



COMMUNICATION REGARDING THE CZECH REPUBLIC'S NONCOMPLIANCE WITH RESPECT TO EXTENSIONS OF NUCLEAR REACTOR LIFETIMES

30/10/16

OEKOBÜERO; GLOBAL 2000; Jihočeské matky, z. s.; Calla; Aarhus
Konvention Initiative

I. INFORMATION ON COMMUNICANTS

This Communication is submitted by OEKOBUERO – Alliance of the Austrian Environmental Movement, GLOBAL 2000 (FoE Austria), Jihočeské matky, z. s., Calla, and the Aarhus Konvention Initiative (collectively, “Communicants”). OEKOBUERO has been legally registered (No. 873642346) as an NGO under Austrian law since 1993. It consists of 16 NGOs promoting protection of the environment; it works on the political and legal level for the interests of the environmental movement. GLOBAL 2000 has been legally registered (No. 593514598) as an NGO under Austrian law since 1982. Its aims are to uncover environmental scandals and violations of national and international environmental legislation, to ensure the responsibility Austria has for international environmental issues, and offer ecological approaches for these problems. Jihočeské matky, z. s. was founded initially as a loose informal association of people in southern Bohemia interested in nature and landscape protection. Formally registered since 1992, Jihočeské matky’s activities place particular emphasis on nuclear issues and alternative energy sources. Calla is a citizens’ environmental association founded in 1991. Its mission is to offer people a helping hand for protection of the environment, contribute to the preservation of valuable ecosystems in South Bohemia, and support the desirable transformation of the Czech energy system to a clean, safe and renewable one. The Aarhus Konvention Initiative is a German civil society movement; its speaker acts under German law as a natural person. It consists of an environmental alliance, several NGOs, civil society movements, and individuals, which pursue policy and legal strategies to ensure the responsibility of Germany for environmental issues under international law.

Contact Details:

OEKOBUERO: Mr. Thomas ALGE, Director; thomas.alge@oekobuero.at; Ms. Summer KERN, Legal Expert; summer.kern@oekobuero.at; Neustiftgasse 36/3a; 1070 Vienna, Austria; Tel + 43 524-93-77

II. THE PARTY CONCERNED

The Czech Republic. The Party Concerned deposited its instrument of accession on July 6, 2004. The Convention entered into force on October 4, 2004.

III. FACTS OF THE COMMUNICATION

1. The Dukovany nuclear power plant (NPP) has four pressurized-water reactors, all VVER 440/213 units of Soviet design. It is located 30 km southeast of Třebíč, Czech Republic, and is only 40 km from the Austrian border; the German border is 175 km distant. Dukovany’s Reactor 1 was first commissioned in 1985 and has been in operation since then,¹ making it the oldest reactor in the Czech Republic. Reactors 2 and 3 went into operation in 1986; Reactor 4 in 1987. As acknowledged by the Czech State Office for Nuclear Safety (SONS) and the project promoter (CEZ) and as stated in numerous public documents, the lifetime of the reactors is 30 years.² Reactor 1’s lifetime expired in 2015. Reactors 2 and 3 expire in 2016; Reactor 4 in 2017.³
2. Preparation to extend the four reactors’ beyond their 30-year lifetimes began in 1996.⁴ For the extensions SONS required not only meeting basic requirements for normal operational licenses, but *additionally* measures on the NPP’s ageing effects, specifically:

1 See *Preparation of Long-Term Operation in Dukovany NPP, Czech Republic*, by R. Krivanek (of the IAEA, NSNI – OSS) and M. Sabata (of Dukovany NPP, CEZ, as. Czech Republic), IAEA-CN-194 (2012) (“[Krivanek Report](#)”), available at [Krivanek Report Link](#) see also SONS Response Letter, which states that the permit was issued on December 9, 1985; see also *First Czech Nuclear Power Plant Turns 25*, available at [SONS News Article Link](#) (“[SONS News Article](#)”)

2 See The 2016 Czech Republic National Report under the Convention on Nuclear Safety, SÚJB/JB/7626/2016, p. 91, (“[Report on Nuclear Safety](#)”) available at [2016 SONS Report on Nuclear Safety Link](#); Nuclear Energy Agency Committee on the Safety of Nuclear Installations Results of Questionnaire on Long-Term Operation of Commercial Nuclear Power Plants (NEA/CSNI/R(2015)13) December 22, 2015 at p. 33, (“[NEA Questionnaire Results](#)”) available at [NEA Questionnaire Results Link](#); see also SONS News Article; see also SONS Reply to the Information Request of Southbohemian Mothers, dated 29.8.2014 (GZ:SUIB/PrO/19452/2014), (“[2014 SONS Reply Letter](#)”)

3 Krivanek Report, p. 1; 2014 SONS Reply Letter

4 See the CEZ’s website with [basic information on Dukovany](#)

- a long-term strategy based on IAEA documents and internationally accepted practice;
 - a “Program for Assurance of NPP Dukovany LTO⁵” based on a periodically updated Feasibility study; and
 - an updated “Program for Assurance of NPP Dukovany LTO” with the objective of demonstration of changes in LTO relevant programs and processes; to demonstrate solutions for new safety requirements, and issues arising from equipment ageing (obsolescence/physical aging)⁶
3. To meet these obligations CEZ submitted in December 2006 a Quality Assurance program “Preparation of the NPP Dukovany LTO” to SONS. In January 2008, CEZ submitted the document “CEZ, a.s. approach to preparation of NPP long-term operation.” In January of 2009, the Board of Directors of CEZ approved its “Strategy of LTO Dukovany”, “Program for Assurance of NPP Dukovany LTO” and “LTO Dukovany Preparation Project”.⁷ These (or parts thereof) were submitted to SONS in February 2009. Works were undertaken to modernize the NPP for operations beyond the designed lifetimes, including reinforcement of reactor facilities, construction on ventilation towers, an increase in the number of auxiliary diesel generators, etc.⁸
 4. CEZ was unable to timely submit the documents required for the lifetime extension of Reactor 1 per its application of September 24, 2015. SONS granted a 3-month extension.⁹ Then, on March 3, 2016, SONS granted the permission to extend Reactor 1’s lifetime.¹⁰ Remarkably the license was not – as was expected – issued for a fixed period of time, but is unlimited. This is the first time this has happened. It is not to be the last, however, as the old Czech Atomic Act was replaced by a new act adopted on July 14, 2016,¹¹ according to which all newly issued licenses are to be unlimited in time.¹² The old Atomic Act did not include any specification on the duration of licenses.¹³ Historically, SONS has issued licenses for ten year periods.¹⁴
 5. This March decision was the only step needed to authorize the extension;¹⁵ per the decision’s terms CEZ is to subsequently submit annual pre-operational safety reports (POSARs).¹⁶ Also the plant continues to be subject to a Periodic Safety Review (PSR), the next being due only in 2025.¹⁷
 6. On July 27, 2016 CEZ applied for an extension of the current license for Dukovany’s Reactor 2 (which was to expire on December 31, 2016) until July 10, 2017. This was granted in August, 2016.¹⁸
 7. Entirely lacking during the course of all the above-described phases and decision-making is public participation of any sort. Pertinent for present purposes is the fact that no public participation has taken place with regards to the steps to achieve extension of Reactor 1’s operation beyond its lifetime and the ultimate decision authorizing this, and that no public participation is being presently undertaken regarding the other reactors or is contemplated for the future. It also bears

5 Long-Term Operation

6 SONS Decisions R24273-05 (1. unit, 2005), R55714-06 (2. unit 2006), R30852-07 (3. unit, 2007), R30853-07 (4. unit, 2007)

7 Krivanek Report, p. 2; see also [CEZ steps to get license](#)

8 See [current status of Dukovany extension](#)

9 Decision GZ 26350/2015 of 18.12.2015

10 Decision GZ 4932/2016 of 30.3.2016 (“March decision”), available at [March Decision in Czech](#); selected passages of the Decision are provided as part of Annex 2

11 Act no. 263/2016 Coll., Atomic Act (“New Atomic Act”), available at [New Atomic Act in Czech](#); selected passages are provided as part of Annex 2

12 §21 (2) of the New Atomic Act

13 Rather, its §15(1) merely said that SONS should establish the term

14 See e.g. NEA Questionnaire Results, p. 33. Every 10 years during this 30 year lifetime a Periodic Safety Review (PSR) was undertaken to review the technical circumstances of the reactors, without these the reactors could not run

15 See, e.g. [CEZ steps to get license](#)

16 This is under General Conditions (A) of the license; see Decision pp. 2-6

17 This is under Conditions (E) of the license; see Decision at pp.17-19; see in particular Condition E2.2

18 See <http://www.world-nuclear.org/information-library/country-profiles/countries-a-f/czech-republic.aspx>

mention, however, that no public participation was provided in relation to the decision-making leading up to the construction, initial permitting of the NPP, or the decisions to renew the operational licenses during the reactors' designed lifetimes, either.

8. An EIA, a potential vehicle for providing public participation, has been absolutely ruled out by the Party Concerned, which has denied even the duty to carry out a screening. The Party Concerned deems extensions of lifetimes as falling entirely out of the scope of the Czech EIA legislation,¹⁹ despite the fact that its Annex No. 1, Item 3.2²⁰ appears to track the language in the Convention's Annex I, para. 1 in relevant respects and the Party Concerned's claim that the "scope of activities listed in Annex I of the Convention is identical to the scope of activities that according to the Czech legislation mandatorily fall under the environmental impact assessment process."²¹ Czech Environmental Minister Richard Brabec confirmed "we are convinced that the legislation does not bind us" to perform an EIA for extensions of lifetimes.²² Nor do other procedures (such as those per the Czech Building Act) apply, which could serve as an alternative means for public participation, because such extensions have no associated zoning or construction decisions.
9. The only procedures involved for the extension of NPP lifetimes in the Czech Republic are those pursuant to the Czech Atomic Act,²³ and only the applicant, CEZ, can be a party to these procedures.²⁴ There is no way for any member of the public (concerned) to participate. Members of the public concerned have litigated this issue exhaustively, without success.
10. Specifically, on December 6, 2007 SONS rejected the application of a Czech civic association devoted to nature protection to participate in the procedure to extend operations²⁵ of Dukovany's Reactor 3, based on Article 6 of the Convention, the EIA Directive, and Czech nature protection laws.²⁶ The association's ordinary appeal²⁷ to the President of SONS was rejected.²⁸ In those proceedings SONS took the position that the Convention (in particular Article 6) has no direct application in the Czech Republic, and denied that the relevant authorization procedure was the only procedure for the operation of a nuclear facility because it was an extension of the operation of the existing nuclear facility, which had for years produced electricity. The association appealed this decision²⁹ to the Municipal Court in Prague, which dismissed the case, saying it could not review the decision of the SONS President.³⁰
11. The association then brought an unsuccessful cassation complaint to the Supreme Administrative Court, claiming that its procedural rights and rights to a fair trial had been violated.³¹ In its judgment, the court distinguished its earlier jurisprudence, which suggested that, where only a single procedure is provided for, Article 6 of the Convention might be directly applicable and public

19 Note [CEZ steps to get license](#) which has no mention of an EIA; see also April 1, 2016 Czech News Agency (CTK) [Article](#) "Dukovany not to endanger relations with Austria Minister", e.g. the Czech Environmental Ministry's Letter to Ing. Monika Machová Wittingerová Regarding the Espoo Convention MOP, dated 29.8.2014 ("EM Letter")

20 "Installations with nuclear reactors (including their dismantling or decommissioning) except research installations whose maximum power does not exceed 1 kilowatt of continuous thermal load", Annex No. 1, Point 3.2 of Act No. 100/2001 Coll., on environmental impact assessment, hereinafter "EIA Act"

21 Party Concerned's Response to Communication in Czech Republic ACCC/C/2014/106, p. 1

22 Dukovany not to endanger relations with Austria Minister

23 The Law on the Peaceful Utilisation of Nuclear Energy and Ionising Radiation, Act No. 18/1997 Coll. ("Old Atomic Act"). Provisions relevant to the extension of lifetimes are: (1) Article 9, para. 1(d), which states that "a license issued by [the SÚJB] is required for...operation of a nuclear installation;" (2) Section 13, which details the information to be provided as part of the license application; (3) Article 17, para. 2(a), which stipulates that a license-holder is to submit documentation related to inter alia quality assurance to the SÚJB; and finally (4) Annex D(a), point 6, which requires documentation related to up-dated limits and conditions for safe operation of nuclear installations

24 §14, para. 1 of the Old Atomic Act; §19, para. 1 of the New Atomic Act

25 This was a 10-year extension, still within the design lifetime of the reactor. Still, as with the extension of the lifetime for Reactor 1, it was made pursuant to §9 of the Old Atomic Act, and had the same provision §14 providing only the CEZ is a party

26 SONS ref 32699/2007 dated 6 December 2007

27 Pursuant to §94 et seq. of the Czech Administrative Procedure Code, Act No. 500/2004 Coll.

28 SONS / PRO / 5156/2008 dated 5. 3. 2008

29 On the basis of Article 65, para. 1 of the Czech Administrative Justice Code, Act No 150/2002 Coll.

30 Judgment ref 9 Ca 182/2008-96 dated 25.11.2010

31 Judgment ref 7 As 90/ 2011-154 dated 27. 10. 2011

participation in that procedure might be required. In particular, the court found that such jurisprudence related only to recently commissioned nuclear facilities which represent a potential threat to the environment, i.e. an interest legitimately protected by certain associations, and therefore such associations could have the right to engage in at least one administrative procedure necessary to launch such a new facility into operation. Should such a single procedure proceed under the Atomic Act, the associations could, in principle, have the right to participate in it. By contrast, in the case before it, the court found of the extension of the Dukovany NPP merely licensed an existing state, which could not constitute an interference with the environment. Accordingly, the association was deemed to have no participatory rights.

12. Finally, the association brought its case to the Constitutional Court, alleging the applicability of Article 6 of the Convention³², and further that its procedural and substantive rights had been violated. The Constitutional Court rejected the case as manifestly unfounded.³³
13. What the above demonstrates is that not only has the Czech Republic not conducted any public participation, it has no intention of doing so. This despite repeated calls for such participation from members of the public, including NGOs, both domestically and outside of the country (in Austria and Germany, notably), as well as calls from the Austrian and Bavarian governments.³⁴ We have no documentation to submit regarding public participation because of the simple fact that no such participation has ever taken place – not even in a rudimentary form. The above also shows there are no legal means to challenge this lack of public participation as to procedure or substance.

Further Facts Demonstrating Cause for Communicants' Concern

14. The Dukovany NPP is known to have a great many technical problems which are the cause for great concern. To briefly highlight only a few recent events which motivate in particular our concern surrounding the extensions of lifetimes in this case, we would like to point out that in the second half of 2015 enormous problems were revealed, including welds on emergency steam generation feedwater piping and major problems in radiograph quality.³⁵ SONS itself stated: "uncertainties as to the condition of welds resulted in the absence of information regarding the actual state of nuclear installation as a whole thereby constituting a breach of the requirement to be aware of the actual state of installation throughout the operation of nuclear installation and to have nuclear installation under control."³⁶
15. What is worse, these defects were only revealed when "leaks in the heterogeneous weld in an emergency feedwater pipe of steam generation No. 43...ultimately forced the company CEZ" to report the problems to SONS on September 8, 2015.³⁷ During its own subsequent review, it became clear to SONS that the in-service inspections were plagued by "systematic misconduct" stemming from *inter alia* "excessive satisfaction with the favourable assessment...by IAEA or WANO...emphasis on technical aspects...at the expense of...personnel leading and management and cooperation between...units with a little emphasis placed by top management on enforcement of appropriate behavior...and efforts to reduce costs."³⁸ As a result of these physical defects and the systemic misconduct in inspections, extraordinary shut-downs of Reactors 2 and 3

32 Indeed, at all points the association invoked Article 6

33 US 463/12, dated 20.6.2012

34 Dukovany not to endanger relations with Austria Minister Article; according to the German NGO Umweltinstitut Munich, German Environmental Minister Hendricks demanded public participation and an EIA from the Czech Environmental Minister after 27,437 persons from Germany demanded it from her in an Umweltinstitut Munich online-voting campaign. See www.umweltinstitut.org/mitmach-aktionen/aktion-schrottmeiler-vom-netz.html

35 Report on Nuclear Safety, Annex 4, p. 1

36 Id. at pp. 3-4

37 Id. at p 4, emphasis added

38 Id. at p. 5

took place in 2015 and there was a significant extension of Reactor 1's outage.³⁹ CEZ reported huge financial losses (2.5 billion CZK as of April 2016) and CEZ and SONS filed criminal complaints.⁴⁰

16. Furthermore, it is precisely these problems that caused the CEZ's inability to timely submit the necessary documents to receive the lifetime extension for its Reactor 1 in December of 2015. Moreover, SONS issued the March Decision permitting unlimited operation of Reactor 1 despite its express acknowledgment that the defective welds and systemic misconduct were not resolved even as of April 30, 2016,⁴¹ at which time also Reactor 4 was in a longer than expected outage due to the need to address deficiencies in documentation and in the welds themselves.⁴² Problems with the welds and with radiographic testing are also the reason CEZ needed to defer application for its lifetime extension for Reactor 2 and instead requested an extension of its existing license until the summer of 2017.

IV. PROVISIONS OF THE CONVENTION IN ALLEGED NONCOMPLIANCE

Article 3, para. 1; Article 6, paras. 2-9; Article 9, para. 2

V. NATURE OF ALLEGED NONCOMPLIANCE

17. The present communication alleges **specific instances of noncompliance** with respect to Dukovany NPP's Reactor 1 and ongoing specific noncompliance regarding its other reactors. We also allege **systemic noncompliance**, which arises as a result of the Czech legislative framework.

A. NONCOMPLIANCE WITH ARTICLE 6

1. THE APPLICABILITY OF ARTICLE 6

18. As a threshold matter, NPPs are activities subject to Article 6, para. 1, and annex I, para. 1 of the Convention, for which public participation shall be provided in permit procedures.⁴³

19. Secondly, the SONS decision of March 30, 2016 permits or authorizes the continued operations of Dukovany's Reactor 1 beyond that reactor's original lifetime. As acknowledged by SONS and CEZ, the original lifetime was set to expire. But for the March 3 decision, operations would have to cease. With this decision, operations can continue, uninterrupted, for an indefinite period of time.⁴⁴ This decision, moreover, embraces "all the basic parameters and main environmental implications of the proposed activity;"⁴⁵ it and it alone⁴⁶ authorizes continued operations of an ultra-hazardous activity of enormous public concern. The risks of even greater environmental damage are particularly heightened here considering the ageing equipment, some of which cannot be replaced,⁴⁷ and the grave defects with the welds. Accordingly, the decision to extend the lifetime of Dukovany Reactor 1 is a decision within the meaning of Article 6, para. 1(a) of the

³⁹ Id. at p. 1

⁴⁰ Id. at p. 5

⁴¹ Id. at 3

⁴² Id. at 5

⁴³ See e.g. Slovakia ACCC/C/2009/41; ECE/MP.PP/2011/Add. 3, 12 May 2011, para. 44 (henceforth "C-41 (Slovakia)")

⁴⁴ See references above; see also the March Decision, in the final 2 paragraphs before the instruction on appeals. In these paragraphs the decision is issued at the same time as a rejection of any injunction relief: SONS' clearly stated interest is that operation of the reactor be permitted to continue without any interruption; it discusses the danger of the previous permitting expiring, and the need for any new permit to enter into force neither before the expiry of the previous permit, nor afterwards – but rather that the new permit begin upon expiry of the old one, so as to ensure continued operations with no chance of possible interruptions

⁴⁵ European Community ACCC/C/2006/17; ECE/MP.PP/2008/5/Add. 10, 2 May 2008, (henceforth "C-17 (European Community)", para. 43

⁴⁶ Accordingly this decision would seem to more than satisfy the significance test created in C-17 (European Community)

⁴⁷ Large components (reactor pressure vessel, steam generator, e.g.) cannot be replaced and there is no intention of doing so. In addition, the reactor is so old that many original components are not available any more. Using other non-original equipment or spare parts causes new risks. See to that effect March Decision Condition C12; see also *Lifetime Extension of Nuclear Power Plants: Entering a New Area of Risk*, Section 2.3.3. "Problems of lifetime extension and uprating," and Section 2.3.4. "Czech Republic", available at [Greenpeace Study](#)

Convention. The same is true for any future decisions to extend the lifetimes of the other reactors at Dukovany or other Czech NPPs beyond their original design lifetimes. The licenses for these reactors are still set to expire, and will require that SONS issue new decisions to license their continued operations.⁴⁸ The applicability of Article 6, para. 1 holds regardless of any particular label⁴⁹ the Czech legislation assigns to these decisions,⁵⁰ and regardless of whether any actual physical changes have occurred⁵¹ – though in this case we note substantial upgrading works have taken place in preparation for the extension of lifetimes.

20. We believe that the extensions fall directly under **Article 6, para. 1(a) itself in conjunction with annex I, para. 1**, meaning that Article 6's substantive provisions must be met. First, there is nothing in that provision which says activity must be "new". The words "new," "construction" and the like appear nowhere in either Article 6, para. 1(a) or annex I, para. 1. Indeed, the express wording of Article 6, para. 1(a) states that the provision covers "decisions on whether to permit *proposed* activities." There is thus nothing to prevent the lifetime extensions from qualifying as proposed activities. Even if a proposed activity is to be interpreted as having the additional requirement that it be somehow new, we submit that the extension of a lifetime is, in a meaningful sense, a new activity. Operating an NPP within its designed lifetime has its own parameters and poses its own – quite significant – environmental risks. Operating an NPP (potentially indefinitely) beyond that designed lifetime has different parameters and poses a host of new and exponentially greater environmental risks. The two are not the same. Alternatively, the extensions of lifetimes are "changes or extensions" within the meaning of **annex I, para. 22**, meaning again that all the substantive provisions of Article 6 must be applied.⁵²

2. THE STATUS OF PROCEDURES UNDER NEW UNLIMITED PERMITS

21. Regarding future procedures (following the initial extension beyond the original lifetimes), which involve the periodic technical reviews discussed above, we believe these would at the very least qualify as a "reconsideration or update of operating conditions", per **Article 6, para. 10**, meaning that the provisions of Article 6 apply "mutatis mutandis, and where appropriate." Crucially, the creation and use of so-called "unlimited permits" should not serve as a strategy to avoid public participation duties in the future.⁵³ In this context this Committee has stressed that the discretion of parties is limited, and Article 6, para. 10 cannot be understood to allow parties to determine whether it was appropriate to provide for public participation.⁵⁴ The term "appropriate" merely introduces "an objective criterion to be seen in the context of the goals of the Convention", and where, as is the case here "an activity of such a nature and magnitude, and being the subject of such public concern" is at issue, public participation is appropriate.⁵⁵

3. NONCOMPLIANCE WITH SUBSTANTIVE ARTICLE 6 PROVISIONS

22. We note the public concerned, as defined in Article 2, para. 5, in this case includes persons and NGOs far beyond the Czech Republic's borders. Should an accident occur, the range of adverse effects could extend over huge geographical areas well beyond neighboring countries like Austria

48 Under the New Atomic Act's §9, para. 1(f)), which is the new incarnation of the Old Atomic Act's §9, para. 1(d). The legal effect of the New Atomic Act, which goes into force at the beginning of 2017, is to require SONS to issue new licenses for an unlimited period of time. According to our understanding, this law does not change the facts and legal status of the existing permits, which indeed still have expiration dates

49 See, e.g. Lithuania ACCC/C/2006/17; ECE/MP.PP/2008/5/Add.6, para. 57; see also Belgium ACCC/C/2005/11; ECE/MP.PP/C.1/2006/4/Add. 2, 28 July 2006, para. 29

50 The Czech Atomic Act uses the term "license." However, both the ČEZ and the SÚJB have also used the term "permit". The term permit is also used in the March Decision

51 See, e.g. Report of the Implementation Committee on its twenty-fifth session; ECE/MP.EIA/IC/2012/4; 5 October 2012, para. 20 (emphasis added)

52 C-41 (Slovakia), para. 58

53 See to that effect, e.g., the Party Concerned's Response and Statement at the public hearing of Netherlands ACCC/C/2014/104

54 C-41 (Slovakia), para. 55

55 Id. at paras. 55-56

and Germany.⁵⁶ The concern of persons and NGOs who fear such an accident, particularly in light of the fact that the reactors will be exceeding their lifetimes potentially indefinitely, despite already showing major defects in critical systems, is correspondingly extensive.

23. There was, however, **no public participation either domestically or for the foreign public (concerned)** related to the extensions of the reactors' lifetimes at the Dukovany NPP. Thus we submit the Party Concerned is **clearly in noncompliance with all of Article 6's substantive provisions, namely, paragraphs 2-9. Not only has the Party Concerned not provided public participation, it denies it even has these obligations.**

24. We would, however, **highlight** that the public concerned was **not notified** about the decision-making procedure⁵⁷ in **breach of Article 6, para. 2**. CEZ's website contains merely basic information⁵⁸ concerning its application to extend the lifetimes of the reactors. It should be noted that specific requests for notification and other steps pursuant to the Espoo Convention were refused.⁵⁹ Considering the nature of the activity in question here, members of the domestic and foreign public also expressed their interest,⁶⁰ and they, too, should have been notified.⁶¹ Also by providing no public participation opportunities for either the domestic or foreign public⁶² the Party Concerned is in breach of **Article 6, para. 4**, which mandates not only that public participation occur but also that it be "early," when *all options are open and effective public participation can take place.*" The Party Concerned also failed to encourage the CEZ to identify the public concerned, enter discussions, and provide information regarding the objectives before applying for a permit, per **Article 6, para. 5**. As outlined above, a number of domestic and Austrian- and German-based individuals and NGOs (in addition to governmental entities in Austria and Germany) have even come forward to demand information, to request discussions; these efforts have been rebuffed. Nor was the public informed of the decision to extend Reactor 1's lifetime, and it cannot expect to be informed of any future decision-making, in violation of **Article 6, para.9**.

B. NONCOMPLIANCE WITH ARTICLE 9, PARA. 2

25. Given that the extensions of the reactors' lifetimes fall under Article 6, the public concerned should also have access to justice to defend its rights and interests with respect to these procedures, per **Article 9, para. 2**.⁶³ The following demonstrates that there is no such access, however.

26. First, an ordinary remedy,⁶⁴ by which the public concerned could in principle appeal to the superior administrative authority (here the President of SONS itself) is hopeless. The SONS President is not a neutral entity; moreover, it rejected the same arguments at issue here, namely the necessity of public participation, in its decision of 2008 discussed above.

56 For example, Austria received radioactive contamination by the Chernobyl accident in 1986; that NPP was approximately 1000 km distant. Austria was the second most impacted country (after Belarus), see [Torch 2016 Report, an independent scientific evaluation of the health-related impacts of the Chernobyl nuclear disaster](#); see also [flexRISK Study](#); note also that Dukovany is closer to the German city of Nürnberg than Nürnberg is to Berlin: www.umweltinstitut.org/mitmach-aktionen/aktion-schrottmeiler-vom-netz.html)

57 As argued above, the decision pursuant to the Atomic Act is environmental within the meaning of Article 6. As this Committee has explained, "environmental decision-making...extends to any...phases of the decision-making...as long as the planned activity has an impact on the environment." Czech Republic ACCC/C/2010/50; ECE/MP.PP/C.1/2012/11, 2 October 2012, (henceforth "C-50 (Czech Republic)), para. 70

58 See [CEZ steps to get license](#)

59 See e.g. Dukovany not to endanger relations with Austria Minister Article

60 See e.g. [GLOBAL 2000 Statement on Dukovany](#), which, inter alia, discusses GLOBAL 2000's successful efforts with partner organizations to collect more than 60,000 signatures in Austria, Germany, and the Czech Republic to demand that the Austrian Environmental Minister require the Czechs to conduct procedures which would enable public participation for all; see also [The Open Petition Austria](#); see also the Umweltinstitut Munich petition supported by 27,437 persons, which led to the German Environmental Minister making the same demands, discussed above; note also Communicant Brigitte Artmann communicated with the German Environmental Ministry on 24.10.2014 and 25.11.2014

61 See e.g. Ukraine ACCC/C/2004/3 and ACCC/S/2004/1; ECE/MP.PP/C.1/2005/2/Add.3, 14 March 2005, para. 28; see also France ACCC/C/2007/22; ECE/MP.PP/C.1/2009/4/Add.1, 8 February 2011, para. 41

62 We have no evidence that the foreign public was treated differently in this regard; but of course public participation is to be accorded the foreign public without discrimination as to citizenship, nationality, or domicile, per Article 3, para. 9

63 Belgium ACCC/C/2005/11; ECE/MP.PP/C.1/2006/4/Add.2, 28 July 2006, para. 26

64 §94 et seq. of the Czech Administrative Procedure Code

27. Second, as explained above, the Atomic Act⁶⁵ expressly limits who may be a party to the applicant. This in turn means that the conditions of Section 65, para. 2 of the Code of Administrative Justice⁶⁶ would not be met, as this provision only grants parties to the procedures the right to appeal.⁶⁷⁶⁸ Failing this, the extraordinary remedy of administrative review would require, per Section 65, para. 1 that the appellant's rights or obligations have been "created, changed or nullified or bindingly determined".⁶⁹ However, again as described above, the Municipal Court in Prague rejected exactly this argument, raised under this very same provision, and the Highest Administrative Court refused to come to a different conclusion, determining that the Convention's Article 6 was not directly applicable, and that the association was not improperly denied participatory rights because the procedure at issue involved permitting an existing activity to continue, which could have no environmental effects, rather than approving a new facility. Accordingly the court further determined there was no corresponding violation of the association's rights to justice.⁷⁰ The Constitutional Court, moreover, rejected the review of such failings as "manifestly unreasonable." There are no facts or legal circumstances which would permit a contrary result in this context.
28. Finally, a special complaint to protect the public interest⁷¹ is not availing. This provision says a complaint may be brought *by a person to whom the authorization is expressly granted by...an international agreement which is part of the national law*. The case law cited above means there are no colorable arguments under domestic law that the public concerned should be deemed to have been expressly granted authorization to appeal decisions to extend the lifetimes of reactors.
29. There are no other possible legal avenues to challenge the procedural and substantive failings regarding public participation and the extensions of the lifetimes.

C. NONCOMPLIANCE WITH ARTICLE 3, PARA. 1

30. Gaps in the Party Concerned's domestic legislation, taken together with judicial interpretation and practice, results in **systemic noncompliance** with the Convention. By failing to take the necessary legislative, regulatory and other measures to establish and maintain a clear, transparent and consistent framework to implement Article 6 and Article 9, para. 2 in relation to the extensions of lifetimes of nuclear reactors,⁷² the Party Concerned is in breach of **Article 3, para. 1**.⁷³
31. As indicated above, the Party Concerned's legislation fails to provide for public participation during the procedures to extend the lifetimes of nuclear reactors. The only procedures for such extensions are those pursuant to the Atomic Act, which stipulates that only CEZ may be a party.⁷⁴ Domestic case law has, moreover, specifically approved this legislative gap, finding that no public participation in these Atomic Act procedures is required, even where this is the only procedure applicable and the result is no public participation of any kind ever takes place.⁷⁵ If anything, the

65 Both in its old version, per § 14, para. 1, and the newly adopted version, per §19, para. 1

66 Code of Administrative Justice

67 Id. at Section 65, para. 1: "A complaint against a decision of an administrative authority can be made even by a party to the proceedings before the administrative authority who is not entitled to file a complaint under paragraph 1, if the party claims that his or her rights have been prejudiced by the administrative authority's acts in a manner that could have resulted in an illegal decision.

68 See the Judgment of the Supreme Administrative Court of 29, October 2007, ref. No. 2 AS 13/2006-110, and the Judgment in 19 May 2011, ref. No. 2 As 9/2011 - 154

69 Code of Administrative Justice, Section 65, para. 1 "Anyone who claims that their rights have been prejudiced directly or due to the violation of their rights in the preceding proceedings by an act of an administrative authority whereby the person's rights or obligations are created, changed, nullified or bindingly determined (hereinafter "decision") may seek the cancellation of such a decision, or the declaration of its nullity, *unless otherwise provided for by this Act or by a special law.*"

70 See also [Access to justice in environmental matters -- Czech Republic](#), Point VII (c)

71 Per §66, para. 4 of the Code of Administrative Justice

72 Or even in the case of the previous licensing procedures extending the reactors during the reactor lifetimes

73 See e.g. Kazakhstan ACCC/C/2004/1; ECE/MP.PP/C.1/2005/2/Add.1, 11 March 2005, para. 23

74 Section 14, para. 1 of the Old Atomic Act, Section 19, para. 1 of the New Atomic Act

75 See the judgment of the Highest Administrative Court (ref 7 As 90/2011-144) and of the Constitutional Court (US 463/12)

March Decision extending Reactor 1's operations indefinitely and the New Atomic Act's provision that future licenses will always be unlimited in time⁷⁶ seem likely to compound these deficiencies.

32. The domestic legal framework similarly fails to provide access to justice with regards to the extension of lifetimes. Particularly meaningful in this context is that no member of the public concerned can bring an appeal under the Code of Administrative Justice. This is because (1) it has no party status in Atomic Act procedures;⁷⁷ and (2) domestic courts have established that, lacking any participatory rights to begin with in Atomic Act procedures which only license the continuance of activities, there is no way that the public concerned can demonstrate that its rights have been changed, nullified or reduced.⁷⁸ By virtue of that determination, it is clear that (3) domestic law rejects that the Convention authorizes the public concerned to bring such appeals.⁷⁹
33. Although we understand that the Convention does not require an EIA,⁸⁰ we nonetheless find the Party Concerned's position on the non-applicability of its EIA legislation, in particular its Annex No. 1, Item 3.2, to the extension of reactors beyond their original lifetimes highly relevant when considering the Czech legislative framework as a whole. This is not merely because an EIA could provide an obvious and ready instrument to (partially) fulfill some public participation obligations. Rather, exclusion from the scope of the EIA law crucially also entails that the lifetime extension procedures cannot possibly qualify as so-called "subsequent procedures". This is important because amendments to the Czech EIA Act made in the wake of an infringement suit by the European Commission and the findings of this very Committee⁸¹ provided that, for certain permitting procedures⁸² "subsequent to" an EIA procedure, public participation – and associated appeals mechanisms for procedural and substantive violations arising from such procedures – must be granted.⁸³ Exclusion from the scope of the EIA Act therefore means that these newly-created opportunities cannot possibly serve as an indirect, alternative means of obtaining public participation and access to justice regarding reactor lifetime extensions.
34. We would add here that there has in general been some uncertainty as to whether *any* Atomic Act procedures could, in principle, qualify as "subsequent procedures". Our understanding is that SONS tried to have such procedures expressly excluded during the course of amendments to the Czech EIA legislation, and there is a provision which could suggest such an exclusion."⁸⁴ This would mean that the public concerned could neither become a party to the Atomic Act procedures for the proposed new reactors at Dukovany, nor appeal decisions ensuing therefrom. It would further mean that, should the Party Concerned ultimately be required to find that lifetime extensions must, in fact, be subject to an EIA, it could still insulate itself here against public involvement in the future, a prospect which we find cause for alarm, as it could perpetuate the systemic failure to establish the legislative and other measures needed to implement Article 6 and Article 9, para. 2.
35. All of this seems to merely confirm what the Party Concerned has already clearly said itself: It simply denies having any duty to provide public participation and access to justice with respect to extending the lifetimes of its ageing and defective nuclear reactors. For the foregoing reasons, we argue this constitutes a serious breach of the Convention.

76 Per §21, para. 2 of that act

77 Code of Administrative Justice, Section 65, para. 2

78 Code of Administrative Justice, Section 65, para. 1

79 Code of Administrative Justice, Section 66

80 Spain ACCC/C/2008/24; ECE/MP.PP/C.1/2009/8/Add.1, 20 September 2010, para. 82

81 C-50 (Czech Republic)

82 Procedures which fall within Article 6 of the Convention, such as those according to the Czech Building Act, which are necessary to achieving final approval for the activity in question, and which must consider the result of the EIA procedure

83 Section 9d of the EIA Act

84 This would seem to follow from Section 9b, (3), which states: "by subsequent procedure it is always to be understood as a procedure with a high number of participants per administrative regulations". The single-party Atomic Act procedures would thus seem excluded

VI. DOMESTIC REMEDIES

36. Given the arguments regarding Article 9 above, any domestic remedy with regards to the allegations of specific noncompliance would obviously “not provide an effective or sufficient means of redress” within the meaning of Decision I/7, para. 21. Being mostly foreign organizations, we would face additional hurdles in terms of navigating the domestic legal system, both linguistically and legally. Regarding our systemic allegations, we would add that these are not amenable to judicial review, and are accordingly not subject to domestic remedies considerations.⁸⁵

VII. USE OF OTHER INTERNATIONAL PROCEDURES

37. On July 27, 2016 OEKOBUERO, GLOBAL 2000, Calla and Jihočeské matky, z.s. submitted an Information to the Espoo Implementation Committee alleging noncompliance with the Espoo Convention. Independently, on August 9, 2016, Ms. Brigitte Artmann of the Aarhus Konvention Initiative submitted an Information. However, we see no grounds to defer consideration of our case. The Espoo proceedings focus on the independent question of the duty to carry out transboundary EIAs; this communication alleges broadly that the Party Concerned fails to provide public participation and access to justice in relation to the extensions of reactor lifetimes.

VIII. CONFIDENTIALITY


None requested.

IX. SUPPORTING DOCUMENTATION

In addition to the numerous links⁸⁶ we provide in this communication, we submit the following annexes: (1) a chronology; (2) selected parts of the March Decision (English); (3) selected parts of legislation and case law (English); (4) the Old Atomic Act (English); (5) the Code of Administrative Justice (English); (6) a judgment of the Highest Administrative Court (Czech); (7) a judgment of the Constitutional Court (Czech); (8) the March Decision (Czech); and (9) the New Atomic Act (Czech).

X. SIGNATURE


Mag. Thomas Alge, OEKOBUERO


Dr. Reinhard Uhrig, GLOBAL 2000



Monika Machová Wittingerová, Dipl.-Ing, Jihočeské matky, z. s.



Edvard Sequens, Dipl.-Ing, Calla -Sdružení pro záchranu prostředí



Ms. Brigitte Artmann, Aarhus Konvention Initiative

⁸⁵ United Kingdom ACCC/C/2008/33; ECE/MP.PP/C.1/2010/6/Add.3, 24 August 2011, para. 120; Kazakhstan ACCC/C/2010/59; ECE/MP.PP/C.1/2013/9, 16 July 2013, para. 42

⁸⁶Please note that the hyperlinks only function in the docx version of this communication – they do not function in the pdf version, unfortunately