

Basic Questions of Civil Liability for Nuclear Damage in Slovakia¹

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Abstract: *The nuclear liability regime currently in force in Slovakia governs liability on the system of civil law. The roots of the historical development of the Slovak nuclear liability legislation can be dated back to 1995 when the Slovak Republic acceded to Vienna Convention on Civil Liability for Nuclear Damage.² The Vienna Convention as one of the fundamental international conventions regulating the issues of liability for damages caused as a result of a nuclear incident has promoted a special régime (nuclear liability régime) founded on several principles which had become binding rules for respective contracting parties over the preceding half-century. The fundamental principles established by Vienna Convention directly or indirectly implemented at the Slovak national level include the following: exclusive liability of the operator of nuclear installation, strict liability of the operator, limitation of damages in amount and time, exclusive jurisdiction and mandatory financial coverage. The paper deals with the Slovak nuclear liability legislation established on the basis thereof, taking account of the specifics of the implementation process, formulation and interpretation of the Slovak nuclear liability legal rules and reviewing the variance from the requirement to meet the compatibility standard in this field.*

Key Words: *Nuclear Liability; Principles of Nuclear Liability; Slovak Nuclear Law; Nuclear Damage; Nuclear Power Plant; Vienna Convention on Civil Liability for Nuclear Damage; the Slovak Republic.*

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² Vienna Convention, established on May 21st, 1963, under the auspices of the International Atomic Energy Agency – IAEA, creates a system with so-called “worldwide applicability” that enables any country without any limitation to join the Convention and become a party to the regime of liability for nuclear damage.

Introduction

In the Slovak Republic, there are currently four units of nuclear power plants in commercial operation, whereas two units are located in Mochovce area (EMO – Atómové elektrárne Mochovce) and another two in Jaslovské Bohunice area (EBO – Atómové elektrárne Bohunice). They are operated by Slovenské elektrárne, partly owned by Italian ENEL, partly by the state.³

The number of nuclear installations which have a nature of energy nuclear installations is completed by nuclear power plant A-1 currently in the 2nd stage of decommissioning, nuclear power plant Bohunice V-1 which is currently in the 1st stage of decommissioning and two units of nuclear power plant Mochovce 3 and 4 currently under construction (the construction of nuclear power plant Mochovce 3 and 4 was originally suspended in mid-nineties and the facilities were conserved, however in February 2007 Slovenské elektrárne, as the owner of Mochovce 3 and 4 nuclear power plant announced continuation in construction which was renewed in 2008).

Furthermore, the Slovak government announced plans for a new unit at Bohunice (V3 plant) in April 2008. A public-private partnership is envisaged to build and own the reactor, with the government holding 51 %. The government list of priority power projects, beyond Bohunice V3 plant, includes another nuclear plant at Kečerovce in the eastern part of the country. This is planned to serve after the closure of the Bohunice V2 units from approximately 2025.⁴

In addition to the above mentioned nuclear installations operated for the purpose of electricity production, there are also some other nuclear installations located in the territory of the Slovak Republic: interim spent nuclear fuel storage, liquid radioactive waste final treatment facility, radioactive waste repository and two experimental nuclear installations (bituminization line nuclear facility and nuclear waste incinerator).

³ NOVOTNÁ, M. and J. HANDRLICA. Legal Framework and Perspectives of Nuclear Third Party Liability in the Czech and Slovak Republics. *Forum iuris europaeum*. 2013, vol. 1, no. 2, pp. 49-68. ISSN 1339-4401.

⁴ NOVOTNÁ, M. and J. HANDRLICA. Legal Framework and Perspectives of Nuclear Third Party Liability in the Czech and Slovak Republics. *Forum iuris europaeum*. 2013, vol. 1, no. 2, pp. 49-68. ISSN 1339-4401.

Legal framework

Civil liability for nuclear damage in the Slovak Republic is governed by the Act No. 541/2004 Coll. on Peaceful Use of Nuclear Energy (Nuclear Energy Act) and on amendment and supplement of certain acts⁵ which nature falls into the field of public law (except for regulation of civil law liability for nuclear damage in the seventh chapter).

This act sets out the principles of nuclear liability of the operator of nuclear installations and contains detailed provisions on the third party liability for nuclear damage, which largely reflect the provisions of the 1963 Vienna Convention on Civil Liability for Nuclear Damage (hereinafter “*the Vienna Convention*”) to which the Slovak Republic became a contracting party in 1995. In the same year, Slovakia acceded to the 1988 Joint Protocol Relating to the Application of the Vienna Convention and the Paris Convention⁶ (hereinafter “*the Joint Protocol*”),⁷ aiming at establishing a link between the Vienna Convention and the Paris Convention⁸ by mutually extending the benefit of the special regime of civil liability for nuclear damage set forth under each Convention and eliminating conflicts arising from the simultaneous applications of both Conventions to a nuclear incident.⁹

From the point of national lawmaking, the regulation of civil liability for nuclear damage is not extensive in the Slovak law – it comprises the

⁵ Approved by the Parliament on September 9th, 2004, with effective date of December 1st, 2004.

⁶ *Oznámenie MZV SR uverejnené pod č. 70/1996 Z.z. o pristúpení SR k Viedenskému dohovoru o občianskoprávnej zodpovednosti za škody spôsobené jadrovou udalosťou* [Notice of the Ministry of Foreign Affairs of the Slovak Republic published under No. 70/1996 Coll. on Accession of the Slovak Republic to Vienna Convention on Civil Liability for Nuclear Damage]; and *Oznámenie MZV SR uverejnené pod č. 71/1996 Z.z. o pristúpení SR k Spoločnému protokolu k aplikácii Viedenského dohovoru a Parížskeho dohovoru* [Notice of the Ministry of Foreign Affairs of the Slovak Republic published under No. 71/1996 Coll. on Accession of the Slovak Republic to Joint Protocol to Application of Vienna Convention and Paris Convention].

⁷ After acceding to the 1963 Vienna Convention (“old” Vienna Convention) and to the Joint Protocol, Slovakia didn’t sign any additional nuclear liability conventions of the “second generation” (neither the Protocol to Amend the Vienna Convention, nor the Convention on Supplementary Compensation).

⁸ *The 1960 Paris Convention on Nuclear Third Party Liability* [Paris Convention] [online]. 2014 [cit. 2014-04-04]. Available at: https://www.oecd-nea.org/law/nlparis_conv.html.

⁹ Both the Vienna Convention on Civil Liability for Nuclear Damage and the Joint Protocol to Application of Vienna Convention and Paris Convention entered into force for the Slovak Republic in 1995.

provisions of two sections of the Nuclear Energy Act.¹⁰ However, this condition is understandable and logically reasonable especially in relation to § 29 (1) of the Nuclear Energy Act under which, within regulation of liability for nuclear damage, the international treaties bound for Slovakia are recognized as the source of law (Vienna Convention on Civil Liability for Nuclear Damage and Joint Protocol to Application of Vienna Convention and Paris Convention) and in relation to regulation of the Vienna Convention and Nuclear Energy Act, unless otherwise stipulated therein, under the Nuclear Energy Act subsidiary application of generally binding regulations on liability for damage is also recognized (Article 415 through 450 of Act No. 40/1964 Coll. Civil Code as amended and relevant provisions of Act No. 513/1991 Coll. Commercial Code as amended).¹¹

Due to this “implementation clause”, nuclear liability matters are to be governed by the following legal provisions and in the following order:

1. provisions of international nuclear liability treaties which are binding for the Slovak Republic, i.e. by the provisions of the Vienna Convention and Joint Protocol;
2. provisions of the Nuclear Energy Act which contain special nuclear liability rules, as foreseen in international treaties;
3. provisions of the Civil and Commercial Codes, governing, in general, issues of liability.¹²

¹⁰ Article 29 and Article 30 *Zákon č. 541/2004 Z.z. o mierovom využívaní jadrovej energie (atómový zákon) a o zmene a doplnení niektorých zákonov v platnom znení* [Act No. 541/2004 Coll. on Peaceful Use of Nuclear Energy (Nuclear Energy Act)].

¹¹ A such formulated provision facilitating subsidiary application of the Civil Code and/or Commercial Code provisions to cases of liability for nuclear damage finally resolved the application problem which had existed during the life of law dated in 1998, regarding the possibility of subsidiary application of the Civil Code provisions, which was permissible, under law dated in 1998, only within the institute of compensation of damages, i.e. especially when determining the extent and method of compensation thereof, while in other aspects of the liability relationship the application thereof was at least questionable. Due to this reason, under 2004 Nuclear Energy Act the original regulation was supplemented by provision of Art. 29 par. 1 *in fine* by which the subsidiarity of general regulations on liability for damages was extended also to relations of civil liability for nuclear damage in general, without limiting to the field of compensation of damages. *Zákon č. 541/2004 Z.z. o mierovom využívaní jadrovej energie (atómový zákon) a o zmene a doplnení niektorých zákonov v platnom znení* [Act No. 541/2004 Coll. on Peaceful Use of Nuclear Energy (Nuclear Energy Act)].

¹² HANDRLICA, J. and M. NOVOTNÁ. The Vienna Convention on Civil Liability for Nuclear Damage Revisited: Challenges for Updating the Czech and Slovak Legal Framework. *The Lawyer Quarterly*. 2013, vol. 3, no. 4, p. 301. ISSN 1805-840X.

As already outlined above, at national legislation level the issue of liability for nuclear damage and financial coverage thereof was classified in the seventh chapter of the Nuclear Energy Act as the legal regulation of administrative law nature falling under the public law area. Especially thanks to its civil law (private law) nature, the legal regulation of liability for nuclear damage in this Act has unnatural effect, without direct link to the remaining public law nature regulation.

From systematic point of view it would be more appropriate to include the legal regulation of liability for nuclear damage to the private (civil) law system, whereas the option is either creation of separate subject matter of liability within the existing special legal regulation of particular liability matters in Civil Code or adoption of a separate legal regulation of private nature which would in complexity regulate all relevant issues of liability for nuclear damage.

The first option was dismissed during the re-codification works on the Civil Code with explanation that the issue of liability for nuclear damage is a specific case of liability for damages including more elements which differ from the classic institutes of civil liability for damages in general (the concept of nuclear damage, limitation of extent of liability, obligatory financial coverage for liability, international nature of the sources of law etc.) and due to this reason it is not appropriate to have this institute regulated directly in the Civil Code.

On the contrary, by adoption of a separate legal regulation of civil law nature regulating the civil law aspects of liability for nuclear damage all of the mentioned objections would be eliminated, whereas the necessary link between the Nuclear Energy Act as a regulation of administrative law could be solved by reference provisions between both regulations.

Principles of nuclear liability régime in the light of the Slovak nuclear liability legislation

Nuclear installation operator as person liable for nuclear damage

Each nuclear installation must have a person in charge: *the operator*.¹³ In the legal régime of the Vienna Convention, the operator is the person des-

¹³ NOVOTNÁ, M. and J. HANDRLICA. Legal Framework and Perspectives of Nuclear Third Party Liability in the Czech and Slovak Republics. *Forum iuris europaeum*. 2013, vol. 1, no. 2, pp. 49-68. ISSN 1339-4401.

igned or recognized as the operator of a nuclear installation by the state.

Pursuant to Article 29 (2) of the Slovak Nuclear Energy Act, the subject liable for nuclear damage as laid down in the binding international conventions is “license holder for commissioning of a nuclear installation, license holder for operation of such installation, with the exception of storages, and the license holder for the discarding phase or license holder for transport of nuclear material.”¹⁴

Article 5 (1) of the Nuclear Energy Act indicates that the status of the nuclear installation operator is awarded only to such entity – an individual or a legal entity who utilizes nuclear energy in legal manner, i.e. a license by the Nuclear Regulatory Authority of the Slovak Republic specified above was granted to it.¹⁵

The operator of a nuclear installation bears exclusive liability for nuclear damage (*legal channeling of liability onto the operator*), no other persons (such as builders or suppliers potentially liable under general tort law) associated with the construction or operation of the nuclear installation should be held liable. The operator of a nuclear installation (license holder under the Slovak Nuclear Energy Act) is held liable regardless of whether his or third person’s fault can be established (strict – no fault liability). It follows that there is no need to prove negligence or any other type of fault on the part of the operator. The simple existence of nuclear accident, nuclear damage and causation is an adequate basis for the operator’s strict liability.

Article IV (1) of the Vienna Convention qualifies the operator’s liability as “absolute”, in order to make it clear that it is not subject to the classic grounds of exoneration such as force majeure, acts of God or interven-

¹⁴ Art. 1 (1) (c) of the 1963 *Vienna Convention on Civil Liability for Nuclear Damage* [Vienna Convention] [online]. 2014 [cit. 2014-04-04]. Available at: <http://www.iaea.org/Publications/Documents/Infcircs/1996/inf500.shtml>.

¹⁵ If a license holder operates a number of installations located on the territory for which a common internal emergency plan has been approved, they will be taken as a single nuclear installation for the purposes of liability for nuclear damage. More than one nuclear installation on one site, where the operators are different holders of authorizations, may not be taken as a single installation, even if these installations are technically linked together. Article 29 (3) *Zákon č. 541/2004 Z.z. o mierovom využívaní jadrovej energie (atómový zákon) a o zmene a doplnení niektorých zákonov v platnom znení* [Act No. 541/2004 Coll. on Peaceful Use of Nuclear Energy (Nuclear Energy Act)].

ing acts of the third persons.¹⁶ However, the operator may be exonerated from nuclear liability under special circumstances provided in the Vienna Convention, for example if he proves, that the nuclear incident was directly due to an armed conflict, hostilities, civil war or insurrection, or that it resulted from a grave natural disaster of an exceptional character (if the law of the installation state provides so).¹⁷ It would be therefore more appropriate for the Slovak legal system to use the term strict liability as the term absolute liability refers to the strict liability with no exoneration permitted.

Amount of operator's liability and its coverage

The operator's liability is limited to a sum equivalent to 300 million EUR for nuclear energetic installations with nuclear reactor(s) in course of commissioning and in course of operation and 185 million EUR for other nuclear installations in course of commissioning and in course of operation and for transport of nuclear materials and for all nuclear installations in discarding phase. The lower limit of liability determined for nuclear installations which do not serve for energy purposes, for nuclear damage caused during the transport of radioactive material and for nuclear installations in discarding phase may be reasoned especially by lower degree of risk of these installations and/or activities compared to nuclear power plants as nuclear installations for energy purposes and resulting assumption of risk of nuclear damage of minimum and/or lower degree.

The amount of limitation of operator's liability has been increased, by the Slovak Nuclear Energy act as amended by the Act No. 143/2013 Coll. since January 1st, 2014, as the volume of liability of the operator as specified before this statutory amendment (75 million EUR for energy nuclear installations and 50 million EUR for non-energy nuclear installations and transport of nuclear materials) was not in accordance with current international trend of the volume of liability of the operator. Moreo-

¹⁶ IAEA. *The 1997 Vienna Convention on Civil Liability for Nuclear Damage and the 1997 Convention on Supplementary Compensation for Nuclear Damage – Explanatory Texts*. 1st ed. Vienna: International Atomic Energy Agency, 2007, p. 9. IAEA International Law Series, no. 3. ISSN 1991-2366.

¹⁷ Article 9 of the *1960 Paris Convention on Nuclear Third Party Liability* [Paris Convention] [online]. 2014 [cit. 2014-04-04]. Available at: https://www.oecd-nea.org/law/nlparis_conv.html; and Article IV (2) of the *1963 Vienna Convention on Civil Liability for Nuclear Damage* [Vienna Convention] [online]. 2014 [cit. 2014-04-04]. Available at: <http://www.iaea.org/Publications/Documents/Infcircs/1996/inf500.shtml>.

ver, it may be argued that due to drifting of exchange rates and gold prices it did not even reach the minimum limits of liability set forth by Vienna Convention.¹⁸

Therefore, introduction of the higher financial limit of liability of the operator was certainly beneficial, whereby not only risk of violation of minimum limits of liability set by Vienna Convention due to gold prices and exchange rates drifts were eliminated, but, at the same time, the Slovak law is closer to the trend of nuclear legislation which is clearly indicated also in the area of financial limits of liability by the conventions of the second generation¹⁹ targeted at effort to increase unreasonably low minimum liability limit set by “old” Vienna Convention and Paris Convention and/or seeking additional sources for compensation of nuclear damage.

The operator shall ensure that his liability for nuclear damage is covered by insurance or some other form of financial cover to the amount specified above (laid down in Art. 29 (6) of the Nuclear Energy Act). Financial security may be obtained through a variety of means, e.g. conventional financial guarantees (a bank guarantee, state guarantee) or ordinary liquid assets, but in most cases it will be provided through insurance cover.²⁰

Financial security for coverage of operator’s liability for nuclear damage must be valid during the entire term of license granted to the operator by the Nuclear Regulatory Authority of the Slovak Republic for commissioning of the nuclear installation, for operation of the nuclear installation, for the phase of discarding of nuclear installation or for transport of radioactive materials. Upon lapse of the term of the license the operator shall be obliged to secure the insurance and/or other form

¹⁸ The Vienna Convention provides primary for unlimited liability, but under national legislation, it could be limited to a smaller amount not less than USD 5 million defined by reference to its value in terms of gold on April 29th, 1963. That is USD 35 per one troy ounce of fine gold.

¹⁹ The *1997 Protocol to Amend the Vienna Convention on Civil Liability for Nuclear Damage* [online]. 2014 [cit. 2014-04-04]. Available at: <http://www.iaea.org/Publications/Documents/Infircs/1998/infircs566.pdf>; and the *2004 Protocol to Amend the Paris Convention on Nuclear Third Party Liability* [online]. 2014 [cit. 2014-04-04]. Available at: https://www.oecd-nea.org/law/paris_convention.pdf.

²⁰ IAEA. *The 1997 Vienna Convention on Civil Liability for Nuclear Damage and the 1997 Convention on Supplementary Compensation for Nuclear Damage – Explanatory Texts*. 1st ed. Vienna: International Atomic Energy Agency, 2007, p. 13. IAEA International Law Series, no. 3. ISSN 1991-2366.

of liability coverage only in case a nuclear incident occurred and for the period of at least 20 years after occurrence of the incident.

However, the obligation to cover the liability during the entire term of the license is not a duty to preserve the equal financial security of one provider during the entire term. In accordance with the principle of individual autonomy of will, which, in this case, is not limited by international regime or national law, the operator is entitled not only to choose the provider of financial security but also to change such provider during the term of the license.

Due to specific nature of such type of insurance the nuclear damage risk insurance is provided in Slovakia by the Slovak Nuclear Insurance Pool as a free association of more insurance entities originated in the Slovak Insurance Association on July 31st, 1997, by execution of the cooperation agreement regarding insuring of the nuclear damage caused by operation of the nuclear installation. The cooperation agreement was executed by seven insurance agencies operating in Slovakia,²¹ whereas currently this association has nine members.²² The Slovak Nuclear Insurance Pool is an entity without legal personality, due to this reason, the leading insurer – Allianz – Slovenská poisťovňa, a.s., acts on behalf of the association based on power of attorney from other members of the pool.

Nuclear damage and its compensation

Under the Vienna Convention nuclear damage means loss of life, any personal injury or any loss of, or damage to, property which arises out of or results from the radioactive properties or a combination of radioactive properties with toxic, explosive or other hazardous properties of nuclear fuel or radioactive products or waste in, or of nuclear material coming from, originating in, or sent to, a nuclear installation. The heads of damage set forth in Vienna Convention should be compensated also under the Slovak nuclear liability law. Moreover, the Nuclear Energy Act made use of the possibility of the Art. 1 (1) (k) (ii) of the Vienna Convention²³ and

²¹ Allianz poisťovňa, a.s.; Ergo poisťovňa, a.s.; Kooperativa poisťovňa, a.s.; Otčina poisťovňa, a.s.; Slovenská poisťovňa, a.s.; Union poisťovňa, a.s.; and Univerzálna banková poisťovňa, a.s.

²² Allianz – Slovenská poisťovňa, a.s.; ČSOB Poisťovňa a.s.; Generali Slovensko poisťovňa, a.s.; Kooperativa poisťovňa, a.s.; HDI Versicherung AG; Mitsui Sumitomo Insurance Co., Ltd.; Union poisťovňa a.s.; Uniqa poisťovňa a.s.; and Wüstenrot poisťovňa a.s.

²³ Art. 1 (1) (k) (ii) of the 1963 Vienna Convention on Civil Liability for Nuclear Damage [Vienna Convention] [online]. 2014 [cit. 2014-04-04]. Available at: <http://www.iaea.org/>

broadens the definition of nuclear damage including additional heads of damage: environmental damage and preventive measures.

In this respect, the following shall be deemed as nuclear damage, under the Slovak nuclear liability law:

- a) loss of life or personal injury;
- b) loss of and damage to property;
- c) loss arisen as a result of incurring the costs for necessary measures for averting or mitigation of radiation taken upon occurrence of a nuclear incident for the purpose of elimination and/or minimization of the occurrence of nuclear damage (so-called preventive measure costs – e.g. costs of evacuation of public). The relevant provision of Art. 29 (5) of the Nuclear Energy Act is *lex specialis* to provision of Art. 419 of the Civil Code which grants a right to compensation of the incurred costs and compensation of damage to a person who averted the threatening damage;
- d) loss arisen as a result of incurring the costs for reinstatement of the previous or similar status of the environment (so-called environmental loss – e.g. costs of remedy of the consequences of contamination, costs of achievement of acceleration of natural regeneration process of the destroyed environmental elements), subject to a condition that the measures specified under c) and d) were triggered as a result of a nuclear incident and nature of matter allows it.

Compensation of victims of a nuclear incident is based on the system of individual actions brought in civil process. Jurisdiction over actions lies exclusively with the courts of the Contracting Party in whose territory the nuclear incident occurred, excluding any other court's jurisdiction in other states (principle of exclusive jurisdiction).²⁴

According to the Article 29 (4) of the Nuclear Energy Act the right to compensation of nuclear damage shall be statute barred, unless the claim for compensation thereof was not exercised within three years from the date when the injured party learned about the event leading to nuclear

Publications/Documents/Infcircs/1996/inf500.shtml: "Nuclear damage means [...] any other loss or damage so arising or resulting if and to the extent that the law of the competent court so provides...".

²⁴ Article XI (1) of the 1963 Vienna Convention on Civil Liability for Nuclear Damage [Vienna Convention] [online]. 2014 [cit. 2014-04-04]. Available at: <http://www.iaea.org/Publications/Documents/Infcircs/1996/inf500.shtml>; and Article 13 (a) of the 1960 Paris Convention on Nuclear Third Party Liability [Paris Convention] [online]. 2014 [cit. 2014-04-04]. Available at: https://www.oecd-nea.org/law/nlparis_conv.html.

damage and about who was liable for it, or could have learned about it, however not later than within 20 years from the date of occurrence of such event, or after the expiry of insurance, if the validity of insurance was longer. Thus, the Slovak Republic used the possibility foreseen in the Article VI (1) of the Vienna Convention and prolonged the 10-years period set forth therein in which victims can claim nuclear damages to twenty years from the date of the nuclear incident.

The concept as determined above and the length of time limitation of the claim for compensation damage in the Slovak law causes certain interpretation and application problems. The principled problem is a determination of the concept of the period defined as a statute of limitations period in the Nuclear Energy Act.²⁵ According to the official English version of the Vienna Convention, in Article VI stipulating the time limitation of the claim for compensation of nuclear damage, a term “extinction period” is used and it explicitly recognizes a legal consequence of failure to exercise the claim for compensation of damage within the specified period being the expiration of such subjective right of the injured party.²⁶ Apparently, if, under objective law, a subjective right is expired as a result of failure to perform certain act within given period which duration is subject to performance of given act (such as legal action, notification), this is a foreclosure and a period granted by objective law for exercising of such act (exercising of a right) is a foreclosure period.

The 20-year statute of limitations period approved in the Nuclear Energy Act (on the contrary to original bill from the Nuclear Regulatory Authority of the Slovak Republic where 10-year period was proposed)

²⁵ Article 29 (4) *Zákon č. 541/2004 Z.z. o mierovom využívaní jadrovej energie (atómový zákon) a o zmene a doplnení niektorých zákonov v platnom znení* [Act No. 541/2004 Coll. on Peaceful Use of Nuclear Energy (Nuclear Energy Act)].

²⁶ Compare the official English wording of Article VI par. 1 of the 1963 *Vienna Convention on Civil Liability for Nuclear Damage* [Vienna Convention] [online]. 2014 [cit. 2014-04-04]. Available at: <http://www.iaea.org/Publications/Documents/Infcircs/1996/inf500.shtml>: “Rights of compensation under this Convention shall be extinguished if an action is not brought within ten years from the date of the nuclear incident. If, however, under the law of the Installation State the liability of the operator is covered by insurance or other financial security or by State funds for a period longer than ten years, the law of the competent court may provide that rights of compensation against the operator shall only be extinguished after a period which may be longer than ten years, but shall not be longer than the period for which his liability is so covered under the law of the Installation State. Such extension of the extinction period shall in no case affect rights of compensation under this Convention of any person who has brought an action for loss of life or personal injury against the operator before the expiry of the aforesaid period of ten years.”

seems to be a positive step forward in an effort for broader application of the principle of protection of nuclear incident victims, due to the fact that, at first sight, it considerably strengthens the position of the injured party who is able to exercise his claim to compensation of nuclear damage within longer period.

However, one can fully be identified with this view only in the cases of nuclear damage consisting of physical injury. Harmful consequences of radiation to human health may not be even detectable and recognizable within shorter timeline after occurrence of nuclear incident, however they may persist in silent form for long time and may cause physical injury after several years. Due to the above mentioned, some experts²⁷ are of the opinion that longer than 10-year period in this case is not only welcomed but unconditionally necessary.²⁸ The 20-year statute of limitations period stipulated by the Nuclear Energy Act is not appropriate in case of property damage and in fact it does not (as it may first seem) provide more favourable position for the injured party due to the fact that 20-year period for exercising the right inevitably implies the threat of lack of evidence of the injured party who shall not be able to demonstrate the required prerequisites of liability. For the sake of prevention against inefficient filing of the legal actions, where an injured party would face lack of evidence as a result of considerable time period since the occurrence of nuclear damage to property, standard 10-year period for filing of the claim for compensation of damages seems to be more acceptable in the nuclear legislation.

Conclusion

The system of civil liability for nuclear damage is built upon the principle of international conventions of unifying character.²⁹ As opposed to the

²⁷ PELZER, N. Focus on the Future of Nuclear Liability Law. In: *Reform of Civil Nuclear Liability: Budapest Symposium 1999*. 1st ed. Paris: Organisation for Economic Co-Operation and Development, 2000, p. 430. ISBN 92-64-05885-0.

²⁸ This issue was targeted by the 1997 Protocol which revised Vienna Convention by exclusion of separate prolonged 30-year period for exercising the right to compensation of nuclear damage caused to health or life. Compare Article 8 par. 1 letter a) (i) of the *1997 Protocol to Amend the Vienna Convention on Civil Liability for Nuclear Damage* [online]. 2014 [cit. 2014-04-04]. Available at: <http://www.iaea.org/Publications/Documents/Infcircs/1998/infcirc566.pdf>.

²⁹ The *1963 Vienna Convention on Civil Liability for Nuclear Damage* [Vienna Convention] [online]. 2014 [cit. 2014-04-04]. Available at: <http://www.iaea.org/Publications/Documents/Infcircs/1996/inf500.shtml>; the *1997 Protocol to Amend the Vienna Convention on Civil Liability for Nuclear Damage* [online]. 2014 [cit. 2014-04-04]. Available at: <http://www.iaea.org/Publications/Documents/Infcircs/1997/inf500.shtml>.

typically designed international treaties those regulate liability for damage, the international conventions on nuclear liability do not stem from a direct and exclusive international liability of states but primarily from civil liability of the operator of nuclear installation.³⁰

The fundamental principles set forth in the nuclear liability conventions, on which international liability system of nuclear legislation is built, have been incorporated to the national legislation by Act No. 541/2004 Coll. on Peaceful Use of Nuclear Energy (Nuclear Energy Act). However, in the course of time the Nuclear Energy Act has been criticized for low limits of operators liability which did not even reach the minimum limits of liability set forth by Vienna Convention, for an inappropriate concept of limitation of damages in time, inconvenient principles of demonstration of the causal link, imprecise conditions which must be met by entity providing financial security for liability, as well as for further deficits and irregularities of the interpretation and/or conceptual nature (e.g. need for re-established provisions on principles of distribution of compensation funds depending on the time of exercising the claim for compensation of damages introduced upon proposal of the insurer).

In 2007 Interdepartmental Working Group under auspices of the Nuclear Regulatory Authority of the Slovak Republic was created in order to solve the issue of civil liability for nuclear damage (hereinafter as the “Interdepartmental Working Group”), whose members, due to cross-sectioning and interdepartmental correlation of the issue of civil liability

www.iaea.org/Publications/Documents/Infcircs/1998/infcirc566.pdf; the *1997 Convention on Supplementary Compensation for Nuclear Damage* [online]. 2014 [cit. 2014-04-04]. Available at: <http://www.iaea.org/Publications/Documents/Infcircs/1998/infcirc567.shtml>; the *1960 Paris Convention on Nuclear Third Party Liability* [Paris Convention] [online]. 2014 [cit. 2014-04-04]. Available at: https://www.oecd-nea.org/law/nlparis_conv.html; the *1988 Joint Protocol Relating to the Application of the Vienna Convention and the Paris Convention* [Joint Protocol] [online]. 2014 [cit. 2014-04-04]. Available at: https://www.oecd-nea.org/law/nljoint_prot.html; the *2004 Protocol to Amend the Paris Convention on Nuclear Third Party Liability* [online]. 2014 [cit. 2014-04-04]. Available at: https://www.oecd-nea.org/law/paris_convention.pdf; the *1963 Brussels Supplementary Convention on Nuclear Third Party Liability* [Brussels Supplementary Convention] [online]. 2014 [cit. 2014-04-04]. Available at: <https://www.oecd-nea.org/law/nlbrussels.html>; and the *2004 Protocol to Amend the Brussels Supplementary Convention on Third Party Liability* [online]. 2014 [cit. 2014-04-04]. Available at: https://www.oecd-nea.org/law/brussels_supplementary_convention.pdf.

³⁰ ČEPELKA, Ć., D. JÍLEK and P. ŠTURMA. *Mezinárodní odpovědnost*. 1. vyd. Brno: Masarykova univerzita v Brně, 2003, pp. 132-136. ISBN 80-210-3057-7.

for nuclear damage, were nominated by broad spectrum of entities affected by this issue.³¹

Primary task of the Interdepartmental Working Group was to achieve a solution to the material intention of the revision of the legal regime of civil liability for nuclear damage and subsequently its reflection to the articulated wording of the bill so that possibilities and abilities of particular affected departments are taken into account and so that, at the same time, the requirements of theory and practice of the nuclear law liability relations are reflected and the European trends of this issue are honoured.

The final result of the negotiations of the Interdepartmental Working Group was articulated wording of the bill on civil liability for nuclear damage prepared by the Nuclear Regulatory Authority of the Slovak Republic reflecting relevant comments of the affected entities. The bill followed the material intention comprised in the concept material "Analysis of the status and concept of development of new system of civil liability for nuclear damage in the Slovak Republic", which was approved by Resolution of the Government of the Slovak Republic No. 880/2008 dated on December 3rd, 2008.

By this above mentioned bill the issue of civil liability for nuclear damage was exempted from the Nuclear Energy Act as a regulation of public law (administrative law) nature and incorporated into separate legal regulation of private law nature.

However, the articulated wording of this bill was dismissed by Legislation Council of the Government at its session on November 2nd, 2010.

In 2013 the Interdepartmental Working Group was re-established to continue the revision process based on prior achievements that should be used as the starting point of further work, whereas some of the main

³¹ The representatives of the Office of the Government of the Slovak Republic, Ministry of the Foreign Affairs of the Slovak Republic, National Bank of Slovakia, Public Health Authority of the Slovak Republic, Ministry of Economy of the Slovak Republic, Ministry of Justice of the Slovak Republic, Ministry of Environment of the Slovak Republic, Ministry of Finance of the Slovak Republic, representatives of Slovenské elektrárne, a.s., Jadrová a vyrad'ovacia spoločnosť, a.s., Office of the Slovak Nuclear Insurance Pool and Office of the Czech Nuclear Insurance Pool c/o Česká pojišťovna, a.s., National Nuclear Fund for Decommissioning of Nuclear Installations and for Disposal with Burnt Nuclear Fuel and Radioactive Waste, representatives of Slovak Cities and Towns Association and ZMO Region of Jaslovské Bohunice Nuclear Power Plant as well as the representatives of academic law community.

objectives are to analyze (in relation to the Council Decision authorizing certain Member States to ratify, or to accede to, the Protocol amending the Vienna Convention on Civil Liability for Nuclear Damage of May 21st, 1963, in the interest of the European Union) possible impacts of accession of the Slovak Republic to the 1997 Protocol to Amend the Vienna Convention on Civil Liability for Nuclear Damage which creates an improved regime of nuclear liability (higher amount of compensation available, extended scope of damage covered, allocation of jurisdiction etc.)³² and to discuss the pressure of the European Commission to the EU member states to create a unified European nuclear liability regime roofed by revised wording of the Paris Convention (whether by direct exit of the Slovak Republic from the Vienna Convention regime and accession to the regime of the revised Paris Convention or indirectly by adoption of such Union regulation in the form of regulation or directive which provisions and/or objectives must be honoured by the Slovak Republic).

In April 2014, the Government of the Slovak Republic approved the study "Analysis of the current state and possible impacts of accession of the Slovak Republic to the Protocol to Amend the Vienna Convention on Civil Liability for Nuclear Damage of 1963" in relation to the 2013/434/EU Council Decision³³ submitted by the Slovak Nuclear Regulatory Authority by Resolution No. 152/2014 dated on April 2nd, 2014. Therein, the Government commissioned the Slovak Nuclear Regulatory Authority to submit a draft of the Nuclear Third Party Liability and its financial coverage Act to the Government, latest by December 31st, 2014 (which has been discussed at the sessions of the Interdepartmental Working Group) and a report on the state and development of the EU legislation on civil liability for nuclear damage, latest by March 31st, 2017.

References

1960 Paris Convention on Nuclear Third Party Liability [Paris Convention] [online]. 2014 [cit. 2014-04-04]. Available at: https://www.oecd-nea.org/law/nlparis_conv.html.

³² To the 1997 Protocol see LAMM, V. The Protocol Amending the 1963 Vienna Convention. *Nuclear Law Bulletin: No. 61* [online]. 1998, no. 1, pp. 7-24 [cit. 2014-04-04]. ISSN 0304-341X. Available at: <https://www.oecd-nea.org/law/nlb/NLB-61/vanda.pdf>.

³³ The *2013/434/EU Council Decision of 15 July 2013 Authorising Certain Member States to Ratify, or to Accede to, the Protocol Amending the Vienna Convention on Civil Liability for Nuclear Damage of 21 May 1963, in the Interest of the European Union, and to Make a Declaration on the Application of the Relevant Internal Rules of Union Law.* O] L 220, 2013-08-17, pp. 1-2.

- 1963 *Brussels Supplementary Convention on Nuclear Third Party Liability* [Brussels Supplementary Conventio] [online]. 2014 [cit. 2014-04-04]. Available at: <https://www.oecd-nea.org/law/nlbrussels.html>.
- 1963 *Vienna Convention on Civil Liability for Nuclear Damage* [Vienna Convention] [online]. 2014 [cit. 2014-04-04]. Available at: <http://www.iaea.org/Publications/Documents/Infcircs/1996/inf500.shtml>.
- 1988 *Joint Protocol Relating to the Application of the Vienna Convention and the Paris Convention* [Joint Protocol] [online]. 2014 [cit. 2014-04-04]. Available at: https://www.oecd-nea.org/law/nljoint_prot.html.
- 1997 *Convention on Supplementary Compensation for Nuclear Damage* [online]. 2014 [cit. 2014-04-04]. Available at: <http://www.iaea.org/Publications/Documents/Infcircs/1998/infcirc567.shtml>.
- 1997 *Protocol to Amend the Vienna Convention on Civil Liability for Nuclear Damage* [online]. 2014 [cit. 2014-04-04]. Available at: <http://www.iaea.org/Publications/Documents/Infcircs/1998/infcirc566.pdf>.
- 2004 *Protocol to Amend the Brussels Supplementary Convention on Third Party Liability* [online]. 2014 [cit. 2014-04-04]. Available at: https://www.oecd-nea.org/law/brussels_supplementary_convention.pdf.
- 2004 *Protocol to Amend the Paris Convention on Nuclear Third Party Liability* [online]. 2014 [cit. 2014-04-04]. Available at: https://www.oecd-nea.org/law/paris_convention.pdf.
- 2013/434/EU *Council Decision of 15 July 2013 Authorising Certain Member States to Ratify, or to Accede to, the Protocol Amending the Vienna Convention on Civil Liability for Nuclear Damage of 21 May 1963, in the Interest of the European Union, and to Make a Declaration on the Application of the Relevant Internal Rules of Union Law.* OJ L 220, 2013-08-17, pp. 1-2.
- ČEPELKA, Č., D. JÍLEK and P. ŠTURMA. *Mezinárodní odpovědnost*. 1. vyd. Brno: Masarykova univerzita v Brně, 2003. 339 p. ISBN 80-210-3057-7.
- HANDRLICA, J. and M. NOVOTNÁ. The Vienna Convention on Civil Liability for Nuclear Damage Revisited: Challenges for Updating the Czech and Slovak Legal Framework. *The Lawyer Quarterly*. 2013, vol. 3, no. 4, pp. 296-310. ISSN 1805-840X.

- IAEA. *The 1997 Vienna Convention on Civil Liability for Nuclear Damage and the 1997 Convention on Supplementary Compensation for Nuclear Damage – Explanatory Texts*. 1st ed. Vienna: International Atomic Energy Agency, 2007. 160 p. IAEA International Law Series, no. 3. ISSN 1991-2366.
- LAMM, V. The Protocol Amending the 1963 Vienna Convention. *Nuclear Law Bulletin: No. 61* [online]. 1998, no. 1, pp. 7-24 [cit. 2014-04-04]. ISSN 0304-341X. Available at: <https://www.oecd-nea.org/law/nlb/NLB-61/vanda.pdf>.
- NOVOTNÁ, M. and J. HANDRLICA. Legal Framework and Perspectives of Nuclear Third Party Liability in the Czech and Slovak Republics. *Forum iuris europaeum*. 2013, vol. 1, no. 2, pp. 49-68. ISSN 1339-4401.
- Oznámenie MZV SR uverejnené pod č. 70/1996 Z.z. o pristúpení SR k Viedenskému dohovoru o občianskoprávnej zodpovednosti za škody spôsobené jadrovou udalosťou* [Notice of the Ministry of Foreign Affairs of the Slovak Republic published under No. 70/1996 Coll. on Accession of the Slovak Republic to Vienna Convention on Civil Liability for Nuclear Damage].
- Oznámenie MZV SR uverejnené pod č. 71/1996 Z.z. o pristúpení SR k Spoločnému protokolu k aplikácii Viedenského dohovoru a Parížskeho dohovoru* [Notice of the Ministry of Foreign Affairs of the Slovak Republic published under No. 71/1996 Coll. on Accession of the Slovak Republic to Joint Protocol to Application of Vienna Convention and Paris Convention].
- PELZER, N. Focus on the Future of Nuclear Liability Law. In: *Reform of Civil Nuclear Liability: Budapest Symposium 1999*. 1st ed. Paris: Organisation for Economic Co-Operation and Development, 2000, pp. 421-451. ISBN 92-64-05885-0.
- Zákon č. 541/2004 Z.z. o mierovom využívaní jadrovej energie (atómový zákon) a o zmene a doplnení niektorých zákonov v platnom znení* [Act No. 541/2004 Coll. on Peaceful Use of Nuclear Energy (Nuclear Energy Act)].

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