

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

### **Statement OEKOBUERO and GLOBAL 2000**

After our original communication was submitted in 2016, the 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 the Czech Republic still considers the arguments brought up in the statement of 4 July 2017 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:

Czechia 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 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 ruled out 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 the „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 Czechia. 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 needs to 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 which 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 Nuclear 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 decisions to continuously grant operational permits were 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 the 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. 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 the 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 the 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.*