

## **Public Hearing Case ACCC/C/2016/143 (Czech Republic), 3 July 2019**

### **Statements OEKOBUERO**

After our original communication was submitted in 2016, Czech Republic proceeded with issuing unlimited operational licenses for the remaining reactors 2, 3 and 4 in Dukovany without any sign of public participation.

We therefore come to the conclusion that not only the problems concerning Reactor 1, but also the systemic issues addressed in our communications remain and that Czech Republic still considers the arguments brought up in the statement accurate. We would therefore like to discuss the different points of the Party's statement.

#### 1. As regards the applicability of Article 6 of the Convention in general:

Czech Republic expressed their doubts regarding the applicability of Article 6 arguing that the Dukovany nuclear power plant had already been in operation for many years. The „proposed activity“ in the present case, however, is the indefinite prolongation of the operating time. This leads to different parameters and the need to assess new and exponentially greater environmental risks. Alternatively, the extensions of lifetimes are “changes or extensions” within the meaning of annex I, paragraph 22 of the Convention. However, as Advocate General Kokott stated in case C-411/17 of the EU Court of Justice, „extending the period of operation of an installation is different from a ‚simple‘ change or extension in that without the extension in time the activity would be suspended“. This is also the case with the Dukovany reactors, as without the issue of the operational permits through the State Office for Nuclear Safety, the NPP would have ceased its operations. The discussed operational permit for the Dukovany NPP thus falls under article 6 paragraph 1 letter a in conjunction with Annex I paragraph 1 of the Convention.

In the case of the Dukovany reactors, the operating duration was extended for an indefinite time. Additional to this extension of the period of activity, the Czech authority has also set improvement conditions such as an adaption of the cooling system in reactors 2, 3 and 4. For the sake of completeness it also needs to be mentioned that the capacity of the reactors has been increased step by step since the last operating permit was issued in 2006. Compared to the original activities, the capacity has been increased by more than 13 % (from originally 440 MWe to the now applicable 510 MWe per reactor).

It cannot be excluded that these changes have significant effects on the environment. Such an extension must therefore be subject to the provisions of article 6. This is also in line with the opinion of Advocate General Kokott stated in Case C-411/17 according to which „extension of the operation of an installation may, of course, have significant effects on the environment, not only as a result of continued operation, but also because of the altered environmental conditions in the surrounding area. In addition, new scientific findings may be available at the time when a decision on extension is taken.“

#### 2. As regards the classification of the assessment procedure and the operational permit

The operating timeframe of the NPP may be called the „reactor's lifetime“ or otherwise. The fact that the NPP has been re-assessed according to latest scientific findings shows once

more that there has been an assessment procedure regarding the extended activity which should have led to public participation according to article 6 of the Convention.

The Party agrees in its statement to the communication that there has been a „complex check of the NPP’s operation tied to the periodic safety review” which finally led to the decision that the relevant requirements were met and the permit could be issued. The fact that an authority is obliged to issue a permit when and if all relevant requirements of a project are met is not only common in Czech Republic. However, the crucial decision taken by the authority is whether the relevant requirements are met; this decision has to be based on a previous assessment procedure requiring public participation according to article 6 of the Convention.

We consider the specific form of a decision to extend the operating license of a nuclear power plant irrelevant – whether it is issued as a new permit, as a renewal of an existing operational permit or within a periodic safety review to determine whether the operating requirements are met – in any case, the provisions of article 6 shall apply to such a decision.

Even though the extension of the operating time as such should already be considered an important change in the operating conditions, it should be mentioned that the new permits also included some technical updates, such as the installation of a third cooling circuit in the cooling pond system or further operating conditions regarding the capacity of the cooling system. All operating conditions laid down in the permits give rise to the assumption that severe effects on the environment can be expected by extending the operating time of the reactors and that the authority has performed an assessment of these possible environmental impacts that should have been open to public participation. Even if these conditions do not necessarily need to be laid down in the operating permit, they are part of the decision taken by SONS taking into account the particularities of each reactor.

### 3. An Outlook for future procedures:

We also consider the approach of the new Atomic Act more than disturbing. It indicates that the procedures to assess whether an operating license can be granted for an additional period of time will be carried out within periodic safety reviews to be performed every 10 years without providing for public participation. This leads to a similar situation as has been the case in 2016 and 2017, when the decision to continuously grant an operational permit was not preceded by public participation.

The permitted duration of the NPP’s activity is an operating condition and therefore the applicability of article 6 para 10 is indicated. Regarding the distinction between paragraphs 1(a) and 10 of article 6 should be noted that even if the Compliance Committee should conclude that the present case falls under article 6 paragraph 10, the provisions of article 6 would apply “mutatis mutandis” – i. e., with the necessary changes – and “where appropriate”. The authority (or Czech Republic) therefore does not have room to determine whether it is appropriate to provide for public participation at all within the decision-making process, but only to determine regarding which provisions of article 6 it would be appropriate to apply them in the assessment procedure. The interpretation of the term “appropriate” is to be applied even wider in the case of nuclear power plants, where the prolongation of operating permits can have significant effects on the environment. Whereas

in the case of Dukovany, on the contrary, there was no action to involve the public in the permitting process at all.

The statement of Czech Republic also shows that there is clearly no understanding of this requirement which demonstrates the systemic issue regarding public participation in procedures on the extension of permitting durations regarding nuclear reactors in general.

*We therefore call upon Czech Republic to rethink the current approach regarding different means for public participation and provide for the necessary legislative and administrative measures to apply these where relevant and especially in the case of the prolongation of NPP operational permits.*

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As already indirectly referred to in our previous statement, the Dukovany case resembles Case C-104 regarding the fact that the permitting duration of an NPP was extended, which, as the Committee noted, falls clearly within the scope of article 6 unless “a change to the permitted duration is for a minimal time and obviously would have insignificant or no effects on the environment”.

In Case C-104, the operating license was issued for an “indefinite” period of time. Therefore, the discussed decision was to amend this license regarding to the end of the operating period.

The Czech authority, however, released a completely new license, considering whether to continue or discontinue operations and assessing safety requirements. As we discussed today, the old licenses would have ended in 2016 or 2017 and the reactors would have ceased operations. This was only prevented by the issuance of a completely new operational permit. What also needs to be considered is that considering that in the past, there has never been any kind of public participation regarding the operational permits of the Dukovany reactors, and according to what we have heard today neither the newly introduced annual updates of the safety reports which have to be approved by the nuclear authority as part of the unlimited operational licence nor the periodic safety reviews will be open to public participation. The operational permits for the Dukovany reactors thus would have required full application of Article 6 of the Convention.

What obviously must be mentioned as well is, that in the Case of C-104, certain means of public participation according to Article 6 were applied (also regarding the previous safety reviews) and access to justice was granted insofar, as interested parties could appeal against the decision to on the extension of activities. The Czech procedure according to the Nuclear Act, however, completely restricts the administrative procedure to applicants and authority. As the right to appeal according to the Czech Code of Administrative Justice depends on the question who can be party to the procedure, this limited regulation of the Atomic Act also results in a lack of access to justice for members of the public. And besides the permitting procedure according to the Nuclear Act, no other procedure was applied in the present case.

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After what has been discussed today we would like to emphasize once again that the Czech Republic is in non-compliance with Articles 6 and 9 of the Convention as well as with Article

3 para 1 by not providing for any kind of public participation or access to justice regarding the extension of the operating time of the Dukovany reactors.

We therefore call upon the Czech Republic to provide for the necessary legislative measures to ensure that public participation as well as access to justice is granted within the periodic safety reviews which determine whether a nuclear reactor can continue its operations.