Annex 1, point A (c), point B (a), (b), (i), (m), point C (a), (d), (i), (j), (s), (w) and Annex 2, point A (b), point B (b).
66. According to Section 46 of Act No. 71/1967 Coll. on administrative procedure (Administrative Procedure Code) as amended by later laws (hereinafter referred to as "Administrative Procedure Code"), the decision must be in accordance with the laws and other legal regulations, it must be issued by the competent authority, it must be based on a reliably ascertained state of affairs and it must contain the prescribed particulars.
67. Pursuant to Section 47(1) of the Administrative Procedure Code, the decision must contain an operative part, statement of reasons and a notice of appeal (dissent). Reasons are not necessary if all parties to the proceedings are granted in full.
68. Pursuant to Article 47(3) of the Administrative Procedure Code, the administrative authority shall state in the grounds of the decision which facts formed the basis for the decision, what considerations guided it in the assessment of the evidence, how it applied and administered the reasoning in the application of the legal provisions on the basis of which it made its decision, and how it dealt with the submissions and objections of the parties to the proceedings and their comments on the grounds of the decision.
69. When reviewing a decision, the court examines whether the decision challenged in the action is in accordance with the legal order of the Slovak Republic, in particular with the substantive and procedural administrative regulations. Within the intent of Section 6 (1) of ACO the court also examines the administrative procedure, which according to Section 3 (1) (a) of ACO means the procedure of a public administration body in the exercise of its competence in the field of public administration when issuing individual administrative acts and normative administrative acts.
70. The legality of a decision of a public administration body is conditional upon the legality of the procedure which preceded its issuance. In the context of administrative justice, therefore, the court also examines the procedural irregularities of the public authority complained of in the action, in particular whether that procedural irregularity constitutes such a defect in the proceedings before the public authority as to affect the lawfulness of the contested decision.
71. The Administrative Court found from the administrative file that the Plaintiff requested access to information on the designation of the service sets which are sources of fire water and the buildings, in which these service sets are located, and on the parameters of the systems, as well as information on the electrical supply, the diagram of the fire water system, where the sources of fire water are located and the routes by which the fire water is transported, and the buildings in which these

service sets are located, a description of the fire extinguishing systems, their locations and the identification of the fire extinguishing systems which are the sources of fire water and the buildings in which these service sets are located, marking of service sets, marking and location of fire extinguishing systems, their function and method of activation of fire extinguishing systems, sources of fire water and places where fire water is located, marking of the operating system that ensures the supply of fire water, marking and functions of fire extinguishing systems that are sources of fire water, marking of the system that ensures the supply of fire water to internal hydrants, the marking of the building in which the fire water pumping station is located which is the source of water for the seismic-resistant system, the marking of the building in which the wastewater monitoring system is located, the marking of the equipment which is part of the wastewater monitoring system and is used for continuous monitoring of the chemical parameter pH, the marking of the equipment which is part of the wastewater monitoring system, the marking of the equipment which is part of the wastewater monitoring system and serves for continuous monitoring of the chemical parameter CHSKc chemical oxygen consumption by chromate, the marking of the equipment, which is a part of the wastewater monitoring system and serves for continuous monitoring of the chemical parameter N-NH₄ - ammonia nitrogen, the marking of the equipment, which is a part of the wastewater monitoring system and serves for continuous monitoring of the chemical parameter - sulphate, the marking of the equipment, which is part of a wastewater monitoring system and serves for continuous monitoring of the chemical parameter - nitrate, the marking of the equipment which is part of a wastewater monitoring system and serves for continuous monitoring of the chemical parameter - conductivity, the marking of the equipment of the wastewater treatment system and of the water from impure condensate tanks, the marking of the equipment of the systems, which are the source of neutralised regeneration wastewater, one of the components of the process wastewater, the marking of a system facility that is the source of waste regeneration wastewater from a treatment plant, one of the constituents of conditionally active wastewater, the marking of a system facility that is the source of waste washing and regeneration wastewater, one of the constituents of conditionally active wastewater, the marking of a facility on a premises that is the source of wastewater from a laundry, one of the constituents of conditionally active wastewater, the marking of a system facility that is the source of sludge, one of the constituents of inactive wastewater, the marking of a system facility, which is the source of oily wastewater, one of the components of wastewater recycled back into the process, the marking of a facility, which is the source of wastewater from leachate and sludge, which is recycled back into the process, the marking of a system facility for the treatment of effluent from leachate and sludge, which is recycled back into the process, the marking of a system facility which, when it is flushed, is the source of one of the components of process effluent, the marking of equipment systems that are the source of effluents from pickling, degreasing or de-conservation of the equipment of the system, one of the components of the process wastewater, the marking of the equipment of the system and service sets of the Instrumentation and Control System, which is part of the process of liquid radioactive waste management, the marking of the technological unit, which is part of the process of liquid radioactive waste management and defines the method of control, description of the automatics and interlocks of the system and the marking of the buildings and rooms, in which the equipment is located, the marking of the equipment, technological units, which are part of the liquid radioactive waste management process, defining the method of control, description of the automation and interlocks of the system, the safety class classification of the classified equipment, the safety class classification (seismic resistance) of the classified equipment, the marking and description of the set of components of the severe accident mitigation system (hereinafter referred to as 'SA'), their functionality, the numbers of buildings and equipment, a more detailed description of one group of components of the SA mitigation system, the functionality of the system, the numbers of buildings and facilities, a more detailed description of the operation of the individual components of the SA mitigation system in normal operation and during design basis accidents and their marking, the classification of the SA mitigation system in the seismic resistance category, a description of the main components of the SA mitigation system, a description of the main components of the SA mitigation system, the link of the system to mobile and external sources of coolant and the function of the system, a description of the requirements for system operating parameters, such as volume, temperature, concentration and a description of the operation to maintain these parameters within the required limits, information on the activity of the fission products that will be placed in the spent fuel storage pool and in the spent fuel interim

storage after fuel removal from the nuclear reactor.

72. The primary role of the Administrative Court was to assess whether the public authorities had correctly assessed the case in law when they decided on the partial non-disclosure of information to the Plaintiff within the meaning of Section 11(1)(i) of the Freedom of Information Act, read in conjunction with Section 3 (16) and (17) of the Atomic Act.
73. The role of the Defendant is enshrined in the law in Section 29 (1) and (2) of the Act No. 575/2001 Coll. on the organization of government activities and the organization of the central state administration as amended.
74. Section 11(1)(i) of the Act on Free Access to Information provides that one of the grounds for restricting access to information is if the documentation contains information the disclosure of which could be used to plan and carry out activities to disrupt or destroy a nuclear installation or objects of special importance and other important objects under special regulations, referring also to the Act on the Peaceful Uses of Nuclear Energy, or if the information relates to the exercise of control, supervision or oversight by a public authority pursuant to special regulations (e.g. also under the Atomic Act) other than information on a decision or other result of an inspection, supervision or oversight.
75. The authority to exclude sensitive information is formally regulated by the Atomic Act, which provides in Section 3(16) that documentation including sensitive information is considered to be documentation, the disclosure of which could be used to plan or execute activities to cause disruption or destruction of a nuclear installation, thereby adversely affecting public safety and causing ecological or economic damage. This documentation shall be made available after the exclusion of sensitive information. Furthermore, Article 3(17) of the Atomic Act states that the documentation including sensitive information is the documentation listed in Annex 1(A)(c)(B)(a), (b), (i), (m), (C)(a), (d), (i), (j), (s), (w) and Annex 2(A)(b), (B)(b).
76. Aarhus Convention, which entered into force for the Slovak Republic by the Notification of the Ministry of Foreign Affairs of the Slovak Republic No. 43/2006 Coll. defines the term "environmental information", but only in general terms and does not define what is information on the environment in the case of a nuclear installation, etc., and thus it can be concluded that it does not clearly define some concepts and activities related to nuclear installations and thus does not provide a legally binding and enforceable framework, unlike Directive 2003/4/EC of the EP and the Council. It follows from Article 4(4) of the Convention that: A request for environmental information may be refused if the disclosure would adversely affect the confidentiality of the proceedings of public authorities, where such confidentiality is provided for under national law, international relations, national defence or public security, and the confidentiality of commercial and industrial information, where such confidentiality is protected by law, in order to protect a legitimate economic interest.

In relation to the above, the Administrative Court also refers to Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters to Community institutions and bodies and 'The Aarhus Convention, An Implementation Guide, United Nations, 2000, which on Article 4(4) of the Aarhus Convention' states: *'The interests covered by Article 4(4) are exceptions to the general rule that information must be made available to the public on request. Parties are not obliged to incorporate these exceptions in their implementation of the Convention. On the exceptions they adopt, Parties may set criteria for public authorities to apply in the exercise of their powers or may categorically exclude certain information from disclosure'*.

77. With regard to the Plaintiff's objection that the Defendant acted contrary to its obligations under the Aarhus Convention and the Directive 2003/4/EC of the EP and the Council, and that the categories of the Directive of the Nuclear Regulatory Authority of the SR No. 4460/2016 are very broadly formulated, the Administrative Court states that the Defendant, in its legal assessment of the case, acted within the framework of the rights and obligations established for it by the legislation of the Slovak Republic and in accordance with the Constitution of the Slovak Republic (Art. 26), with the Act on Free Access to Information (Article 11(1)(i)), with the Atomic Act (Article 3(16) and (17)) and with EU law - Directive 2003/4/EC of the European Parliament and of the Council (Article 4(2)) and the Aarhus Convention (Art. 4 (4)).

The subject of the right to information may be any information, except for information subject to restriction in Article 26 of the Constitution of the Slovak Republic: *'Freedom of expression and the right to seek and disseminate information may be restricted by law if it is a measure necessary in a democratic society for the protection of rights and freedoms'*. The right to information can therefore be limited, if the law so provides. The legal theory and case law require certain conditions to be fulfilled for the application of this constitutional restriction (see the ruling of the Constitutional Court of the Slovak Republic No. PL ÚS 15/1998 of 11/03/1999), which states: *"The restriction of the right to information in accordance with the Constitution is allowed only if the formal condition of the law and two cumulative material conditions are met. Under no circumstances does the Constitution permit waiver of all three conditions for restricting freedom of expression and the right to information. The formal condition means that the restriction is adopted by the National Council of the Slovak Republic in a legal regulation with the force of law. The term 'law' does not refer to a single general binding regulation with the force of law, but to an indefinite number of general binding regulations with a defined degree of legal force. In this case, it is Section 3(16) of the Atomic Act. The importance of such a possibility is indicated by the fact that all three basic regulations, whether at the national (Constitution of the Slovak Republic), international (Aarhus Convention) or European Union level (Directive 2003/4/EC), which regulate the fundamental right of persons to information, also provide for the possibility of limiting this right."* Further, the Constitutional Court of the Slovak Republic in the cited ruling states: *"The first material condition is the requirement that the restriction must serve to protect rights and freedoms or must protect national security, public order, public health or morals. In order to satisfy the first material condition, it is sufficient to demonstrate the existence of one of the interests cited. The second substantive condition is that the restriction must be adopted."* This view is supported by the case law of the Court of Justice of the EU, where it is permissible in specific cases to restrict the public's right of access to sensitive information in the interests of protecting public security in order to prevent possible ecological or economic damage.

Sensitive information is defined in the Act No. 350/2011 Coll., amending and supplementing Act No. 541/2004 Coll. on the peaceful uses of nuclear energy (Atomic Act) and on amendment and supplement to certain acts, as amended, in Section 3(14) as follows: *“Documentation containing sensitive information is considered to be documentation, the disclosure of which could be used to plan and execute activities to disrupt or destroy a nuclear installation and thereby adversely affect public safety and cause environmental or economic damage. This documentation shall not be made public pursuant to a specific regulation. ”*

The Administrative Court agrees with the Defendant's view that information on the identification and marking of facilities and buildings, room numbers and description of the location where they are located, description, parameters and marking of equipment and technologies, sources and location of their storage, numbers and description of technological units, seismic resistance category, functionality, parameters and components of the system and its backup, are not environmental information under Art. 2(3) of the Aarhus Convention, are not related to emissions to the environment, as they are information of an operational nature of the installation/building and are therefore not essential for the assessment of the environmental impact of the nuclear installation, i.e. they are not environmental information.

In the light of the above, the Administrative Court concluded that when disclosing documentation containing sensitive information, it is necessary to take into account the overriding interests, which are typically security interests insofar as they are defined by the Atomic Act, and the relevant international treaties to which the Slovak Republic is bound, in particular in the context of Article 4(4) of the Aarhus Convention and Article 4 of Directive 2003/4/EC of the European Parliament and of the Council. That approach is consistent with the principles contained in Article 8(2) of Directive 2009/71/Euratom, as amended by Directive 2014/87/Euratom, which allows for the exclusion of public access to certain information, subject to a restrictive interpretation of such a provision.

The Administrative Court concluded that the Defendant, as the regulatory authority for nuclear safety of nuclear installations and which has its scope of competence framed in Section 29 of the Act No.575/2001 Coll. on the organisation of governmental activities and the organisation of the central state administration, as amended, and in detail in the Atomic Act (541/2004 Coll.), it acted in accordance with the Aarhus Convention (Article 4(4)(b)) and Directive 2003/4/EC of the European Parliament and of the Council (Article 4(2), from which it follows that in certain cases States are entitled to restrict the right of authorised entities to information in the interest of ensuring the physical security of a nuclear power plant and thus ensuring the protection of the health of employees and the public, as well as the protection of the work environment and life environment, which outweighs the Applicant's interest in obtaining the information in question.

When assessing the disclosure of information by an obliged person, the Freedom of Information Act cannot be applied as an isolated piece of legislation, but it is also necessary to assess whether the disclosure of the information would jeopardise other State interests. The legitimate reason for restricting access to information is the protection of important interests of the State, and therefore, when disclosing information, obliged persons must consider the reason for withholding the information, which lies in the interest of the State in ensuring that the information provided does not jeopardise public security. This principle is enshrined in the Freedom of Information Act in the first sentence of section 12 of the Act as follows: *“Any restriction on the right to information shall be exercised by the obliged person by making the requested information available... after excluding the information, for which the law so provides. ”*

In the present case, having regard to the above facts and the legal framework, the

Administrative Court considers that there was a legitimate interest in partially withholding the requested information, which the defendant described as 'sensitive' and for that reason did not disclose it.

Accordingly, the Administrative Court considers that the Plaintiff's objection is unfounded.

78. On the Plaintiff's objection that the Defendant sought to give the impression that it had assessed each of the requested information individually and, despite the length of the second-instance Decision (122 pages), that assessment was blanket and did not take sufficient account of the public interest in disclosure of the information and that it related to emissions into the environment, *the Administrative Court notes that* it can be seen from the contested Decision that the Defendant indicated for each individual piece of information which it did not disclose the possible manner of its misuse, the negative consequence of its misuse and the associated risk. It can therefore be concluded that the Defendant gave proper reasons for its decision and gave detailed reasons for each piece of information which was not disclosed in its entirety.

Accordingly, the Administrative Court considers that the Plaintiff's objection is unfounded.

79. In relation to the above, the Administrative Court also refers to the ruling of the Constitutional Court of the Slovak Republic I. ÚS 236/06, which states: "*The constitutional obligation of public authorities to provide information on their activities may be limited only by law if it is a measure necessary in a democratic society for the protection of the rights and freedoms of others, the security of the state, public order, the protection of public health and morals. "The obligation to apply the proportionality test applies both to legislative activity (the formulation of the provisions of legislation) and to the interpretation and application of legislation (e.g. deciding whether or not to disclose information).*" The proportionality test must also be applied in cases where public authorities and courts make a decision on the basis of a statutory norm giving the public authority concerned a certain discretion. Such a statutory provision does not itself clearly resolve a conflict between fundamental rights or constitutional values. It entrusts the resolution of the conflict to the competent public authority.

80. In the case law of Slovak courts, there is a legal concept of implicit restriction of access to information, which has been formulated by the courts in their rulings, e.g. Resolution of the Constitutional Court of the SR, Case No. III US 96/2010 of 9 March 2010, which states: "*In general terms, therefore, the Constitutional Court concludes that not only the provisions of Sections 8 to 11 of the Freedom of Information Act explicitly defining the limitations on access to information, but also the provisions of other legal regulations protecting the rights and freedoms of others, state security, public order, public health and moral, are relevant for the limitation of the fundamental right of access to information. The Constitutional Court thus shares the complainant's view that the Freedom of Information Act is an expression of the principle 'what is not secret is public', but that the scope of what is 'secret' does not necessarily follow only from the Freedom of Information Act.*

81. The aforementioned legal concept can also be found in other rulings of the Supreme Court, e.g. Case No. 5Szi/4/2009 of 21 April 2010: *"The Supreme Court of the Slovak Republic, also addressing the question whether under the Freedom of Information Act, in addition to the mandatory disclosure of information (Section 5 of the Act No. 211/2000 Coll.), the non-disclosure of information can be narrowed down only to the conditions of restriction of access pursuant to Sections 8 to 13 of the Act No. 211/2000 Coll., holds that even an expansive interpretation of the Freedom of Information Act has its limits and does not mean that obliged persons must disclose absolutely everything. A broadly interpreted right of access to information, as presented by the plaintiff, would mean that any third party should have the right to request the release of documents also from non-public deliberations, e.g. also from deliberations of the Plenary of the Constitutional Court of the Slovak Republic (Section 4 of the Act No. 38/1993 Coll. on the organisation of the Constitutional Court of the SR on the proceedings before it and on the status of its judges, as amended) or non-public deliberations of the Senate of the Court, etc. Such an expansive interpretation does not take into account in the systematics of the legal order the nature of the non-public nature of the meetings of the Government with regard to its activities."*
82. *The restriction of access to information does not only apply to explicit cases of the Freedom of Information Act, but also to prohibitions from other public law legislation, confirms the jurisprudence, which is referred to in the Supreme Court's jurisprudence as an implicit restriction of access to information arising from other legislation. It is precisely these restrictions on access to information that can be challenged by actions not only by the lay public, but also by the professional public, whose legal awareness is based on the principles of legal normativism and legal positivism. However, it is the task of the highest judicial instances to ensure the internal logic of the legal system by so-called dilatory decisions. Legal dilatation is a concept taken from mechanics and applied by analogy to the legal system.... So that the physical and mechanical properties of a particular material or structure with respect to the conditions of exposure and loading do not cause an undesirable state. Due attention should be paid to their design, as they largely represent or create a weak point in the structure." Legal positivism and normativism, by their rigid elements, which are themselves rigid, cause them to interact with each other to create weaknesses in the legal order..... The Constitutional Court confirmed that the limits of the right to information are also determined by the principle of good governance. An implicit restriction on access to information may also result from the preservation of the principle of good governance. (Rumana, I., Šingliarová, I.: Case law on freedom of access to information, first edition, Bratislava, Wolters Kluwer, 2014, p. 34).*
83. *The Freedom of Information Act is based on the principle of the general clause with negative enumeration, which means that obliged persons disclose all information, except for those prohibited by law. However, the prohibition does not have to be explicitly provided for directly by the Freedom of Information Act, but may also arise from other public law provisions. In this case, the government drafting the laws was confronted with the fact that "the information seeker merely wanted the government to follow the text of the law verbatim." This is therefore the approach that is often taken by public administration officials towards the parties to proceedings. Proceeding strictly in the manner and within the scope of the law.*

Such an isolated approach to the interpretation and application of the law is not possible because the laws operate within a system of legal order where they are mutually constraining and complementary. The role of the administrative judiciary is to review legality, i.e. application and interpretation within the system of the legal order. For this reason, the concept of implicit limitation of access to information has been declared by the courts, which limitation also arises from other legislation, of which an applicant who is only familiar with the text of the Freedom of Information Act may not be aware. However, these implicit prohibitions must be recognised by public authorities and administrative courts. Because they are already required to think legally within the system of law. When a certain proceeding is not public, it defies elementary logic that data from that proceeding can be made available through the Freedom of Information Act. Under such an interpretation, the deliberations and votes of the panel in court cases would be publicly accessible, as the Freedom of Information Act does not expressly prohibit this. (Rumana, I., Šingliarová, I.: Case law on freedom of access to information, first edition, Bratislava, Wolters Kluwer, 2014, p. 60).

84. *“The principle of constitutionally consistent interpretation also implies the requirement that in cases where different interpretations of related legal norms are taken into account when applying the standard methods of interpretation, the one which ensures a full-fledged or more full-fledged realisation of the rights of natural persons or legal entities guaranteed by the Constitution should be preferred. All public authorities are therefore obliged, when in doubt, to interpret legal norms in favour of the implementation of the fundamental rights and freedoms guaranteed by the Constitution (and also by international treaties)...” (for example: II. ÚS 148/06, III. ÚS 348/06, IV. ÚS 209/07, similarly also 1. ÚS 252/07).*

85. On the basis of the foregoing, the Administrative Court dismissed the Plaintiff's administrative action in its entirety as unfounded, since the documentation in question contains sensitive information pursuant to Article 3(16) and (17) of the Atomic Act and its disclosure could be used to plan and execute activities with the aim of disrupting or destroying a nuclear installation, thereby adversely affecting public security and causing ecological or economic damage. In the present case, it was therefore necessary to modify the documentation prior to its publication in such a way that this data would not be accessible. At the same time, the Defendant followed the applicable Directive of the Nuclear Regulatory Authority SR No. 4460/2016, which was also assessed and evaluated by the US Nuclear Regulatory Commission (US NRC) as being very detailed and providing a good framework for evaluating the potential sensitivity of different types of information. The Administrative Court finds that the Plaintiff was provided with information in part and in a proper and timely manner, in the form chosen by him and to the extent provided for by the legislation of the Slovak Republic, i.e. internal regulations, as well as EU and international legislation of both a binding and recommendatory nature.

86. It can be summarised that the non-disclosure of the requested information to the extent requested by the Plaintiff was sufficiently justified by the Defendant and that the Defendant acted in accordance with its obligations under the Aarhus Convention, as well as Directive 2003/4/EC of the European Parliament and of the Council in assessing the Plaintiff's request.

87. The Administrative Court considers that both the first-instance decision and the second-instance decision were implemented in accordance with all national, EU and other international legislation. The Defendant assessed the various parts of the contested application, clearly stated which facts formed the basis for its decision, what considerations guided its decision, how it tested the proportionality between the public's interest in access to information and the protection of public security, and stated what legislation guided its decision and how it upheld the Plaintiff's objections. The Administrative Court considered this explanation to be sufficient, on the basis that the Plaintiff's interest in disclosure of the information was not given.
88. The Administrative Court concluded that the public authorities had interpreted and applied the relevant laws with due responsibility, while respecting fundamental rights and freedoms, and had correctly assessed the case in law. Accordingly, it considers that the contested Decision, together with the first instance Decision, was lawfully adopted and that there is therefore no reason to annul it.
89. In its decisions, the Supreme Court of the SR has repeatedly expressed the opinion that any statement of reasons for a decision of a public administration body must contain logical, legal and persuasive reasoning to a sufficient extent, i.e. that the average addressee must be able to understand from the statement of reasons the correctness of the legal norms applied to the facts and the legal conclusions that do not deviate from the logic of the application of the law and that lead to the conclusions contained in the operative part. (*see the judgment of the Supreme Court of the SR 10Sžo/3/2012*).
90. In the decision, the Defendant is not required to answer all the questions raised by the Party, but only those which are of substantial importance to the case or which sufficiently clarify the factual and legal basis of the Decision. Accordingly, a Statement of Reasons which explains concisely and clearly the factual and legal basis of the Decision, is sufficient to conclude that, in that respect, the party's right to a fair hearing is fully realised (*m. m. IV. ÚS 112/05, 1. ÚS 117/05, 1 ÚS 141/09-12*). It is not necessary for the constitutionality of a statement of reasons to answer all, even irrelevant and immaterial to the case, circumstances or submissions of a party to the proceedings, even if the party to the proceedings perceives them to be relevant (*see Resolution of ÚS SR No. k. IV. ÚS 150/03- 41 of 27 August 2003*).
91. With reference to the above-mentioned reasons, the Court concludes that the contested Decision of the Defendant, as well as the Decision of the first instance, is factually correct, and therefore the Court dismisses the action as unfounded in accordance with Section 190 of the ACO.
92. The Court decided on the claim for reimbursement of costs pursuant to Section 168 in conjunction with Section 175(1) of the ACO, however, the successful Defendant in the case did not incur any reasonably incurred costs, did not even claim any, it is a state administration body, and therefore the Administrative Court did not award it the costs.
93. This Decision was adopted by the Chamber of the Regional Court in Bratislava by a vote of 3:0 (Section 3 (9) of the Act No. 757/2004 Coll. as amended by the Act No. 33/2011 Coll.).

Instructions: A cassation complaint may be lodged against this Decision with the Regional Court in Bratislava within one month of its delivery.

In addition to the general particulars (Section 57 of the ACO), a cassation complaint must contain a designation of the contested Decision, an indication of when the contested Decision was notified to the complainant, a description of the relevant facts in order to make it clear to what extent

and on what grounds, pursuant to Section 440 of the ACO, it is being lodged (the points of complaint) and a draft operative part of the decision (the Statement of Appeal). The pleas in law may be amended only until the expiry of the time-limit for lodging a cassation complaint.

In cassation proceedings, the complainant or the omitted complainant must be represented by a lawyer within the meaning of Section 449(1) of the ACO. The cassation complaint and any other submissions made by the complainant or omitted complainant must be drawn up by a lawyer. Compulsory representation by a lawyer in cassation proceedings shall not be required if a/ the applicant or the applicant's representative, an employee or a member acting for him or her before the Court of Cassation has a second-level university degree in law; b/ the proceedings are administrative actions under Article 6(2)(c) and (d); c/ the defendant is the Legal Aid Centre.

Done in Bratislava, on 16 February 2023

JUDr. [REDACTED]
President of the Chamber

JUDr. [REDACTED]
Member of the Chamber

JUDr. [REDACTED]
Member of the Chamber

For the correctness of the copy:

[REDACTED]

Regional Court in Bratislava

Certification Clause

on the execution of an electronic copy of a court decision, the original of which has been issued in paper form

The original of the decision attached to this certification clause has been made from the original of the decision on file with the court and consents to that decision verbatim

Original of the Decision:

Judgment

Court: Regional Court in Bratislava

Date of Decision: 16 February 2023

File No./proceeding No.: IS/305/2017

IČS: 1017202100

ECLI: ECLI:SK:KSBA:2023:1017202100.2

Original signed by, position:

JUDr. [REDACTED], President of the Chamber

JUDr. [REDACTED], Chamber Member

JUDr. [REDACTED], Chamber Member

Date of creation of the clause: 9 March 2023

Created by: [REDACTED]

Certification Clause pursuant to Section 63a of the Decree of the Ministry of Justice of SR No. 543/2005 on Administrative and Clerical Rules for District, Regional Courts, Special Court and Military Courts as amended.

Regional Court in Bratislava
VALIDITY CLAUSE

JUDGMENT

Date: 16 February, 2023

File No.: IS/305/2017

ICS: 1017202100

ECLI: ECLI:SK:KSBA2023: 1017202100.2

Date of entry into force: 23 March 2023

Date of creation of the clause: 6 April 2023

Created by: [REDACTED]