

ANNEX 3: SELECTED LEGISLATION AND CASE LAW

I. From the New Atomic Act¹

“§9 Authorization is required to perform these activities related to nuclear energy:...(f) operation of nuclear facilities”

§19 “The procedure for issuing permits (1) shall be issued on the basis of an application. The applicant is the only party to the procedure.”

The terms and duration of the authorization: § 21, para. 2: “the permit is issued indefinitely...”

II. From the EIA Act

“Subsequent Procedures §9b...(3) by subsequent procedure it is always to be understood as a procedure with a high number of participants per administrative regulations...§9c (some) may also become a party to the subsequent procedure...§9d the public concerned...is entitled to bring a legal action to protect the public interest against the decision issued in a subsequent proceeding and challenge substantive or procedural legality of this decision.”

Annex No. 1, Point 3.2 : "Installations with nuclear reactors (including their dismantling or decommissioning) except research installations whose maximum power does not exceed 1 kilowatt of continuous thermal load."

III. From the Administrative Procedure Code

§94, para. 1: “In the review proceedings administrative authorities ex officio review the final decisions when it can reasonably doubt that the decision is in accordance with the law.”

IV. Excerpts of arguments made by petitioner to Constitutional Court, providing procedural history of case, including Highest Administrative Court judgment ref 7 As 90/2011-144 dated 27.10.2011

“The petitioner **applied** on 29 November 2007 **to participate** in the administrative authorization procedure (resp. Extended) operation of nuclear facilities, specifically for Unit 3 nuclear power plant under § 9. 1 point. d) of the Act no. 18/1997 Coll., which was conducted before the State Office for Nuclear Safety ("SONS").

Resolution ref 32699/2007, sp. Ref. 29299/2007 / OHJZ / 44 dated December 6, 2007 SONS ruled that the complainant is not a party to the administrative proceedings for permission to

¹ Please note the entire Old Atomic Act in English is included as Annex 4, the New Atomic Act is included in its entirety in Czech as Annex 9

operate third Dukovany nuclear power plant on the grounds that by law no. 18/1997 Coll., called. Atomic Act (hereinafter the "Atomic Act"), **is the sole party to proceedings only the applicant (§ 14 para. Atomic Act), in this case the company CEZ**

The complainant **appealed against this decision on 18 January 2008, referring to the international commitments of the Czech Republic, specifically, the Aarhus Convention, the Council Directive of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended Council Directive 97/11 / EC of 3 March 1997 and Directive of the European Parliament and Council Directive 2003/35 / EC of 26 May 2003 (the "EIA Directive"), as well as with § 70 of the Act no. 114/1992 ., on nature and landscape protection, as amended. The complainant, who is a **civil association whose primary mission is the protection of nature and landscape protection** of the legitimate interests of citizens who experience fear of nuclear power plants, including health, property and the right to a healthy environment, **demanding participation in the proceedings in order to apply their views on extending the operation of nuclear installations in terms of environmental protection. In his view, participation in the proceedings fully legitimized, because in fact it is the only nuclear facility authorization procedure under which the operation of nuclear facilities - 3 at Dukovany allowed when on the authorization of the project did not take place Dukovany process of assessing the impacts of the project on the environment environment.****

President SONS decision on the appeal ref SONS / PRO / 5156/2008 dated 5. 3. 2008 ("the contested decision"), **confirmed the denial of participation** per resolution SONS ref 32699/2007 dated 6 December 2007. **The parties in the contested decision, expressed the view that although the Aarhus Convention is part of the Czech legal order, its provisions are not directly applicable without performing the national implementing measures. Party to the proceedings also denied that the relevant authorization procedure is the only procedure in which the operation of a nuclear facility licensing, because it is an extension of the operation of the existing nuclear facility, which has for years produced electricity.**

Against the President's decision SONS complainant filed within the statutory period before the Municipal Court in Prague, who had his judgment ref 9 Ca 182 / 2008-96 dated 25. 11. 2010 dismissed.

Against the decision of the Municipal Court in Prague, the petitioner filed a cassation complaint to the Supreme Administrative Court. The Supreme Administrative Court decided that the cassation rejected in its judgment ref 7 As 90 / 2011-144 dated 27. 10. 2011. In its decision the stated that the applicant's reference to the jurisprudence of the Supreme Administrative Court does not apply to this case because it featured recently commissioned nuclear facilities represent a potential threat to the environment, ie interest legitimately protected ecological civic associations, including the complainant, and therefore these civic associations have, in the cited judgments of the right to engage in at least one administrative procedure necessary to launch such new nuclear facility into operation. Should such a single procedure proceed under the Atomic Act civic associations should have the right to participate in it. In the present case, however, it is an extension of the nuclear power plant Dukovany, it is not clear how the procedure for the extension of the existing state constitute an interference environment.

V. Summary of the Constitutional Court Judgment in US 463/12²

"The Czech Constitutional Court ruled in a panel presided over by chairwoman Vlasta Formánková and judges Miloslav Vyborný and Michaela Židlická during meetings without the presence of the parties on the constitutional complaint from the complainant - a civic association in the emergency zone of the nuclear power plant Temelin, ID 265 29 084, based Všemyslice, Neznašov 122, represented by Ing. V. H., PhD., Legally represented by Mgr. Martin Arrow, a lawyer based Law Offices Korbel, Tuháček, Arrow, Kadlec, Ltd., Tabor Přebrátická 330, against a judgment of the Supreme Administrative Court dated 27 October 2011, ref 7 As 90 / 2011-144, as follows:

The constitutional complaint is rejected.

Reason:

Timely filed constitutional complaint meets the other requirements of administration according to law no. 182/1993 Coll., On the Constitutional Court, as amended, (hereinafter "the Constitutional Court Act"), the petitioner sought the annulment of the aforementioned decision, since it has it considers that it has **violated his constitutionally guaranteed right to a fair trial and the right to a favorable environment enshrined in Art. 35 of the Charter of fundamental rights and freedoms (the "Charter"), the right to an effective remedy, enshrined in Art. 36 paragraphs 1 and 2 and Art. 38 paragraph 1 of the Charter of fundamental rights and freedoms (the "Charter"), as well as in Art. 6 paragraph 1 European Convention on human rights.**

By order of 6 December 2007, Ref. Ref. 29299/2007 / OHJZ / 44; Ref 32699/2007, the State Office for Nuclear Safety ruled that the complainant is not a party to the administrative proceeding. Decision on the appeal dated March 5, 2008, Ref SONS / PRO / 5156/2008, Chairwoman of the State Office for Nuclear Safety decomposition rejected, and confirmed the contested decision. By judgment of 25 November 2010, ref 9 Ca 182 / 2008-96, dismissed Prague Municipal Court administrative complaint the complainant. Subsequent cassation complaints were dismissed by the contested judgment of the Supreme Administrative Court.

In the constitutional complaint stated that **sought participation in the procedure of the Office for Nuclear Safety concerning permission (extended) operation of Unit 3 of the nuclear power plant. The complainant sought to justify their participation reference to the provisions called. Aarhus Convention and the EIA Directive in conjunction with § 70 of the Act no. 114/1992 Coll., On nature and landscape protection, as amended. The administrative body, however, with reference to the nature of the proceedings and the relevant provisions of Law no. 18/1997 Coll., On peaceful utilization of nuclear energy and ionizing radiation (Atomic Act) and amending and supplementing certain acts, as amended, the complainant rejected this. The complainant nevertheless shown interest in participating, and also in view of the fact that the operation of the Dukovany nuclear power plant has never been assessed for environmental impact,**

² Source: <http://judikatury.cz/document/czx9q2gr>

therefore the procedure has taken place pursuant to the Act no. 100/2001 Coll., On assessment of the impact on the environment, in as amended (EIA). Therefore, the complainant infers direct applicability of the Aarhus Convention to the present case, with regard to the ruling in the Supreme Administrative Court ref 2 As 13 / 2006-110, under which the direct applicability occurs when the single administrative proceeding be enough to launch a nuclear power plant into operation. The complainant disagrees with the Supreme Administrative Court, according to which the contested decision is not extending the operation of existing facilities can modify the environment carried out. Therefore, in the present proceeding should be a direct application of the Aarhus Convention. He therefore suggested that the Constitutional Court annul the decision.

The Constitutional Court after he became acquainted with the contents of the constitutional complaint contested decision and file of the Municipal Court in Prague. Ref. 9 Ca 182/2008, **concluded that the constitutional complaint is manifestly unfounded**, for the following reasons.

The Constitutional Court is a judicial body for protection of constitutionality (Art. 83 of the Constitution). There is no general court next stage is not part of the ordinary courts, which is not an instance superior. The Constitutional Court is not another instance of the system of justice, it does not assess overall legality of the decision or substitute its own assessment of the evidence evaluation. It does not deal with any potential violation of the ordinary rights of natural or legal persons, unless such violation simultaneously constitutes a violation of fundamental rights or freedoms guaranteed by constitutional law.

From the file of the Municipal Court in Prague, especially the Constitutional Court found the proceedings before administrative courts. The contents of the case file attachments complainant is given that the **complainant had repeatedly made the same argument, and probably since the time of registration for participants in administrative proceedings on 29 November 2007**. The objections raised in the appeal in an administrative complaint in a cassation complaint are the same objections and arguments of the complainant's constitutional complaint. Repeatedly while the complainant presented constant opinion administrations depend on the decision making of the administrative courts and the Constitutional Court on the matter, and by reference to § 14 paragraph 1 of the Atomic Act, according to which the only party to the procedure is the applicant.

The complainant then has been repeatedly confronted with the findings of **public authorities, which even in this case, found no reason to depart settled practice**. The complainant in that case, did any new circumstances that would indicate that the process of administrative courts, or the decision of the Supreme Administrative Court, was constituted interference in its fundamental rights. As is apparent from the contested decision, the Supreme Administrative Court reviewed the similarities and differences from the previous procedures, but neither time did it reach a conclusion on the direct applicability of international conventions. It came to it on the basis of proceedings in which the Constitutional Court found that the alleged misconduct and even shortening the complainant's rights guaranteed.

According to § 43 paragraph 2, letter a) of the Constitutional Court of Appeal, without a hearing without the presence of participants Resolution reject the application if it is a proposal manifestly unfounded. In this case the Constitutional Court panel found no misconduct alleged ordinary courts, and therefore he had no choice but constitutional complaint under this provision to refuse.

Instruction: Decisions of the Constitutional Court cannot be appealed.

In Brno on June 11, 2012”