

Aarhus Convention Secretariat

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

Vienna, 1 March 2021

Regarding: Comments on the Party's responses to questions from the Committee to the Party concerned relating to the lifetime extension of Dukovany Nuclear Power Plant, ACCC/C/2016/143 (Czech Republic)

Dear Ms. Marshall,

We would like to thank the Compliance Committee and its Secretariat for the opportunity to comment on the Party's response to the Committee's questions of 24 December 2021 regarding communication ACCC/C/2016/143 (*Czech Republic*) by ÖKOBÜRO and GLOBAL 2000 (hereafter the "Party's reply").

Overall, we consider that the reply of the Party concerned supports and indeed is in substantial agreement with the arguments raised by the communicants in their communication and previous submissions as to the facts and legal developments in the Czech Republic. Rather, this reply underscores what we already observed, including in our letter of 27 February 2017.

Thus, the answer to the first questions shows that indeed the State Officer for Nuclear Safety (SONS) takes the decision to issue a license for a nuclear reactor after having evaluated verified that – hence evaluated if – “the applicant has fulfilled all the conditions established in this Act and in implementing regulations”, which then determines the specific decisions in question.¹ It also confirms that in the relevant procedures, the public has no opportunity to participate in the decision-making process regarding the permission of an extended operating period.²

¹ Party's reply, para 1.

² Ibid, para 2.

Secondly, regarding the judgement of the Supreme Administrative Court of the Czech Republic no. 4 As 157/2013 – 33³, we would like to note that this case concerned a procedure under the Building Act⁴ which was also subject to an environmental impact assessment.⁵ The judgement accordingly provides no support whatsoever for the conclusion that NGOs would have the possibility to challenge a decision to extend the operating period of the Dukovany reactors before a court of law of the Party concerned. Our conclusion on this issue is directly supported by the confirmation of the Party concerned that procedures according to the Atomic Act do not qualify as subsequent procedures according to the EIA Act.⁶ Thus, the issues regarding a lack of access to justice according to article 9 (2) of the Convention raised in our communication are not addressed by the judgement of the Supreme Administrative Court cited by the Party concerned in its reply to the Committee's questions.

Moreover, the Party concerned stands by its approach that it considers the "activity in question is outside the scope of the Aarhus Convention".⁷ In this regard it refers to the judgment of the Constitutional Court of the Czech Republic in its judgement no. II. ÚS 940/20 of 8 September 2020, which would appear to confirm that, as a matter of the national law of the Party concerned, the communicants lacked any realistic opportunity to challenge the decisions of SONS.

In this respect, we note further that the Party concerned refers to the abovementioned judgement of the Supreme Administrative Court, which explicitly relies on the applicability of the Aarhus Convention and the EIA Directive noting that,

*"the interpretation of procedural rules concerning the admissibility of an action must also be based on the **Aarhus Convention** and **Directive 2011/92/EU** of the European Parliament and of the Council of 13 December 2011 on the assessment of the impacts of certain public and private projects on the environment."*⁸

This confirms the judgement referred to in Annex 3 to the communication and the communicants' conclusions drawn therefrom, which has now been translated by the Party

³ Annex 4 to the Party' reply.

⁴ See para 1 and 14 of the judgement.

⁵ See para 37 of the judgement.

⁶ Party's reply, para 3.

⁷ Ibid, para 4.

⁸ Annex 4 to the Party's reply, para 37; emphasis added.

concerned. In its conclusions the Supreme Administrative Court held concerning the extension of the nuclear power plant's operating period that,

*"the mere continuation of its existence does **not affect the protection of nature and landscape in a way that would justify the need for the public to have the right to participate** directly in this technical procedure in the manner provided for in Section 70 of the Act on Nature and Landscape Protection. It is therefore **not necessary**, in either of these cases, for the unambiguous text of Section 14(1), second sentence, of the Atomic Act to be violated and **for representatives of the public to be granted the right to participate.**"⁹*

The translations of the permits provided by the Party are very welcome. They show that the operational permits were issued for an unlimited period of time. In this regard we would like to repeatedly stress that extending the license for an indefinite period can hardly be regarded as an irrelevant project update or reconsideration, but rather in itself represents an activity according to Annex I of the Convention, which would require a decision-making process informed by public participation in line with article 6(1)(a).¹⁰

As the Party confirmed, the new licenses were issued without a time limit. In the future regular assessments of the reactors will be carried out within a Periodic Safety Review (PSR) every ten years. Such PSRs might result in reconsideration or updates of operating conditions and thus require paragraphs 2 to 9 to be applied *mutatis mutandis*, and where appropriate, as stipulated in article 6 (10) of the Convention. The Czech law, however, currently does not provide for any public participation regarding these future assessments.

We hope the Committee will still be able to take our remarks into account.

With best regards,



Thomas ALGE

Managing Director,
ÖKOBÜRO – Alliance of the Austrian Environmental Movement

⁹ Annex 8 to the Party's reply, p. 5 (148); emphasis added.

¹⁰ In conjunction with paragraph 1, or 22 of Annex I; see elaborations in para. 20 of the communication.