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1070 Vienna
Austria

Aarhus Convention Secretariat
c/o Fiona Marshall
Palais des Nations
8-14 avenue de la Paix
1211 Geneva 10,
Switzerland

Vienna, 27.02.2017

Dear Ms. Marshall,

We wanted to briefly inform the ACCC as to an important development relating to the facts of our case ACCC/C/2016/143 (Czech Republic).

On January 2, 2017 the Czech nuclear permitting authority SONs initiated the procedure for the extension of the lifetime of the second reactor at Dukovany. This procedure must be completed within 6 months. As explained in our Communication, this is the only procedure required to permit the extension of the reactor's lifetime and, as was the case with Reactor 1, no public participation has been or is being undertaken.

In an effort to provide further evidence demonstrating that it is hopeless to seek participation relating to the extensions of lifetimes, our co-communicant Czech nature organization Jihocesky Matky filed on January 5, 2017 a request to participate in this permitting procedure in accordance with the Czech law on nature protection. Unsurprisingly, the application was promptly denied. Due to an internal communication error, these events were only recently related to us.

As SONs itself explained in its decision to reject the application¹ there is already "settled case law" on this very issue and a "constant jurisprudence" on the interpretation of the Atomic Act and other domestic laws, particularly the Czech law on nature protection, pursuant to which participation was sought. All of this jurisprudence would seem to confirm that there are no participatory rights with respect to Atomic Act procedures – even where this has the result that no participation at any time occurs, a situation which is inevitable where, as in the present case, the permitting procedure proceeds only under the Atomic Act. As explained in

¹ Cj.: SUJB/OSKRaE/2243/2017; Zn.sp:SUJB/POD/30/2017/1; this decision is attached in its original Czech and with an informal translation

our Communication, this result is justified under domestic Czech law on the basis that “a continuation of the status quo” cannot constitute an interference with the environment which would serve as the basis for any participatory rights.

Of particular significance is that SONs cites to the very same Jihočeský Matky litigation which resulted in the seminal Supreme Administrative Court² and Constitutional Court³ decisions we cite to in our Communication and comes to precisely the same conclusions we do concerning their clear and determinative application in the context of these procedures to extend the lifetimes of the reactors. What the SONs refusal further clarifies is that these decisions are part of a broader and consistent body of case law, which includes not merely general court decisions but is also in line with an earlier Constitutional Court decision.⁴ We would only add the fact that a 2015 ruling from the Supreme Administrative Court on yet another Jihočeský Matky case again seems to clarify that there are no participatory rights for Atomic Act proceedings and thus would reaffirm that, from the perspective of the Czech legal order, no participatory rights need be given.⁵

In light of this it seems to us that **we and the Party Concerned are in substantial agreement about the state of the law in the Czech Republic.** The only disagreement seems to be, rather, whether this constitutes noncompliance with the Convention.

Sincerely,

Thomas Alge, ÖKOBÜRO



² Judgment ref 7 As 90/2011-154 dated 27.10.2011, cited at pp. 3-4 of our Communication. See also Annex 3 to our Communication

³ US 463/12, dated 20.6.2012, cited at p. 4 of our Communication. See also Annex 3 of our Communication

⁴ US 1791-1707, dated 21.11.2007

⁵ 10 As 59/2015-42, dated 15 October, 2015