

## Case summary C-2009/41 Slovak Republic (NPP Mochovce)

Provided by the communicant for the public hearing  
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### History of the case

1. In 1986 four reactors for a nuclear power plant (NPP) in the Slovak town Mochovce were permitted, based on **Soviet technology** of the 1970s. Two reactors went into operation in 1989. Reactors 3 and 4 did not. Constructions were halted after 70 % of constructions and 30 % of equipment were done.
2. In 2007 the Slovak Republic announced that the Italian/Slovak consortium ENEL/SE will build two “**completely new reactors**” in Mochovce that would comply with today's **nuclear safety requirements**.
3. Not only the public concerned, but various countries and institutions such as the **European Commission** and Parliament requested Slovakia to carry out a **full scale EIA** since the project needs to have a completely different design compared to the 1986 permit due to technological and nuclear safety developments in the last decades.
4. Not only the Austrian MoE does not understand that the Slovak Republic carried out an EIA including international consultation procedure for a relatively small extension of reactors 1 and 2 just few years ago, but has rejected to make an EIA for the **complete new construction of reactors 3 and 4**.
5. In May 2008 the operator submitted three applications to the **nuclear regulatory authority (UJD)** that were approved in **August 2008**:
  1. *Construction permit for the modified plant*, UJD Decision 246/2008 of August 2008 (list of permitted modifications included)
  2. *Permit to realize safety relevant modifications during completion* (120 items listed, where changes are to be undertaken), UJD decision 266/2008, issued August 2008
  3. *Permit to implement Changes in the Preliminary Safety Analysis Report*
6. In November 2008 the operator conceded that the recommendations of the European Commission will be fully implemented in the design of the reactors and that the nuclear regulatory authority (UJD) had **approved changes** to the constructions, which were a **condition for incorporating all the safety changes** to the civil and technological part of the design. They furthermore stated that they made more than 100 changes.
7. The **public concerned** was not **informed about the three procedures** and could not participate. It was also not possible to appeal against the three decisions. Standing was rejected.
8. The official **constructions** for the NPP extension started on **3. November 2008**. Site preparatory with 300 workers started in September 2007.
9. Only at the end of 2008 the Slovak Republic agreed to carry out an **Espoo and EIA** procedure. This is however not a permitting procedure. Furthermore the Slovak Republic claims that the EIA is voluntary and not legally binding.

10. In this procedural history we see clear breach of the Aarhus Convention. The complete Article 6, in particular Article 6 par 4 have been ignored. The same counts for Article 9 par 2 and 4.

11. The following provisions make the Aarhus Convention applicable in this case:

**Article 6 par 1** reads as follows:

"1. Each Party:  
(a) Shall apply the provisions of this article with respect to decisions on whether to permit proposed activities listed in annex I;"

**Article 6 par 10** reads as follows:

"10. Each Party shall ensure that, when a public authority reconsiders or updates the operating conditions for an activity referred to in paragraph 1, the provisions of paragraphs 2 to 9 of this article are applied mutatis mutandis, and where appropriate."

**Annex I par 1** regarding NPP (nuclear power plant) reads follows:

"Nuclear power stations and other nuclear reactors including the dismantling or decommissioning of such power stations or reactors 1/ (except research installations for the production and conversion of fissionable and fertile materials whose maximum power does not exceed 1 kW continuous thermal load);"

**Annex I par 20** reads as follows:

"Any activity not covered by paragraphs 1-19 above where public participation is provided for under an environmental impact assessment procedure in accordance with national legislation."

**Annex I par 22** reads as follows:

Any change to or extension of activities, where such a change or extension in itself meets the criteria/thresholds set out in this annex, shall be subject to article 6, paragraph 1 (a) of this Convention. Any other change or extension of activities shall be subject to article 6, paragraph 1 (b) of this Convention."

12. A NPP is an activity listed in the Annex of the Convention (Annex I par 1). The Convention is applicable when permitting procedures relating to a NPP are carried out. This does not only count for new NPP, but also reconsiderations and updates of respective permits (Article 6 par 10) as well as in cases when changes or extensions meet the thresholds set in the Annex in itself (Annex I No 22). Furthermore the Convention shall be applied in case an EIA is foreseen under national and European law (Annex I par 20).

## Early and effective public participation

13. Article 6 par 4 of the Convention provides for public participation in certain environment related permitting procedures in an **early and effective** manner, **when all options are still open**.
14. The Compliance Committee interpreted this provision in different cases as follows:
  - In the case an activity needs **different permits** with regard to the environment, public participation has to be provided in any of the procedures if the same subject matter will not be dealt with any more in another permitting procedure for the same project where the public has early and effective participation rights.
  - It is of particular importance that the public has early and effective public participation rights with regard to **the fundamental technical choices** for any project activity.
  - If certain permits are only granted after the construction works for a project were finished this is only in line with the Convention if **substantial project changes** are possible not only in theory, **but also in practice** and this is only case if **political and commercial pressure** would not foreclose certain technological options and if the public had possibilities to participate in earlier stages where fundamental decisions were taken.
  - Finally the Committee expects that the EIA-procedure according to the **European EIA directive** has to be carried out **before construction** for a project is started.

### With regard to the Mochovce NPP extension this means the following.

15. Firstly, Slovakia breaches Art 6 par 4 of the Aarhus Convention by providing public participation only at a stage when **most technological options are foreclosed**. The EIA procedure, the only procedure where public participation in the sense of the Convention would be provided in this case is not a permitting procedure as Article 6 par 1 of the Convention provides for. Furthermore the EIA scoping has started only a year after certain decisions were taken and by the same time **construction work** have been initiated far before the EIA started. Different environment related permits on nuclear safety, technical specifications were issued during the year 2008 without public participation possibilities. Public participation is thus not early and effective, but late and ineffective.
16. Secondly, the Slovak Republic failed to provide for public participation in the aforementioned permitting procedures that **significantly changed and updated** the project design, the construction permit and nuclear safety. Major issues the permits dealt with can not be changed any more once constructions are final or far progressed.
17. Thirdly, conducting an EIA including the public participation procedure after or during the construction process contravenes not only the EIA-directive of the EU but makes most of the provisions of Article 6 of the Convention useless or less valuable. Article 6 is based on the assumption that an EIA is carried out (e.g Art 6 par 2 (e)) and **assumes that the EIA is conducted before or during permitting procedures** are carried out. Article 6 foresees different information stages on the project and documentation that needs to be made available to the public in order to enable effective participation. Most of the information listed in Article 6 par 6 refers to documentation relating to the EIA. Furthermore the public authority has to **take due account of the public participation's outcome** in its permitting decision (Art 6 par 8). It is thus very unlikely the aim of Article 6 in general, but also the objectives of most paragraphs of Article 6 can be reached when the EIA including public participation is carried out at such a late stage.

