

Act on Civil Liability for Nuclear Damage and Its Financial Coverage as a New Source of the Slovak Liability Nuclear and Civil Legislation¹

Marianna Novotná
Jakub Handrlica

Abstract: *The study is dedicated to the key amendments of legislation regarding civil liability for nuclear damage occurring as of the effective date of January 1st, 2016, by virtue of new law which regulates civil law aspects of compensation of nuclear damage and related issues. Based on detailed analysis of new legislation the authors offer their opinion to the realized amendments, whereas they are trying to assess their actual impact on the aggrieved persons on one side as well on operator as a liable person on the other side. The authors do not avoid demonstration of possible application complications, whether persisting from the original Atomic Act or those which may arise out of the new legislation.*

Key Words: *Civil Liability; Act on Civil Liability for Nuclear Damage; Vienna Convention on Civil Liability for Nuclear Damage; Nuclear Damage; Operator of Nuclear Installation; Substantive Causal Court Jurisdiction; the Slovak Republic.*

Introduction

On March 19th, 2015, with the effective date on January 1st, 2016,² new separate Act No. 54/2015 Coll. on Civil Liability for Nuclear Damage and

¹ This study was prepared as outcome of research project VEGA No. 1/0256/12 “Civil Nuclear Liability Regime – Perspectives and Options of Its Future Development in the Slovak, International and European Law”, in the Slovak original “Občianskoprávny režim zodpovednosti za jadrové škody – perspektívy a možnosti jeho ďalšieho vývoja na úrovni slovenského, medzinárodného a európskeho práva”.

² Act on Civil Liability for Nuclear Damage and Its Financial Coverage came to force on March 30th, 2015, except for the Articles I, III and IV which shall come to force on January 1st, 2016. Such set-up of the effective date is a result of substantively unsystematic and unsubstantiated inclusion of the Article II of the mentioned act which results in the amendment of the Act No. 106/2004 Coll. on Sales Tax from Tobacco Products and the Article V which supplements the Act No. 85/2005 Coll. on Political Parties and Political Movements. Both mentioned Articles came to force on March 30th, 2015, whereas all oth-

Its Financial Coverage and on amendment and supplement of certain acts (hereinafter as “ACLND” or “Act on Liability for Nuclear Damage”) was passed which replaces the current regulation of this issue which, from the effective date on December 1st, 2004, was comprised in Act No. 541/2004 Coll. on Peaceful Use of Nuclear Energy (Atomic Act) and on amendment and supplement of certain acts (hereinafter as the “Atomic Act”).

The path to extraction of the regulation of civil liability for nuclear damage from the substantive regulation in the Atomic Act and to creation of new separate legislation was nowhere near easy. Already as soon as in year 2008 the Nuclear Regulatory Authority of the Slovak Republic (hereinafter as the “NRA”) submitted to the session of the Slovak Government material called “Analysis of Status and Concept of Development of New System of Civil Liability for Nuclear Damage in the Slovak Republic”³ on the grounds of which a bill of separate legislation regulating the compensation of nuclear damage and its financial coverage was prepared. However, due to not very clear reasons from substantive and expert points of view, the bill was dismissed in year 2010 by the Council of Legislation of the Slovak Government with the recommendation to retain the mentioned regulation within the structure of the Atomic Act and, from substantive point of view, to restrict the same only to the necessary extent arising from the Vienna Convention on Civil Liability for Nuclear Damage as international convention binding upon the Slovak Republic in this field.⁴

As mentioned in the reasoning report to the Act on Liability for Nuclear Damage, the pressure of non-governmental organizations supporting the environmental protection as well as the towns in the vicinity of the nuclear plants⁵ forced the NRA to revive the idea of more precise regulation in the form of a separate legislation adoption of which subse-

er parts substantively related to the issue of liability for nuclear damage shall come to force on January 1st, 2016.

³ Conceptual material “Analysis of Status and Concept of Development of New System of Civil Liability for Nuclear Damage in the Slovak Republic” was approved by the Resolution of the Slovak Government No. 880/2008 on December 3rd, 2008.

⁴ At the same time, the Resolution of the Slovak Government No. 880/2008 by which the Head of the NRA was assigned to submit to the Slovak Government the bill on civil liability for nuclear damage and its financial coverage was revoked.

⁵ The *Reasoning Report to the Government Bill on Civil Liability for Nuclear Damage and Its Financial Coverage and on amendment and supplement of certain acts*, p. 8.

quently became part of the Government Legislative Task Plan for 2014.⁶ Under the patronage of the NRA the final wording of the ACLND was the work of the members of the Interdepartmental Working Group on Civil Liability for Nuclear Damage with the members being the representatives of the affected authorities and organizations.⁷

The reasons that lead to the extraction of legal regulation of liability for nuclear damage from the Atomic Act and to the adoption of a separate law⁸ laid especially in theory of law position of the liability for nuclear damage as an institute of civil law. From this point of view, the inclusion of the issue of compensation of damage based solely on the civil law constructed liability of the operator of the nuclear installation as a liable entity and related civil law issues of the Atomic Act as a legal regulation of the public (administrative) law was systematically wrong. According to the reasoning report to the Act on Liability for Nuclear Damage, also purely pragmatic (legislative-technical) reasons were in favour of creation of separate legislation, whereas this way the submitting entity of the bill tried to eliminate the non-system interventions to the civil aspects of the compensation of nuclear damage in the cases of opening of administrative parts of the Atomic Act due to the necessity of transposition of the European legislation⁹ and vice versa, as the case may be.

Creation of a separate legal regulation was evaluated as more appropriate also from the point of view of possibility to include this issue as a separate subject matter in the Act No. 40/1964 Coll. Civil Code (hereinafter as the "CC") as a general regulation of the private law. Possible legal regulation of compensation of nuclear damage in the CC was and is deemed as inappropriate and/or undesirable due to specifics of the type

⁶ The Slovak Government passed the bill on civil liability for nuclear damage and its financial coverage on December 10th, 2014, by the Resolution of the Slovak Government No. 627/2014.

⁷ The Interdepartmental Working Group on Civil Liability for Nuclear Damage was created by the Nuclear Regulatory Authority of the Slovak Republic in year 2007 from the members of the affected government authorities, municipal authorities, operators, insurers, and independent experts. The activity of the Interdepartmental Working Group was renewed in year 2013 and the result of its activity was preparation of the articulated wording of the adopted Act on Liability for Nuclear Damage.

⁸ The idea of a separate legal regulation regulating the civil liability for nuclear damage has been resonating amongst Slovak experts since 2007.

⁹ Amendment of the Atomic Act was required for instance by necessity of transposition of the Directive No. 2009/71/Euratom (Act No. 350/2011 Coll.) and the Directive No. 2011/70/Euratom (Act No. 143/2013 Coll.) which, from the content point of view, have no connection with the issue of civil liability for nuclear damage.

of liability deviating from “traditional” view of the delict law institutes. The following issues are in favour of special regulation separated from traditional subject matter of the liability for damages caused by extremely hazardous operation¹⁰ in the CC: separate concept of nuclear damage as a compensable harm linked to international liability regime of the nuclear law which the Slovak law is a part of, limitation of liability of the operator, separate regime of time limitation of exercising the right to compensation of nuclear damage as well as specifically formulated mechanisms of distribution of available compensation funds.

Systematization view on the new legal regulation may be summarized by statement that the Act on Liability for Nuclear Damage may be included in the set of separate civil law regulations, whereas, however, it indicates the specifics arising from the nature of the liability for nuclear damage as a regime which may be identified especially and preferentially as international one forming a general fundament for national legal regulations of particular countries.¹¹ For this reason, § 2 ACLND recognizes the Vienna Convention on Civil Liability for Damage Caused by Nuclear Incident (hereinafter as the “Vienna Convention”)¹² as a source of law binding for the Slovak Republic, whereas the provisions thereof are directly applicable for its addressees.¹³ In accordance with the nature of

¹⁰ Due to its nature, the operation of nuclear installations is traditionally viewed by expert literature as a typical example of extremely hazardous operation (see for instance ŠVESTKA, J., J. SPÁČIL, M. ŠKÁROVÁ, M. HULMÁK, et al. *Občanský zákoník I. § 1 – 459: Komentář* [Civil Code I. § 1 – 459: Commentary]. 1. vyd. Praha: C. H. Beck, 2008, p. 1110. ISBN 978-80-7400-004-1), despite of its separate legal regulation.

¹¹ See NOCERA, F. *La responsabilité civile nucléaire: actualisation du régime international. Uniform Law Review*. 1998, vol. 3, no. 1, pp. 15-30. ISSN 1124-3694.

¹² The *Vienna Convention on Civil Liability for Nuclear Damage* [1963-05-21]; see document IAEA INFCIRC 500. By its Resolution No. 71 dated on January 25th, 1995, the National Council of the Slovak Republic approved the accession of the Slovak Republic to the Convention and it was approved by the President on February 23rd, 1995. In relation to the Slovak Republic the Convention became valid on June 7th, 1995, under the Article XXIV par. 3 of the Vienna Convention. The Slovak translation of the Vienna Convention was published in the Collection of Laws of the Slovak Republic as the Notice of the Ministry of Foreign Affairs No. 70/1996 Coll. on Accession of the Slovak Republic to the Vienna Convention on Civil Liability for Damages Caused by Nuclear Incident. The accession charter was kept with the Director General of the International Atomic Energy Agency on March 7th, 1995.

¹³ Historically, two parallel legal regimes were created at international level representing the duality of the legal regime from the beginnings of forming of the regime of liability for nuclear damage. On one side the so-called Vienna regime represented by the *Vienna Convention on Civil Liability for Nuclear Damage* [1963-05-21] which is an open system with “worldwide operation” enabling any country to become its participant without any re-

the Vienna Convention as an international treaty ratified by the Slovak Republic and declared in the manner stipulated by law (prior to coming into force of the Constitutional Act No. 90/2001 Coll.), this convention was in line with the Article 154c par. 2 of the Constitution of the Slovak Republic incorporated in the Slovak law by provision of § 2 ACLND. The mentioned provision (probably with the aim to prevent undesired collisions of the Vienna Convention with the national legal regulation in the Act on Liability for Nuclear Damage which could be identified in relation to the original regulation of the Atomic Act)¹⁴ enumerates those provisions of the Vienna Convention which as directly applicable or as using the enabling provisions of the Vienna Convention are not explicitly stipulated in the law.

Contrary to the regulation in the Atomic Act, the new legal regulation abandoned the notice on subsidiary application of generally binding regulations on liability for damages (the Civil Code and the Commercial Code). The likely reason was the systematic extraction of the issue of compensation of nuclear damage to the separate law of a civil law nature, the nature of which, due to relations which it regulates, could implicitly indicate the subsidiary application of the Civil Code as a legal regulation of the general private law. The necessity of subsidiary application of general civil regulation is justified also by non-complexity of the regulation by the ACLND in the sense of missing regulation of content and the method of compensation of damages which is leaved by the Vienna Convention in the scope of *lex fori*.¹⁵ Compared to other regulations regulating

striction; on the other side the so-called Paris regime represented by the *Paris Convention on Third Party Liability in the Field of Nuclear Energy* [1960-07-29] (hereinafter as the "Paris Convention") open only for the countries which are members of the OECD and which are authorized to accede to the international treaties (deriving such authorization from its membership) which origination was initiated by the Atomic Energy Agency. Compare with NOVOTNÁ, M. and P. VARGA. Vplyv úniového práva na medzinárodný rámec právnej úpravy zodpovednostných vzťahov jadrového práva [Influence of EU Law on the International Framework of Legal Regulation of the Liability Relations in Nuclear Law]. *Právny obzor*. 2015, roč. 98, č. 2, pp. 128-147. ISSN 0032-6984; and KOSNÁČOVÁ [NOVOTNÁ], M. Občianskoprávna zodpovednosť za jadrovú škodu v práve EÚ [Civil Liability for Nuclear Damage in the EU Law]. *International and Comparative Law Review*. 2004, roč. 4, č. 11, p. 35. ISSN 1213-8770.

¹⁴ See more details in NOVOTNÁ, M. and J. HANDRLICA. *Zodpovednosť za jadrové škody: Výzvy pre medzinárodnú a národnú zodpovednostnú legislatívu v post-fukushimskom období* [Liability for Nuclear Damages: Challenge for International and National Liability Legislation in the Post-Fukushima Period]. 1. vyd. Bratislava: Veda, vydavateľstvo Slovenskej akadémie vied, 2011, p. 146 and following. ISBN 978-80-224-1218-6.

¹⁵ See the Article VIII of the Vienna Convention.

the compensation of damages in the civil law regime which regulation was extracted to a separate law (e.g. act on liability for damages caused by defective product, act on liability for damages caused while exercising state power), and which, despite of more specific link to general regulation of the delict law compared to regulation of liability for nuclear damage, include the provision referring to subsidiary application of the CC,¹⁶ such abandonment in the Act on Liability for Nuclear Damage may be viewed as out of standard. At the moment it is impossible to predict what will be the impact of the missing provision in the application practice, the most realistic scenario is probably the implicit operation of subsidiary application of the Civil Code using the argumentation of the position of the Act on Liability for Nuclear Damage as a separate civil law regulation referring to the Article VIII of the Vienna Convention.¹⁷

Liabe person and mechanism of exercising the right to compensation of nuclear damage

Unlike typically constructed international treaties regulating the compensation of damages, the Vienna Convention is not based (as none of the international conventions regulating the issue of liability for nuclear damages is) on direct and exclusive international liability of the countries, but as a priority from the civil law constructed liability of the operator of nuclear installation,¹⁸ who, as a sole entity, is liable for occurrence of nuclear damage (so-called *legal channelling*).¹⁹ While constructing this

¹⁶ See § 6 par. 1 of the Act No. 294/1999 Coll. on Liability for Damages Caused by Defective Product: "Unless otherwise provided in this act, the compensation of damages caused by defective product shall be governed by the provisions of the Civil Code" and § 25 par. 1 of the Act No. 514/2003 Coll. on Liability for Damages Caused while Exercising the State Power and on amendments of some acts: "Unless otherwise provided in § 26, the legal relations including preliminary negotiations of the claim pursuant to this act shall be governed by the Civil Code".

¹⁷ See the Article VIII of the Vienna Convention on Civil Liability for Nuclear Damage [1963-05-21]: "The nature, form and the extent of compensation of damages as well as its equitable distribution shall be decided pursuant to the legal regulations of the competent court while observing the provisions of this Convention".

¹⁸ NOVOTNÁ, M. and J. HANDRLICA. *Zodpovednosť za jadrové škody: Výzvy pre medzinárodnú a národnú zodpovednostnú legislatívu v post-fukushimskom období* [Liability for Nuclear Damages: Challenge for International and National Liability Legislation in the Post-Fukushima Period]. 1. vyd. Bratislava: Veda, vydavateľstvo Slovenskej akadémie vied, 2011, pp. 121-122. ISBN 978-80-224-1218-6.

¹⁹ For legal channelling concept see more AMEYE, E. Channelling of Nuclear Third Party Liability towards the Operator: Is It Sustainable in a Developing Nuclear World or is There a Need for Liability of Nuclear Architects and Engineers?. *European Energy and Environ-*

so-called concentrated liability, the position of international “lawmaker” was based on the proposition that shifting the liability for nuclear damage solely to the operator of the nuclear installation is in accordance with the principles of the civil law liability, since while using the nuclear energy as activity which is organized, managed by the operator and the operator makes profit out of it, there are certain processes of using certain types of technology or forces of nature which alone bear relatively high risk of harmful consequences. The operator is an entity which, due to its position of organizing and managing entity, has the biggest influence on the safest method of using of these dangerous sources and thus an opportunity to avert and to prevent the damages.

Obviously the concept of exclusive liability of the operator of nuclear installation remained preserved also in the new regulation. In addition, the ACLND removed terminology irregularities existing at the time of effect of the original regulation of the Atomic Act²⁰ by synchronizing the customary civil law terminology of identification of the operator as a liable entity with the terms which are defined by the Atomic Act within the framework of the public law co-extensive terms of the given issue. While the Atomic Act keeps using the terminology of the public law by identification of the operator of nuclear installation as a licence holder (holder of the licence for commissioning of the nuclear installation, operation of the nuclear installation, the holder of the licence for the stage of decommissioning, and the holder of the licence for transportation of radioactive materials, except for holder of the license for operation of storages), the Act on Liability for Nuclear Damage works already with the civil law term operator, whereas mutual interconnection of these two terms is governed by provision of § 3 par. 4 letter a) ACLND which linked the legal definition of the operator to entity to which the relevant licence was is-

mental Law Review. 2010, vol. 19, no. 1, pp. 33-58. ISSN 0966-1646; PELZER, N. Die rechtliche Kanalisierung der Haftung auf den Inhaber einer Atomanlage – ein juristischer und wirtschaftlicher Fehlgriff?. *Versicherungsrecht*. 1966, vol. 17, no. 41, pp. 1010-1014. ISSN 0342-2429; and VANDEN BORRE, T. Channelling of Liability: A Few Juridical and Economic Views on an Inadequate Legal Construction. In: N. L. J. T. HORBACH, ed. *Contemporary Developments in Nuclear Energy Law: Harmonising Legislation in CEEC/NIS*. 1st ed. The Hague; Boston: Kluwer Law International, 1999, pp. 13-39. ISBN 90-411-9719-2.

²⁰ For the mentioned terminology irregularities see more in NOVOTNÁ, M. and J. HANDRLICA. *Zodpovednosť za jadrové škody: Výzvy pre medzinárodnú a národnú zodpovednostnú legislatívu v post-fukushimskom období* [Liability for Nuclear Damages: Challenge for International and National Liability Legislation in the Post-Fukushima Period]. 1. vyd. Bratislava: Veda, vydavateľstvo Slovenskej akadémie vied, 2011, pp. 232-233. ISBN 978-80-224-1218-6.

sued within the administrative proceedings by the Slovak Nuclear Regulatory Authority.

Pursuant to the Article V par. 1 of the Vienna Convention, liability of the operator of the nuclear installation for nuclear damage caused by nuclear incident is generally based on the concept of unlimited liability modified by the possibility of the member states to determine by their national legal regulations the maximum amount of damages for which the operator of the nuclear installation is liable. Despite the fact that determination of the maximum line of liability was left to the member states, these must honour mandatorily set minimum extent of liability set by the Vienna Convention representing 5 million gold U.S. dollars per each nuclear incident, whereas such minimum limit of liability is determined at the value of dollar as a clearing unit which is converted in the rate to gold as of April 29th, 1963, i.e. 35 USD per one Troy ounce of pure gold. Due to the fact that this is a so-called floating limit which depends on the development of the price of gold in the world markets, the current amount of minimum liability of the operator in the regime of the Vienna Convention varies depending on these movements. Currently, the value of gold for one Troy ounce is in the range of approximately 1 200.00 USD per Troy ounce which is multiple of 34.29 of price of gold in which the limit of liability of operator was determined as of April 29th, 1963. Therefore, the current minimum limit of liability of the operator set by the Vienna Convention which must be reflected by national legislations of the member states when constructing the limited liability of the operator is in the range of approximately 171 450 000.00 USD.

As a member state of the Vienna Convention, in its national law the Slovak Republic opted for the concept of limited liability of the operator by setting the financial limit to which the operator of the nuclear installation is liable for caused nuclear damage.

Original legal regulation of the Atomic Act limited the duty of the operator of the nuclear installation to compensate nuclear damage up to the limit of 300 million EUR for nuclear installations with the nuclear reactor or nuclear reactors for energy purposes during the commissioning and during the operation or up to the amount of 185 million EUR in case of other nuclear installations during the commissioning and during the operation and during transportation of radioactive materials, and in case of all nuclear installations in the stage of decommissioning. The mentioned extent (threshold) of the liability of the operator (together with the lower

extent for nuclear installations with lower degree of risk of occurrence of nuclear damage) remained unchanged also in the Act on Liability for Nuclear Damage (since its increase has taken place relatively recently²¹ and under current price of gold and development of the EUR/USD conversion rates it meets the limits set by the Vienna Convention). However, the ACLND provided precisely to which “other” nuclear installations during the commissioning and during the operation does the reduced limit of liability of the operator in terminology of the Atomic Act apply in particular. These will include especially nuclear installations with the nuclear reactor serving solely for scientific, educational, or research purposes.

The principle of financial limitation of the operator’s liability has been previously subject of the questions which were necessary to address in the process of negotiation of the new bill. It was especially the issue of equitable distribution of the limited funds in case of occurrence of nuclear damage exceeding the aggregate extent of operator’s liability.

Taking into account such limitation of liability of the defendant, a (theoretic) question arose how the courts would decide on the amount of the awarded compensation of damages. Due to the absence of any legal scheme in the Atomic Act which would provide the manual for deciding the amount of the compensation of damages, it would not be clear what formula should be used by the judge due to the limited amount of available compensation tools in the decision-making. Awarding the compensation in the extent of occurrence of total damage (in accordance with the Slovak civil law principle of full compensation of damages) it would be acceptable only in case the total required amount of compensation of all legal actions which claims are not affected by exercising of the objection of statute of limitations does not exceed the maximum amount which represents a limit of the operator’s liability. However, once the required extent of compensation of damages in aggregate exceeds the amount of limited liability, compensation of damages in accordance with the principle of compensation of harm would become unjust, since only the claims decided earlier would be fully compensated, whereas for the claims decided later there would be no compensation funds left due to consumma-

²¹ Act No. 143/2013 Coll. amending and supplementing the Act No. 541/2004 Coll. on Peaceful Use of Nuclear Energy (the Nuclear Energy Act) and on amendments and supplements to some acts as amended by later acts, and amending and supplementing the Act No. 238/2006 Coll. on the National Nuclear Fund for Decommissioning of Nuclear Facilities and for Management of Spent Fuel and Radioactive Waste (the Nuclear Fund Act) and on amendments and supplements to some acts as amended by later acts.

tion thereof. This situation is even more essential due to the nature of the occurrence of the nuclear damage: from the time point of view, primarily the compensation of financial/property damages would be compensated (since these are identifiable within a very short time period following the occurrence of the nuclear incident), on the other hand, injuries and fatalities (which may be viewed as socially more significant), manifested in most cases within longer time period, would not be compensated at all after consuming available tools in case of larger nuclear incidents.

Therefore, the new Act on Liability for Nuclear Damage addressed this issue (especially upon impulse of the insurers as providers of the financial security) by creation of statutory mechanisms which, upon designated scheme, determine the drawdown of the compensation tools for particular periods for exercising of right to compensation of damages, so that in each of such periods at least a part of allocated funds is available.

The scheme works with three time periods defined within ten year foreclosure period for exercising the right to compensation of nuclear damage, whereas the decisive factor is the moment of exercising the right to compensation of nuclear damage. For the rights exercised within the first period, i.e. by the end of the sixth month from the date of occurrence of the nuclear incident as a result of which the nuclear damage occurred, 50 % from the statutory financial volume designated for coverage of liability for nuclear damage would be allocated for full or pro rata compensation of nuclear damage. Further 30 % from the financial volume determined for coverage of liability for nuclear damage and unspent part of the volume from the first period shall be allocated for full or pro rata compensation of nuclear damage which was exercised from the beginning of the seventh month till the end of the 24th month from the date of occurrence of the nuclear damage. Within the last period, the remaining 20 % from the statutory financial volume designated for coverage of liability for nuclear damage as well as unspent part of the volume from the second period shall be allocated for full or pro rata compensation of nuclear damage which was exercised from the beginning of the 25th month till the end of the tenth year from the date of occurrence of the nuclear incident.

The claims for compensation of nuclear damage shall be satisfied pro rata: all claims to compensation of nuclear damage pro rata to the financial volume allocated for satisfaction thereof within the given time period. In case the application of the mentioned distribution mechanism does

not result in spending of the financial volume of total limit of liability (i.e. 300 million EUR or 185 million EUR), whereas in certain period the compensation of nuclear damage for spending of allocated financial volume was only prorated, after the lapse of ten years following the nuclear incident which resulted in nuclear damage all the exercised claims shall be settled and possible deficits supplemented fully or pro rata in relation to all exercised claims.

Even in case of application of the mentioned mechanism it may happen that certain or all of the legal actions shall be satisfied only partially in accordance with the designated scheme (partial satisfaction may occur in case of larger nuclear incidents), however, despite of that the mentioned solution may be viewed as a positive sign which together with other changes of the new legal regulation may contribute to more transparent procedure of damage compensation.

Insurance or other financial security of the liability of the operator for nuclear damage

The extent of risk and intensity of hazard related to operation of the nuclear installation required, both within the regulations of the international law and in accordance with them also within the national laws of the member states of the international treaties regulating the liability for damages caused by nuclear incident, linking of the operation of the nuclear installation to fulfilment of duty of financial security for the operator's liability in the form of insurance or other financial security.

The operator is obliged to cover its liability for nuclear damage up to the limit of liability set forth in § 5 par. 1, 2 and 3 of the ACLND, whereby this represents the fulfilment of the principle of congruence (conformity) of the extent of the operator's liability and its financial coverage. The objective of such constructed principle was to ensure that the amount of damages for which the operator is liable is always covered by equal amount of available and/or quasi-available cash which represents an advantage both for the aggrieved entity as well as the operator of the nuclear installation. The aggrieved entity has the certainty that possible legal claims shall be financially covered and the operator has compensation sources available in the form of available cash.

New legal regulation made precise the prerequisites and conditions for provision of financial coverage of the liability, whether in the form of insurance as a financial coverage of the liability for nuclear damage pro-

vided by the authorized entity pursuant to the Act No. 39/2015 Coll. Insurance Act and on amendment and supplement of certain acts or in the form of financial security as other type of financial coverage of the liability, whereas it is deemed that financial satisfaction from the financial security and the derived satisfaction of claims of the aggrieved for compensation of nuclear damage must be identical with the one in case of insurance.

Insurance market (unlike other forms of financial coverage) created a special mechanism for coverage of risk of occurrence of nuclear damage meaning the creation of special association of insurance entities, so-called insurance *pools*, via which the bearing of risk is shared amongst more entities²² which on the basis of the insurance contracts provide coverage of the liability of the operators of the nuclear installations. The insurance of risk of occurrence of nuclear damage in the Slovak Republic is realized by the Slovak Nuclear Insurance Pool as a free association of more insurance entities which was created at the Slovak Insurance Association on July 31st, 1997, by execution of the agreement on cooperation in insuring the nuclear damages caused by operation of the nuclear installation. The Slovak Nuclear Insurance Pool is an entity which has no legal capacity, for this reason the leading insurer – Allianz – Slovenská poisťovňa, a.s., acts on behalf of the pool on the basis of power of attorney from other members of the pool.

Both the Vienna Convention as well as the Paris Convention generally allow the possibility to cover the liability via means other than insurance,²³ therefore, from this point of view, the ACLND took advantage of the relevant provision of the Vienna Convention which was made precise by enumerating particular types of certain security tools of the financial and capital markets. They include especially guarantee by domestic legal entity or foreign legal entity allocating the funds of more operators (including foreign operators), bank guarantee, special purpose pledged bank deposit, or any other form of security which secures financial coverage of liability for nuclear damage equally to the above-mentioned types of financial security. The ACLND explicitly excluded participation of

²² Compare with ANDRIS, D., G. GALEY, S. REITSMA and R. WALKER. *Nuclear Risks in Property Insurance and Limitations of Insurability*. Zurich: Swiss Reinsurance Company, 2003, p. 3.

²³ See the Article VII par. 1 of the Vienna Convention and the Article 10 (a) of the Paris Convention.

public funds in securing the financial coverage, even in the case the operator of the nuclear installation is directly the state.

Due to the fact that the funds of other financial security are not common in practice and compared to the insurance they are deemed as funds indicating lower degree of financial certainty and rentability, the Act on Liability for Nuclear Damage provides for certain types of security which lie in the obligation to provide financial security and comparable activities required for reporting and registration of nuclear damages, inspecting and determination of the extent of nuclear damage, timeliness of satisfaction of claims to compensation of nuclear damage, and payment of compensation for nuclear damage in the extent provided by insurance provider. The above-mentioned means that the liability of the operator may be covered by other financial security only in case both financial extent of the required coverage is fulfilled and in relation to possibility of claiming and compensation the provider of other financial security must provide extent of activities similar to insurance.

Upon operator's decision the financial coverage of liability for nuclear damage may be ensured either by insurance in the full extent or by other financial security in the full extent, or by combination of both types of financial coverage, whereas, however, the condition of the total coverage of liability for nuclear damage in accordance with the principle of congruence, i.e. at least up to the limit of the extent of the operator's liability, must be met.

Insurance or financial security must cover the liability of the operator for nuclear damage separately for commissioning, separately for operation of the nuclear installation, separately for decommissioning of the nuclear installation, and separately for transportation of radioactive materials.

Commissioning and operation of the nuclear installation as well as the stage of decommissioning of the nuclear installation include also disposal with nuclear damage, transportation and disposal with burnt nuclear fuel or transportation, and disposal with radioactive waste and transportation of radioactive materials. The operator does not need to conclude a special insurance or to agree a special financial security for transportation and disposal with the nuclear material, burnt nuclear material, or radioactive waste provided that the operator already concluded insurance contract or agreed other financial security for the existing nuclear installation to be commissioned, operated, or decommissioned.

Funds provided from the insurance or financial security shall be provided solely for the purposes of compensation of nuclear damage; they may not be used for compensation of nuclear damage occurred at the nuclear installation or any property located on the land of this nuclear installation which is used or is to be used in relation to this nuclear installation, or means of transportation which at the time of the incident transported the radioactive material which caused such incident.

The concept of nuclear damage

Nuclear damage as one of the prerequisites of occurrence of liability for nuclear damage is a specific concept regulated and arising from the liability nuclear law. Notional determination which creates the framework of the basic extent of the nuclear damage is regulated by international treaties of the first generation (or possibly the second generation),²⁴ with the option for its extension by further elements on the basis of authorizing provisions of relevant conventions via explicit regulation in national legal regulations.

Due to the fact that the Slovak Republic is bound by unrevised wording of the Vienna Convention as the convention of the first generation, in determining the term *nuclear damage* the base will be the legal regulation of original wording of the Vienna Convention (also due provision of § 3 par. 2 of the ACLND which defines the term nuclear damage as *damage which arose in causal link with the nuclear incident*²⁵ according to the provisions of the international treaty).

In accordance with this legal regulation the following shall be deemed a nuclear damage: subject to cumulative fulfilment of condition

²⁴ The conventions of the second generation are those international treaties governing the area of compensation of nuclear damage which were adopted as a result of incident in Chernobyl with the aim to amend the original regulation which in certain aspects proved as inappropriate (Protocol of 1997 amending the Vienna Convention, Convention on Additional Compensation, Protocol of 2004 amending the Paris Convention).

²⁵ Pursuant to § 3 par. 1 of the Act on Liability for Nuclear Damage nuclear incident means any occurrence pursuant to provisions of international treaty. In accordance with the Article I par. 1 letter l of the Vienna Convention the nuclear incident is any occurrence or series of occurrences of the same origin which cause nuclear damage. For the term nuclear damage see more in NOVOTNÁ, M. and J. HANDRLICA. *Zodpovednosť za jadrové škody: Výzvy pre medzinárodnú a národnú zodpovednostnú legislatívu v post-fukushimskom období* [Liability for Nuclear Damages: Challenge for International and National Liability Legislation in the Post-Fukushima Period]. 1. vyd. Bratislava: Veda, vydavateľstvo Slovenskej akadémie vied, 2011, p. 169 and following. ISBN 978-80-224-1218-6.

of causal link between the damage and radioactive features of nuclear materials mentioned in definition of the Article I par. 1 letter k) of the Vienna Convention it shall be a loss of life or personal injury or loss or damage to property. Other losses may be assessed as nuclear damage only if so stipulated by law of the court which is authorized to act and to resolve in the matter of compensation of nuclear damage (*lex fori*). These may be subject to compensation only if and in such extent as identified *expressis verbis* as nuclear damage by national law.

The New Act on Liability for Nuclear Damage did not take the advantage of the mentioned authorizing provision,²⁶ unlike previous legal regulation,²⁷ and in § 3 par. 2 it linked the concept of nuclear damage solely with its basic definition in original (not revised) wording of the Vienna Convention. Compensation of other loss than injury, loss of life, or damage to property in the regime of compensation of nuclear damage is not permissible according to the new legal regulation due to the wording of law and due to precisely limited concept of nuclear damage it will not be possible to broaden the extent of the compensable nuclear damage, not even by extensive interpretation or by subsidiary application of general provisions of the delict law.

Neither the Vienna Convention, nor the international doctrine offer specification of the terms loss and damage to property and loss of life or injury; interpretation of these terms is left by the court which would decide on compensation of nuclear damage (probably in accordance with the precedent and doctrine conclusions present in the legal environment *lex fori*).

In the Slovak law the closest term to “*loss or damage to property*” used by the Vienna Convention is the term “*actual damage*” which means a loss objectively expressible in cash (property damage) and which lies in real reduction of property values of the aggrieved party as a result of occurrence of the damaged incident. In addition to loss, when, as a result of the nuclear incident, the aggrieved party has no knowledge on where the

²⁶ See the Article I par. 1 letter k) (ii) of the Vienna Convention.

²⁷ In the legal regulation of the Atomic Act effective until December 31st, 2015, the Slovak Republic took advantage of the mentioned authorizing provision of the Vienna Convention and extended the basic definition of nuclear damage applicable pursuant to the Vienna Convention by statutory provision of § 29 par. 5 of the Atomic Act by necessary measures for averting or reduction of radiation or reinstating the previous or similar condition of environment if such measures were caused as a result of nuclear incident and the nature of the matter allows so.

lost property is located or is unable to regain it (e.g. property is located in the area which is closed as a result of contamination), or the property damage assumes reduction of its value compared to the value prior to occurrence of nuclear incident, the term loss and damage to property within the meaning of the Vienna Convention includes also destruction of property, e.g. the total elimination of its value. However, it is obvious that no further interpretation extension is possible and the term nuclear damage in the extent binding for the Slovak Republic may not include e.g. lost profit, cost of prevention measures spent after the occurrence of the nuclear incident for the purposes of minimization or elimination of occurrence of nuclear damage, or environmental loss.

The fact that the adopted solution is limiting the nuclear damage to its original extent set forth by the Convention which origination goes back to the Sixties of the past century and taking into account the fact that previous regulation of the Atomic Act regulated the extended concept of the nuclear damage makes the return to the reduced extent surprising. All the more that the trend is more towards extension of the basic concept of nuclear damage arising from the conventions of the first generation, whereas such trend is confirmed also by the liability nuclear conventions of the so-called second generation which amended the original wordings of the Vienna Convention (revised by the Protocol of 1997)²⁸ as well as the Paris Convention (revised by the Protocol of 2004).²⁹

²⁸ *Protocol to Amend the Vienna Convention on Civil Liability for Nuclear Damage* [1997-09-12] [online]. 2015 [cit. 2015-08-18]. Available at: <https://www.iaea.org/sites/default/files/infirc566.pdf>. The Slovak Republic is not the part of the revised regime of liability for nuclear damage, since to date it did not accede (and does not intend to do so in the near future) to the Protocol of 1997 amending the original text of the Vienna Convention.

²⁹ *2004 Protocol to Amend the Paris Convention on Nuclear Third Party Liability* [online]. 2015 [cit. 2015-08-18]. Available at: https://www.oecd-nea.org/law/paris_convention.pdf. Pursuant to the Article 2 par. 2 of the Protocol of 1997 amending the Vienna Convention the following shall be deemed a nuclear damage: *loss of life or personal injury, loss of or damage to property, economic loss arising from loss of life or personal injury, or from loss of or damage to property if incurred by a person entitled to claim in respect of such loss or damage, the costs of measures of reinstatement of impaired environment (unless such impairment is insignificant), unless such costs fall under category of "loss of or damage to property", loss of income deriving from an economic interest of the aggrieved in any use or enjoyment of the environment, incurred as a result of a significant impairment, unless such costs fall under category of "loss of or damage to property", the costs of preventive measures and further loss or damage caused by such measures, any other economic loss, other than any caused by the impairment of the environment, if permitted by the general law on civil liability of the competent court. Pursuant to the Article 1 letter B) vii) of the Protocol of 2004*

Time limitation for exercising the claim to compensation of nuclear damage

Mechanism of time limitation of claims to compensation of nuclear damage remained preserved also in the new legal regulation in the sense of combination of subjective and objective periods for exercising the claim to compensation of nuclear damage. Also the length of the subjective statute of limitations period was preserved in line with which the claim to compensation of nuclear damage shall become statute-barred, unless exercised within three years from the date when the aggrieved (or a heir or legal successor of the aggrieved)³⁰ learned about the nuclear damage and about the entity which is liable for the nuclear damage or could have learned about the same. However, a change occurred in relation to the length and nature of the objective period commencing from the date of nuclear incident which was shortened in the new law from original (as a non-systematic regulation) twenty years³¹ to ten years and, at the same time, the nature of such period was changed from the statute of limitations period to the foreclosure (preclusive) period.

The reason for change of the nature of the objective period for exercising of claim to compensation of nuclear damage was especially the discrepancy arising from the Atomic Act with the wording of the Article VI par. 1 of the Vienna Convention according to which the right to compensation of nuclear damage shall be extinguished unless exercised within ten years from the date of nuclear incident. The Vienna Convention as in-

amending the Paris Convention the following shall be deemed a nuclear damage: loss of life or personal injury, loss of or damage to property, economic loss arising from loss of life or personal injury or loss of or damage to property if incurred by a person entitled to claim in respect of such loss or damage, the costs of measures of reinstatement of impaired environment (unless such impairment is insignificant) unless such measures fall under category of "loss of or damage to property", loss of income deriving from a direct economic interest of the aggrieved in any use or enjoyment of the environment, incurred as a result of a significant impairment of that environment, unless such measures fall under category of "loss of or damage to property" and the costs of preventive measures and further loss or damage caused by such measures.

³⁰ Supplemented by the Act No. 54/2015 Coll. on Civil Liability for Nuclear Damage and Its Financial Coverage and on amendment and supplement of certain acts.

³¹ By setting forth the twenty-year objective period the Atomic Act took advantage of the authorizing provision of the Article VI par. 1 of the Vienna Convention which enables the member states to stipulate by their national legal regulations longer than ten-year objective period for exercising the claim to compensation of nuclear damage provided that the liability for nuclear damage is covered by insurance or other form of financial security for the entire period of the prolonged objective period.

ternational treaty of unification nature which provisions are binding for the Slovak Republic as a member state hereby set forth objective period which is of preclusive period nature. Since, unlike the Vienna Convention, the Atomic Act set forth a statute of limitations period by nature instead of preclusive one for exercising of right by the aggrieved (plaintiff), solution of such discrepancy would be (due to different notion elements and legal consequences of institutes of statute of limitations and preclusion) a necessary prerequisite of the decision in the case (at least from point of view whether the court was obliged to take note of the lapse of the twenty-year period mentioned in the Atomic Act *ex offio* or only upon objection of the operator). For the sake of elimination of the discrepancy between the national liability nuclear legislation and the international regime of nuclear law the ACLND made this institute compliant with the international legislation (also due to ambiguous issue of clash of the statute of limitations period in the Atomic Act with the preclusive period in the Vienna Convention).³²

³² The solution of the given issue arises in general from the relation between international treaty as a source of international law and legal regulations of national law. From the point of view of international law, their mutual relationship is clear – international law insists on its supremacy over the national laws which would result in exclusion of application of national laws which are in contradiction with the rule set forth by the international law. However, from the point of national law, it is impossible to determine the relation of the international treaty and national normative legal act so clearly. By the Article 7 par. 5 of the Slovak Constitution the national law absorbed, *inter alia*, also international treaties which directly establish the rights or obligations of individuals or legal entities and which were ratified and proclaimed in the manner stipulated by law. At the same time, the mentioned constitutional paragraph determined the legal force and conditions of application of such international treaties by defining their supremacy over the laws. In relation to the provisions of the Vienna Convention, though establishing directly the rights and obligations, it shall not be possible to proceed and to determine the legal force of its rules according to the mentioned Article of the Slovak Constitution due to the reason that the Vienna Convention was ratified and proclaimed prior to the effective date of the constitutional act which amended the Slovak Constitution by extension of the fundamental constitutional reception rule of international law. These situation are dealt with by intertemporal provision of the Article 154c par. 2 of the Slovak Constitution which clearly specifies that international treaties (except for international treaties on human rights and fundamental liberties) which were ratified by the Slovak Republic and were proclaimed in the manner stipulated by law prior to the effective date of the Constitutional Act No. 90/2001 Coll. form part of the Slovak law if so stipulated by law. Secondary reception law anticipated by the Constitution incorporating the Vienna Convention as a source of international law into the national Slovak law may be identified in the Atomic Act whereby the Vienna Convention gained a spot in the national law, unfortunately without any constitutional or statutory note regarding its hierarchy structure in the system of sources of law and/or note on its legal force. See NOVOTNÁ, M. and J. HANDRLICA.

Also the length of the objective period for exercising the claim to compensation of nuclear damage was significantly changed – it was shortened from twenty years to ten years. At the first sight, shortening of the statutory length of such period may seem as a step back in relation to the application of the principle of protection of the aggrieved by nuclear incident by weakening of the position of the aggrieved party who may claim compensation of nuclear damage within shorter time limit. However, this statement may be supported only in cases of nuclear damage representing the personal injury. Harmful consequences of radiation to human health need not be visible immediately but may in latent form persist for a long time and cause personal injury only in several years; therefore ten-year period is not ideal condition. However, on the contrary, in case of nuclear damage caused to a thing or property, twenty-year statute of limitations period is in no way appropriate and in fact it does not bring such an advantageous position for the aggrieved as it may seem. The longer the time from the nuclear incident which caused nuclear damage, the lower the probability that the aggrieved shall be able to prove in possible legal proceedings the causal link between the nuclear incident and the occurrence of nuclear damage as one of the necessary preconditions establishing the occurrence of liability. For the sake of avoidance of impracticable legal actions where the aggrieved would be in the lack of proof due to considerable time distance from the moment of occurrence of nuclear damage to a thing or property, ten-year period for exercising the claim to compensation of nuclear damage seemed more appropriate in the nuclear legislation.

However, the above-mentioned thesis is not supported in case of so-called late losses of life and personal injuries, since these types of losses may be latent and need not be necessarily manifested for a long time (exceeding the ten-year period) after exposure of the aggrieved by radiation.³³ Thus by reduction of the objective period from twenty to ten

Zodpovednosť za jadrové škody: Výzvy pre medzinárodnú a národnú zodpovednostnú legislatívu v post-fukushimskom období [Liability for Nuclear Damages: Challenge for International and National Liability Legislation in the Post-Fukushima Period]. 1. vyd. Bratislava: Veda, vydavateľstvo Slovenskej akadémie vied, 2011, pp. 277-278. ISBN 978-80-224-1218-6.

³³ See details in NOVOTNÁ, M. and J. HANDRLICA. *Zodpovednosť za jadrové škody: Výzvy pre medzinárodnú a národnú zodpovednostnú legislatívu v post-fukushimskom období* [Liability for Nuclear Damages: Challenge for International and National Liability Legislation in the Post-Fukushima Period]. 1. vyd. Bratislava: Veda, vydavateľstvo Slovenskej akadémie vied, 2011, pp. 277-278. ISBN 978-80-224-1218-6.

years, the new legal regulation reduced the possibility to claim the compensation of nuclear damage caused to health or life only for period of ten years after occurrence of nuclear damage, whereby it excluded all late losses from the options of compensation. Simple solution would be exclusion of application of § 7 par. 8 (i.e. provisions on objective preclusive period lapsing from the moment of occurrence of nuclear incident) to the case of nuclear damage – loss of life or personal injury whereby for these types of loss combined lapsing of subjective and objective periods would not apply, instead, only lapsing of subjective statute of limitation period would apply commencement of which depends on the moment of knowledge of the aggrieved on occurrence of nuclear damage – personal injury and loss of life and on the liable entity. Other option would be to set longer objective period for personal losses in accordance with the conventions of the second generation,³⁴ thus creating dual regime of the statute of limitations – separately for losses to property and separately for personal injury and loss of life. However, for the sake of elimination of clash of the Vienna Convention (which represents the instrument of full harmonization) with the national law (the Act on Liability for Nuclear Damage) did not select any of the above-mentioned options, whereas, pursuant to § 7 par. 9 of the Act on Liability for Nuclear Damage, the provisions stipulating the time limitation of the right to compensation of nuclear damage are in the position of *lex specialis vis-à-vis* § 106 of the Civil Code³⁵ which will not be applied to time limitation of the right to compensation of nuclear damage.

General versus special jurisdiction of the court for proceedings and decision on compensation of nuclear damage

Like other civil law claims to compensation of damage, the claim to compensation of nuclear damage caused by nuclear incident is exercised by legal action filed at the substantively and locally competent court. Upon

³⁴ Regarding the prolongation of the period for exercising the right to compensation of nuclear damage in relation to personal injury and loss of life see 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.

³⁵ See § 106 of the *Act No. 40/1964 Coll. Civil Code, as amended*: The right to compensation for damage becomes statute-barred two years after the day on which the aggrieved party became aware of the damage and discovered who was responsible for it. The right to compensation for damage becomes statute-barred after three years at the latest, and if the harm was caused deliberately, then after ten years from the day on which the event resulting in the damage occurred; this rule does not apply to harm to one's health.

primary determination of jurisdiction of the state which courts are authorized to act in the matter in accordance with the rules of international law,³⁶ secondarily it is necessary to deal with the issue of substantive and local competence of the court within the national judicial system of the given country. Unless the nuclear incident caused harmful consequences outside the borders of the country where it occurred, only national procedure regulations shall apply for determination of judicial competence.

By the Article IV of the Act on Liability for Nuclear Damage (effective as of January 1st, 2016) new provision of § 14f “Court with the agenda of proceedings in the matter of compensation of nuclear damage” was inserted to the Act No. 371/2004 Coll. on Seats and Districts of the Courts of the Slovak Republic and on amendment of the Act No. 99/1963 Coll. Civil Procedure Code as amended (hereinafter as the “Act on Court Seats and Districts”), according to which the court competent for proceedings in the matter of compensation of damage which occurred in causal link with the nuclear incident is the District Court Nitra, whereas its district is the entire territory of the Slovak Republic. The Regional Court of Nitra shall be competent to decide on appeals in the matters of compensation of nuclear damage.

The significance of this new provision leading to separate regulation of causal jurisdiction in case of legal actions for compensation of nuclear damage caused by nuclear incident may be demonstrated on the limits of original regulation which does not include such special provisions on determination of the court jurisdiction in cases of compensation of nuclear damage, resulting in application of general provisions on determination of court jurisdiction pursuant to the Act No. 99/1963 Coll. Civil Procedure Code as amended (hereinafter as the “Civil Procedure Code” or “CPC”). Thus, pursuant to original regulation provision § 84 and subs. of CPC, was a fundamental criteria for determination of the court jurisdiction. In accordance with this provision the competent court for the proceedings shall be the general court of a party against whom the legal action is targeted (defendant), unless otherwise stipulated. In case of nuclear incident (i.e. in case of exercising of the right to compensation of nuclear damage) a party against whom the legal action is targeted is an entity which holds a status of entity that under relevant substantive law provisions is liable for nuclear damage. The sole entity which bears liability for caused nuclear damage is the operator of nuclear power plant,

³⁶ See the Article XI of the Vienna Convention and the Article 13 of the Paris Convention.

whereas the status of the operator in the Slovak Republic is awarded to Slovenské elektrárne, a.s., with its registered office at Mlynské Nivy 47, Bratislava, member of the ENEL Group, and Jadrová a vyrad'ovacia spoločnosť, a.s., – JAVYS, with its registered office at Tomášikova 22, Bratislava. According to the originally applied general procedural regulation of the CPC provisions of § 85 par. 2 of the Civil Procedure Code are decisive pursuant to which a general court of legal entity is a court within which district the registered office of the legal entity is located. Since the registered office of the operators is located within the district of the same court, in case of both operators locally competent court would be the District Court Bratislava II. However, alternatively, pursuant to § 87 letter b) CPC it applies that beside the court of the defendant, also the court within which district the incident which lays the grounds for right to compensation of nuclear damage occurred is competent. The decisive factor for determination of local competence of choice in this case is the place of occurrence of unlawful act and/or damage incident which lay grounds for right of compensation of damage³⁷ (for the purposes of nuclear liability this would be the place of occurrence of nuclear incident).

Thus, in case of nuclear accident, alternatively, also the District Court of Trnava would be considered as a court within which district the nuclear incident occurred for the cases of nuclear incident within the location of Jaslovské Bohunice and the District Court of Levice for the cases of nuclear incident in location Mochovce. In case of the so-called continuous radioactive contamination during the transportation of nuclear material performed via districts of more countries, more courts would be competent, since the incident laying grounds for compensation of damage would continuously be happening within the districts of more courts.

Diapason of the first instance courts authorized to act and to decide in the matter of compensation of nuclear damage would be too wide due to particular mentioned options for determination of the court jurisdiction according to general procedure law rules (especially in the case of continuous radioactive contamination during the transportation) which used to bring (in theory), especially in relation with the peculiarities of

³⁷ The question is whether it would be possible to think analogically to similar provision of the Regulation Brussels I bis and to the court practice of the European Court of Justice on extensive interpretation of term “fact that lays grounds for right to compensation of nuclear damage” in the sense of interpretation extension of such term also to a place where damage occurred as one of the facts which lays grounds for right to compensation of damage.

the liability nuclear relations (limited scope of liability, risk of high occurrence of latent losses etc.), by factual and legal complexity of assessment of the claim to compensation of nuclear damage, more unresolved issues which in the new legal regulation of liability nuclear law were the reasons for concentration of lawsuits regarding the compensation of nuclear damage in one competent court in the form of identification of special causal jurisdiction in the Act on Court Seats and Districts.

The concept of special causal jurisdiction in the lawsuits regarding the compensation of nuclear damage was assumed also within the new regulation of the civil procedure which, with the effective date as of July 1st, 2016, would revoke the currently valid and effective Act No. 99/1963 Coll. Civil Procedure Code. With the effective date from July 1st, 2016, provision of § 32 of the Act No. 160/2015 Coll. Civil Procedure Code regulates the jurisdiction in the lawsuits regarding the compensation of damages in similar manner as the CPC by granting the competence to the District Court of Nitra with the district of the entire territory of the Slovak Republic. The Regional Court of Nitra shall be competent for appeals.

Opinion giving preference to concentration of the court jurisdiction to one designated court is supported also in the Article 12 par. 4 of the Protocol of 1997 amending the Vienna Convention³⁸ and supplementing the original text of the Vienna Convention from 1963 by new provision imposing upon member states the duty to ensure that only one court within the national judicial structure shall be competent for any nuclear incident, i.e. to make sure that the lawsuits related to compensation of nuclear damage are resolved by one court.³⁹

Despite of the fact that the Slovak Republic is not bound by the Protocol of 1997 and the fulfilment of the duty to designate one court authorized to act and to decide in the matters of compensation of nuclear damage, the pressure leading towards harmonization of the European regime of nuclear liability grows stronger and stronger. Clear signal of this trend includes recently adopted Decision of the Council No. 2013/

³⁸ See the *Protocol to Amend the Vienna Convention on Civil Liability for Nuclear Damage* [1997-09-12] [online]. 2015 [cit. 2015-08-18]. Available at: <https://www.iaea.org/sites/default/files/infcirc566.pdf>.

³⁹ For amendments of the “Vienna regime” of liability brought by the Protocol of 1997 see LAMM, V. The Protocol Amending the 1963 Vienna Convention. *Nuclear Law Bulletin: No. 61* [online]. 1998, no. 1, pp. 7-24 [cit. 2015-08-18]. ISSN 0304-341X. Available at: <https://www.oecd-nea.org/law/nlb/NLB-61/vanda.pdf>.

434/EU by which certain member states are authorized to ratify in the interest of the European Union the Protocol amending and supplementing the Vienna Convention on Civil Liability for Nuclear Damages dated on May 21st, 1963, or to accede thereto and to make a declaration on application of relevant internal Union law rules.⁴⁰ Despite of the fact that this so-called authorization decision⁴¹ authorized (i.e. enabled an option) the European Union member states to which it was targeted (the Slovak Republic, Bulgaria, the Czech Republic, Estonia, Lithuania, Hungary, and Poland) to ratify the Protocol of 1997 amending the provisions of the Vienna Convention dated in 1963, from the point of the European Union position to the amended regime of nuclear liability which is represented by the so-called conventions of the second generation, the original draft of this decision is more interesting,⁴² which imposed upon these member states the duty to ratify the Protocol and/or to accede to it.⁴³

Despite of the fact that in the near future the Slovak Republic intends to enter into the amended “Vienna regime”, the issue of one competent court was, not only in the process of creation of new legal regulation of civil liability for nuclear damage, deemed as one of the important “practical” changes of procedural regime of liability for nuclear damages so as to assist jointly with exclusive jurisdiction arising from the Vienna Conven-

⁴⁰ 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. OJ L 220, 2013-08-17, pp. 1-2.

⁴¹ By its procedure law provisions, the Protocol of 1997 interferes to the exclusive jurisdiction of the European Union in the area of court jurisdiction and execution of decisions. For this reason the ratification of the Protocol and/or accession to it must be authorized by the European Union.

⁴² The substantial change of the wording of the authorization decision occurred after considerable reservations of the member states to many of its provisions, whereas the most intensive disapproval was present in relation to the imposing of obligatory duty of the member states to which the decision was targeted, to accede to the amended regime of liability for nuclear damages represented by the Protocol of 1997.

⁴³ For details see HANDRLICA, J. and M. NOVOTNÁ. Európska únia a Protokol z r. 1997, ktorým sa dopĺňa Viedenský dohovor o občianskoprávnej zodpovednosti za jadrové škody z r. 1963 [European Union and 1997 Protocol Amending 1963 Vienna Convention on Civil Liability for Nuclear Damage]. *Justičná revue*. 2014, roč. 66, č. 2, pp. 252-268. ISSN 1335-6461. Necessity of determination of one competent court within the country the courts of which have jurisdiction to act on compensation of nuclear damage is not a rare initiative of the Protocol of 1997, but this requirement is expressed also in the Protocol of 2004 amending the Paris Convention.

tion in prevention of *forum shopping*⁴⁴ and, at the same time, to remove (at least partially) the insufficiencies arising from the application of general procedure law rules of determination of court jurisdiction for (in many aspects) specific proceedings on compensation of nuclear damage.

Conclusion

The submitted paper did not try to offer exhaustive enumeration of all provisions of the new and first separate legal regulation regulating the liability for nuclear damage and other related institutes. Despite of strongly interdisciplinary nature of this institute, the authors limited their interpretation only to the civil law co-extensive terms of the given issue (also due to the fact that the Act on Civil Liability for Nuclear Damage was structured as a separate civil law regulation regulating specific area of the delict law), whereas the related issues of the administrative law nature (competence of the Slovak NRA in relation to application of the ACLND, competence of the National Bank of Slovakia in relation to the supervised entities of the financial market in financial coverage of liability for nuclear damage and other) are not dealt with.

From amongst particular civil law institutes the authors tried to select and to focus on the conceptual changes *vis-à-vis* the original regulation of the Atomic Act, assessment thereof, and clarifying the reasons which necessarily led to such changes (although, fortunately, most of such reasons have still only theoretic background and reflection thereof in the new legal regulation is of a prevention nature – to prevent the complications which could be caused by actual occurrence of nuclear damage). From this point of view, it is necessary to highlight especially the introduction of causal jurisdiction of the courts in the matters of decision-making regarding the compensation of nuclear damage, introduction of distribution scheme of redistributing of funds for compensation of nuclear damage as well as solution to terminology and other irregularities of the previous legal regulation compared to the provisions of the Vienna Convention as directly applicable source of the nuclear liability law.

However, the authors do not avoid critical view of the finally adopted solutions despite of the fact that in formulation of the approved wording of the new law which under the supervision of the Slovak Nuclear Regu-

⁴⁴ Compare with STOIBER, C., A. BAER, N. PELZER and W. TONHAUSER. *Handbook on Nuclear Law*. 1st ed. Vienna: International Atomic Energy Agency, 2003, pp. 115-116. ISBN 92-0-105703-2.

latory Authority was prepared by the Interdepartmental Work Group for Dealing with the Issue of Civil Liability for Nuclear Damage many times the contradictory opinions and standpoints of its particular members representing all affected entities were in the opposition and in the interest of balancing of the interests of these entities a compromise solution had to be sought, which, from the point of the authors and while applying their free academic approach, need not be necessarily deemed appropriate (e.g. reduction of the notional determination of nuclear damage *vis-à-vis* the original regulation of the Atomic Act). Special category of negative changes listed in the report includes those adoption of which was on one side necessary in the interest of compliance of national legislation with directly applicable provisions of the international treaty binding upon the Slovak Republic, which, however, on the other side, need not necessarily be deemed (also due to the time of creation of this international treaty going back to the Sixties of the past century and then the current approach largely preferring the development of the nuclear industry) beneficial for the aggrieved (e.g. preclusive nature of the objective period for exercising of right to compensation of nuclear damage).

Despite of the fact that the Slovak Republic is not bound by the more modern regulation of the Vienna Convention regime (the Protocol of 1997), some of its elements can be identified in the new legal regulation (e.g. determination of one court authorized to decide in the matter of compensation of damages). The question is whether due to more significant attempts of the European Union to interference with the issues of the compensation of damages leading to certain form of harmonization of the European regime of nuclear liability these would not bring in the future the necessity to make the requirements for peaceful use of nuclear energy stricter in respect to its liability relations. Despite of the fact that the European Union has no explicit powers in the area of substantive aspects of nuclear liability,⁴⁵ the effort to cover the “labyrinth of nuclear li-

⁴⁵ Implicitly it would be probably possible to derive such powers from provision of the Article 98 and the Article 203 of the Treaty Establishing the European Atomic Energy Community. See details of the issue in HANDRLICA, J. and M. NOVOTNÁ. Európska únia a Protokol z r. 1997, ktorým sa dopĺňuje Viedenský dohovor o občianskoprávnej zodpovednosti za jadrové škody z r. 1963 [European Union and 1997 Protocol Amending 1963 Vienna Convention on Civil Liability for Nuclear Damage]. *Justičná revue*. 2014, roč. 66, č. 2, pp. 261-262. ISSN 1335-6461.

ability"⁴⁶ with the goal to align the fundamental base points on which this legal regime is built (the amount of limitation of liability, the extent of compensable damages etc.) leads the European institutions to various forms of activities in this field.⁴⁷

References

2004 Protocol to Amend the Paris Convention on Nuclear Third Party Liability [online]. 2015 [cit. 2015-08-18]. 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.

Act No. 143/2013 Coll. amending and supplementing the Act No. 541/2004 Coll. on Peaceful Use of Nuclear Energy (the Nuclear Energy Act) and on amendments and supplements to some acts as amended by later acts, and amending and supplementing the Act No. 238/2006 Coll. on the National Nuclear Fund for Decommissioning of Nuclear Facilities and for Management of Spent Fuel and Radioactive Waste (the Nuclear Fund Act) and on amendments and supplements to some acts as amended by later acts.

Act No. 294/1999 Coll. on Liability for Damages Caused by Defective Product.

Act No. 40/1964 Coll. Civil Code, as amended.

Act No. 514/2003 Coll. on Liability for Damages Caused while Exercising the State Power and on amendments of some acts.

⁴⁶ VANDEN BORRE, T. Nuclear Liability: An Anachronism in EU Energy Policy?. In: M. M. ROGGENKAMP and U. HAMMER, eds. *European Energy Law Report VII*. 1st ed. Antwerp: Intersentia, 2010, pp. 183-191. Energy and Law 11. ISBN 978-94-000-0049-0.

⁴⁷ Clear signal of this trend is the 2013/434/EU 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, and to make a declaration on the application of the relevant internal rules of the Union law as well as the considerations of the European Union on certain form of the secondary European legislation which to certain extent would harmonize the fractured regulation of liability for nuclear damage in various member states.

Act No. 54/2015 Coll. on Civil Liability for Nuclear Damage and Its Financial Coverage and on amendment and supplement of certain acts.

AMEYE, E. Channelling of Nuclear Third Party Liability towards the Operator: Is It Sustainable in a Developing Nuclear World or is There a Need for Liability of Nuclear Architects and Engineers?. *European Energy and Environmental Law Review*. 2010, vol. 19, no. 1, pp. 33-58. ISSN 0966-1646.

ANDRIS, D., G. GALEY, S. REITSMA and R. WALKER. *Nuclear Risks in Property Insurance and Limitations of Insurability*. Zurich: Swiss Reinsurance Company, 2003. 8 p.

HANDRLICA, J. and M. NOVOTNÁ. Európska únia a Protokol z r. 1997, ktorým sa doplňuje Viedenský dohovor o občianskoprávnej zodpovednosti za jadrové škody z r. 1963 [European Union and 1997 Protocol Amending 1963 Vienna Convention on Civil Liability for Nuclear Damage]. *Justičná revue*. 2014, roč. 66, č. 2, pp. 252-268. ISSN 1335-6461.

KOSNÁČOVÁ [NOVOTNÁ], M. Občianskoprávna zodpovednosť za jadrovú škodu v práve EÚ [Civil Liability for Nuclear Damage in the EU Law]. *International and Comparative Law Review*. 2004, roč. 4, č. 11, pp. 35-52. ISSN 1213-8770.

LAMM, V. The Protocol Amending the 1963 Vienna Convention. *Nuclear Law Bulletin: No. 61* [online]. 1998, no. 1, pp. 7-24 [cit. 2015-08-18]. ISSN 0304-341X. Available at: <https://www.oecd-nea.org/law/nlb/NLB-61/vanda.pdf>.

NOCERA, F. La responsabilité civile nucléaire: actualisation du régime international. *Uniform Law Review*. 1998, vol. 3, no. 1, pp. 15-30. ISSN 1124-3694.

NOVOTNÁ, M. and J. HANDRLICA. *Zodpovednosť za jadrové škody: Výzvy pre medzinárodnú a národnú zodpovednostnú legislatívu v post-fukushimskom období* [Liability for Nuclear Damages: Challenge for International and National Liability Legislation in the Post-Fukushima Period]. 1. vyd. Bratislava: Veda, vydavateľstvo Slovenskej akadémie vied, 2011. 374 p. ISBN 978-80-224-1218-6.

NOVOTNÁ, M. and P. VARGA. Vplyv únieového práva na medzinárodný rámec právnej úpravy zodpovednostných vzťahov jadrového práva [Influence of EU Law on the International Framework of Legal Regu-

lation of the Liability Relations in Nuclear Law]. *Právny obzor*. 2015, roč. 98, č. 2, pp. 128-147. ISSN 0032-6984.

Paris Convention on Third Party Liability in the Field of Nuclear Energy [1960-07-29].

PELZER, N. Die rechtliche Kanalisierung der Haftung auf den Inhaber einer Atomanlage – ein juristischer und wirtschaftlicher Fehlgriff?. *Versicherungsrecht*. 1966, vol. 17, no. 41, pp. 1010-1014. ISSN 0342-2429.

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.

Protocol to Amend the Vienna Convention on Civil Liability for Nuclear Damage [1997-09-12] [online]. 2015 [cit. 2015-08-18]. Available at: <https://www.iaea.org/sites/default/files/infcirc566.pdf>.

Reasoning Report to the Government Bill on Civil Liability for Nuclear Damage and Its Financial Coverage and on amendment and supplement of certain acts.

STOIBER, C., A. BAER, N. PELZER and W. TONHAUSER. *Handbook on Nuclear Law*. 1st ed. Vienna: International Atomic Energy Agency, 2003. 168 p. ISBN 92-0-105703-2.

ŠVESTKA, J., J. SPÁČIL, M. ŠKÁROVÁ, M. HULMÁK, et al. *Občanský zákoník I. § 1 – 459: Komentář* [Civil Code I. § 1 – 459: Commentary]. 1. vyd. Praha: C. H. Beck, 2008. 1221 p. ISBN 978-80-7400-004-1.

VANDEN BORRE, T. Channelling of Liability: A Few Juridical and Economic Views on an Inadequate Legal Construction. In: N. L. J. T. HORBACH, ed. *Contemporary Developments in Nuclear Energy Law: Harmonising Legislation in CEEC/NIS*. 1st ed. The Hague; Boston: Kluwer Law International, 1999, pp. 13-39. ISBN 90-411-9719-2.

VANDEN BORRE, T. Nuclear Liability: An Anachronism in EU Energy Policy?. In: M. M. ROGGENKAMP and U. HAMMER, eds. *European Energy Law Report VII*. 1st ed. Antwerp: Intersentia, 2010, pp. 177-218. Energy and Law 11. ISBN 978-94-000-0049-0.

Vienna Convention on Civil Liability for Nuclear Damage [1963-05-21].

JUDr. Marianna Novotná, PhD.

Faculty of Law
Trnava University in Trnava
Kollárova 10
917 01 Trnava
Slovak Republic
marianna.novotna@gmail.com

JUDr. Jakub Handrlica, PhD.

Faculty of Law
Charles University in Prague
Náměstí Curieových 901/7
116 40 Praha 1
Czech Republic
jakub.handrlica@prf.cuni.cz