Czech Republic statement

Audioconference with Aarhus Convention Compliance Committee

15th December 2022

Chair, members of the Committee, colleagues,

my name is Alena Chaloupková. I'm working at the Ministry of Environment and since May I'm the new national focal point for the Aarhus Convention. My colleague Štěpán Kochánek from the State Office for Nuclear Safety is here too, in order to answer further questions regarding their work and procedures in case there are any.

First, let me express our appreciation for the work of the Committee and its role that it plays in ensuring compliance to the Aarhus Convention.

We would like to stress that we take the conclusions of the Committee seriously and that we are working on ways how the address identified shortcomings.

With this in mind, we would like to react to the concerns expressed by the Committee regarding our plan of action in order to provide certain clarifications.

With regard to paragraph 2 (a) (i) of the decision VII/8e concerning the issue of noise exceptions, it seems to us that there has to be some kind of misunderstanding in this case.

When studying the case, it seemed quite clear that the only issue that was challenged by the communicant was the lack of access to justice in relation to a special procedure under the Czech law in which a public authority allows the operation of a source of noise that exceeds noise limits established by the law. These permits are usually called "noise exceptions". In the past, there have really been problems regarding the access of justice in these cases, however the situation changed significantly as the case law evolved. Therefore, with regard to this case, we were referring to the selection of case law which was send to the Committee on the 1 December and which is concerning both this case and the recommendation in paragraph 6 (b) of the decision.

On the other hand, a situation when an operator contravenes a noise limit is a completely different situation from the legal point of view and, of course, different legal remedies are applicable. If the Committee wishes so, we can prepare an information summarising what remedies are available in such a case. However, we would like to call attention to the fact that in our view the communicant was never challenging this issue – neither in the communication nor in the subsequent reactions.

With regard to paragraph 2 (b) (i) and (ii) of the decision VII/8e concerning the notification of the public concerned in a transboundary context, we would like to say that in the plan of action, we are in fact proposing a measure which in our view would significantly facilitate the notification of public concerned in a transboundary context. This measure consists of introducing a special search filter in the CENIA system which would allow for online search for information about ongoing transboundary assessments. This additional measure would be combined with the standard practice of posting relevant information on official boards. We believe that this approach is in line with the Convention, as it states in Article 6(2) that the public concerned shall be informed either by public notice or

individually as appropriate. In cases where a large number of people may be affected by the decision, we consider a public notice to be an appropriate means of notification.

Informally, I can indicate that we are currently also discussing if and how we could facilitate information dissemination through other online tools which could in future apply to the subsequent procedures, however, these negotiations are in their early stages and their concrete results cannot be predicted at this point. We need to ask for your patience in this regard.

It is not entirely clear from the concerns of the Committee that were sent to us last Friday, whether or not it considers the proposed measure to be sufficient. We would therefore like to ask the Committee to confirm this. If the Committee finds that this measure is not sufficient to fulfil its recommendation, we will ask it for advice about how to proceed in this matter.

With regard to paragraph 6 (a) of the decision VII/8e concerning decision-making procedures under the Atomic Act including the periodic safety reviews, we would first like to verify if we understand the Committee's concern correctly. The State Office for Nuclear Safety is the competent authority, which is responsible for reviewing the PSR report and determining whether the licencing basis for the nuclear power plant remains valid. Is this the activity of a public authority which should be considered as a reconsideration of operating conditions under Article 6(10) of the Convention…?

If yes, we can confirm that in principle, we can agree with this interpretation – only subject to what we stated in our comments to the Committee's draft advice provided in the case of the Netherlands, but these comments were related rather to the material scope of application of Article 6(10) than to the procedural issues which are our main concern in relation to periodic safety reviews.

As explained in the plan of action and in our response to the comments provided by the communicants, the public concerned actually has an opportunity to participate in the decision-making which follows after the State Office for Nuclear Safety reviews the PSR report:

- The State Office for Nuclear Safety reviews the report and then decides if it is necessary to initiate one of the administrative procedures which were mentioned in the plan of action. It will initiate it if a situation foreseen in the given legal provision occurs, for example if there has been a change in the performance of the originally permitted activity that is essential from the point of view of nuclear safety, radiation protection, etc.

- In these cases, the public concerned can be a party to the procedure according to Section 27(2) of the Administrative Code. **The Committee asked for a clarification about which members of the public would qualify as persons whose rights or obligations may be directly affected by the decision**. It could be anybody who might be directly affected in his or her rights by the decision. Environmental NGOs have a right to a favourable environment, which might be affected by the decision. It depends on the activities of the NGO in question and on the nature of the decision to be taken – there has to be a certain connection between these two aspects. More information can be found in the case law which was sent to the Committee on the 1 December 2022.

- If the State Office for Nuclear Safety decides not to initiate any administrative procedure but the public feels that some administrative procedure should have been initiated, there is a possibility to file a motion to commence an *ex officio* procedure. This situation is explained in our response to the comments of the communicants.

We would like to kindly ask the Committee to take into account also this additional information which was send to the Secretariat on the 1 December – both the case law and the response to the comments of the communicants.

We apologize for the inconvenience caused by sending both the final plan of action and this additional information later than requested. With that in mind, we are prepared to answer any further questions the Committee may have after it has the opportunity to study all the documents we submitted.

Thank you.