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Legal Challenges Related to Nuclear Safety

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The mission of the NEA is:

- to assist its member countries in maintaining and further developing, through international co-operation, the scientific, technological and legal bases required for a safe, environmentally sound and economical use of nuclear energy for peaceful purposes;
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Specific areas of competence of the NEA include the safety and regulation of nuclear activities, radioactive waste management, radiological protection, nuclear science, economic and technical analyses of the nuclear fuel cycle, nuclear law and liability, and public information. The NEA Data Bank provides nuclear data and computer program services for participating countries.

Cover photos: BWXT licence renewal public Commission hearing, 2020 (Canadian Nuclear Safety Commission); Vogtle Unit 3 liquid processing tanks inside the reactor building (Georgia Power Company/CC BY 2.0 DEED).

Foreword and acknowledgements

The Working Party on the Legal Aspects of Nuclear Safety of the OECD Nuclear Energy Agency (NEA) prepared this report under its Chair, Ms Lisa Thiele (Canada), and its Vice-Chair, Mr Karel Künzel (Czechia). The report was approved by the NEA Nuclear Law Committee on 9 October 2023 and prepared for publication by the NEA Secretariat.

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Finally, the graphic and editorial support provided by Laurie Moore and Elisabeth Villoutreix as well as the thorough revision and valuable comments by Carlo Piovano are gratefully acknowledged.

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List of abbreviations and acronyms

ADR	alternative dispute resolution
AEA	Atomic Energy Act (United States)
AECB	Atomic Energy and Control Board (Canada)
ANAV	Ascó Vandellós Nuclear Association (Spain)
ANSTO	Australian Nuclear Science and Technology Organisation
APA	Act on Administrative Procedure (Switzerland)
ARPANSA	Australian Radiation Protection and Nuclear Safety Agency
ASN	Autorité de sûreté nucléaire [Nuclear Safety Authority] (France)
ASLB	Atomic Safety and Licensing Board (United States)
ASLBP	Atomic Safety and Licensing Board Panel (United States)
AtG	Atomgesetz [Act on the Peaceful Utilisation of Atomic Energy and the Protection against its Hazards] (Germany)
BDAC	Barngarla Determination Aboriginal Corporation RNTBC (Australia)
BGBl.	*Bundesgesetzblatt* [Federal Law Gazette] (Austria and Germany)
BMUV	Bundesministerium für Umwelt, Naturschutz, nukleare Sicherheit und Verbraucherschutz [Federal Ministry for the Environment, Nature Conservation, Nuclear Safety and Consumer Protection] (Germany)
CEA	Commissariat à l'énergie atomique et aux énergies Alternatives [Alternative Energies and Atomic Energy Commission] (France)
CEAA	Canadian Environmental Assessment Act
CEO	chief operating officer
CFR	*Code of Federal Regulations* (United States)
CISF	consolidated interim storage facility
CJEU	Court of Justice of the European Union
CNEN	Comissão Nacional de Energia Nuclear [National Nuclear Energy Commission] (Brazil)
CNS	Convention on Nuclear Safety
CNSC	Canadian Nuclear Safety Commission
CSA	Complementary Safety Margin Assessment (the Netherlands)
DETEC	Département de l'environnement, des transports, de l'énergie et de la communication [Department of Energy, Transport, Environment and Communication] (Switzerland)
DFO	Department of Fisheries and Oceans (Canada)

DiP	Decision-in-Principle (Finland)
DO	designated officer (Canada)
DOE	Department of Energy (United States)
EA	environmental assessment
ECHR	European Court of Human Rights
EDF	Électricité de France
EIA	environmental impact assessment
EIS	environmental impact statement (United States)
ENSI	Eidgenössisches Nuklearsicherheitsinspektorat [Federal Nuclear Safety Inspectorate] (Switzerland)
FANC	Federal Agency for Nuclear Control (Belgium)
FCA	Federal Court of Appeal (Canada)
FERC	Federal Energy Regulatory Commission (United States)
FONSI	finding of no significant impact (United States)
GEIS	generic environmental impact statement (United States)
HLW	high-level waste
IAEA	International Atomic Energy Agency
ICEDA	Installation de Conditionnement et d'Entreposage de Déchets Activés – packaging and storage facility for radioactive waste (France)
ISP	Interim Storage Partners, LLC (United States)
JAPC	Japan Atomic Power Company
KKNPS	Kudankulam Nuclear Power Station (India)
km	kilometre
LES	Louisiana Energy Services, LP (United States)
LLW	low-level waste
LR	licence renewal
MOX	mixed oxides uranium/plutonium
NEA	Nuclear Energy Agency
NEPA	National Environmental Policy Act (United States)
NGO	non-governmental organisation
NHPA	National Historic Preservation Act (United States)
NLA	Nuclear Liability Act (Canada)
NLB	*Nuclear Law Bulletin*
NLC	Nuclear Law Committee (NEA)
NRA	Nuclear Regulation Authority (Japan) or Nuclear Regulatory Authority – Úrad jadrového dozoru Slovenskej republiky [ÚJD SR] (Slovak Republic)
NRC	Nuclear Regulatory Commission (United States)

NSCA	Nuclear Safety and Control Act (Canada)
OECD	Organisation for Economic Co-operation and Development
PAA	National Atomic Energy Authority (Poland)
PSA	probabilistic safety assessment
PSR	periodic safety review
RL	reference levels
RS	*Recueil systématique* [Classified Compilation] (Switzerland)
RSC	Revised Statutes of Canada
RWE	RWE Power AG (Germany)
SAMA	severe accident mitigation alternatives
SC	Statutes of Canada
SEPCO	Shikoku Electric Power Company (Japan)
SLOMFP	San Luis Obispo Mothers for Peace (United States)
SFOE	Swiss Federal Office of Energy
SLR	subsequent licence renewal
SNF	spent nuclear fuel
SONGS	San Onofre Nuclear Generating Station
Stb	*Staatsblad* [Official Gazette] (the Netherlands)
TEPCO	Tokyo Electric Power Company
TLAA	time-limited ageing analysis
TVO	Teollisuuden Voima Oyj (Finland)
UK	United Kingdom
US	United States
USC	*United States Code*
VEPCO	Virginia Electric and Power Company
WENRA	Western European Nuclear Regulators Association
WISE	World Information Service on Energy Amsterdam (Netherlands)
WPLANS	Working Party on the Legal Aspects of Nuclear Safety (NEA)

Introduction

Method

On 6 October 2020, a survey entitled "Legal Challenges related to Nuclear Safety" (reproduced in Annex 3) was sent to all Nuclear Energy Agency (NEA) member countries. The survey was originally prepared by the NEA and then was revised and supplemented with additional questions following consultation with members of the NEA Working Party on the Legal Aspects of Nuclear Safety (WPLANS). Responses were received from 24 countries, 23 of which are NEA member countries and 1 from a country which participates in certain NEA activities. Five of the respondents do not currently operate nuclear power reactors, but one of those five is in the process of constructing nuclear power reactors.

The intent of the survey was to compile relevant information about NEA member countries' frameworks for legal challenges related to nuclear safety and, without making any general recommendations, identify commonalities and differences. The main specific areas of study were:

- types of procedures for legal challenges related to nuclear safety;
- stages of the legal challenge process, both internal to an agency and in a judicial forum;
- identification of the parties to proceedings and how they become parties; and
- types of decisions/actions related to nuclear safety that can be challenged.

The survey and related responses focused on legal challenges related to nuclear safety,[1] which may include both technical and environmental issues. This includes not only specific decisions made (such as issuing licences[2] and authorisations[3]) and approvals[4] granted by regulatory authorities and the government related to nuclear safety, but it may also include possible challenges made to "[a]ll operations associated with the production of nuclear energy."[5]

1. "The achievement of proper operating conditions, prevention of accidents or mitigation of accident consequences, resulting in protection of workers, the public and the environment from undue radiation risks." Basic Safety Standards Secretariat (BSS Secretariat) (2014), *Radiation Protection and Safety of Radiation Sources: International Basic Safety Standards*, General Safety Requirements Part 3, IAEA Doc. No. GSR Part 3, p. 405 (approved by the NEA Steering Committee for Nuclear Energy, 28 Oct. 2011, as presented in "NEA Co-sponsorship of 'Radiation Protection and Safety of Radiation Sources: International Basic Safety Standards'", NEA Doc. NEA/NE(2011)12, "Summary Record of the 123rd Session of the Steering Committee for Nuclear Energy", NEA Doc. NEA/SUM(2011)2, pp 7-8).
2. "Any authorization granted by the regulatory body to the applicant to have the responsibility for the siting, design, construction, commissioning, operation or decommissioning of a nuclear installation." Convention on Nuclear Safety (1994), IAEA Doc. INFCIRC/449, 1963 UNTS 293, entered into force 24 October 1996 (CNS), Article 2(iii).
3. "The granting by a regulatory body or other governmental body of written permission for a person or organization (the operator) to conduct specified activities." BSS Secretariat (2014), *supra* note 1, p. 383.
4. "The granting of consent by a regulatory body. NOTE: Typically used to represent any form of consent from the regulatory body that does not meet the definition of authorization." BSS Secretariat (2014), *supra* note 1, p. 382.
5. According to the International Basic Safety Standards definition of "nuclear fuel cycle", "These include: (a) Mining and processing of uranium ores or thorium ores; (b) Enrichment of uranium; (c) Manufacture of nuclear fuel; (d) Operation of nuclear reactors (including research reactors); (e) Reprocessing of spent fuel; (f) All waste management activities (including decommissioning) relating to operations associated with the production of nuclear energy; (g) Any related research and development activities." BSS Secretariat (2014), *supra* note 1, pp. 404-405.

Policies, plans and programmes related to the production of nuclear energy and to nuclear safety in particular may also be the subject of legal challenges. The scope of the survey was intentionally broad so as to gather as much information as possible from the respondents.

Report structure

The report is structured into two main chapters. Chapter 1 provides the international context, with an overall review of the different approaches taken by countries to legal challenges related to nuclear safety. The information presented is intended to be a concise and factual account of the survey responses. To facilitate this, detailed quantitative information, such as the number of countries using any specific approach, was not included. Rather, qualifiers have been used to provide more general information.

Key to qualifiers

- All: 24
- Vast majority: 21-23
- Most: 18-20
- Majority: 15-18
- Slight majority: 13-14
- Half: 12
- Just under half: 10-11
- Some: 7-9
- Few: 3-6
- Less than a few: 1-2

At the same time, throughout Chapter 1, country-specific vignettes have been included to highlight informative examples of certain aspects. None of the selected examples were included in order to describe either a best practice or poor practice; they are to serve as helpful illustrations of certain aspects of the activities canvassed.

As this subject matter is complex, highly dependent upon national legal systems, and even more dependent on the facts of each specific matter, the WPLANS determined that the preferable approach was to provide a compendium of representative cases in responding countries in certain defined categories. Thus, Chapter 2 provides case summaries from 11 different countries related to the following actions or activities:

- new reactor licensing;
- long-term operation;
- reactor restart following a non-routine shutdown;
- other licensing and regulatory actions (not restricted to nuclear power reactors);
- decommissioning activities (e.g. licence transfer, decommissioning licence or regulatory release);
- storage and disposal of radioactive waste;
- legislative actions.

A total of 39 cases have been included in Chapter 2.

As a further illustration of the type and nature of cases involved in challenges to nuclear energy activities, a chart of cases dealing with challenges to nuclear safety is included as Annex 1. Further details on many of the cases can be found in the NEA *Nuclear Law Bulletin* and where possible, citations to the final judgment are provided.

Annex 2 provides a list of all relevant laws and decrees as related to this report for the responding countries.

Chapter 1:
Review of approaches to legal challenges related to nuclear safety

Each country's framework for legal challenges related to the peaceful use of nuclear energy depends on its national legal system. Because each country's national legal structure is distinct, it is important for lawyers, as well as law and policy makers, to have a comparative understanding of the different frameworks for legal challenges. There are many types of legal challenges that can be raised in the context of the peaceful uses of nuclear energy. This report, however, focuses on legal challenges related to nuclear safety.

1.1 Raising a challenge

All 24 responding countries stated that legal challenges related to nuclear safety are allowed. Nuclear safety has been the subject of a legal challenge in most responding countries and only a few countries have not had such a challenge.

In **Canada**, while nuclear safety is not very often the primary subject of a judicial challenge, nuclear safety is implicated in many types of court challenges. Other measures, including environmental assessment (EA) decisions for nuclear projects, and not only the licensing decisions that follow an EA, have also been the subject of legal challenges implicating nuclear safety. For example, in Greenpeace Canada et al. v. Attorney General of Canada and Ontario Power Generation Inc., 2016 FCA 114, an EA for the refurbishment of a nuclear power reactor was subjected to judicial review by the Federal Court and appealed to the Federal Court of Appeal.

In the **United States** (US), section 189 of the Atomic Energy Act of 1954 allows persons whose interests may be affected by the grant, suspension, revocation, transfer of control or amendment of a licence, to request a hearing before the US Nuclear Regulatory Commission (NRC) on the proposed action; the US NRC's final decision may be challenged through an appeal to the federal courts. Even though legal challenges through an adjudicatory proceeding are allowed, the US NRC also provides other mechanisms to allow members of the public to raise safety concerns and receive a response. For example, the provision in 10 Code of Federal Regulations (CFR) section 2.206 allows any "person" to "file a request to institute a proceeding … to modify, suspend, or revoke a license or for any other action as may be proper." Members of the public may also raise safety concerns directly to the US NRC. Safety concerns raised directly to the US NRC are processed through the agency's allegations process.

Of those countries that have not had a challenge related to nuclear safety, only one currently operates nuclear power reactors.

1.1.1 Procedures to raise legal challenges

The first step in initiating a legal challenge is to determine the legal procedure. In responding countries, the legal procedure for raising challenges to nuclear safety were either those of general application (e.g. general rules of administrative procedure applicable to any administrative challenge, rather than just a nuclear safety-specific challenge) or specific procedures laid out in nuclear legislation or nuclear regulation. While some countries have specific procedures to challenge nuclear safety, the majority do not.

In those countries with specific procedures, not all of the procedures are unique to nuclear power. For example, in the **United States**, US NRC licensing actions (e.g. issuance, amendment, renewal, suspension, etc.) are subject to the US NRC's rules of practice and procedure in 10 CFR Part 2, which govern the adjudicatory proceeding from its commencement until a final decision is rendered by the five-member Commission of the US NRC. After that, an aggrieved party to the proceeding may challenge the Commission's decision in the US courts of appeals and then, in rare circumstances, through a petition for *certiorari* filed before the US Supreme Court.

The four main types of procedures in responding countries are: administrative, civil, criminal and constitutional. All responding countries provide for an administrative procedure to raise a challenge related to nuclear safety. A slight majority of responding countries provide for civil and criminal challenges. A few countries provide for constitutional challenges. In addition, depending on the country, these four main types of procedures are not always completely distinct procedures and it can be the case, for example, that an administrative procedure also includes a constitutional challenge.

The type of legal procedure used to bring challenges to nuclear safety can change based on the subject matter of the challenge. For example, if one is challenging a licence application, the procedure may be administrative. If one is challenging a law, the procedure may be civil or constitutional. The type of legal procedure can impact many different aspects of the legal challenge like legal basis, standing, legal process, judgment or remedies. The procedures (administrative, civil, criminal or constitutional) change depending on the subject matter being questioned in a slight majority of the responding countries, while in some of the countries the procedures do not change. Some examples of the subject matter of challenges in responding countries are:

Administrative challenge

- decisions made by the regulatory body concerning nuclear safety;
- licensing decisions (e.g. issuance, amendment, renewal or suspension);
- royal decrees issued by the executive branch;
- safety breaches by the operator.

Civil challenge

- making or amending of laws or regulations;
- civil liability of the government;
- judicial review of awards;
- state body's decision;
- appeals from final agency decisions.

Criminal challenge

- violations of law or regulations;
- infringement of particular laws concerning nuclear safety.

Constitutional challenge

- compatibility of federal/state laws with the constitution;
- compatibility of state laws with federal laws;
- violations of fundamental rights;
- legality of laws and regulations.

For example, in **Australia**, decisions made by the regulator are subject to administrative challenge, violations of laws are subject to criminal action and challenges to the making or amending of laws are subject to civil actions. In **Türkiye**, challenges to regulatory acts and administrative acts of the regulatory authority are raised in administrative courts. Challenges related to compensation are brought against the person authorised under civil law. Criminal law matters are filed in criminal courts against authorised/unauthorised person(s). In **Belgium**, civil liability of the government for matters of nuclear energy is governed by civil procedure, while infringement of some laws concerning nuclear safety is subject to criminal procedure as well as administrative procedure. The decisions of the regulatory body concerning nuclear safety may also be subjected to administrative procedures due to it being a federal government body. Royal decrees issued by the executive branch can also be contested through administrative procedures and be brought before the State Council. In the **Netherlands**, the procedure depends on whether the subject is civil, criminal or administrative. Decisions, mainly licensing and oversight decisions, by the government (nuclear authority or otherwise), as well as laws and other general rules can be challenged indirectly by contesting a specific decision with a reticent review by the judge through the administrative procedure. Laws and other general regulations, as well as legal procedures against civil parties (e.g. the operator) are governed by civil procedure. Prosecution of persons or companies for criminal charges are governed by criminal procedure.

In **Canada**, where a legal challenge is brought related to a law or regulation, the legal basis for a challenge could be constitutional, in which case it would proceed in Federal Court in the same manner as a challenge to a decision, but the process would be constitutional. Claims may also be made against the nuclear regulator for tort liability, which could relate to nuclear safety. General civil actions or claims related to nuclear safety made against the applicant/licensee/operator could be made and heard by provincial courts. The Crown Liability and Proceedings Act is the federal statute that allows for the Crown (the executive branch of government) to be sued for any tort (including negligence) committed by one of its employees or agents who was acting within the scope of their duties under vicarious liability (section 3). Similarly, the Canadian Nuclear Safety Commission (CNSC, the nuclear regulatory body), as a corporate body with a distinct legal personality, may be sued in its own name and incur civil liability for an act or omission of its members and staff acting in the course of their duties, per subsection 18(3) of the Nuclear Safety and Control Act (NSCA).[6]

The CNSC licensing process is accomplished either by public hearing by the Commission (NSCA, subsection 40(5)), in accordance with the CNSC Rules of Procedure (SOR/2000-211), or by a designated officer (DO) under NSCA, section 37. Licensing decisions by DOs may be reviewed by the Commission on appeal under the NSCA, and an opportunity to be heard must be extended to applicants for a licence before any refusal to issue a licence. The NSCA requires the Commission to hold public hearings in certain specified situations and to give a reasonable opportunity for affected parties to be heard. Section 40 of the NSCA, for instance, sets out the circumstances in which the Commission is required to provide an opportunity to be heard in accordance with rules of procedure prescribed by it. This would be the case, for example, before the Commission refuses to issue or renew a licence, or before it confirms an order made by an inspector or a designated officer requiring a licensee to take measures to protect the environment or the health or safety of persons. This section also sets out the circumstances under which the Commission may, on its own initiative, conduct proceedings in accordance with prescribed rules of procedure and under which it must hold public hearings. The CNSC Rules of Procedure (SOR/2000-211) govern the Commission's proceedings and provide for things such as the possibility of intervention in proceedings before the Commission. Section 43 of the NSCA addresses the Commission's powers to rehear and re-determine decisions and orders and to hear appeals in specified cases.

6. This is the case notwithstanding the fact that individuals acting either on behalf of or under the direction of the Commission enjoy immunity from civil liability in respect of anything done in the good faith exercise of their powers or duties under the NSCA.

Subsection 43(1) of the NSCA provides a list of the actions of a DO that may be appealed to the Commission. Subsection 43(2) of the NSCA provides a detailed list of those persons who may apply for the rehearing and redetermination of a decision of the Commission and the decisions that may be reheard and re-determined. This is not an "appeal" since it is the Commission's own decision that is in question and being reviewed by itself. Per subsection 43(3) of the NSCA, the Commission itself may decide on its own initiative that a decision of an inspector, designated officer or the Commission itself, or any licence condition, may deserve redetermination.

In **Czechia**, the typical procedure used to carry out challenges related to nuclear safety is administrative. The general process is that anyone who claims that their rights have been prejudiced directly or due to the violation of their rights in the prior proceedings by a decision (an act of an administrative authority whereby the person's rights or obligations are created, changed, nullified or bindingly determined) may seek the cancellation of such a decision, or the declaration of its nullity according to Act No. 150/2002 Coll., Code of Administrative Justice. A complaint against the decision of an administrative authority can also be made by a party to the proceeding before the administrative authority who is not entitled to file complaint, if the party claims that his or her rights have been prejudiced in a manner that could have resulted in an illegal decision. Moreover, anyone can seek protection against the inaction of an administrative authority or protection against unlawful interference, instruction or enforcement from an administrative authority according to this Act. Unlawfulness rests in failure to follow the legally required procedure or substantive violation of any obligations enumerated in: Act No. 263/2016 Coll., Atomic Act; Act No. 183/2006 Coll., on Town and Country Planning and Building Code (Building Act); Act No. 100/2001 Coll., on Environmental Impact Assessment. These acts also provide specific rules for determination of the person authorised to challenge the respective decisions of competent authorities (e.g. State Office for Nuclear Safety, Ministry of Industry and Trade or Ministry of Environment). In the administrative court's proceedings, a plaintiff is anyone entitled under that particular law and the defendant is the competent authority of the state.

The principal act that provides the opportunity to challenge nuclear safety in all stages of the lifecycle of nuclear installations is Act No. 100/2001 Coll., on Environmental Impact Assessment. The public (i.e. one or more persons) may submit comments on the project, including the nuclear installation itself and its significant changes, in a proceeding subsequent to the environmental impact assessment (EIA). The public concerned specified in Article 3(i)(2) is entitled to bring an action against the decision issued in subsequent proceeding (as listed by this Act, e.g. construction of the installation) and challenge the substantial and/or procedural legality of such decision.

It should also be noted that the decision issued by an administrative authority (in the first instance) should also be reviewed by a higher administrative authority (appellate administrative authority) according to Act No. 500/2004 Coll., Code of Administrative Procedure. This procedure – an ordinary appeal against a decision – is part of administrative proceedings before administrative authorities. Unless stipulated otherwise by law, the appellate administrative authority shall be the immediate superior administrative authority. For decisions taken by the State Office for Nuclear Safety, which is the responsible authority for issuing authorisations according to Act No. 263/2016 Coll., Atomic Act, this appellate (administrative) decision is taken by the chairperson of this office (as it is a central administrative authority that does not have a superior administrative authority). This is the first, necessary, step before engaging in subsequent (administrative) court proceedings.

In Czechia, all of these actions eventually can lead to the constitutional complaint to the Constitutional Court where the plaintiff is entitled also to challenge the applicable regulation (law or decree or their amendment) if they question its constitutionality (claiming that a certain provision(s) is/are non-compliant with the constitutional order of Czechia).

1.1.2 Forms and types of challenges

There are countless types of actions and activities that may be challenged in the context of nuclear safety. Over 25 different actions and activities were analysed and the matters represent the potential to challenge the operational safety of a facility, different licensing actions, and the issuance or amendment of laws, regulations, plans, etc. Some of these types of challenges are to the:

- current general state of safety at a facility (regardless of whether there is a violation of a law or regulation)
- current specific safety concern (regardless of whether it is a violation of a law or regulation)
- current general state of safety at a facility based on a potential violation of a law or regulation
- current specific safety concern based on an asserted violation of a law or regulation
- design certification
- site permit/licence
- construction authorisation/permit/licence
- operation authorisation/licence[7]
- combined construction and operation licence
- licence amendment
- request to restart a facility following a shutdown
- refurbishment
- licence renewal
- long-term operation authorisation
- licence extension
- periodic safety review
- licence suspension
- licence termination
- licence transfer
- decommissioning
- enforcement action taken by the regulatory body
- issuance of a new law
- amendment of an existing law
- issuance of a new rule/regulation/decree
- amendment of an existing rule/regulation/decree
- issuance of a nuclear energy-related plan or policy
- amendment of the country's constitution

7. It should be noted that there are a number of countries that require additional authorisations/licences between the construction phase and the operation phase, which can include activities such as commissioning, first nuclear fuel loading, first physical start-up and first power generation start-up.

The vast majority of responding countries provide the opportunity to challenge a number of different licensing actions, including: site permit/licence, construction authorisation/ permit/licence, operation authorisation/licence, licence amendment, licence suspension. In addition, the vast majority of responding countries also provide an opportunity to challenge one or more of the following actions/activities related to long-term operation:[8] refurbishment, licence renewal, long-term operation authorisation, licence extension or a periodic safety review. Just under half of the countries allow for a challenge related to design certifications or to a combined construction and operation licence, but this is likely due to the more limited number of countries that have these processes or types of licences rather than countries restricting the ability to challenge design certifications and combined construction and operation licences.

There are a few additional opportunities to raise challenges in a licensing context apart from the traditional pre-operational and operational licensing actions. The vast majority of responding countries allow challenges to decisions in respect of decommissioning in general and to licence termination in particular. A majority of the responding countries allow a challenge to licence transfers, with no specification as to whether the transfer is related to decommissioning or a mid-operation change of ownership. In one specific example, the **Netherlands** allows for challenges to the authorisation of the decommissioning plan as well as the financial security and the financial security plan for the decommissioning.

Half of the responding countries allow a challenge to the restart of a facility following a shutdown, though it is not specified whether the challenge is against the approval of a restart or the denial of a restart.

Finally, enforcement actions taken by the regulatory body may be challenged in all responding countries. In **Germany**, the legality of enforcement decisions can be challenged by the addressee through preliminary injunction, and the unlawfulness of enforcement actions already taken can be determined ex post.

Fewer countries allow challenges related to the state of safety at a facility than challenges related to licensing decisions. Most countries allow a challenge to a current specific safety concern based on an asserted violation of a law or regulation, whereas only a majority allow a challenge to the current general state of safety at a facility based on a potential violation of a law or regulation. Just under half of the countries allow a challenge to a current specific safety concern (regardless of whether it is a violation of a law or regulation); however, only some countries allow a challenge to the current general state of safety at a facility (regardless of whether there is a violation of a law or regulation).

In **Germany**, according to section 19(3) of the Act on the Peaceful Utilisation of Atomic Energy and the Protection against its Hazards (Atomic Energy Act – Atomgesetz, AtG), the supervisory authority may order that a situation be discontinued that is contrary to AtG provisions or to the statutory ordinances issued under the AtG, or to the terms and conditions of the notice granting the licence or general approval or to any subsequently imposed obligation, or which may constitute a hazard to life, health or property because of the effects of ionising radiation. In other words, the authority can act to: 1) remedy a violation of the law or 2) remedy a dangerous state as a result of the effects of ionising radiation. The operator – as the addressee – may challenge the supervisory authorities' orders issued under AtG, section 19(3). Third parties may bring forward such safety concerns to oblige the supervisory authority to act based on AtG, section 19(3) claiming a potential violation of their individual rights by an alleged unsafe condition at a facility.

8. "Operation beyond an established time frame defined by the licence term, the original plant design, relevant standards or national regulations." IAEA (2018), *Ageing Management and Development of a Programme for Long Term Operation of Nuclear Power Plants*, Specific Safety Guide No. SSG-48, IAEA, Vienna, p. 9, para. 2.30.

In responding countries, various types of challenges can be raised specifically related to laws, rules, plans, polices and the constitution, such as for the:

- amendment of an existing rule/regulation/decree [most countries];
- issuance of a new law; amendment of an existing law; issuance of a new rule/regulation/decree [majority of countries];
- issuance of a nuclear energy-related plan or policy [some countries]; and
- amendment of the country's constitution [a few countries].

All of the previous discussion relates to challenges to governmental actions; however, challenges could also be raised against actions by the applicant, licensee and/or operator by non-governmental entities in most responding countries. A variety of applicant, licensee and/or operator actions can be challenged, including:

- actions causing an imminent threat to the plaintiff;
- negligent endangerment;
- environmental offences and/or environmental damage;
- non-compliance of the applicant/licensee/operator with the law, regulation, licence, etc.;
- violations of rights and legitimate interests of third parties;
- actions that threaten safety; and
- activities that cause damage.

For example, in **Canada**, such actions can be those for damages, torts or other civil wrongs, employment matters, or environmental damage. The following applicant, licensee and/or operator actions can be challenged in **Japan**: establishing facilities, operation, restarting facilities following shutdown, etc. In **Czechia**, any act of the applicant, licensee and/or operator can be challenged according to Act No. 99/1963 Coll., on Civil Procedure when the defendant's fault or neglect causes the plaintiff some injury or damage. In **Türkiye**, the activities of the authorised person cannot be challenged unless damage occurs. If damage occurs, one can request compensation by lawsuit under civil law. In the **United States**, members of the public may raise safety concerns directly to the US NRC. Safety concerns raised directly to the US NRC are processed through the agency's allegations process. Also, concerns about applicant, licensee and/or operator actions may also be raised through an internal agency process that allows any person the opportunity to file a request to institute a proceeding to modify, suspend or revoke a licence.

1.1.3 Legal basis for raising a challenge

Responding countries noted numerous legal bases for raising challenges to nuclear safety in the initial challenge, including:

- lack of a constitutional basis for the law or regulatory requirement;
- illegality of the law or regulation under which a decision was made;
- negligence;
- government's failure to act;
- misapplication of substantive law or regulation;
- legal error;
- erroneous findings of fact;

- procedural impropriety;
- procedural fairness;
- jurisdictional error of the decision maker;
- failure to observe a principle of natural justice;
- lack of legal authority to make a decision; and
- protection against unlawful interference.

Specifically, for example:

- In **Australia**, most challenges arise under administrative law principles, such as whether the decision maker considered irrelevant factors or failed to take account of relevant considerations, or there was an absence of power, all of which generally come under a heading of jurisdictional error. Where the validity of a law under which the decisions are made is challenged, it is done on Constitutional law grounds.
- In **Belgium**, the legal basis can be the lack of legal authority to make the decision, the government's failure to act, misapplication of substantive law, illegality of the regulation, negligence or erroneous findings of fact.
- In **Canada**, pursuant to the Federal Courts Act, the court may grant relief if a statutory decision maker made a jurisdictional error, failed to observe a principle of natural justice, procedural fairness or other required procedure, made an error in law or acted contrary to law, or based its decision on an erroneous finding of fact. A successful judicial review application generally results in the decision being quashed and the matter being referred back to the decision maker for reconsideration in accordance with the court's decision. This process provides a mechanism to compel a decision, as well as challenge a decision that has been made. A decision or law may also be challenged on the basis of a lack of legal authority or constitutional basis for the law or regulatory requirement.
- In **Czechia**, the legal basis can be erroneous findings of fact, lack of legal authority to make a decision, misapplication of substantive or procedural law, inaction of administrative authority or protection against unlawful interference, instruction or enforcement from an administrative authority.
- In **Finland**, the legal basis can be erroneous findings of fact, lack of legal authority to make a decision or misapplication of substantive law.
- In **France**, the legal basis can be erroneous findings of fact, lack of legal authority to make a decision, misapplication of substantive law, illegality of the regulation under which a decision was made or the government's failure to act. In addition, a concept specific to French law is that of "integrated safety", according to which all basic nuclear installations [*installations nucléaires de base*] are subject to a specific legal regime established to protect all the interests mentioned in Article L593-1 of the Environment Code (public safety, health and sanitary conditions, or the protection of nature and the environment). Consequently, the concept of "integrated safety" applies beyond the requirement of the sole prevention of accidents.
- In **Romania**, the legal basis can be the lack of a competent national authority in the nuclear field to make a decision; misapplication of the Law No. 111/1996 on the Safe Conduct, Regulation, Authorisation and Control of Nuclear Activities and of the legal norms issued on the application of that law; illegality of the regulation under which a decision was made; failure of the competent national authority to resolve such person's petition within the timeframe provided by law; unjustified refusal of the competent national authority to respond to a petition; the abusive exercise, by the competent national authority, of their authority in violation of their jurisdictional limitations as under the law or in violation of citizens' fundamental rights and liberties;

violation by the competent national authority of any public or private legitimate interest; violations by the operator of the nuclear safety legal framework; or the government's failure to act or the non-compliance of a government act with the constitution.

- In **Slovenia**, a decision may be challenged (i.e. an appeal may be lodged), if the regulation has been applied incorrectly or has not been applied at all, the factual situation has not been established correctly or completely, or there has been a violation of the rules of procedure.
- In **Spain**, the legal basis can be substantive or procedural illegality, negligence, legal error, illegality of the law or regulation under which a decision was made, misapplication of substantive law or regulation, government's failure to act, violations of law or regulations, or infringement of particular laws concerning nuclear safety.
- In **Türkiye**, an administrative act related to nuclear safety can be challenged with the claim that the act is contrary to legislation due to a mistake made in one of the elements of competence, form, reason, subject or aim. Also, in the case of criminal law and civil law, there should be a causal connection between the act of the person and the nuclear safety incident. In addition to that, in criminal law, the act must be defined as a crime.
- In **Ukraine**, the legal basis can be recognition of a regulatory legal act or its separate provisions as illegal and invalid; recognition of an individual act or its separate provisions as illegal and requiring cancellation; recognition of actions of the public body/authority as illegal where there is the obligation to refrain from committing certain actions; recognition of inaction of the public body/authority as illegal where there is the obligation to take certain actions, establishing the presence or absence of competence (authority) of the public body.
- In the **United States**, the US NRC's decisions can be challenged based on erroneous findings of fact, lack of legal authority to make a decision, misapplication of substantive law, illegality of the regulation under which a decision was made, the government's failure to act, etc. depending on the specific facts at issue. Licensing decisions, for example, are most often challenged for failure to follow the National Environmental Policy Act of 1969 or US NRC safety regulations, whereas rulemakings are most often challenged for failure to follow the Administrative Procedure Act. Challenges to compliance with the Atomic Energy Act of 1954 (e.g. whether a proposed action provides adequate protection of public health and safety) most often arise in the context of safety issues related to reactor licensing actions (e.g. initial licensing, licence amendments).

1.1.4 *Informing the public*

A majority of the responding countries stated that there was a requirement for the governmental body making a decision or taking an action to inform members of the public about their right to challenge a decision or action related to nuclear safety. For example, in **Slovenia**, regardless of what type of decision is taken within the administrative procedure, a so-called "legal remedy instruction" must be provided with the decision that explains whether an appeal or other remedy is allowed, the time frame for such action and to whom it must be addressed. In **Sweden**, the parties concerned must be informed of the decision whereas in the **United Kingdom**, there is no legal requirement but it is considered to be good practice.

In **Czechia**, there is no general legal requirement for the governmental body making a decision or taking an action to inform members of the public about their right to challenge such decision or action in the Act No. 150/2002 Coll., Code of Administrative Justice; however, specific legislation lays down the general access to information requirements (Act No. 100/2001 Coll., on Environmental Impact Assessment, Article 9b and Act No. 114/1992 Coll., on Nature and Landscape Protection, Article 70(2)). According to generally applicable access to

information legislation (Act No. 106/1999 Coll., on Free Access to Information), the relevant state organisation is required to publish certain details, such as the description of the organisational structure, the place and the way of obtaining relevant information, where to submit a request or file a complaint, submit a proposal, instigation or any other request or where to receive the decision on the persons' rights and duties, place, time for compliance with the request, and how and where to seek a remedial measure against the decision of the legally bound person on the rights and duties of persons, including the explicit list of requirements put on the applicants in this respect, as well as the description of procedures and rules, which are necessary to comply with during these activities, and a description of the relevant form and how and where such a form can be obtained.

In **Germany**, the nature of the disclosure depends on the decision or action taken by the government body. For those decisions within the scope of the Nuclear Licensing Procedure Ordinance (Atomrechtliche Verfahrensverordnung, AtVfV), the authority's obligation to inform the public is two-fold: at the outset of the licensing process, when the application is complete, the licensing authority must announce the project in both its official gazette and in local daily newspapers distributed in the area of the site of the installation. The announcement must include, *inter alia*, information on where and by what date the project documentation can be viewed, objections raised and the public hearing attended. At the end of the licensing process, the decision must be made in writing, state the reasons in writing, be accompanied by instructions on the right of appeal and be served to the applicant and the persons who have raised objections. In addition, the decision must be publicly announced. If the decision is to be served on more than 300 persons, the notifications shall be replaced by a public announcement.

1.2 Parties

The right or ability to introduce a legal challenge in court is generally referred to as *locus standi* (or "standing" in common law countries). As explained in the previous section, there are numerous types of challenges that may be introduced in relation to nuclear safety. Depending on the type of challenge raised, the *locus standi* may differ. This section addresses the many different types of questions related to the parties to a challenge, including who may raise a challenge related to nuclear safety and against whom is the challenge being raised; how does a prospective party establish *locus standi* or standing; and is there any type of government funding for legal aid or judicial assistance for challenges related to nuclear safety.

1.2.1 *Who can legally raise a challenge to nuclear safety?*

Single individuals and group or individuals not part of a formal group of organisation

Single individuals are generally entitled to raise a challenge related to nuclear safety in accordance with their legal framework in a vast majority of responding countries. For example, in **Finland**, the following persons may request judicial review of an administrative decision by way of appeal: one whom a decision concerns; one whose right, obligation or interest is directly affected by the decision; and/or one whose right of appeal is separately provided by law. In the **United States**, challenges may be raised by any person or group whose interests may be affected by a US NRC decision.

The case differs, however, regarding the ability for a group of individuals who are not part of a formal group or organisation to introduce a legal challenge in relation to nuclear safety, which appears to be provided for in the legal frameworks of a slight majority of responding countries. Further, in some countries, there appears to be a form of "commonality requirement" for such groups to introduce a legal challenge, which means that, for example, all individual members of the group must share either a common cause of action, direct harm from the challenged decision or legal arguments in support of the redress sought. For example, in **Australia**, all persons must have directly suffered a loss as a result of the action. In **Japan**, to raise a legal challenge, a group of individuals must have certain characteristics, such as continuity of the group regardless of membership changes and a principle of majority vote,

among others. In **Türkiye**, for more than one person to bring an action with a joint petition, the plaintiffs must have a joint right or benefit and the events that gave rise to the action or the legal reasons must be same.

In certain countries, legal challenges related to nuclear safety brought by a group of individuals would be subject to general rules applicable to so-called "class actions". In **Canada**, for example, class actions are possible and have a specific procedure under the rules of the various courts.

Non-governmental organisations (NGOs)

NGOs focused either on environmental matters or nuclear safety matters are entitled to raise a challenge to nuclear safety in a vast majority of responding countries. These categories are differentiated because in several countries, NGOs focused on environmental matters is a category defined and somewhat protected by law, while nuclear safety as a specific category may not be so defined and protected. Additionally, there may be some variance in responding countries' interpretation of the question and what was meant by NGO. For example, **Austria** drew a distinction between NGOs focused on environmental matters and recognised environmental organisations, specifying that only the latter can legally raise a challenge to nuclear safety. According to the Environmental Impact Assessment Act 2000 (Bundesgesetz über die Prüfung der Umweltverträglichkeit (Umweltverträglichkeitsprüfungsgesetz 2000 – UVP-G 2000)), to be considered a recognised environmental organisation that can raise a challenge, such an organisation must first meet the requirements specified in section 19(6): their primary objective must be the protection of the environment according to the association's statutes or the foundation's charter, they must be a non-profit and have pursed protection of the environment as their primary objective for a minimum of three years before applying for recognised status and have a minimum of 100 members.

Some responding countries provide for the possibility for any NGO (i.e. including those neither focused on nuclear safety nor environmental protection) to introduce a legal challenge related to nuclear safety.

The legal framework in a majority of countries regulates the *locus standi* of NGOs through special requirements. These requirements are not identical among responding countries. Examples of some requirements are:

- by-laws or statutory purposes of the concerned NGO must include environmental protection or a topic otherwise related to nuclear safety;
- the concerned NGO must be either registered with, or accredited/recognised officially, by public authorities;
- the concerned NGO must have a minimum number of members;
- the concerned NGO must have already been active in the concerned field for a certain period of time (e.g. three years in **Germany** and ten years in **Switzerland**).

In many countries, fulfilling the relevant applicable criteria means that the concerned NGO otherwise does not have to fulfil other criteria applicable to other types of parties in terms of standing. For example, in **Austria**, there must be a decision based upon a request by an administrative order whether an environmental organisation meets certain criteria or is entitled to exercise the rights to participate or appeal. In **Belgium**, if an NGO is qualified as a legal entity, they are bound by the specialty principle and thus are only able to raise a legal challenge as long as it is related to the function of the legal entity as determined by their statutes (by-laws). In **Czechia**, NGOs that are able to raise a challenge under Act No. 100/2001 Coll. on Environmental Impact Assessment must be legal persons of private law whose activity (according to its founding act) is the protection of the environment or public health, whose principal activity is not business or other profit-making activity, and which either was established at least three years before the challenge or is supported by at least 200 persons (via their signatures). In **France**, NGOs officially recognised by the state (an authorisation referred to as an "*agrément*") in accordance with the Environmental Code have automatic standing,

while other NGOs may still introduce a legal challenge if they demonstrate that the subject of their challenge falls within the mandate of their statute. In **Slovenia**, the Environmental Protection Act provides that NGOs acting in the public interest on the basis of laws governing nature conservation, protection, use of natural resources or protection of cultural heritage may acquire the status of an NGO under the Environmental Protection Act and have the right to participate in decision-making procedures under the Act. In **Ukraine**, the NGO must be officially recognised by the state and the subject of their challenge should be within the governing or organisational document(s).

In **Canada**, there is a recognised basis for standing that is called "public interest standing", which can be granted to individuals or groups not directly affected by the matter where the case raised a "… serious justiciable issue…", the party bringing the matter forward "… has a real stake or genuine interest in its outcome and whether, having regard to a number of factors, the proposed suit is a reasonable and effective means of getting the case to court."[9] This allows cases of public interest to be brought forward even though the claimant is not directly involved in the matter and even though their own rights are not at stake. NGOs have been granted public interest standing to challenge nuclear safety decisions in Canada.

In addition, an NGO may have "representational standing", which means that it could raise a challenge on behalf of one or more of its members, subject to the demonstration that such members would satisfy standing requirements, in a limited number of countries. For example, in the **United States**, an NGO may demonstrate representational standing when it seeks to raise a challenge on behalf of one or more of its members. To intervene in a proceeding based on representational standing, the organisation must show that: 1) at least one member of the organisation's members would qualify for standing in their own right, 2) the member authorises the organisation to bring the suit on their behalf, 3) the interests that the organisation seeks to protect are germane to the organisation's purpose and 4) neither the claim asserted, nor the relief requested, require the individual's participation in the organisation's legal action.

In the **United States**, NGOs may also obtain organisational standing in the same way as an individual. When addressing the injury requirement, an NGO must demonstrate that its organisational interest could be affected by a proceeding and this may be based on its proximity to the site, organisational standing or representational standing (as just discussed). Proximity arises when an organisation is located close enough to a nuclear facility that there is a potential for it to be affected by offsite consequences due to facility operations. In proceedings related to construction permits, operating licences, licence renewal and licence amendments where there is an increased potential for offsite consequences, if the organisation operates within the potentially affected radius from the facility, then a presumption arises that it could be affected, and it would therefore be able to raise challenges regarding the facility. Organisational standing arises when an organisation demonstrates that its interest could be adversely affected by a proceeding. An organisation seeking to intervene in a proceeding must satisfy the same standing requirements as an individual seeking to intervene. In addressing the injury requirement, the organisation must show that the licensing action would constitute "a threat to its organizational interests".[10]

Governmental entities and foreign governmental entities

Domestic governmental entities, such as cities, states, counties or self-governing regional or local entities are entitled to raise a challenge related to nuclear safety in a majority of countries. For example, in **Austria**, the competent authority, *ex officio*, i.e. the authority that issued the

9. Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society, 2012 SCC 45; Canadian Council of Churches v. Canada (Minister of Employment and Immigration), [1992] 1 SCR 236.

10. Crow Butte Resources, Inc. (Marsland Expansion Area), CLI-14-2, 79 NRC 11, 18 (14 Feb. 2014).

decision in the last instance or the relevant higher authority in the public interest, can amend notices to the extent that this is necessary to remedy abuses that endanger the life or health of people. In all such cases, the authority must proceed with the greatest possible protection of acquired rights (*Allgemeines Verwaltungsverfahrensgesetz* 1991 [AVG – General Administrative Procedure Act 1991], section 68). In **Finland**, an authority may request a judicial review by appeal if this is necessary because of a public interest overseen by the authority. In **Germany**, local authorities on whose territory a site proposed for underground exploration for a deep geological repository is located are provided rights to legally challenge such decisions.

In some countries, governmental entities would have to demonstrate standing before courts in the same way as other parties. A foreign governmental entity may also introduce a legal challenge related to nuclear safety in half of the responding countries.

Operator, applicant or licensee, vendor, supplier or other private companies

The applicant and/or licensee may introduce a legal challenge in all responding countries. The operator may introduce a legal challenge related to nuclear safety in a vast majority of countries. The situation is different for vendors, suppliers or other private companies that are not licence applicants, where these entities can introduce a challenge to nuclear safety in only a majority of responding countries.

Indigenous peoples, Native American Tribes, First Nations, national minorities and ethnic groups

In certain instances, there can be special categories of individuals or groups that may have special *locus standi* afforded to them in certain legal proceedings, as compared to the general population. Special *locus standi* is provided to either Indigenous peoples, Native American Tribes or First Nations or to national minorities or ethnic groups in only a few responding countries. This may not necessarily mean that the other countries affirmatively do not provide such special standing, but rather that the national context is different and that either such peoples and groups are not represented in their country or that the national context does not necessarily indicate that such individuals or group face increased difficulties in effectively accessing justice, thus justifying special standing requirements.

In **Canada**, there are constitutional protections and rights held by Canada's Indigenous peoples (First Nations, Inuit and Métis), and concomitant fiduciary obligations on the executive branch of government (the Crown). Indigenous groups therefore can have specific rights in relation to nuclear safety decision making and can use a legal challenge to assert those rights where it is viewed they have not been respected. In the **United States**, there are certain exceptions for Federally-recognised Tribes to general standing requirements that apply to potential parties in NRC licensing hearings. Federally-recognised Tribes are not required to demonstrate standing to be admitted as a party in proceedings involving production or utilisation facilities located within the boundaries of the Tribe. For proceedings involving high-level waste geologic repositories, Federally-recognised Tribes are not required to demonstrate standing if the repository would be within the borders of a Tribe's reservation or if the repository would affect certain land ownership or usage rights for the Tribe outside of its reservation. Additionally, a presiding officer in a US NRC proceeding may exercise discretion to permit a Federally-recognised Tribe an opportunity to participate in a hearing as a non-party representative.

1.2.2 How does a prospective party establish standing to raise a legal challenge?

One of the most common grounds to establish standing is a direct and actual harm resulting from that which is being challenged, which is the case in a majority of responding countries. Standing can be established by demonstrating a direct imminent harm (i.e. not actual) due to that which is being challenged in a majority of countries. In both instances, the asserted injury cannot be hypothetical or conjectural.

Only a few countries allow a prospective party to demonstrate standing by asserting the rights of others. This means that for most countries, standing must be demonstrated by a direct interest, i.e. individuals may not challenge on behalf of the interest of others.

Another common ground identified is that of the legal interest, which partly corresponds to the situation described earlier for NGOs (as such, this could also apply to governmental entities). In this situation, for a majority of countries, claimants would be required to demonstrate that they are challenging something that falls within their protected interest.

Standing can also be established by demonstrating that the actual or imminent harm can be traced to the defendant in a slight majority of countries. In just under half of the countries, the injury suffered or to be suffered by plaintiffs must be able to be redressed by a favourable decision.

Geography is a component that may be used to establish standing in just under half of the countries; however, a plaintiff can automatically establish standing based on geography/location in only a few countries. For example, in the **Netherlands**, according to precedent (as opposed to law) from the Raad van State [Council of State], the highest general administrative court in the Netherlands, those residing a maximum of 20 kilometres (km) from a nuclear power plant would automatically meet the criteria for legal standing; however, this distance may be smaller for other nuclear installations and must be determined by the courts. In **Switzerland**, according to case law in the field of nuclear energy, geographical proximity is sufficient to demonstrate an interest. Persons living in Zone 1 (i.e. within a 3-5 km radius around the nuclear power plant) have a right to request and obtain a decision. Regarding persons living in Zone 2 (i.e. within a 20 km radius around the nuclear power plant), the Swiss Federal Supreme Court left the question open. In the **United States**, regarding construction permit, operating licence, licence renewal and licence amendment proceedings where there is an increased potential for offsite consequences, there is a presumption that those who reside or conduct substantial activities within 50 miles (approximately 80 km) of the facility have standing to intervene or request a hearing, based on being within a pre-recognised geographic zone of potential harm.

In most instances, however, geographical proximity would be assessed by courts on a case-by-case basis, i.e. there is no set distance to, for example, an installation that would justify automatically establishing standing. For instance, in **France**, there is no fixed geographic criteria, and this would be decided on a case-by-case basis. As an example, an NGO recognised for the protection of the environment would not have to demonstrate geographic proximity, while a private individual would be required to demonstrate geographic proximity to the situation challenged. In **Germany**, there is no automatic legal standing in the case of geographic proximity; however, this will play a role in the judgment of the courts when they determine whether or not the plaintiffs' rights might be violated. In **Japan**, standing will be judged during the trial on factors such as distance from the nuclear power plant, administrative area division, etc. In **Korea**, if a statute on which the administrative disposition is based stipulates a sphere of influence that is expected to infringe upon the environment due to the project implemented, residents within that sphere of influence may be expected to suffer direct and serious environmental damage. Because it is presumed *de facto* that there is an infringement or are concerns of infringement on environmental interests, residents within such sphere of influence have a standing (Supreme Court Full Bench Decision 2006Du14001 delivered on 22 December 2006, et al.).

1.2.3 Government funding for legal aid or judicial assistance for challenges related to nuclear safety

Government funding can be made available to plaintiffs subject to an application to public authorities in some countries and such funding could be made available to prospective plaintiffs on application in a few countries. Government funding is not provided to either prospective plaintiffs or plaintiffs in a slight majority of countries.

The criteria based on which such funding can be made available is similar among countries and primarily includes an economic component (i.e. plaintiffs are unable to cover the expenses related to the challenge) and, in several countries, a requirement that the challenge presents a reasonable likelihood of success (i.e. filtering manifestly unsubstantiated claims). For example, in **Poland**, the right to assistance in the administrative court proceeding may be granted in full or in part. The plaintiff must demonstrate that it does not have sufficient resources to bear the costs of the proceedings. The public administration body can waive the fees, costs and amounts due, entirely or partially if the party is clearly unable to pay the fees for the administrative proceeding. Any waiver of treasury duty shall be made in accordance with the regulations relating to that duty.

1.2.4 Subject, defendant of, respondent to and intervener in the nuclear safety challenge

The question regarding the subject, defendant of or respondent to the nuclear safety challenge is, similar to previous elements, closely related to the type of challenge introduced before the court. For example, in countries such as **Belgium**, the **Netherlands**, **Poland**, and **Türkiye** the defendant depends on the claim and the type of procedure.

The nuclear safety authority or nuclear regulatory body may be the subject of a legal challenge, primarily in relation to a decision made either wholly or partly by such authorities, in all responding countries. Other governmental bodies could be the subject of such challenge in a slight majority of countries. This corresponds to legal frameworks where such authorities are competent for part of the licensing of nuclear activities, but not necessarily all (e.g. ministries in charge of issuing operation licences, authorities in charge of land-use planning and construction, and environmental agencies). In **Belgium** and in the **Netherlands**, under administrative law, the defendant is the competent authority. In the **Netherlands**, the state can also be defendant in civil cases. In administrative cases before courts in **Poland**, administrative actions are brought against the nuclear safety authority, but the operator has the right to participate in the proceeding. In **Türkiye**, legal challenges related to enforcement actions and other administrative actions are brought against the regulatory authority.

Applicants/licensees or operators may be the defendants in a nuclear safety-related challenge in a majority of countries. It is not clear, however, if this applies to all types of challenge or only challenges of a non-administrative nature (i.e. civil challenges due to damage caused or criminal challenges). In some countries an operator has an automatic right to intervene in proceedings where only the nuclear safety authority or another governmental body can be sued (such as, for example, a challenge to a licensing decision), which is the case in **Poland**. For example, in **Belgium,** under criminal law, the defendant will likely be the operator/applicant/licensee. In the **Netherlands**, under criminal and civil law, the defendant will often be the operator/applicant/licensee. In **Türkiye**, the authorised person/operator is the defendant in civil or criminal cases.

1.3 Preliminary legal process

This section is focused on the actions and activities that occur in the earlier stages of the legal challenge process, up to the stage of the actual hearing, whether that hearing is administrative, civil, criminal or constitutional.

1.3.1 Statute of limitations

One of the first procedural hurdles that must be crossed in raising a legal challenge is ensuring that such challenge is raised within the correct period of time. This can be variously referred to as a statute of limitations, a prescription period or simply a legal time limit. Regardless of the validity of the challenge, if a claim is not raised within the legally-mandated period, the challenge will not be considered.

There is a statute of limitations or prescription period or legal time limit set for raising a challenge to nuclear safety in a vast majority of responding countries. In the countries with such a limit, the statute of limitations/prescription period/legal time limit does not differ depending on the subject matter of the challenge in a slight majority of the responding countries. The average prescription period for raising a challenge is 30-60 days.

There is a "discovery of harm" element in the determination of "when the clock starts" for the statute of limitations in some countries. For example, in **Australia**, a potential plaintiff has six years from first becoming aware of the damage caused to raise a challenge. In **Czechia**, in an administrative procedure the complaint must be filed with the administrative authority that issued the decision within two months of the complainant being notified of the decision by delivery of a written copy or by another manner prescribed by law, unless a relevant special law prescribes a specific time limit. **Korea** provides a prescription period of 90 days from the date a disposition is known, but an ultimate limit of 1 year from the date the disposition is made.

The time periods differ greatly depending on the subject matter of the challenge. This period can range from as short as 15 days in **Slovenia** or 20 days in the **United States** for licence transfers to as long as 3 years in some countries (e.g. in **Russia**, and in the **Slovak Republic** in event of an extraordinary legal remedy procedure) or even 10 years in **Türkiye** for civil challenges. In **France**, the time period for the challenge to the licensing of a basic nuclear installation (which includes nuclear reactors and facilities for the enrichment, production, processing or storage of nuclear fuels or treatment, storage or disposal of radioactive waste) is two months for the licensee but two years for any other potential plaintiff. In **Spain**, prescription periods in criminal law are based on the severity of the penalties while prescription periods in civil law are based on the severity of non-compliance, with longer prescription periods corresponding to more severe penalties or violations of law. In **Sweden**, there is no time limit on the regulatory body's right to investigate or act on a possible violation of law or regulation; there is also no time limit on the regulatory body's decision not to act on an acclaimed violation. Also, there is no time limit on the regulatory body's right to set new conditions relating to nuclear safety to a permit. Such a decision can be challenged within three weeks. If a decision according to the Act on Nuclear Activities is challenged, it is submitted to the government. The government decision cannot be challenged in its entirety; however, a three-month time limit applies to requests for judicial review of the legality of the government's decision (which is submitted to the Supreme Administrative Court).

1.3.2 Preliminary procedure

Stay of effectiveness

There are instances where a legal challenge may stay the effectiveness of the decision or action being challenged. Another way to understand this is whether the legal challenge suspends the execution or enforcement of the decision or action being challenged. For example, if a member of the public raised an administrative challenge to the issuance of an operating licence by the nuclear safety authority or nuclear regulatory body, would such challenge prevent the operator from starting the installation pending the conclusion of the challenge?

A legal challenge always stays the effectiveness of the decision or action being challenged in a few countries, while it never does in a few other countries. The answer is determined on a case-by-case basis in about half of the countries. For example, in **Czechia** and **Poland**, a legal challenge in an administrative proceeding generally stays the effectiveness, while a legal challenge in an administrative court proceeding in the same country generally does not. There are, however, exceptions to each of these rules. In **Portugal**, as a general rule, legal challenges to administrative acts generally do not stay the effectiveness, but there are exceptions. In **Canada**, decisions remain effective unless notwithstanding a challenge an application for an interim order to "stay" the decision is filed.

For those countries that stated that a legal challenge always or sometimes stays the effectiveness, there are avenues for making the decision or action effective pending the resolution of the challenge. For example, in **Belgium** and the **Netherlands**, a stay can be expressly requested in a separate procedure, whereas in the **United States**, in the case of a licence amendment proceeding, the amendment may be issued before the completion of adjudicatory hearings if the regulatory body determines that "no significant hazard consideration" is involved. In **Austria**, a legal challenge automatically stays the effectiveness of a decision or an action; however, the authority may exclude the suspensive effect by an administrative decision if, after having considered the affected public interests and the interests of other parties, the early enforcement of the contested administrative decision or the exercise of the authorisation granted by the contested administrative decision is urgently required because of imminent danger.

On the other hand, for those countries that stated that a legal challenge does not automatically stay the effectiveness (either always or on a case-by-case basis), there are also ways to request such a stay. For example, in **Japan**, a party must file a petition to stay the effectiveness of the decision/action in addition to the legal challenges itself and the court judges the necessity of staying the effectiveness.

Pre-trial or alternative dispute resolution mechanisms

Pre-trial or alternative dispute resolution (ADR) mechanisms are available in a majority of responding countries. These pre-trial or ADR mechanisms are largely voluntary, with only a few countries stating that they are mandatory. As an example, in **Canada**, while the mechanisms are voluntary, the Federal Court may order that a pre-hearing conference be held. In some countries, if pre-trial or ADR mechanisms are employed, such mechanisms only suspend the statute of limitations or prescription period for raising a challenge.

Of the countries that stated pre-trial or ADR mechanisms are available, a few countries in almost equal numbers noted the possibility for arbitration, for mediation and for negotiation. For example, in **Czechia**, arbitration and mediation are only possible for civil law disputes, not administrative proceedings or consecutive administrative challenges (an appellate procedure before the appellate administrative authority). Therefore, civil law disputes related to nuclear power plants may be resolved through an ADR mechanism in this country, but not if it is an administrative procedure.

There were additional alternatives, including plea bargains, admissions of guilt, settlement, appeals to the decision maker and appeals to a higher authority in some countries. In the **United States**, settlements of adjudicatory proceedings are encouraged. The presiding officer or Atomic Safety and Licensing Board may appoint a settlement judge or establish other dispute resolution procedures, if requested.

Discovery

In general, discovery can be understood as the gathering of information prior to an administrative proceeding or trial. This information can be collected in a number of different ways, such as interrogatories, depositions, requests for admissions and written requests for documents. Most countries provide for formal written requests for documents that contain relevant information within the other party's possession, custody or control. This was possible on a case-by-case basis in a few countries while this was not allowed in another few countries.

Of the countries where there was an opportunity for document production (including those on a case-by-case basis), this was an automatic production in half the countries. This means that the document production is required according to law or rule or regulation or decree and there is no requirement for a specific written request. For example, during the challenge process in **Sweden**, the parties as a rule receive the documents that the other parties submit to the review body. In the **United States**, the rules of practice require the parties to make mandatory disclosures, including: 1) the identity of any persons, including experts, upon whose opinion the party bases its claims and may rely upon as a witness, along with a copy of that person's

analysis or documents relied upon; 2) all documents and data compilations that are relevant to the contentions in the proceeding; 3) all tangible things that are relevant to the contentions; and 4) a list of documents that are being withheld under a claim of privilege. Generally, in the **United States**, comparable disclosure requirements apply to the regulatory body as well. In an informal proceeding, formal discovery mechanisms (e.g. interrogatories, requests for admission, document requests and depositions) are only allowed in exceptional cases, as defined in the rules of practice. In addition, the regulatory body is required to compile a hearing file containing the application, any amendments to the application, any correspondence between the regulatory body and the applicant/licensee, and the regulatory body's safety evaluation and environmental impact statement or environmental assessment. Formal proceedings are held for a few types of actions: these include proceedings on high-level waste repository permits, uranium enrichment facility licensing proceedings, and enforcement proceedings (unless the Commission of the NRC orders or all parties agree otherwise). Formal proceedings use both mandatory disclosures and formal discovery mechanisms (e.g. interrogatories, requests for admission, document requests and depositions); a hearing file is not required. Formal procedures (i.e. cross-examination) may also be used in otherwise informal reactor licensing proceedings where the presiding officer or Atomic Safety and Licensing Board finds an issue of eyewitness credibility, motive or intent.

Oral depositions (defined as "the taking and recording of testimony of a witness under oath before a court reporter in a place away from the courtroom before trial"[11]) of parties and potential witnesses are allowed in some countries, with less than a few countries specifying that they are allowed on a case-by-case basis. For example, in **Canada**, oral depositions are allowed in civil actions, but not for judicial review applications. In **Switzerland**, if it is not possible to establish the facts of the case sufficiently in any other way, certain enumerated competent authorities may order the examination of witnesses (Swiss Act on Administrative Procedure Act [APA], Articles 12(c) and 14 *et seq.*), though witness evidence is considered to be only subsidiary evidence. In the case of a hearing of witnesses, the parties have the right to attend the examination of witnesses and to ask supplementary questions (Swiss APA, Article 18(1)). The Swiss Federal Nuclear Safety Inspectorate (ENSI) or the Swiss Federal Office of Energy (SFOE) have to obtain an order from the Swiss Department of Energy, Transport, Environment and Communication (DETEC).

The situation is quite similar for written interrogatories (questions and answers written under oath or similar obligation to tell the truth). In this instance, written interrogatories are allowed in some countries, not allowed in half the countries and determined on a case-by-case basis in a few countries.

Summary judgment

Summary judgment is a judgment by a court either before trial or at an early stage of the proceedings that either disposes of the entire case or certain issue(s) of the case without a full trial. Motions for summary judgment are available in some countries, not available in half of the countries and available on a case-by-case basis in less than a few countries. For those that do provide for motions for summary judgment, these motions were dependent on similar circumstances in most countries, such as the case not showing any particular factual or legal difficulties and where the facts have been clarified, the simplicity or uncomplicated nature of the dispute, or a showing that there is no genuine issue of material fact and that the proponent of the motion is entitled to judgment as a matter of law.

11. Law.com (n.d.), "Deposition", https://dictionary.law.com/Default.aspx?selected=495.

1.4 Legal process

1.4.1 *Conduct of proceedings*

There can be great differences between responding countries in their conduct of proceedings to challenge nuclear safety based on the multiple types of challenges, each being subject to different procedural rules.

Method to adjudicate a challenge

Courts and other relevant bodies in responding countries have different methods to adjudicate challenges related to nuclear safety, be it by means of written pleadings, oral hearings or a combination of the two. The process to adjudicate a challenge to nuclear safety involves a combination of written pleadings, motions, statements and an oral hearing in a vast majority of responding countries. This is the case in **Czechia**, though in specific instances no oral hearing is conducted as the court may decide on the matter without a hearing if both parties agree. However, such process would be exclusively in writing in **Switzerland**, with one exception mentioned below, and the process would solely rely on oral hearings in **Portugal**.

In responding countries, the calling and examining of witnesses is more commonly found in civil and criminal proceedings, while administrative proceedings are more likely to rely on written pleadings.

Witnesses

Witnesses can be called to testify and be cross-examined in the oral hearing in a majority of countries. Witnesses could be called on a case-by-case basis in a few countries, which often depends on the type of challenge or proceeding. For example, in **Belgium**, witnesses will not be called in most cases as most nuclear safety challenges are subjected to an administrative procedure. Nevertheless, the law regulating nuclear safety prescribes that infringement may be subject to criminal procedure where it is the competence of the judge to determine whether or not witnesses must be called based on the principle of fair-trial or if written testimonies are sufficient. In **Canada**, it is not possible for witnesses to be called for judicial review but witness testimony may be allowed in other types of challenges. In **Spain**, the majority of challenges to nuclear safety relate to the Administrative Procedure and Contentious Administrative Jurisdiction. Calling and examining witnesses is more commonly found in criminal proceedings, while administrative proceedings rely on written pleadings. In **Türkiye**, witnesses can be called if the case is civil and/or criminal law related. In administrative law, adjudication is mainly made through written pleadings, motions and/or statements. However, if the claimant, defendant or court requests a hearing, the legal challenge is adjudicated with both. In the **United Kingdom**, it is very rare, but witnesses may be called in judicial review proceedings.

The situation is slightly different in **Switzerland**, where the case-by-case determination relates to the ability to establish facts in writing as opposed to witness examination. Although the procedure is usually to conduct the process in writing, if it is not possible to establish the facts of the case sufficiently in any other way, the examination of witnesses may be ordered (Swiss APA, Article 14). The parties then have the right to attend the examination of witnesses and to ask supplementary questions (Swiss APA, Article 18(1)).

Openness of proceedings to the public

The state of affairs for how open proceedings are to the public is quite varied between and among responding countries. While proceedings are in general intended to be public, the public may be excluded from at least parts of such proceedings based on the confidentiality of the concerned information (e.g. due to the protection of trade secrets or due to public safety/security requirements linked with the sensitivity of nuclear information) in several countries.

In **Belgium**, there is a principle of openness, but given the sensitive nature of nuclear information this can be restricted by a decision of the court. In **Germany**, proceedings before the administrative courts may be made public on request. In the **Netherlands**, in general, hearings are held in public. However, the case materials are only available for review by the parties. In **Russia**, as a general rule, the process is open and judicial acts are published. But, the case materials are available for review only by the parties. In **Slovenia**, in administrative proceedings within which an appeal is conducted, the General Administrative Procedure Act stipulates that under certain conditions an oral hearing is public if, for example, due to incompletely established facts it is necessary to supplement it. This means that interested members of the public may attend the oral hearing but does not mean that the administrative body proactively ensures release of all materials in real time. In **Türkiye**, if a confidential order is not taken, the hearings are open to the public. In the **United States**, most US NRC adjudicatory proceedings are open to the public, although portions or all of a proceeding can be closed to protect against the disclosure of privileged, proprietary, sensitive or classified information. In **Poland**, court proceedings are open to the public. Having received an application for a construction licence of a nuclear facility, the President of PAA (National Atomic Energy Agency) shall immediately publish the application with an abbreviated safety report in the Public Information Bulletin, in the section dedicated, along with: 1) information on the initiation of proceedings in response to the application for a licence to build a nuclear facility; 2) information on the right to make submissions or observations; 3) information on how and where to make submissions or observations within a 21-day deadline; 4) information on how and where the administrative proceedings take place.

1.4.2 Courts from first to last instance

First instance

In several countries, administrative challenges must generally first be raised before the concerned decision-making body as a first instance challenge. However, in some other countries, raising a challenge before such authority is only optional and claimants may decide to directly introduce their challenge before a court (typically an administrative court). Some countries provided details illustrating the integration of adjudicatory functions within nuclear regulatory bodies (e.g. the Atomic Safety and Licensing Board Panel within the US NRC). Some countries reported that all challenges – understood as including administrative challenges – would be raised directly before a court.

In **Austria**, the appeals must be submitted to the authority concerned, which is the authority that issued the contested decision. After having carried out any further necessary additional investigation, the authority may reject the appeal as impermissible or filed too late, cancel the administrative decision or modify it in any way (preliminary decision on the complaint). In **Czechia**, the challenge must first be raised with the administrative body that issued the decision being challenged. In **Sweden**, an appeal is always submitted to the body that made the first decision. This body decides whether to reconsider the decision itself or not (if it is obvious that the decision is wrong and a change would not have a negative effect on an individual party, the decision can be changed by the body itself). If not, the appeal is forwarded to the next instance. In **Switzerland**, challenges are first raised before the relevant competent body. In safety-related cases this is the regulatory authority, ENSI. Otherwise it is DETEC or the SFOE, respectively. In the **United States**, for challenges to US NRC licensing and enforcement actions, hearing requests/petitions to intervene are filed before the Commission, which typically refers the matter to the Chief Judge of the Atomic Safety and Licensing Board Panel. The Chief Judge then appoints a presiding officer or Atomic Safety and Licensing Board to consider the request/petition and to preside over any proceeding that may be held. For some types of actions (e.g. challenges to licence transfer applications or import/export licence applications), the Commission itself typically considers the request/petition and may conduct any hearing that is held.

Second instance

All countries indicated that the initial decision made by either the competent court or body on the challenge related to nuclear safety may be appealed to a higher court or body. Depending on the corresponding country and the type of challenges, appeals may be lodged on the basis of a misapplication of the substantive law, procedural law or on erroneous findings of facts. In some countries, appeals are limited to errors of law, i.e. the appellate court will rely on the facts established in the first instance.

For example, in **Australia**, appeals are usually based on an error of law or deficiencies in the conduct of the initial trial. In **Canada**, on an appeal of a judicial review decision by the Federal Court of Canada (lower court), the Federal Court of Appeal (FCA) is required to determine whether the lower court identified the appropriate standard of review and, if so, whether it was applied correctly. If the lower court applied the wrong standard, the FCA applies the correct standard. If the lower court applied the correct standard, the FCA ensures it was applied properly and, where necessary, remedies errors that were made. In **Czechia**, anyone who claims that their rights have been prejudiced directly or due to the violation of their rights in the preceding proceedings (administrative decision) may seek a review by the administrative court. A complaint against a decision of an administrative authority can also be made by a party to the proceeding before the administrative authority, which is not entitled to file a complaint, if the party claims that his or her rights have been prejudiced in a manner that could have resulted in an illegal decision. Moreover, anyone can seek protection against an administrative authority's inaction or unlawful interference, instruction or enforcement according to Act No. 150/2002 Coll., Code of Administrative Justice. Unlawfulness rests in failure to follow the legally required procedure or substantive violation of any obligations enumerated. Appeals must be raised to the regional court in whose jurisdiction lies the seat of the administrative authority that issued the first instance decision on the matter or otherwise infringed upon the rights of the subject seeking protection of the court. In **France**, appeals must be based on a claim that the decision is based on erroneous findings of fact, there was a lack of legal authority to make a decision, there was a misapplication of substantive law, the regulation under which the decision was made was illegal or the government failed to act. In **Russia**, appeals must be based on a misapplication of substantive and/or procedural law. In **Slovenia**, decisions may be challenged (i.e. an appeal may be lodged) if the regulation has been applied incorrectly or has not been applied at all, the factual situation has not been established correctly or completely, or there was a violation of the rules of procedure. In **Ukraine**, appeals must be based on an incorrect application of substantive law or a violation of procedural law that led to the incorrect judgment. In the **United States**, appeals from a presiding officer's or Atomic Safety and Licensing Board's factual findings typically require a demonstration of clear error or abuse of discretion; while the Commission of the US NRC has the authority to review factual questions de novo (i.e. a fresh look is taken without need for the appellant to demonstrate clear error or abuse of discretion), it is disinclined to do so when a Board has issued a plausible decision that rests on carefully rendered findings of fact, supported by the record. Decisions on questions of law are reviewable de novo.

In very general terms, there are three categories of appellate bodies in responding countries:

- appellate courts (whether in administrative, civil or criminal matters), even though their denomination may differ in some countries (e.g. high courts);
- supreme courts (generally administrative), indicating that for some types of challenges, in some countries, there is only one possibility of appeal; and
- adjudicatory bodies within the decision-making authority, which in this case would address the challenge with a different panel than that of first instance (e.g. in the **United States**).

For example, in **Austria**, within two weeks after the preliminary ruling on the complaint has been served, either party can apply to the authority that issued the preliminary decision to submit this decision to the administrative court for review (request for submission). The authority must submit the application and the complaint to the administrative court together with the files of the proceedings and notify the other parties of the submission of the

application. If a hearing has taken place in the presence of parties, the administrative court must, as a rule, immediately announce the decision with the essential reasons for the decision. Every judgment (decision of the administrative court) must contain an instruction about the possibility of filing a complaint with the Constitutional Court and an ordinary or extraordinary review with the (highest) Administrative Court. In the **Netherlands**, administrative decisions based on the Nuclear Energy Act can be appealed in the first and final instance to the highest administrative court, the Council of State [Raad van State]. In **Sweden**, licensing cases pertaining to the Environmental Code are raised to the Land and Environment Court (first instance), and then the Land and Environment Court of Appeal (second instance) on appeal against a decision made by the Land and Environment Court according to the Environmental Code, and finally the Supreme Court (final instance). Licensing cases pertaining to the Act on Nuclear Activities are submitted to and reviewed by the government (first instance) and then the government's decision may in certain cases be submitted to the Supreme Administrative Court for judicial review of the legality of the decision (second instance). Regulatory decisions on nuclear safety are made by the Swedish Radiation Safety Authority (SSM). When challenged, they can be submitted to the government, if pertaining to the Act on Nuclear Activities. If pertaining to the Radiation Protection Act, the challenged regulatory decisions are raised to the Administrative Court (first instance), then the Administrative Court of Appeal (second instance) and finally the Supreme Administrative Court (final instance). For those cases pertaining to the Penal Code, a criminal judgment by the District Court (first instance) can be raised to the Court of Appeal (second instance) and to the Supreme Court (final instance).

In most cases, the court in charge of hearing the appeal is composed of a panel of judges, as opposed to the body in charge of hearing the first instance challenge, which is more likely (according to the survey) to either be composed of a single judge or be an administrative body.

The vast majority of countries indicated that the appellate decision may be appealed again to a higher court, body or authority.

Third and (where applicable) fourth instances

A majority of countries indicated that the third appeal would be filed before their respective supreme courts (also known as supreme administrative court, court of cassation or council of state), indicating that this is the last possible appeal. The grounds on which such appeals can be raised are more restrictive than those to appeal first instance decisions. In several countries, these grounds appear to be limited to errors in law. In various countries, there is an additional requirement that the cases present special significance or be admitted by the concerned court, especially when it consists of a supreme court. For example, in **Czechia**, according to Article 103 of Act No. 150/200 Coll., Code of Administrative Justice, the complainant (party to the proceedings from which the decision arose or a person participating in the proceedings) is entitled to bring a cassation complaint as a remedy against the final decision of a regional court in administrative justice. A cassation may be submitted only based on the grounds of claimed unlawfulness consisting of: incorrect consideration of a legal issue before the court in previous proceedings, fault of proceedings, irregularity of proceedings or non-reviewability of a decision.

Some countries indicated that third instance decisions may be further appealed to a fourth instance court, sometimes raising issues related to breaches to the concerned country's constitution. For example, in the **United States**, the Commission of the NRC's second instance decision can be appealed to the US Court of Appeals for the District of Columbia Circuit or to the US Court of Appeals for the circuit in which the facility is located. The third instance Circuit Court decision can then be appealed by a petition for *certiorari* to the US Supreme Court.

1.5 Judgment and remedies

1.5.1 *Legal remedies*

The most commonly indicated remedies that can result from the final judgment across responding countries are ones that affirm the original decision or remand the decision to the original decision maker, followed closely by those that overturn the original decision.

The original decision

Courts can affirm the original decision or remand it to the original decision maker for new or additional analysis in all responding countries. Courts can overturn the original decision in almost all countries. Courts have the ability to modify the original decision as part of the final judgment in a majority of countries. For example, in **Canada**, a successful judicial review application generally results in the decision being quashed and the matter referred back to the decision maker for reconsideration in accordance with the Court's decision. In **Czechia**, the basic rule is that if the complaint is justified, the court revokes the contested decision as unlawful or for procedural faults. If the complaint is not justified, the court shall dismiss it.

While affirming, overturning or remanding the decision was an available remedy in almost all countries, fewer countries' courts have the power to modify an original decision. This discrepancy may be due to the courts' deference to the technical decisions of authorised regulatory bodies or the requirement of the court to decide only on matters of legality, as specifically indicated by a few responding countries.

Injunction, damages or civil monetary penalty/fine

An injunction can be issued as part of the final decision in half of the responding countries. Damages can be awarded in a slight majority of countries, with some countries indicating that a civil monetary penalty or fine can result from the final decision.

Changes to a licence/authorisation/permit

A final decision could result in an amendment to a licence/authorisation/permit in a slight majority of responding countries. A final decision could lead to the issuance of a licence/authorisation/permit in half of the countries, whereas a final decision could result in the suspension or revocation of a licence/authorisation/permit in a majority of countries.

For example, in **Germany**, administrative decisions are subject to judicial review. Courts can also oblige executive powers to revoke, modify or suspend a licence taking into account the court's conclusions. While, theoretically, **Switzerland** allows for the issuance, amendment, revocation and/or suspension of a licence/authorisation/permit as possible remedies, they would likely never occur in practice because of existing legal precedent from the Supreme Court respecting the technical determinations of the specialised authorities. In **Türkiye**, the courts can only judge the legality of the licence or authorisation and any questions of the appropriateness are the purview of the regulatory body that issued the licence.

Changes to a law/rule/regulation/decree

Courts can issue a new law/rule/regulation/decree as result of a final decision in a few responding countries. However, a final decision can amend or repeal a rule/regulation/decree in a larger number of countries and a final decision can also modify or repeal a law in some countries. In one country, **Türkiye**, a final decision can lead to the repeal of a constitutional amendment. In **Germany**, the Federal Constitutional Court can oblige parliament to issue legislation if they find the subject of the legal challenge leads to a situation of unconstitutionality.

Criminal penalties

Criminal penalties may result from a final decision in just under half of the responding countries. Such decisions are taken in separate criminal proceedings.

1.5.2 Awarding of legal fees

The vast majority of countries can award legal fees to the prevailing party as part of the final judgment, but a few of those countries restrict this to the plaintiff alone. Despite the possibility, there is no requirement to award legal fees in a few countries and it is up to the discretion of the court to award costs. In some instances, legal fees are only awarded in very limited circumstances.

1.5.3 Monetary damages for injury resulting from the legal challenge

Monetary damages are available for any injury or harm suffered during a legal challenge in a slight majority of responding countries. There are conditions and specifications for those countries that provide for monetary damages. For example, in **Belgium**, according to Article 1382 of the Civil Code only compensatory legal remedies are available. In **Czechia**, costs of proceedings that can be reimbursed involve cash expenses of the parties and their representatives, judicial fees, loss of earnings of the parties and their legal representatives, expenses related to providing evidence, representation fees, the representatives' cash expenses, and interpretation fees. Moreover, a successful claimant can ask for a specific remedy, e.g. cash expenses, loss of earnings or satisfaction for non-pecuniary damage (if the damage was caused by the unlawful decision or incorrect administrative procedure). In **France**, monetary damages can be awarded in the event of improper claims (*recours abusif*). In **Japan**, a party can file a civil lawsuit to ask another party for compensation. In the **Netherlands**, according to Article 8:75 of the Dutch General Administrative Law Act (Awb), the administrative court can order a party to pay the costs that another party has reasonably incurred in connection with the appeal proceedings. A natural person may be ordered to pay costs in the event of a manifestly unreasonable use of the right of appeal, which is very exceptional. In **Portugal**, it is possible to ask for compensation based on bad faith litigation. In the **Slovak Republic**, one usually, but not always, claims for monetary damages according to the classification of various sorts of harm (loss of reputation, loss of income, etc.) in a separate proceeding and if the causal link between the result of proceedings and the harm caused is established. In **Türkiye**, pecuniary and non-pecuniary damages are available. Pecuniary damages can be requested to compensate the loss of assets due to an unlawful act. Non-pecuniary damages are provided for the grief experienced by the individual due to the action(s) at issue.

1.5.4 Duration of the legal proceeding

The length of legal proceedings varies greatly depending on the subject matter and how many appeals the parties undertake. There is a wide estimated duration that varies from 133 days to 8 years in a slight majority of responding countries. Legal proceedings took an average of one to three years in just under half of the responding countries. This, however, varies depending on the subject matter and number of appeals. For example:

- In **Australia**, it depends on the nature and complexity of the proceeding, but court actions usually take one to two years to resolve.
- In **Austria**, it depends on the specific matter, but the length of the proceeding is usually one to three years for the Administrative Court and approximately six months for the Supreme Administrative Court.
- In **Canada**, it depends on the nature and complexity of the proceeding, but the length of the proceeding is approximately two years.

- In **Czechia**, according to the most recent statistics, the average length of proceedings in front of the administrative courts was 500 days.
- In **France**, the length of the proceedings is approximately 18 months in the first instance and 3 years on appeal.
- In **Korea**, in administrative cases, it takes about two years on average to reach a final decision from the Supreme Court.
- In the **Netherlands**, it depends on the nature and complexity of the proceeding, but the length is usually one to two years.
- In **Romania**, the average length of a procedural stage is 133 days. Cases with more than one procedural stage (two appeals) will take longer. This can vary based on the number of parties involved, the specialised expertise administered in the case, clarifications from various national and international institutions, etc.
- In **Spain**, according to the most recent statistics, the average duration of contentious administrative proceedings of the National High Court is 16.5 months. As regards the Supreme Court, it is 15.2 months.
- In **Sweden**, the length of the proceedings usually last from one to three years.
- In **Türkiye**, there is no definitive period, but the proceedings can last approximately two years.
- In **Ukraine**, the proceedings can last one to five years.
- In the **United Kingdom**, the proceedings can last approximately one year, but this can vary significantly.
- In the **United States**, if a hearing request is granted, administrative adjudicatory proceedings within the US NRC typically take two to three years from inception to conclusion, although cases have taken as little as one year to as much as eight or more years. The US NRC's rules of practice contain model milestones for various types of proceedings (see 10 CFR Part 2, Appendix B). Appeals to the federal courts typically take an additional one to three years.

Chapter 2:
Legal cases related to nuclear safety

NEW REACTOR LICENSING

AUSTRALIA

Greenpeace Australia Pacific Ltd v. Chief Executive Officer of the Australian Radiation Protection & Nuclear Safety Agency

Federal Court of Australia, 2002
[2002] FCA 1144; 125 FCR 186; 125 LGERA 233

1. Parties:

The Plaintiff in this proceeding was Greenpeace Australia Pacific Limited (Greenpeace). Greenpeace is a company limited by guarantee whose objects include the protection, preservation and enhancement of the natural environment and the promotion of nuclear disarmament.

The first Respondent was the Chief Executive Officer of the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) (ARPANSA CEO). ARPANSA is the Australian Government's primary authority on radiation protection and nuclear safety and regulates Commonwealth entities that use or produce radiation with the objective of protecting people and the environment from the harmful effects of radiation.

The second Respondent was the Australian Nuclear Science and Technology Organisation (ANSTO). ANSTO is one of Australia's largest public research organisations.

To gain standing in the proceeding, Greenpeace claimed that it was adversely affected to a greater degree than ordinary members of the public by the ARPANSA CEO's decision to grant ANSTO a licence to construct a controlled facility under section 32(1) of the Australian Radiation Protection and Nuclear Safety Act 1998 (Cth) (the Act). Its standing to bring this proceeding was not disputed.

2. Issue(s):

Greenpeace applied for an order under the Administrative Decisions (Judicial Review) Act 1977 (Cth) (the AD(JR) Act) for review of the ARPANSA CEO's decision (the Decision) to issue Facility Licence FO0118-Construction (the Licence) to ANSTO under section 32(1) of the Act. The Licence authorised the construction of a replacement nuclear research reactor (the Reactor) at the Lucas Heights Science and Technology Centre.

It was common ground in the proceedings that by section 32(3) of the Act, in making the Decision, the ARPANSA CEO was required to take into account "international best practice in relation to radiation protection and nuclear safety".

The primary issue raised by Greenpeace was that in making the Decision, the ARPANSA CEO failed to identify, ascertain or take into account international best practice in relation to the management, handling, transport, processing and storage of spent nuclear fuel and radioactive waste. As a consequence of this purported failure, Greenpeace asserted that:

- the procedures required by law to be observed in connection with the making of the Decision were not observed (see section 5(1)(b), AD(JR) Act);
- the making of the Decision was an improper exercise of the power conferred by section 32(1) of the Act, in that the ARPANSA CEO failed to take into account a relevant consideration (see sections 5(1)(e) and 5(2)(b), AD(JR) Act); and

- the Decision involved an error of law (see section 5(1)(f), AD(JR) Act).

Greenpeace's claims focused on the invalidity of the ARPANSA CEO's reasoning for the Decision on the grounds that he failed to adequately consider the management of spent nuclear fuel and radioactive waste to be generated by the Reactor once completed and his failure to make a determination on the "international best practice in relation to radiation protection and nuclear safety" imposed by section 32 as regards spent nuclear fuel and radioactive waste management.

3. Facts:

Upon receipt in May 2001 of ANSTO's application for a licence to construct the Reactor on land owned by ANSTO at Lucas Heights, adjacent to the existing "HIFAR" research reactor, and after a lengthy assessment process, including public consultation, the Decision authorising the construction of the Reactor was made on 4 April 2002 by the ARPANSA CEO. As part of the public consultation undertaken by the ARPANSA CEO, Greenpeace was expressly invited to make, and did make, submissions, in relation to ANSTO's application to ARPANSA.

In relation to international best practice, it could be gleaned from the ARPANSA CEO's reasons for the Decision that "international best practice in relation to radiation protection and nuclear safety" is not a phrase defined by the Act. He also noted that "international best practice" is not a term of art used at the international level. Against this background, the ARPANSA CEO identified the relevant international best practice by having regard to the ordinary meaning of these terms and the object of the Act. He also noted that his consideration of international best practice occurred in the context of issuing a construction licence.

The ARPANSA CEO referred to the Convention on Nuclear Safety (CNS) and to the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management (Joint Convention) in his reasons for the Decision. The ARPANSA CEO noted that the Joint Convention is modelled on the CNS in that it is an "incentive convention that sets out the 'gold standard' for the safety of the management of spent fuel and radioactive waste" and that the CNS makes a distinction between the design and construction of a nuclear installation and the operation of a nuclear facility. The Joint Convention also makes a distinction between the safety standards for existing facilities, the siting of proposed facilities and (importantly) the design and construction of facilities. The issue of safe operation of facilities is treated separately.

4. Past procedure:

This was a decision at first instance with no prior proceedings or any subsequent appeal.

5. Analysis:

The Court considered each of Greenpeace's assertions separately.

a. Were procedures required to be observed in connection with the making of the Decision not observed?

Greenpeace submitted that section 32 of the Act required the ARPANSA CEO, in effect, to determine what constitutes international best practice in relation to the management of spent nuclear fuel and radioactive waste, whether it be an objective determination or a subjective one. According to Greenpeace, the ARPANSA CEO did not do so, and this was an error of law.

Greenpeace further submitted that ARPANSA failed to sufficiently assess the validity of the ARPANSA CEO's determination that it was "likely" that waste from reprocessing spent nuclear fuel could be safely stored for a significant period of time.

It was said that the ARPANSA CEO failed to consider whether ANSTO's proposals (or any of the alternatives to them) constitute international best practice in relation to radiation protection and nuclear safety, specifically in relation to the transportation of such spent nuclear fuel and radioactive waste, when its transportation involves safety questions for persons in the vicinity of domestic and international routes, including sea lanes, and a risk of harm to the environment.

In short, Greenpeace contended that since section 32(3) required the ARPANSA CEO to consider international best practice in this connection, in failing to do so, the ARPANSA CEO did not, in the terms of AD(JR) Act, section 5(1)(b), observe "procedures that were required by law to be observed in connection with the making of the [D]ecision."

The Court noted that although Greenpeace claimed that the ARPANSA CEO erred in law in his interpretation of section 32(3), the grounds for review described in AD(JR) Act, section 5(1)(b) is available only in a procedural context and, therefore, whether the ARPANSA CEO erred in law in his understanding of the meaning and operation of section 32(3) is a question arising, if at all, under either section 5(1)(f) or section 5(2)(b) of the AD(JR) Act and not an adjectival or procedural issue.

Ultimately, the Court disposed of this submission by determining that there was nothing in the ARPANSA CEO's process that could be said to be procedurally irregular or defective.

b. Did the ARPANSA CEO fail to take into account a relevant consideration?

In making this claim, Greenpeace essentially relied upon the same submission it made in relation to procedural irregularities.

The Court accepted ANSTO's arguments that the allegation that the ARPANSA CEO failed to take into account a relevant consideration will only be made out as a ground of review if the ARPANSA CEO failed to take into account a consideration that he was required to take into account in making the Decision. ANSTO conceded that the ARPANSA CEO's obligation to take into account international best practice requires him to give proper, genuine and realistic consideration to any relevant international best practice; however, it is for a decision maker, and not for the Court, to decide the appropriate weight to be given to a matter that is required to be taken into account.

The Court considered the ARPANSA CEO's obligations under section 32(3) in two steps:

- "international best practice in radiation protection and nuclear safety" must be construed in the context of the application before the ARPANSA CEO, i.e. for a construction licence.
- any international best practice in relation to radiation protection and nuclear safety relevant to the issue of a construction licence must be identified as a matter of fact. That is, there is no assumption under the Act that there is an established international best practice for every aspects of radiation protection and nuclear safety and as such only an established international best practices can be taken into account.

The Court determined that, with regard to relevant international conventions, the ARPANSA CEO appropriately reasoned that international best practice concerning the design and construction of a research facility is different than international best practice concerning the operation of a research facility. Under this reasoning the ARPANSA CEO made no error in failing to consider the management, handling, transport, processing and storage of spent nuclear fuel and radioactive waste as this relates to the operation of the reactor and not its design and construction. Therefore, Greenpeace's submission relied upon a faulty understanding of the meaning of international best practice as regards radiation protection and nuclear safety.

The results of the operation of the Reactor were considered by the ARPANSA CEO, properly, in the context of, and in the course of, assessing the construction of the proposed Reactor.

In analysing an administrative decision for the purposes of assessing a claim under AD(JR) Act, section 5(2)(b), the considerations may come within three categories: obligatory, forbidden or permissible. The obligatory relevant considerations are those mandated by the Act, in this case the matters set out in Regulation 41 of the Australian Radiation Protection and Nuclear

Safety Regulations 1999 (Cth) (as it then was), together with international best practice in relation to radiation protection and nuclear safety. Forbidden considerations, or legally irrelevant considerations, are those that the statute expressly or impliedly prohibits to be considered.

The ARPANSA CEO's consideration, in his reasons, of radiation protection and nuclear safety (even assuming that it did include the "management, handling, transport, processing and storage" of spent nuclear fuel and radioactive waste), falls into the class of "permissible" considerations. These are matters that may be taken into account in assessing the design of a research reactor, and how that reactor may operate at some future time based on the design. However, the ARPANSA CEO is not required by section 32, or otherwise, to consider these matters as if he were issuing an operating licence, and in a manner that would bind him in relation to any future consideration of an application to issue an operating licence for the purpose of section 30(1)(d).

The Court found that because these considerations fall within the class of "permissible", rather than "legally relevant", considerations, the ARPANSA CEO's treatment of them is not subject to review under AD(JR) Act, section 5(2)(b).

Ultimately, on this point, the Court determined that Greenpeace failed to show failure on the part of the ARPANSA CEO to take into account international best practice in relation to radiation protection and nuclear safety for the purposes of section 32(3) of the Act; nor that he failed to correctly identify and consider the relevant international best practice in relation to the construction of the Reactor. Further, it was found that the ARPANSA CEO did consider public submissions and other materials when making a determination on the management of spent nuclear fuel and radioactive waste that would be generated by the Reactor, despite having no obligation under law to make this consideration. His analysis concluded that "the applicant has demonstrated that the radiation protection and nuclear safety objectives included as a part of the design meet those laid out in the guidance provided by the international authorities."

c. Did the ARPANSA CEO's decision involve an error of law?

To establish, within the meaning of AD(JR) Act, section 5(1)(f), that the Decision "involved an error of law", Greenpeace must first show that the ARPANSA CEO erred in his understanding of section 32(3). The Court accepted that it was settled law in Australia that "[a] decision does not 'involve' an error of law unless the error is material to the decision in the sense that it contributes to it so that, but for the error, the decision would have been, or might have been, different."

Adopting much the same reasoning as in its consideration of relevant considerations above, the Court found that the ARPANSA CEO did not err in law in his understanding of section 32(3). The phrase "international best practice in relation to radiation protection and nuclear safety", is not a term of art or a technical term and therefore the ordinary meaning applies. Under this meaning the factual enquiry undertaken by the ARPANSA CEO in his granting of the construction licence was sufficient. There was no indication of a legal error or mistake of law occurring that would have changed the outcome of the decision.

6. Holding:

The application was dismissed, with costs awarded against the Plaintiff.

CANADA

Ontario Power Generation Inc. v. Greenpeace Canada

Federal Court of Appeal (FCA), 2015
2015 FCA 186

1. Parties:

The Federal Court of Appeal heard and consolidated three appeals: A-282-14, brought by Ontario Power Generation (OPG) a publicly owned utility company and licensee of the Canadian nuclear regulatory body; A-283-14, brought by the Canadian Nuclear Safety Commission (CNSC), the Canadian regulator; and A-285-14, brought by the Attorney General of Canada, the Minister of the Environment, the Minister of Fisheries and Oceans and the Minister of Transport. The Respondents to the appeals were Greenpeace Canada, Lake Ontario Waterkeeper, Northwatch and the Canadian Environmental Law Association who are all non-governmental organisations.

2. Issue(s):

Whether the Federal Court Judge erred in his review of the question of whether, in conducting the environmental assessment (EA) and preparing the EA Report, the Joint Review Panel (the Panel) failed to consider the factors contained in paragraphs 16(1)(a) and (b) of the Canadian Environmental Assessment Act, SC 1992, c. 37 (CEAA) in respect of the hazardous substance emissions (HSE) issue; and whether the Judge misapplied the correct standard of review in his review of that question.

3. Facts:

In June 2006, the Ontario Ministry of Energy directed OPG to begin the approvals process for the installation and operation of new nuclear power generation units at the existing Darlington Nuclear Generating Station, located on the Lake Ontario shoreline in Clarington, Ontario. Pursuant to this directive, OPG applied to the CNSC in September 2006 for a licence to prepare the Darlington site for construction of up to four new nuclear reactors (the Project).

The Project consisted of site preparation; construction of the four new reactors and associated facilities; the operation and maintenance of the reactors and related facilities for approximately 60 years, including the management of conventional and radioactive waste; and the decommissioning of the nuclear reactors and abandonment of the site.

In March 2008, the Panel was established to conduct both an EA under the CEAA and serve as a CNSC panel to determine OPG's site preparation licence application under the Nuclear Safety and Control Act, SC 1997, c 9 (NSCA). In September 2009, OPG filed its environmental impact statement (EIS).

The hearing was conducted from March 2011 until April 2011, it received 278 contributions and was finally able to make public the Panel's Environmental Assessment Report (EA Report) in August 2011. The EA Report concluded that the Project was not likely to cause significant adverse environmental effects, provided the mitigation measures proposed and the commitments made by OPG during the review, as well as the Panel's 67 recommendations,

were implemented. The Governor in Council subsequently released the Government Response approving the Project under the CEAA.

In August 2012, the CNSC issued OPG a site preparation licence under the NSCA.

4. Past procedure:

Two Federal Court applications, heard consecutively, challenged the EA undertaken by the Panel under the CEAA in relation to the Project and challenged the licence issued under the NSCA on the basis of the EA Report. The applications were allowed in part. The Federal Court Judge held that the EA failed to comply with the CEAA in respect of three areas. The EA Report was partially quashed and was returned to the Panel for further consideration of the HSE Issue, the Spent Nuclear Fuel Issue, and the Common Cause Accident Issue. The second application challenged the issuance of the site preparation licence with respect to the Project that was issued by the CNSC after the release of the EA Report by the Panel. The licence was quashed because the EA Report failed to comply with the CEAA.

5. Analysis:

On appeal are the Federal Court Judge's conclusions that the analysis of the Panel was incomplete in three areas: (1) consideration of hazardous substance emissions; (2) consideration of spent nuclear fuel; and (3) the deferral of the analysis of a severe common cause accident. In each area, the Federal Court Judge held that the EA Report required more information to allow the Governor in Council to properly evaluate the Project in connection to "society's chosen level of protection against risk."

In relation to hazardous substance emissions, the Federal Court of Appeal found that the reasonableness standard of review, with respect to the question of whether the Panel erred by failing to consider those environmental effects, was misapplied. The lack of bounding scenario analyses with respect to all of the environmental effects of HSE was a logical consequence of the use of the plant parameter envelope approach.

In consideration of the spent nuclear fuel issue, the Federal Court of Appeal found the Panel's decision to have been defensible and found that the Judge erred in substituting his own views for that of the Panel.

With respect to severe common cause accidents, the issue turned on whether the decision maker had sufficient information of the environmental effects, together with mitigation measures, to make the assessment and recommendations that it did. In this case, the issue was a highly improbable severe accident, the parameters of which depended on any one of any number of hypothetical scenarios. The CEAA does not require that all accident scenarios be considered. Therefore, the Federal Court of Appeal agrees that the Panel's assessment of the probability of the accident, and hence its limited assessment of the environmental effects, was a matter within the scope of its discretion and its conclusion was reasonable.

6. Holding:

On the basis that the Federal Court Judge erred in his conclusions with respect to all three of the issues, this decision dismissed both applications for judicial review.

Greenpeace Canada's application for leave to appeal this decision to the Supreme Court of Canada was dismissed.

CZECHIA

Sdružení Jihočeské matky v. Státní úřad pro jadernou bezpečnost [South Bohemian Mother's Association v. State Office for Nuclear Safety]

The Supreme Administrative Court of the Czech Republic, 2007
2 As 12/2006-111

1. Parties:

In this matter, the Complainant was Jihočeské matky, a non-governmental organisation (NGO), appealed the decision of the State Office for Nuclear Safety (SÚJB), the nuclear regulator, to issue a licence to operate Unit 1 of the Temelín Nuclear Power Plant.

2. Issue(s):

Whether the applicant for a licence to operate a nuclear power plant under section 9(d) of the Act No. 18/1997 Coll., of 24 January 1997 on Peaceful Utilisation of Nuclear Energy and Ionising Radiation (Atomic Act) is the sole participant in the administrative proceeding and thus whether the entities defined in section 70(2) and (3) of the Act No 114/1992 Coll., on the Protection of Nature and the Landscape (Nature and Landscape Protection Act) are not participants in this proceeding.

3. Facts:

The licensee applied for a licence to operate a nuclear installation pursuant to section 9(1)(d) of the Atomic Act for Unit 1 of the Temelín Nuclear Power Plant. The SÚJB issued the licence in an administrative proceeding and laid down the conditions under which that activity may be carried out.

4. Past procedure:

The Complainant (the NGO Jihočeské matky) appealed SÚJB's decision (first instance administrative decision) and subsequently filed a complaint against the administrative proceeding described above. Jihočeské matky based its appeal, *inter alia*, on the grounds of a procedural defect, namely its omission as a party to the administrative proceeding, and on the assertion that the applicant for the licence had not demonstrated that the benefits of its activity outweigh the associated risks and that the principle of the lowest reasonably achievable level of risk was being respected.

The appeal was found to be inadmissible by the President of the SÚJB as the Complainant was not a party to the proceedings under section 14 of the Atomic Act.

The Complainant then brought an action against that decision before the Municipal Court in Prague. Jihočeské matky argued, *inter alia*, that the operation of Temelín, Unit 1 would undeniably have a major impact on the interests of nature and landscape protection as defined in section 2 of the Nature and Landscape Protection Act and also criticised the decision by the SÚJB in the first instance administrative procedure, in particular for its alleged

non-reviewability. That action was dismissed by the Municipal Court in Prague (final decision of a regional court in administrative justice review).

This decision was subsequently challenged by a cassation complaint to the Supreme Administrative Court (remedy against the final decision of a regional court in administrative justice review).

5. Analysis:

The applicant for a licence to operate Temelín, Unit 1 in accordance with section 9(d) of the Atomic Act is the sole participant in the administrative proceeding. The entities defined in sections 70(2) and (3) of the Nature and Landscape Protection Act are not participants in the proceeding. It is sufficient if public participation is ensured in those proceedings in which the environmental impact of such operations is directly considered (e.g. under Act No. 183/2006 Coll., on Town and Country Planning and Building Code (Building Act)).

A different situation would arise if there were only a single administrative procedure to bring a nuclear power plant into operation. In such case, a systematic interpretation would lead to a different conclusion and participation in such proceedings would also have to be granted to the civic associations whose main objective is to protect nature and landscape.

6. Holding:

The Court held that the applicant for a licence pursuant to section 9(1)(d) of the Atomic Act is the sole participant in the proceeding and the entities defined in section 70(2) and (3) of the Nature and Landscape Protection Act do not have a right to participate as parties in the proceeding. This is consistent with the international legal obligations of Czechia, namely the Aarhus Convention,[12] published under Act No. 124/2004 Coll., of International Treaties. The appeal was dismissed.

12. Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (1998), 2161 UNTS 450, entered into force 30 Oct. 2001 (Aarhus Convention).

FINLAND

Olkiluodon ja Orjasaaren osakaskunta, Munakarin yhteisalueen osakaskunta ja Sorkan osakaskunta sekä yksityishenkilöt A ja B v. The Finnish Government [Olkiluoto and Orjasaari Co-operative, Munakari Common Area Co-operative and Sorkka Co-operative, as well as private individuals A and B v. The Finnish Government]

The Supreme Administrative Court of Finland, 2019
KHO 29.8.2019/3864

1. Parties:

The Appellants were three co-operatives of property owners possessing the water areas around Olkiluoto 3 Nuclear Power Plant: Olkiluoto and Orjasaari co-operative, Munakari co-operative and Sorkka co-operative, and two private persons A and B. The Respondent was the Finnish Government, as the licensing authority of nuclear facilities in Finland.

2. Issue(s):

Whether the decision of the Finnish Government to grant a licence to operate the Olkiluoto 3 Nuclear Power Plant should be annulled. The appealing parties argue that Olkiluoto 3 does not comply with the safety standards set out in the Nuclear Energy Act (990/1987) and that the water areas around the power plant belong to the appealing parties.

3. Facts:

In April 2016, Teollisuuden Voima Oyj (TVO) applied for a licence to under section 20 of the Nuclear Energy Act (990/1987) to operate the Olkiluoto 3 Nuclear Power Plant to be built on Olkiluoto Island in the Municipality of Eurajoki. The licence was to run from the beginning of 2018 until the end of 2038. In addition, TVO applied for an intermediate storage permit for the intermediate storage of spent nuclear fuel and a permit for the intermediate storage of waste from 2018 until the end of 2038. In its application, TVO requested that the Government, pursuant to section 31(2) of the Administrative Procedure Act (893/2015), decide that the decision be enforced despite any complaint and not be postponed in the public interest.

On 7 March 2019, the Finnish Government granted TVO a licence to operate the Olkiluoto 3 Nuclear Power Plant under section 20 of the Nuclear Energy Act. The Government decision found that the security procedures, emergency procedures and other procedures were sufficient. Additionally, the Government found the residence and movement restriction area for the Nuclear Power Plant area set up by Decree 480/2018 of the Ministry of the Interior was sufficient to cover changes caused by the construction of the Olkiluoto 3 Nuclear Power Plant. The licence was granted from the date of the decision until the end of 2038 with the decision having immediate effect.

Olkiluoto and Orjasaari co-operative, Munakari co-operative and Sorkka co-operative launched their appeal with the Supreme Administrative Court on the grounds that the decision by the Finnish Government failed to meet sections 6, 7 and 20 of the Nuclear Energy Act and that the Ministry of Economic Affairs and Employment and TVO unlawfully determined the extent and location of the area of Olkiluoto 3 Nuclear Power Plant. They

claimed that the Finnish Government and the Ministry of Economic Affairs and Employment illegally granted control of town-planned water and island areas owned by the shareholders to TVO. According to their claim, the Ministry of the Interior must impose a restriction on movement and residence in the area in accordance with Chapter 9, section 8 of the Police Act (872/2011) for TVO to have legal control over it, in accordance with the requirements of sections 6, 7 and 20 of the Nuclear Energy Act.

Similarly, two private persons, A and B, argued that the conditions for granting a licence were not met and thus the decision should be annulled. They claimed that the Government's decision was made in violation of sections 5, 6, 7 and 20(1)(1)(1) to (3) of the Nuclear Energy Act. The Supreme Administrative Court reserved an opportunity for A and B, referring to section 75(2) of the Nuclear Energy Act and section 6(1) of the Administrative Judicial Procedure Act (808/2019), to present its explanation of the grounds for their right of appeal in the matter.

4. Past procedure:

According to the Administrative Judicial Procedure Act, appeals against the decision of a government plenary session shall be made to the Supreme Administrative Court. Thus, this is the court of first and last instance.

5. Analysis:

Concerning the appeal by the co-operatives, the Court reasoned that an appeal may be filed on the grounds that a decision is unlawful. In this case, the ownership of the water areas was not unclear and the nuclear power plant had the right to operate in the water areas. There was also no evidence of deficient safety of the nuclear power plant that would lead to the Government's decision being considered unlawful.

According to Chapter 9, section 8 of the Police Act (872/2011), in order to safeguard activities or property of great importance or to protect people, movement or residence in or around a secure or protected object may be restricted by decree of the Ministry of the Interior because of the danger posed by or to the site, or prohibit the introduction of objects or substances that endanger safety. The Ministry of the Interior imposed such a restricted zone on movement and residence at the Olkiluoto 3 Nuclear Power Plant through Decree 480/2018. However, the question concerning the movement and residence restriction area of the Olkiluoto 3 Nuclear Power Plant and its scope has not been fully resolved.

Concerning the appeal by the private persons, A and B, the Court held that they did not have the right of appeal because the decision did not concern them and their rights, obligations or interests were not affected. According to Article 6(1) of the Administrative Judicial Procedure Act, any decision may be appealed by the person to whom the decision is directed or whose right, obligation or interest is directly affected by the decision. The Court was not convinced that the rights, duties or interests of A and B were affected in such a way that they have the right to appeal the Government's decision.

6. Holding:

The Court dismissed the appeal by the co-operatives and held the appeal by the private persons, A and B, was inadmissible.

JAPAN

Case to seek revocation of the permission for the Ikata Nuclear Power Plant

Judgment of the First Petty Bench of the Supreme Court of 29 October 1992[13]
Minshu[14] Vol. 46, No. 7, p. 1174
1985 (Showa 60) (行ツ: Gyo-Tsu) No. 133

1. Parties:

The Appellants were residents living in Ehime Prefecture, in which the Ikata Nuclear Power Plant is located. The Appellee was the Minister of International Trade and Industry, who by way of an amendment to the Act on the Regulation of Nuclear Source Material, Nuclear Fuel Material and Reactors (Act No. 166 of 1957) was given the regulatory power on nuclear power plants that was previously held by the Prime Minister, who had given Shikoku Electric Power Co., Inc. the permission to install the nuclear reactor in question.

2. Issue(s):

Although the Appellants submitted plenty of legal issues, the main legal issues before the Supreme Court were as follows:[15]

(1) whether the Act on the Regulation of Nuclear Source Material, Nuclear Fuel Material and Reactors (Act No. 166 of 1957; prior to the amendment by Act No. 80 of 1977) violated Article 31 of the Constitution of Japan (publication date: 3 November 1946) on the grounds that the law did not provide for public participation in regulatory review and disclosure of related documents;

(2) whether the safety criteria were inconsistent with Articles 31 and 41 of the Constitution of Japan by reason that the criteria in question were not set by laws in detailed and concrete terms;

(3) to what extent the regulator had administrative discretion to grant the permission for installing the nuclear reactor (hereinafter referred to as the "permission"), to what extent the court could review the regulator's decision to give the permission in question, and whether the regulator bore the burden of proof of showing the reasonableness of its decision to give the permission; and

(4) whether the scope of the permission was limited to the basic design of the nuclear reactor.

13. A provisional English translation of this decision is available on the Supreme Court website at: www.courts.go.jp/app/hanrei_en/detail?id=1399.
14. *Minshu* is the abbreviated name for *Saiko Saibansho Minji Hanreishu*, which is a Japanese publication containing the collection of rulings of the Supreme Court in civil matters (Japanese language publication: 『最高裁判所民事判例集』).
15. Takagi, H. (2018), "Commentary on the Ikata case", in *The 100 Selected Leading Cases on the Environment Law*, 3rd edition, p. 192 (Japanese language publication: 高木 光「伊方原発事件」『環境法判例百選［第３版］』（2018 年）192 ページ).

3. Facts:

Over the course of amendments of laws related to nuclear power plants, Japan has had several different nuclear power regulators.[16] In this case, the Supreme Court reviewed the permission granted by the Prime Minister as nuclear power regulator at that time.

The Act on the Regulation of Nuclear Source Material, Nuclear Fuel Material and Reactors (hereinafter referred to as the "Regulation Act") has provided regulatory process on a step-by-step basis since the law was enacted in 1957.[17] As the Defendant explained (a permission "[did] not cover an approval of nuclear reactor operation. In the stage of obtaining a permission, an applicant [was] just qualified to seek an approval of construction plan which [was] required as a secondary step"[18]), under the then Regulation Act, the scope of the permission in question was limited to the basic design of nuclear reactor.

Under the above legal background, on 28 November 1972, the permission in question was given by the Prime Minister to the Shikoku Electric Power Co., Inc. pursuant to then Article 23 of the old Regulation Act.

4. Past procedure:

On 27 August 1973, the residents filed the administrative litigation with the Matsuyama District Court to seek revocation of the permission in question, claiming that there was illegality in the safety review and, as a result, their lives, health and properties, etc. were in danger. However, the District Court dismissed the claim on 25 April 1978.[19]

The residents later appealed to the Takamatsu High Court on 1 May 1978, asserting that there were defects and unjust points in the District Court's reasonings.

During this appeal, on 5 July 1978, the Regulation Act was amended with other related laws such as the Atomic Energy Basic Act (Act No. 186 of 1955). And on 4 January 1979, the Minister of International Trade and Industry succeeded the regulatory power on nuclear power plants from the Prime Minister following the partial enforcement of those laws. The residents claimed that the Minister of International Trade and Industry should have followed the procedures prescribed in the then Code of Civil Procedure (Act No. 29 of 1890)[20] to succeed as the defendant, but the High Court made an interlocutory judgment on 25 May 1979 concluding that the Minister of International Trade and Industry *ipso jure* succeeded this case as the defendant from the Prime Minister following the abovementioned partial enforcement

16. Hase, H. (2018), "Legal challenges to the operation of nuclear reactors in Japan", *Nuclear Law Bulletin*, No. 100, OECD Publishing, Paris, pp. 38-39.
17. Commentary on the Act on the Regulation of Nuclear Source Material, Nuclear Fuel Material and Reactors, *Monthly Report by the Atomic Energy Commission*, Vol. 2, No. 7 (1957), pp. 27-32. (Japanese language publication: 「核原料物質、核燃料物質及び原子炉の規制に関する法律解説」『原子力委員会月報』第２巻第７号（1957 年）). The current Regulation Act maintains the step-by-step regulatory process. Article 43-3-5 and Article 43-3-9 of the existing Regulation Act stipulate that when an electric power company wants to build a nuclear power plant, it must get a permission for installing a nuclear power reactor in its basic design stage, and it needs to obtain an approval of its design and construction method in the detailed design stage.
18. Case to seek revocation of the permission to install the nuclear reactor in the Ikata Nuclear Power Plant, *The collection of rulings of the Supreme Court in civil matters*, Vol. 46, No. 7 (1993), pp. 2490-2491 (Japanese language publication: 「伊方発電所原子炉設置許可処分取消請求事件」『最高裁判所民事判例集』第 46 巻第７号（1993 年）2490〜2491 ページ).
19. *Hanrei Times*, No. 362 (1978), pp. 124, 132 (Monthly Journal of Court Judgments/Japanese language publication: 『判例タイムズ』362 号（1978 年）124、132 ページ).
20. The current civil procedure law is the Code of Civil Procedure (Act No. 109 of 1996).

of the laws in 1979 and therefore was not required to take the procedures pursuant to the Code of Civil Procedure.[21]

The High Court upheld the judicial decision of prior instance and dismissed the appeal on 14 December 1984.[22]

5. Analysis:

The judgment by the Supreme Court concerning this case, which is generally referred to as "The Ikata Supreme Court decision", is recognised as the leading case in this area as it provides the judicial review standards for administrative cases regarding the permission for installing a nuclear power reactor. With regard to the above-mentioned issue (1), the Supreme Court considered that (a) "there are various types of administrative proceedings depending on administrative purposes", (b) reviewing the safety of reactor facilities "requires a considerably high level of expert technical assessments", and (c) the then Regulation Act obliged the nuclear power regulator to hear an opinion of the Atomic Energy Commission, which consisted of persons with knowledge and experience in the relevant specialised fields, and to respect the Commission's opinion before granting a permission. Taking these points into consideration, the Supreme Court concluded that it was impossible to say that the then Regulation Act was contrary to Article 31 of the Constitution only for the reason that the law in question did not require public participation in regulatory review and disclosure of related documents.

Concerning the above-mentioned issue (2), the Supreme Court considered that reviewing the safety of reactor facilities requires a wide-ranging and considerably high level of scientific and technical knowledge that makes progress constantly, and it concluded that the safety criteria were not inconsistent with Articles 31 and 41 of the Constitution because "it is not only difficult to set out safety criteria for [nuclear] reactor facilities in specific details by law, but it is also inappropriate to do so from the perspective of the need to respond to the latest science and technology standards instantly." Another reason for the Supreme Court's conclusion is that the relevant provision of the Regulation Act included the discreet procedure that made it mandatory for the nuclear regulator, before granting a permission, to hear and respect the opinion of the Atomic Energy Commission and the said discreet procedure was prescribed to ensure proper safety review by the nuclear regulator.

About the above issue (3), the Supreme Court stated that the Regulation Act's purpose of requiring the nuclear power regulator to ask and respect the opinion of the Atomic Energy Commission was to leave the nuclear safety issue to the regulator's reasonable decision, which was based on the Atomic Energy Commission's opinion. Taking the law's purpose into consideration, the Supreme Court concluded that judicial review should be made "in light of the current science and technology standards", concerning (a) whether the then safety standards, which the Atomic Energy Commission or the expert panel used for reviewing nuclear safety, were unreasonable or not, and (b) whether there were errors or omissions, which could not be overlooked, in the expert's review process and the nuclear regulator made an illegal decision relying on such unreasonable expert's opinion. And the Supreme Court stated that, in principle, the plaintiff should bear the burden of proof regarding the illegality of the nuclear regulator's permission, but concluded that considering that all of the materials concerning the safety review "[were] in the hands of the defendant administrative agency", the nuclear regulator as defendant should first prove, based on the substantial evidence and materials, that there were no unreasonable aspects in its decision.

21. *Hanrei Times*, No. 395 (1979), pp. 110-111 (Japanese language publication: 『判例タイムズ』395 号（1979 年）110〜111 ページ).

22. *Hanrei Times*, No. 542 (1985), pp. 89, 94 (Japanese language publication: 『判例タイムズ』542 号（1985 年）89、94 ページ).

As for above-mentioned issue (4), the Supreme Court concluded that the permission was limited to the basic design of the nuclear power reactor because of the structure of regulations under the then Regulation Act.

6. Holding:

The Supreme Court upheld the High Court's decision, which had determined that the permission for the Ikata Nuclear Power Plant was legal, and the final appeal to seek revocation of the permission was dismissed.

JAPAN

Case to seek a declaratory judgment of the nullity of the permission for the fast breeder reactor called "Monju" by the residents living outside a radius of 20 kilometres from the reactor

Judgment of the Third Petty Bench of the Supreme Court of 22 September 1992[23]
Minshu[24] Vol. 46, No. 6, p. 571
1989 (Heisei 1) (行ツ: Gyo-Tsu) No. 130

1. Parties:

The residents living about 11 to 58 kilometres (km) away from the fast breeder reactor (FBR) called "Monju" brought an administrative case to judicially obtain a declaration of nullity of the permission for the Monju reactor.

In this case, some of the plaintiffs, i.e. the residents living outside a radius of 20 km from the Monju reactor, as well as the Prime Minister, who gave the permission in question as a nuclear regulator, appealed the case to the Supreme Court.

2. Issue(s):

The legal issue before the Supreme Court was whether the residents living about 29 to 58 km away from the Monju reactor had the standing to sue in an administrative lawsuit to seek a declaration of nullity of the permission for the FBR in question under the Article 36 of the Administrative Case Litigation Act (Act No. 139 of 1962).[25]

3. Facts:

The Monju reactor is an FBR with an electrical power of 280 MW, and the reactor in question was in the research and development phase when the Supreme Court reviewed this case. It used metallic sodium as its coolant and mixed oxide of uranium and plutonium as its fuel, breeding plutonium inside its reactor core.[26]

23. A provisional English translation of this decision is available on the Supreme Court website at: www.courts.go.jp/app/hanrei_en/detail?id=1406.
24. *Minshu* is the abbreviated name for *Saiko Saibansho Minji Hanreishu*, which is a Japanese publication containing the collection of rulings of the Supreme Court in civil matters (Japanese language publication: 『最高裁判所民事判例集』).
25. Ohnishi, Y. (2017), "The Reactor Installation Permit and the standing of the third person", in *The 100 Selected Leading Cases on the Administrative Law II*, 7th edition, p. 336 (Japanese language publication: 大西有二「原子炉設置許可と第三者の原告適格」『行政判例百選Ⅱ［第７版］』（2017 年）336 ページ).
26. More information about the Monju reactor can be found in IAEA (2012), *Status of Fast Reactor Research and Technology Development*, IAEA-TECDOC-1691, IAEA, Vienna and JAEA (2020), *Prototype Fast Breeder Reactor Monju – Its History and Achievements*, JAEA-Technology 2019-20, available at: https://doi.org/10.11484/jaea-technology-2019-020.

Under the Act on the Regulation of Nuclear Source Material, Nuclear Fuel Material and Reactors (Act No. 166 of 1957; hereinafter referred to as the "Regulation Act"), on 27 May 1983, the Prime Minister granted the permission for the Monju reactor to the "Power Reactor and Nuclear Fuel Development Corporation" (PNC), which was a special company established under the Power Reactor and Nuclear Fuel Development Corporation Act (Act. No. 73 of 1967) and was the operator of the FBR reactor in question.

4. Past procedure:

On 26 September 1985, the residents living approximately 11 to 58 km away from the Monju reactor filed an administrative lawsuit with the Fukui District Court to obtain a declaration of nullity of the permission for the reactor in question, claiming that there were serious risks on residents' lives and health resulting from the establishment and operation of the FBR facility. Concurrently, the same residents filed a civil lawsuit in the same court against PNC, seeking an injunction against the construction and operation of the Monju reactor.

On 25 December 1987, the Fukui District Court separated the administrative lawsuit from the civil lawsuit and declined the residents' claim on the administrative lawsuit, stating that the civil lawsuit filed against PNC was "an action concerning the existing legal relationship" prescribed in Article 36 of the Administrative Case Litigation Act,[27] and the civil lawsuit could achieve the residents' purpose more effectively than the administrative lawsuit.[28]

The residents appealed to the Nagoya High Court, Kanazawa Branch, asserting that they had standing to sue to seek a declaration of nullity of the permission in question under the Article 36 of the Administrative Case Litigation Act.

On 19 July 1989, the Nagoya High Court, Kanazawa Branch divided the residents into two groups and dismissed the appeal of those living outside a radius of 20 km from the Monju reactor, who were the Appellants in this Supreme Court case. At the same time, the High Court ruled in favour of the appeal of those living within a radius of 20 km from the reactor in question, stating that they had standing to sue under the Article 36 of the Administrative Case Litigation Act. The High Court sent the case of the residents living within a radius of 20 km from the Monju reactor back to the Fukui District Court.

Therefore, the residents living outside a radius of 20 km from the Monju reactor, as well as the Prime Minister, appealed to the Supreme Court.[29]

5. Analysis:

The judgment by the Supreme Court concerning this case is the first Supreme Court case in Japan regarding a nuclear power plant.

27. Article 36 (Standing to Sue in an Action for Declaration of Nullity, etc.) "An action for the declaration of nullity, etc. of an original administrative disposition or administrative disposition on appeal may be filed only by a person who is likely to suffer damage from said original administrative disposition or any disposition following said administrative disposition on appeal or any other person who has legal interest to seek the declaration of nullity, etc. of the original administrative disposition or administrative disposition on appeal, where the person is unable to achieve the purpose by filing an action concerning the existing legal relationship which is based on the existence or non-existence of or validity or invalidity of the original administrative disposition or administrative disposition on appeal."
28. Ohnishi, Y. (2017), *supra note* 28, p. 336.
29. The Supreme Court rendered separate judgments for both parties respectively, and the case of residents living within 20 km of the Monju reactor was decided in the Supreme Court decision of 1989 (Heisei 1) (行ツ: Gyo-Tsu) No. 131, provided *infra*.

Regarding the standing to sue, the Supreme Court concluded as follows:

Article 9 of the Administrative Case Litigation Act provides for standing to file an action for revocation of an administrative disposition. The "person who has legal interest" to seek revocation of the disposition as referred to in said Article means a person whose right or legally-protected interest has been harmed or is likely to be necessarily harmed by the disposition. If it is construed that the administrative legislation that governs the disposition is not only intended to have a specific interest of many and unspecified persons merely absorbed and dissolved into the general public interest but also intended to protect such specific interest as an individual interest of each person who is entitled to said specific interest, said specific interest falls within the scope of legally-protected interest mentioned herein …

Determination as to whether or not the administrative legislation in question is intended to protect a specific interest of many and unspecified persons also as an individual interest of each person who is entitled to said specific interest should be made by taking into consideration such factors as the purpose and objective of the administrative legislation, and the content and nature of the interest that the administrative legislation intends to protect by means of the disposition.

Article 36 of the Administrative Case Litigation Act provides for standing to file an action for declaration of nullity, etc. It is appropriate to interpret the "person who has legal interest" to seek declaration of nullity, etc. of the disposition in question as referred to in said Article [9] in the same meaning as in the case of standing to file an action for revocation of an administrative disposition mentioned above. …

The criterion under item (iii) (limited to the part concerning technical capabilities) and that under item (iv) [listed in paragraph (1) of Article 24 of the Regulation Act] … have been set out as the criteria for granting permission for installation of reactors for the following reason. Reactors … could cause serious disasters …. In light of such risk, and with a view to ensuring that such a disaster will not take place by any chance, said criteria are intended to ensure that sufficient examination will be conducted during the process of granting permission for the installation of reactors, with regard to the technical capabilities of the person who intends to install reactors and the safety of the location, structure and equipment of the reactor facilities specified in the application for permission, and to prohibit the competent minister from granting permission for installation of reactors unless he/she finds that the applicant has such technical capabilities and that the location, structure and equipment of the reactor facilities will not hinder the prevention of disasters. Furthermore, any errors or omissions in the examination as to the applicant's technical capabilities as prescribed in Article 24, paragraph (1), item (iii) of said Act and the examination as to the safety of the reactor facilities as prescribed in item (iv) of said paragraph could cause a serious reactor accident, and if such an accident actually occurs, residents living closer to the reactor facilities are more likely to suffer damage, … and in particular, those who live near the reactor facilities are likely to suffer direct and serious damage to their lives, health, etc. Hence, items (iii) and (iv) of said paragraph can be interpreted as setting out the criteria for technical capabilities and for safety as mentioned above, in consideration of the nature of such damage resulting from a possible disaster that could be caused by such a reactor accident, etc. In light of such matters as the reason why item (iii) (limited to the part concerning technical capability) and item (iv) have been established, and the nature of the damage that is taken into consideration under these items, it is appropriate to construe that these items are not only intended to protect the safety of the lives and health of the public and their interest in the environment as a general public interest, but also intended to protect the safety of the lives and health, etc. of the scope of residents who are living near the reactor facilities and are likely to suffer more direct and serious damage resulting from a possible disaster that could be caused by such an accident, etc., as an individual interest of each of these residents.

> The issue as to whether or not the area where these residents are living is an area where the residents are likely to suffer more direct and serious damage in the event of such a disaster that could be caused by a reactor accident, etc. as mentioned above should be determined rationally in light of socially accepted ideas, while taking into consideration specific conditions regarding the reactors concerned (e.g. the type, structure and scale) and focusing on the distance between the area where those residents are living and the location of the reactors.

Considering the facts that "the appellants are living in areas within a radius of about 29 [km] to about 58 [km] from the Reactor; the Reactor is a fast-breeder reactor in the research and development stage" which "produces 280,000 kilowatts of power output, using mixed plutonium-uranium oxide as the core fuel, and a larger amount of plutonium with high toxicity than used is generated in the reactor core" the appellants living in areas within a radius of about 29 km to about 58 km from the Monju reactor "should be considered to be persons living in an area where the residents are likely to suffer more direct and serious damage in the event of a disaster that could be caused by a reactor accident."

6. Holding:

The Supreme Court ruled in favour of the appeal, stating that the residents living about 29 to 58 km away from the Monju reactor had the standing to sue under the Article 36 of the Administrative Case Litigation Act. At the same time, the Supreme Court sent the case back to the Fukui District Court.

JAPAN

Case to seek a declaratory judgment of the nullity of the permission for the fast breeder reactor called "Monju" by the residents living within a radius of 20 kilometres from the reactor

Judgment of the Third Petty Bench of the Supreme Court of 22 September 1992[30]
Minshu[31] Vol. 46, No. 6, p. 1090
1989 (Heisei 1) (行ツ: Gyo-Tsu) No. 131

1. Parties:

The residents living about 11 to 58 kilometres (km) away from the fast breeder reactor (FBR) called "Monju" brought an administrative case to judicially obtain a declaration of nullity of the permission for the Monju reactor under the Article 36 of the Administrative Case Litigation Act (Act No. 139 of 1962).

In this case, the Nagoya High Court, Kanazawa Branch, ruled in favour of some of the above plaintiffs, i.e., the residents living within a radius of 20 km from the Monju reactor, stating that they had standing to sue under the law, and the Prime Minister, who gave the permission in question as a nuclear regulator, appealed the case to the Supreme Court.

2. Issue(s):

The legal issue before the Supreme Court was whether the residents who had already filed another civil lawsuit seeking an injunction against the FBR reactor in question had standing to sue under Article 36[32] of the Administrative Case Litigation Act.[33]

30. A provisional English translation of this decision is available on the Supreme Court website at: www.courts.go.jp/app/hanrei_en/detail?id=1407.
31. *Minshu* is the abbreviated name for *Saiko Saibansho Minji Hanreishu*, which is a Japanese publication containing the collection of rulings of the Supreme Court in civil matters (Japanese language publication: 『最高裁判所民事判例集』).
32. Article 36 (Standing to Sue in an Action for Declaration of Nullity, etc.) "An action for the declaration of nullity, etc. of an original administrative disposition or administrative disposition on appeal may be filed only by a person who is likely to suffer damage from said original administrative disposition or any disposition following said administrative disposition on appeal or any other person who has legal interest to seek the declaration of nullity, etc. of the original administrative disposition or administrative disposition on appeal, where the person is unable to achieve the purpose by filing an action concerning the existing legal relationship which is based on the existence or non-existence of or validity or invalidity of the original administrative disposition or administrative disposition on appeal."
33. Shimizu, A. (2017), "The possibility of the civil injunction lawsuit and the legal interest for the actions for the judicial review of administrative dispositions", in *The 100 Selected Leading Cases on the Administrative Law II*, 7th edition, p. 374 (Japanese language publication: 清水晶紀「民事差止訴訟の可能性と抗告訴訟の訴えの利益」『行政判例百選Ⅱ［第７版］』（2017 年）374 ページ).

3. Facts:

The Monju reactor is an FBR with an electrical power of 280 MW, and the reactor in question was in the research and development phase when the Supreme Court reviewed this case. It used metallic sodium as its coolant and mixed oxide of uranium and plutonium as its fuel, breeding plutonium inside its reactor core.

Under the Act on the Regulation of Nuclear Source Material, Nuclear Fuel Material and Reactors (Act No. 166 of 1957; hereinafter referred to as the "Regulation Act"), on 27 May 1983, the Prime Minister granted the permission for the Monju reactor to "Power Reactor and Nuclear Fuel Development Corporation" (PNC), which was a special company established under the Power Reactor and Nuclear Fuel Development Corporation Act (Act. No. 73 of 1967) and was the operator of the FBR reactor in question.

4. Past procedure:

On 26 September 1985, the residents living approximately 11 to 58 km away from the Monju reactor filed an administrative lawsuit with the Fukui District Court to obtain a declaration of nullity of the permission for the reactor in question, claiming that there were serious risks on residents' lives and health resulting from the establishment and operation of the FBR facility. Concurrently, the same residents filed a civil lawsuit in the same court against PNC, seeking an injunction against the construction and operation of the Monju reactor.

On 25 December 1987, the Fukui District Court separated the administrative lawsuit from the civil lawsuit and declined the residents' claim on the administrative lawsuit, stating that the civil lawsuit filed against PNC was "an action concerning the existing legal relationship" prescribed in Article 36 of the Administrative Case Litigation Act,[34] and the civil lawsuit could achieve the residents' purpose more effectively than the administrative lawsuit.[35]

The residents appealed to the Nagoya High Court, Kanazawa Branch, asserting that they had standing to sue to seek a declaration of nullity of the permission in question under the Article 36 of the Administrative Case Litigation Act.

On 19 July 1989, the Nagoya High Court, Kanazawa Branch, divided the residents into two groups and dismissed the appeal of those living outside a radius of 20 km from the Monju reactor, who were the Appellants in this Supreme Court case. At the same time, the High Court ruled in favour of the appeal of those living within a radius of 20 km from the reactor in question, stating that they had standing to sue under the Article 36 of the Administrative Case Litigation Act. The High Court sent the case of the residents living within a radius of 20 km from the Monju reactor back to the Fukui District Court.

Therefore, the residents living outside a radius of 20 km from the Monju reactor, as well as the Prime Minister, appealed to the Supreme Court.[36]

34. Article 36 (Standing to Sue in an Action for Declaration of Nullity, etc.) "An action for the declaration of nullity, etc. of an original administrative disposition or administrative disposition on appeal may be filed only by a person who is likely to suffer damage from said original administrative disposition or any disposition following said administrative disposition on appeal or any other person who has legal interest to seek the declaration of nullity, etc. of the original administrative disposition or administrative disposition on appeal, where the person is unable to achieve the purpose by filing an action concerning the existing legal relationship which is based on the existence or non-existence of or validity or invalidity of the original administrative disposition or administrative disposition on appeal."

35. Ohnishi, Y. (2017), *supra note* 28, p. 336.

36. The Supreme Court rendered separate judgments for both parties respectively, and the case of residents living outside 20 km of the Monju reactor was decided in the Supreme Court decision of 1989 (Heisei 1) (行ツ: Gyo-Tsu) No. 130, provided *supra*.

5. Analysis:

This Supreme Court case is known as the leading case judging the relationship of civil injunction lawsuit and administrative lawsuit for nullity of administrative disposition such as granting a permission.

The Supreme Court judged as follows:

It is appropriate to interpret the case where the person is unable to achieve the purpose by filing an action concerning the existing legal relationship which is based on the validity or invalidity of the administrative disposition in question---which is one of the requirements for the eligibility to file an action for declaration of the nullity of an administrative disposition---, not only as referring to the case where, in connection with the legal relationship arising from the disposition, the person is unable to eliminate the disadvantage he/she is suffering due to the disposition by filing a public law-related action or civil action based on the invalidity of the disposition, but also as referring to the case where an action for declaration of the nullity of the disposition should be deemed to be a more direct and appropriate type of litigation, when compared with a public law-related action or civil action that is to be filed based on the invalidity of the disposition, for resolving the dispute arising from the disposition (see 1964 (Gyo-Tsu) No. 95, judgment of the Second Petty Bench of the Supreme Court of November 6, 1970, Minshu Vol. 24, No. 12, at 1721, 1982 (Gyo-Tsu) No. 97, judgment of the Second Petty Bench of the Supreme Court of April 17, 1987, Minshu Vol. 41, No. 3, at 286).

This reasoning can be applied in this case as follows. The appellees filed a civil action against Power Reactor and Nuclear Fuel Development Corporation, which is the installer of the reactor facilities in question, to seek an injunction against its construction and operation of the [Monju reactor] based on their personal rights, etc. This civil action cannot be regarded as an action concerning the existing legal relationship which is based on the validity or invalidity of the administrative disposition in question as prescribed in Article 36 of the Administrative Case Litigation Act, nor can it be deemed to be a more direct and appropriate type of litigation, when compared with the action for declaration of nullity in this case, for resolving the dispute arising from the [permission for the Monju reactor]. Hence, the fact that the appellees are able to file and have actually filed such a civil action cannot be evidence for the action for declaration of nullity in this case failing to meet the requirements prescribed in said Article.

6. Holding:

The Supreme Court upheld the High Court's decision and dismissed the final appeal filed by the Prime Minister.

SLOVAK REPUBLIC

Greenpeace Slovensko v. Úrad jadrového dozoru Slovenskej republiky [Greenpeace Slovakia v. Nuclear Regulatory Authority of the Slovak Republic]

Supreme Court, 2013
5Sžp/21/2012

1. Parties:

The Plaintiff, Greenpeace Slovensko, a non-governmental organisation (NGO), brought a lawsuit against the Nuclear Regulatory Authority of the Slovak Republic (Úrad jadrového dozoru Slovenskej republiky – ÚJD SR) (the Defendant), Slovakia's nuclear regulator.

2. Issue(s):

Whether the Plaintiff has standing to be a participant in the permit procedure regarding modifications to construction prior to the completion of Units 3 and 4 of the Mochovce Nuclear Power Plant.

3. Facts:

On 14 August 2008, the ÚJD SR issued administrative decision No. 246/2008 that approved modifications to construction prior to the completion of Units 3 and 4 of the Mochovce Nuclear Power Plant (first instance administrative body decision). These modifications were requested by Slovenske elektrarne, the constructor of Units 3 and 4.

Greenpeace Slovensko filed an appeal against decision No. 246/2008 to the Chairman of the ÚJD SR.

On 28 April 2009, the Chairman of the ÚJD SR issued decision No. 79/2009, which denied Greenpeace Slovensko's appeal (second instance administrative body decision).

4. Past procedure:

Greenpeace Slovensko then filed an appeal with the District Court in Bratislava (the court of first instance review of administrative decisions) seeking annulment of decision No. 79/2009.

On 11 May 2012, the District Court in Bratislava decided in favour of the ÚJD SR (Judgment 4S/125/2009-72). Greenpeace Slovensko filed an appeal with the Supreme Court.

On 27 June 2013, the Supreme Court decided in favour of Greenpeace Slovensko. It reversed the judgment of the District Court in Bratislava, annulled ÚJD SR decision No. 79/2009 and remanded the case to the ÚJD SR to renew the proceeding. The ÚJD SR held a public hearing on 27 February 2014.

On 23 May 2014, the ÚJD SR issued decision No. 291/2014, which dismissed Greenpeace Slovensko's appeal of decision No. 246/2008 and confirmed decision No. 246/2008.

Upon entry into force on 30 May 2014, Greenpeace Slovensko's claims were closed.

5. Analysis:

When determining the range of participants in administrative proceedings, it is necessary to also take into account persons, whose rights, legally protected interests or obligations may be directly affected by the decision. This opinion was expressed by the Constitutional Court of the Slovak Republic in its 13 January 2011 judgment no. k. II. ÚS 197/2010-52: "the basic criterion for assessing participation is above all the impact of the actions of a state power body (court or public administration body) or its decision on the basic rights that such a person has guaranteed in the constitution or through an international treaty".

In addition, the Constitutional Court stated in judgment no. k. I. ÚS 223/09-131 of 27 May 2010 that:

effective care for the environment is a constitutional value (Article 44, paragraph 4 of the Constitution) that the state takes care of. Everyone is subject to the right to a favourable environment (Article 44, paragraph 1 of the Constitution). The state ensures effective care for the environment in all respects, while the basic forms of this care are rule-making (legal framework of protection) and supervision of the state environmental administration bodies over selected activities in the area of the environment. … In addition to the constitution, there are a number of international treaties, but also community law, which pay increased attention to issues related to the protection and creation of the environment. With regard to the fact, that according to the constitution, everyone has a right to a favourable environment, the Slovak Republic has adopted several legal obligations to ensure public participation in the decision-making processes of public administration bodies in the sphere of the environment. At the international legal level, this is mainly the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (published under No. 43/2006 Coll.; hereinafter referred to as the "Aarhus Convention"). At the legal level, it … was implemented by Council Directive 96/61/EC on integrated pollution prevention and control as amended by Directive 2003/35/EC, as well as Act No. 24/2006 Coll. on the Assessment of Environmental Impacts and on the amendment and supplementation of certain laws (hereinafter referred to as the "EIA Act").

Mindful of these conclusions of the Constitutional Court, as well as referencing Recommendation Rec2004(20) of the Committee of Ministers to member states on judicial review of administrative acts, Art. B(2)(a), and Recommendation No. R(87)16 of the Committee of Ministers to member states on administrative procedures affecting a large number of persons, the Supreme Court found that the Plaintiff must be considered a party to the administrative proceedings and further be treated as a party in these proceedings. When evaluating this objection, it is not sufficient to state that the Plaintiff did not suffer damage to its rights, as far as the administrative authority acted with it, and it is necessary to point out the obligation of the administrative authority to include the Plaintiff as a participant in the administrative proceedings, since such a right belongs to the Plaintiff on the basis of the aforementioned legal provisions.

In agreement with the Plaintiff, the Supreme Court found that:

- nuclear power plants are clearly activities that can be characterised as environmental matters, as the Aarhus Convention deals with this term;
- any authorisation (including the construction procedure) related to the nuclear power plant clearly falls under the authorisation procedures covered by the Aarhus Convention, in which the member states must ensure timely and effective public participation;
- the Aarhus Convention concerns not only the authorisation of new activities, but also relevant changes to already permitted activities;
- the essence and purpose of the Aarhus Convention is to ensure broad participation of the public, especially associations whose goal is environmental protection, in decision-making processes;

- the participation of the public should be ensured so that it is timely and effective; and
- the administrative body, considering that the administrative procedure in question indisputably involves an activity consisting of a permit for the operation of a nuclear facility, taking into account Article 6 and Annex I of the Aarhus Convention, shall carry out an assessment of the impact of construction on the environment in accordance with the EIA Act.

In its conclusion, there is no legal requirement of the Slovak Republic or of the Aarhus Convention that the comments submitted by civil associations and the interested public to the environmental impact assessment process be met. Instead, the purpose is to allow the public not only to express themselves, but also to submit qualified comments, especially through environmental experts, to ensure a professional, substantive evaluation process.

6. Holding:

The Supreme Court decided in favour of Greenpeace Slovensko.

SLOVAK REPUBLIC

Greenpeace Slovensko v. Úrad jadrového dozoru Slovenskej republiky [Greenpeace Slovakia v. Nuclear Regulatory Authority of the Slovak Republic]

Supreme Court, 2015
3Sži/22/2014

1. Parties:

The Plaintiff, Greenpeace Slovensko, a non-governmental organisation (NGO), brought a suit against the Nuclear Regulatory Authority of the Slovak Republic (Úrad jadrového dozoru Slovenskej republiky – ÚJD SR) (the Defendant), Slovakia's nuclear regulator.

2. Issue(s):

Whether the ÚJD SR's refusal to release the preliminary safety report for Units 3 and 4 of the Mochovce Nuclear Power Plant was lawful under Act No. 211/2000 Coll. on Free Access to Information and Amendments of Some Acts (Freedom of Information Act).

3. Facts:

On 2 December 2009, under the Freedom of Information Act, the Plaintiff (Greenpeace Slovensko) submitted a request for access to the preliminary safety report for Units 3 and 4 of the Mochovce Nuclear Power Plant (then under construction). Greenpeace Slovensko claimed it had a right to the information (especially environmental information). The ÚJD SR claimed that such sensitive information could endanger public security if it was easily accessible and made publicly available.

On 14 December 2009, the first instance administrative body of the ÚJD SR issued decision No. 325/2009 denying the Plaintiff's request. The Plaintiff appealed the decision.

On 1 February 2010, the second instance administrative body – the Chairman of the ÚJD SR – rejected the appeal by decision No. 39/2010 and confirmed the decision of the first instance administrative body (ÚJD SR).

4. Past procedure:

On 6 April 2010, the Plaintiff lodged the petition/claim for review of the lawfulness of decision No. 39/2010 with the District Court in Bratislava (the court of first instance review of administrative decisions).

On 25 October 2011, the District Court decided in favour of the ÚJD SR and denied Greenpeace Slovensko's claim. Subsequently, Greenpeace Slovensko appealed to the Supreme Court.

On 1 August 2012, the Supreme Court reversed the District Court judgment and remanded the proceeding back to the District Court. The Supreme Court held that the District Court did

not adequately deal with the full scope of the Plaintiff's claims and that its decision lacked sufficient reasoning, especially in regard to application of the Aarhus Convention.

On 14 May 2013, the District Court in Bratislava decided in favour of the Plaintiff, overturning decision No. 39/2010 and remanding the case to the ÚJD SR to renew the administrative proceedings (judgment No. 3S/142/2010 – 212). The ÚJD SR appealed to the Supreme Court.

In the meantime, the ÚJD SR provided to the public from 15 October and 30 November 2013 the safety documentation for Mochovce Units 3 and 4, except for information designated sensitive pursuant to the Article 3(14) and (15) of Act No. 541/2004 Coll. on the Peaceful Use of Nuclear Energy and on amendment and supplement of certain acts, as amended (2004 Atomic Act), which was redacted. Disclosure of the safety documentation was made as part of the renewed administrative proceedings on licensing of the modifications to the construction of Mochovce Units 3 and 4. Public participants were allowed access to all documentation except those portions containing sensitive information.

On 18 December 2014, ÚJD SR issued a new decision No. 291/2014 and lodged an application for suspension of the trial on the grounds that it made licensing documentation available to the Plaintiff, including the preliminary safety report with exclusion of sensitive information. The Plaintiff did not avail itself of this possibility in the scope originally requested in the claim handled by the District Court.

On 9 June 2015 the Supreme Court confirmed the decision of the District Court.

5. Analysis:

The Supreme Court confirmed the logic and reasoning of the District Court. It stated that the precedence of the Aarhus Convention must be observed. On the other hand, Directive 2003/4/EC and the Aarhus Convention do not provide the public unlimited access to information with regards to the environment. Thus the relevant environmental information must be available, but the remaining sensitive information has not been disclosed. The Respondent lodged an application for suspension of the trial, reasoning that from 15 October 2013 to 30 November 2013 the Respondent made licensing documentation available to the Claimant, including the preliminary safety report with redaction of sensitive information. The Claimant has not made use of this possibility in the scope originally requested in the claim handled by the District Court and the Claimant did not express that it does not hold the same claim entitlement as originally requested in the claim. The Supreme Court was therefore unable to satisfy the Respondent's request for suspension of the trial.

6. Holding:

The Supreme Court confirmed the judgment of the District Court.

UNITED STATES

In the Matter of South Carolina Electric & Gas Co. & South Carolina Public Service Authority

US Nuclear Regulatory Commission (2012)
CLI-12-9, 75 NRC 421

1. Parties:

The United States (US) Nuclear Regulatory Commission (NRC) conducted a mandatory hearing of the US NRC Staff's review of South Carolina Electric & Gas Co. (SCE&G) and South Carolina Public Service Authority's combined licence application to build and operate two additional units at the Virgil C. Summer Nuclear Station in Fairfield County, South Carolina.

2. Issue(s):

Under section 189(a) of the US Atomic Energy Act of 1954, as amended (AEA), the US NRC is required to conduct a hearing at the construction permit phase of new reactor generation facility. Interested parties are given the opportunity to contest the sufficiency of the application. Even in the absence of a contested hearing, however, section 189(a) requires the US NRC Commission to hold an "uncontested" or mandatory hearing.

This decision was the result of the mandatory hearing to consider the sufficiency of the US NRC Staff's review of the application for combined construction permits and operating licences (combined licences or COLs) for reactor units at a nuclear power plant. The Commission evaluated whether the US NRC Staff had adequately reviewed the licence application.

3. Facts:

On 27 March 2008, SCE&G submitted its application for 10 Code of Federal Regulations (CFR) Part 52 COLs for two AP1000 advanced passive pressurised-water reactors for the Virgil C. Summer Nuclear Station, Units 2 and 3.

The US NRC completed its safety review in August 2011 with the issuance of the final Safety Evaluation Report. The Staff concluded that the COL application (COLA) complied with applicable safety regulations and recommended that the Commission make the findings necessary for issuance of the COLs.

The environmental review was completed in April 2011 with the issuance of the final environmental impact statement. It concluded, among other things, that unavoidable adverse environmental impacts during construction and operation would be small. The Staff concluded that construction and operation of the proposed units would have accrued benefits that most likely would outweigh the economic, environmental and other societal costs. The recommendation to the Commission related to the environmental aspects was that the COLs be issued.

The AP1000 reactor design is design certified in US NRC regulations as a standard design (10 CFR Part 52, Appendix D). The AP1000 design underwent revisions during the US NRC's review of the Summer COLA. The US NRC's review of the Summer COLA could not be finalised until the amendment to the AP1000 certified design was also finalised, which was effective on 30 December 2011.

4. Past procedure:

Independent of the mandatory hearing conducted by the Commission of the US NRC, two environmental organisations (the Sierra Club and Friends of the Earth, filing jointly) and one individual requested a hearing before the US Atomic Safety and Licensing Board (ASLB), which conducts the US NRC's adjudicatory hearings.

In February 2009, the ASLB found that only the Sierra Club had demonstrated standing but that none of the proposed conditions by any Petitioner was admissible and denied the hearing requests.

All three parties appealed to the US NRC Commission, which affirmed the ASLB's decision except with respect to one proposed contention, relating to the requirement to consider energy alternatives. The Commission determined that promoting energy efficiency by end users could be a valid alternative to be considered when the applicant is a public utility, as opposed to a merchant generator of electricity and remanded the issue to the ASLB for further consideration.

On remand, the ASLB concluded that the contention was inadmissible, which the Commission of the US NRC affirmed on appeal, thus ending the contested portion of the proceeding.

In April 2011, Friends of the Earth and the South Carolina Chapter of the Sierra Club joined in a petition, filed on multiple dockets, to (among other things) suspend licensing decisions while the US NRC Commission considered the impacts of the earthquake and tsunami at the Fukushima Daiichi Nuclear Power Plant in Japan. The US NRC Commission granted the petition in part and denied it in part.

5. Analysis:

The Commission of the US NRC determined that the agency's safety and environmental review was consistent with the requirements of the AEA and the National Environmental Policy Act of 1969, as amended.

6. Holding:

The Commission of the US NRC authorised the agency staff to issue the licences. In addition, it directed the US NRC Staff to include in the licence certain conditions relative to the implementation of a surveillance programme for squib valves and the development of strategies to address beyond design basis external events.

LONG-TERM OPERATION

CANADA

Greenpeace Canada v. Canada (Attorney General)

Federal Court of Appeal (FCA), 2016
2016 FCA 114

1. Parties:

In this matter the Appellants were four non-governmental organisations (NGOs): Greenpeace Canada, the Canadian Environmental Law Association, Lake Ontario Waterkeeper and Northwatch. The Respondents were the Attorney General of Canada and Ontario Power Generation Inc. (OPG), a publicly owned utility company licensed by the Canadian nuclear regulatory body, the Canadian Nuclear Safety Commission (CNSC).

2. Issue(s):

The issue before the Federal Court of Appeal was whether the decision of the CNSC was unreasonable on two issues: (1) whether it was unreasonable for the "Responsible Authorities"[37] (RA) to exclude severe low-probability nuclear accidents from the scope of the environmental assessment (EA); and (2) whether it had failed to give adequate consideration to the long-term management of the nuclear fuel waste that the Darlington Facility would generate if the project were authorised.

3. Facts:

The Darlington Nuclear Generating Station, owned and operated by OPG, is made up of four CANDU reactors and has been in operation since 1993. In April of 2011, OPG submitted a project description to the CNSC for the refurbishment and continued operation of the four reactors for an additional 30 years. The refurbishment and continued operation would produce additional waste, including spent fuel. The project description included the construction of additional storage capacity at the Darlington Waste Management Facility.

Under Canadian law, the activities outlined in the refurbishment project required a licensing decision by the CNSC under the Nuclear Safety and Control Act (NSCA),[38] authorisation from the Department of Fisheries and Oceans (DFO) under the Fisheries Act[39] and an environmental assessment under the Canadian Environmental Assessment Act 1992[40] (CEAA 1992). Both the CNSC and DFO were RAs to conduct the EA, with the CNSC taking the lead on the assessment.

37. The Responsible Authorities in this matter are the CNSC and the Department of Fisheries.
38. SC 1997, c. 9.
39. RSC 1985, c. F-14.
40. Under the Canadian Environmental Assessment Act 1992 that was in force in 2011, OPG's application under the Nuclear Safety and Control Act and the request for an authorisation under the Fisheries Act triggered the need to conduct a screening level EA. By virtue of an order issued by the Minister of Environment under subsection 124(2) of the new Canadian Environmental Assessment Act, 2012, SC 2012, c. 19, s. 52 (CEAA 2012), OPG's refurbishment project continued to be governed by the CEAA 1992 despite the repeal of this legislation in 2012.

In March 2013, after a public hearing on the proposed EA screening report, the CNSC issued its decision on the EA concluding that the refurbishment and continued operation of Darlington were not likely to cause significant adverse environmental effects when the mitigation measures identified in the EA screening report were taken into account. It proceeded to consider the matter for licensing under the NSCA.

4. Past procedure:

Greenpeace Canada, the Canadian Environmental Law Association, Lake Ontario Waterkeeper and Northwatch, who participated in the EA review and hearing process, applied to the Federal Court for judicial review of the EA decision. They argued that the CNSC had failed to assess the matters it was required to assess under the CEAA 1992 and erred by excluding from the scope of the EA low-probability severe nuclear accidents.

By decision dated 25 November 2014, the Federal Court dismissed the application.[41] The Court found that there was no reviewable error, and that the selection of the "one in a million per year" probability for a severe accident as a threshold below which accidents would be out of scope for the EA, was reasonable.

The Federal Court also held that the RAs were entitled to delegate completion of the EIS and technical studies to OPG under section 17 of CEAA 1992 and that they did not need to postpone their decisions until after the design and implementation of the follow up program that was to be pursued by OPG and presented to the CNSC as part of the licensing process under the NSCA.

In late 2014, the NGOs filed an appeal of that decision to the Federal Court of Appeal. Meanwhile, after a two-part licensing hearing that took place in 2015, the CNSC made its licensing decision to renew the Darlington operating licence and to authorise the refurbishment of the reactors. This decision making under the NSCA was reliant upon the validity of the EA that had been done, which had been upheld by the Federal Court.

5. Analysis:

With respect to the standard of review, the Federal Court of Appeal found its job on appeal required it to "assess whether a decision is justified, transparent and intelligible, and whether the result reached is defensible on the facts and the law". In this, the FCA found that considerable deference was owed to the CNSC.

On the issue of exclusion of severe low-probability accidents, the Federal Court of Appeal found that the threshold of "one in a million per year" severe accident was the accepted norm applied, as had been explained in the CNSC decision. The NGOs argued both that the threshold was too low and that the CNSC had not respected that threshold in making its EA decision. The Federal Court of Appeal found no reviewable error in how the CNSC had addressed this issue.

In considering the issue of long-term management of fuel waste, the NGOs submitted that they had submitted to the CNSC in the EA hearing, and before the Federal Court, that the EA had to consider the impact of the absence of a comprehensive plan for the permanent storage of nuclear fuel waste in Canada. The Federal Court of Appeal found that the CNSC had

41. 2014 FC 1124.

reasonably broadened the scope of the project to be considered respecting this issue by including the possibility of ongoing long-term onsite storage of spent fuel at the facility.[42]

6. Holding:

The Federal Court of Appeal found that there had been no reviewable error made in the EA conducted by the RAs for a nuclear project. The EA had concluded that the refurbishment and continued operation of the Darlington Nuclear Generating Station was not likely to cause significant adverse environmental effects. The appeal was dismissed, with costs.

42. This finding is reminiscent of the ruling made by a different panel of the same appellate court in the appeal of an EA completed in the context of an application to build new reactors at the Darlington site, where the Court also determined that the consideration of the issue of spent fuel management at the EA stage did not require consideration of off-site permanent storage. Canada et al. v Greenpeace Canada et al., 2015 FCA 186.

CANADA

Citizens Against Radioactive Neighbourhoods (CARN) v. BWXT Nuclear Energy Canada Inc.

Federal Court, 2022
2022 FC 849

1. Parties:

The Applicant in this proceeding is Citizens Against Radioactive Neighbourhoods (CARN), an unincorporated non-profit organisation established in 2019 and based in Peterborough, Ontario.

The Respondent is BWXT Nuclear Energy Canada Inc. (BWXT), which owns and operates the two nuclear fuel manufacturing facilities in Toronto and Peterborough. Both facilities are, under the Nuclear Safety and Control Act, SC 1997, c.9 (NSCA) and its Class I Nuclear Facilities Regulations, SOR/2000-204, defined as "Class IB nuclear facilities". Prior to 2016, these facilities were operated by GE-Hitachi Nuclear Energy Canada Inc. The Canadian Nuclear Safety Commission (CNSC or Commission) transferred the operating licence for these facilities to BWXT following its acquisition of that company in 2016.

2. Issue(s):

Whether it was reasonable for the Commission to authorise pelleting operations at the Peterborough facility subject to certain licence conditions.

3. Facts:

On 2 November 2018, BWXT applied for a ten-year renewal of its operating licence for the two Class IB facilities. It sought authorisation to conduct "pelleting operations", previously authorised only at the Toronto facility, at the Peterborough facility, for potential future business reasons. The Peterborough facility is in a residential area of downtown Peterborough and is adjacent to an elementary school.

On 18 December 2020, the Commission renewed the licence for a period of ten years pursuant to section 24 of the NSCA and severed the single licence into two facility-specific licences for the Toronto and Peterborough facilities. By majority decision, the Commission authorised commercial fuel pellet production by BWXT at the Peterborough facility, subject to three licence conditions, the first two commonly termed "hold points":

- Licence Condition 15.1 required BWXT to submit and implement an updated environmental monitoring programme at the Peterborough facility prior to the commencement of fuel pellet production;
- Licence Condition 15.2 required BWXT to submit a final commissioning report related to production of fuel pellets that is acceptable to the Commission, prior to the commencement of commercial fuel pellet production at the Peterborough facility; and
- Licence Condition 15.3 stipulated that fuel pellet production could be conducted at either the Toronto facility or at the Peterborough facility, but not at both facilities.

The minority Commission decision (dissent) would not have authorised fuel pellet production at the Peterborough facility. The Commission majority was satisfied that pelleting operations would be adequately safe at either location, since the public effective dose, the air uranium dioxide releases and the effluent uranium dioxide releases would remain well below regulatory and licence limits. The majority found that BWXT was "entitled to determine how best to conduct its business, and that the Commission's role is to ensure it does so safely in accordance with the NSCA and related regulations". The minority, on the other hand, was of the view that even if the safety case were met for either location, the "question is not whether pelleting is safe in Peterborough, but rather, at what location is it 'safer' to pellet".

4. Analysis:

There were four major issues in the application that the Court addressed. First, the Court determined the appropriate standard of review, or level of deference to be given to the decision maker. The parties before the Court agreed that the appropriate standard through which the Court ought to review the Commission decision was "reasonableness".

Second, the Court addressed the sufficiency of the licence renewal application materials and information provided for hearing. In its application, CARN argued that BWXT's licence application lacked information that was required by the NSCA and the applicable regulations, violating the statutory scheme and resulting in an unreasonable Commission decision. The Court was not persuaded by this submission, finding that the sufficiency of an application received by the CNSC under the NSCA and its regulations was:

> … *a subjective standard left to the Commission to enforce, as the Regulations provide broad, general standards, and terms defined without scientific precision*. These broadly defined standards leave room for the Commission's judgment. It is worth noting that the Commission itself wrote the Class I Regulations … *Calibration of the precise level of specificity required by these broad terms is a matter Parliament left for the Commission, not for the Applicant or the Court*. [emphasis added]

The Court was satisfied that there was no reviewable error respecting this issue.

Third, the Court addressed the legality of the use of "hold point" licence conditions. In its challenge to the Commission's decision, CARN argued that licence conditions 15.1 and 15.2 unlawfully deferred key elements of the Commission's decision making and relieved the licensee of mandatory licence application requirements. The Court noted that the NSCA confers a broad discretion on the Commission respecting the power to impose licence conditions. Finding this wording to reflect Parliament's intention that the Commission have flexibility in its interpretation of its enabling authority, the Court found the Commission's imposition of "hold point" licence conditions to be a valid exercise of its discretionary power. The Court was also satisfied that there was no reviewable error on the part of the Commission in requiring additional information from a licensee in the future.

Finally, the Court analysed how the principles of ALARA (As Low as Reasonably Achievable), justification and precaution fit within the statutory scheme of the NSCA and domestic law, in order to assess the legality of the Commission majority decision. CARN submitted that the Commission exercised its statutory discretion unreasonably in light of the three above principles (ALARA, justification and precaution). These principles, CARN argued, have been entrenched in international law and that sections 3, 9 and 24(4) of the NSCA required that they be applied by the Commission.

With respect to the ALARA principle, the Court found that the Commission "did not unreasonably fail to implement the ALARA principle as there was no obligation for it to do so in its decision. The Commission properly found that the Respondent complied with the ALARA principle by monitoring radiation doses, implementing '*action levels*' and establishing an ALARA Committee." The Court was satisfied that "none of the regulations or regulatory documents cited by the Applicant create an obligation for the Commission's decisions to

comply with the ALARA principle, nor for its decisions to take into account social considerations in applying that principle".

With respect to justification, according to CARN, the justification principle dictates that the Commission could not authorise pelleting operations in the Peterborough facility without finding that the advantage or benefit posed by exposure to additional levels of ionising radiation outweighed any risks. The Court rejected this reasoning, accepting BWXT's argument that under the NSCA (sections 3, 9 and 24), justification is a matter of "preventing unreasonable risk". Regarding the application of the precautionary principle, the Court was satisfied that it was not engaged here since there was, as had been established to the satisfaction of all of the Commission members, no potential for serious or irreversible damages.

5. Holding:

The Court concluded that the decision was lawful and reasonable, and it dismissed the application seeking to have the licence decision quashed.

NETHERLANDS

Stichting Greenpeace Nederland v. Minister van Economische Zaken [Greenpeace Netherlands Foundation v. Minister of Economic Affairs]

Raad van State [Council of State], 2014
ECLI:NL:RVS:2014:517

1. Parties:

The Appellants were four non-governmental organisations – Vereniging World Information Service on Energy Amsterdam (WISE), Stichting Greenpeace Nederland (Greenpeace Netherlands), Vereniging Zeeuwse Milieufederatie, and Stichting Noordelijke Ondergrond Afvalvrij (Stichting No-A) – and others. The Defendant was the Minister of Economic Affairs (the Minister).

2. Issue(s):

Whether an amendment to a licence for the extension of the design lifetime of the Borssele Nuclear Power Plant must be proceeded by an environmental impact assessment (EIA).

3. Facts:

NV Elektriciteits-Produktiemaatschappij Zuid-Nederland (EPZ) has a licence based on the Nuclear Energy Act of 21 February 1963 (Stb. 1963, No. 82), as amended (NEA) for the operation of the Borssele Nuclear Power Plant. Although the licence was issued for an indefinite period in 1973, in the original design and construction, the Borssele Nuclear Power Plant had a design lifetime of 40 years from the start of operation in 1973. EPZ agreed in the Borssele Nuclear Power Plant Covenant[43] in 2006 to limit the operating time, despite the indefinite term of the licence, to an ultimate shutdown date of 31 December 2033 (thus a 60-year operating life). The 31 December 2033 shutdown date was also set out in NEA, Article 15a(1) in 2010.[44]

The justification for Borssele's design lifetime was set out in the Safety Report, which forms a part of the initial operation licence granted in 1973 and because of this, any changes to the Safety Report necessitate an amendment to the licence. Therefore, to continue to operate the Borssele Nuclear Power Plant after 2013, EPZ had to apply for a licence approving long-term operation. This application was submitted in 2012. The Minister of Economic Affairs issued the long-term operation licence on 18 March 2013 with the decision "Amendment of the Nuclear Energy Act Licence granted to N.V. Elektriciteits-Produktiemaatschappij Zuid-Nederland (NV EPZ) for the extension of the design lifetime of the Borssele Nuclear Power Plant". This licence amended the licence conditions related to updating the Safety Report containing the justification for an extension of the design lifetime from 40 to 60 years, until the end of December 2033.

43. Borssele Nuclear Power Plant Covenant, *Staatscourant* [*Government Gazette*], No. 136, 17 July 2006, p. 29.

44. "To the extent that it covers the release of nuclear energy, the licence granted pursuant to Article 15b for the operation of the Borssele Nuclear Power Plant that was commissioned in 1973 shall be revoked with effect from 31 December 2033."

4. Past procedure:

This is a case in the first instance. For the licence, the Minister followed the Uniform Public Preparation Procedure [*Uniforme Openbare Voorbereidingsprocedure* – UOV] of section 3.4 of the General Administration Law Act of 4 June 1992 [*Algemene wet bestuursrecht* – Awb]. Pursuant to the UOV, anyone can submit their views on the draft licence and on the EIA before the final licence is issued. For licences that have been established with the UOV, appeal to the Raad van State, the highest administrative court in the Netherlands, is the only remedy available. The right to appeal a licence decision is reserved for interested parties.

In the case at hand, the Appellants argued that an EIA should have been conducted prior to taking the disputed decision, since the changes permitted by this decision involve significant adverse impacts on the environment. According to the Appellants, the failure to perform an EIA is in breach of Article 4(2) and Annex II(13) of the EU EIA Directive.[45] In their view, the interpretation of these provisions should be based on the Espoo Convention.[46] According to Appellants, not conducting an EIA is contrary to Dutch obligations under the Espoo Convention. The Appellants argued that the findings of the Espoo Convention Implementation Committee should apply, that the extension of the design lifetime of the Rivne Nuclear Power Plant in Ukraine must be regarded as a major change under the terms of the Espoo Convention that should lead to an EIA although it was not accompanied by further physical works.

The Appellants further maintained that because several components of the Borssele Nuclear Power Plant may have to be replaced in due course, drastic changes will be taking place at the Borssele Nuclear Power Plant. In addition, the Appellants took the position that category D.22.3, 5° of Appendix D of the Dutch EIA Decree[47] is applicable, because the disputed decision also involves a change to when the Borssele Nuclear Power Plant is to be decommissioned. On the basis of the same provision, Appellants contended that an obligation exists to perform an EIA.

Insofar as the grounds for appeal do not lead to an EIA obligation, the Appellants argued that the 2010 NEA amendment and the introduction of Article 15a resulted in a change in the decommissioning timeline, as referred to in Appendix D, category D.22.3, 5° of the Dutch EIA Decree. For that reason, there is still an EIA obligation. Appellants contend that the adoption of the amendment that impacts when decommissioning occurs means an EIA obligation applies when a decision is taken on a subsequent amendment.[48] According to Appellants, the requested licence amendments must be regarded as a phase of a procedure consisting of several phases for which there is ultimately an EIA obligation.

5. Analysis:

The Raad van State found that it has not been contested that the EU EIA Directive has been correctly implemented in Dutch regulations. For that reason, the EU EIA Directive has no direct effect.

45. Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment, *Official Journal of the European Union* L 124 (25 Apr. 2014) (EU EIA Directive).
46. Convention on Environmental Impact Assessment in a Transboundary Context (1991), 1989 UNTS 310, entered into force 10 Sept. 1997 (Espoo Convention).
47. D.22.3: "The modification or extension of a nuclear power plant and other nuclear reactors, including the decommissioning or dismantling of such power plants or reactors, with the exception of research installations for the production and processing of fissile and breeding materials, with a constant power not exceeding 1 thermal kW."; "5°. a change in the time of decommissioning or dismantling of more than 5 years."
48. See Judgment of 17 March 2011, *Brussels Hoofdstedelijk Gewest and Others v. Vlaamse Gewest*, C-275/09, ECLI:EU:C:2011:154.

Additionally, the requested changes do not result in physical works taking place at the Borssele Nuclear Power Plant. The changes relate exclusively to the update of the Safety Report. The update of the Safety Report does not concern an amendment, extension or establishment of an installation as referred to in Appendix A to the Dutch EIA Decree. For that reason, the requested changes cannot be considered "an activity" as referred to in category D.22.3, 5° of Appendix D to the Dutch EIA Decree. Even if the update of the Safety Report may result in components of the Borssele Nuclear Power Plant having to be replaced in the future, these changes will not be considered "an activity".

Further, it cannot be inferred from the findings of the Espoo Convention Implementation Committee in the Rivne case that the requested changes result in actual changes taking place at Borssele.

Based on the aforementioned findings, the Raad van State determined that there is no reason to overturn the Minister's decision that no EIA was required prior to the issuance of the contested licence. Pursuant to NEA, Article 15a the operating licence for the Borssele Nuclear Power Plant will lapse on 31 December 2033. The appealed licence decision does not constitute a phase of a licence procedure consisting of several phases ultimately aimed at performing activities for which an EIA obligation applies.

6. Holding:

The appeal was found to be without merit and dismissed.

NETHERLANDS

Stichting Greenpeace Nederland en Stichting LAKA v. minister van Infrastructuur en Milieu [Greenpeace Netherlands Foundation and LAKA Foundation v. Minister of Infrastructure and the Environment]

Raad van State [Council of State], 2018
ECLI:NL:RVS:2018:1448

1. Parties:

The Appellants were two non-governmental organisations: Stichting Greenpeace Nederland (Greenpeace Netherlands) and Stichting LAKA [LAndelijk Kernenergie Archief – National Nuclear Energy Archive] (LAKA Foundation). The Defendants were the Minister of Infrastructure and the Environment (the Minister) and, since August 2017, the Authority of Nuclear Safety and Radiation Protection (ANVS).

2. Issue(s):

Whether an amendment of the licence and the corresponding licence conditions due to the implementation of 11 safety measures resulting from the 10-year periodic safety review (PSR) and the Complementary Safety Margin Assessment (CSA) (or stress test) should be proceeded by an environmental impact assessment (EIA) on the basis of Dutch EIA Decree or on the basis of the Aarhus[49] and Espoo[50] Conventions.

3. Facts:

NV Elektriciteits-Produktiemaatschappij Zuid-Nederland (EPZ) has a licence based on the Nuclear Energy Act of 21 February 1963 (Stb. 1963, No. 82), as amended (NEA) for the operation of the Borssele Nuclear Power Plant. Although the licence was issued for an indefinite period in 1973, in the original design and construction, the Borssele Nuclear Power Plant had a design lifetime of 40 years from the start of operation in 1973. EPZ agreed in the Borssele Nuclear Power Plant Covenant[51] in 2006 to limit the operating time, despite the indefinite term of the licence, to an ultimate shutdown date of 31 December 2033 (thus a 60-year operating life). The 31 December 2033 shutdown date was also set out in NEA, Article 15a(1) in 2010.[52]

49. Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (1998), 2161 UNTS 450, entered into force 30 Oct. 2001 (Aarhus Convention).
50. Convention on Environmental Impact Assessment in a Transboundary Context (1991), 1989 UNTS 310, entered into force 10 Sept. 1997 (Espoo Convention).
51. Borssele Nuclear Power Plant Covenant, *Staatscourant* [*Government Gazette*], No. 136, 17 July 2006, p. 29.
52. "To the extent that it covers the release of nuclear energy, the licence granted pursuant to Article 15b for the operation of the Borssele Nuclear Power Plant that was commissioned in 1973 shall be revoked with effect from 31 December 2033."

Long-term operation licence amendment. The justification for Borssele's design lifetime was set out in the Safety Report, which forms a part of the initial operation licence granted in 1973 and because of this, any changes to the Safety Report necessitate an amendment to the licence. Therefore, to continue to operate the Borssele Nuclear Power Plant after 2013, EPZ had to apply for a licence approving long-term operation. This application was submitted in 2012. The Minister of Economic Affairs issued the long-term operation licence on 18 March 2013 with the decision "Amendment of the Nuclear Energy Act Licence granted to N.V. Elektriciteits-Produktiemaatschappij Zuid-Nederland (NV EPZ) for the extension of the design lifetime of the Borssele Nuclear Power Plant". This licence amended the licence conditions related to updating the Safety Report containing the justification for an extension of the design lifetime from 40 to 60 years, until the end of December 2033.

Eleven-measures licence amendment/revision licence. Following the completion of the third 10-year PSR in 2013 and the post-Fukushima European CSA, EPZ agreed to implement 11 measures that required a modification of the licence because of their significance and impact on the Safety Report. Because the Safety Report forms a part of the initial operation licence granted in 1973, any changes to the Safety Report necessitate an amendment to the licence.

On 11 September 2015, the Minister decided that it was not necessary to conduct an EIA for the implementation of the 11 safety measures, because the activity was not expected to have any significant adverse impacts on the environment.

On 9 December 2015, EPZ applied for a licence amendment.

On 12 July 2016, the Minister agreed to the requested amendments to the licence and EPZ's licence conditions. With this amendment, the Minister implemented the 11 safety measures from the third PSR and the CSA to improve the nuclear safety of the Borssele Nuclear Power Plant. EPZ's application to amend the licence was also used by the Minister to issue a so-called "revision licence" which, in addition to implementing the 11 safety measures, replaced all previously granted licences.

With effect from 1 August 2017, the licensing decision of 12 July 2016 was regarded as a decision of ANVS, which replaced the Minister in the appeal procedure in 2018 in connection with the establishment of ANVS.

4. Past procedure:

This is a case in the first instance. For the licence, the Minister followed the Uniform Public Preparation Procedure [*Uniforme Openbare Voorbereidingsprocedure* – UOV] of section 3.4 of the General Administration Law Act of 4 June 1992 [*Algemene wet bestuursrecht* – Awb]. Pursuant to the UOV, anyone can submit their views on the draft licence and on the EIA before the final licence is issued. For licences that have been established with the UOV, appeal to the Raad van State, the highest administrative court in the Netherlands, is the only remedy available. The right to appeal a licence decision is reserved for interested parties.

The Appellants appealed the 12 July 2016 revision licence decision on the grounds that it should have been preceded by an EIA. They argued that inadequacy of the chosen safety measures can have serious consequences for people and the environment. Further they claimed that an EIA is mandatory under the Dutch EIA Decree and the Aarhus and Espoo Conventions. According to the Appellants, both conventions require an EIA for the continued operation of a nuclear power plant following the end of the originally planned operating period.

5. Analysis:

The Raad van State found that the scope of the application to amend the licence is limited to the implementation of the 11 safety measures. These safety measures have no relation to the 2013 long-term operation licence amendment, which became irrevocable with the 19 February

2014 judgment of the Raad van State. The Appellants were unable to refute with evidence the Minister's decision that the 11 safety measures would have no or no significant adverse impacts on the environment.

Further, contrary to what Appellants argue, the EU EIA Directive[53] has been correctly implemented in the Dutch EIA Decree.

In addition, the Appellants wrongly assume that the contested decision involves an extension of the design lifetime or the operation time. Neither the findings of the Espoo Convention Implementation Committee with respect to the Rivne Nuclear Power Plant[54] nor the judgment of the Constitutional Court of Belgium regarding Doel 1 and 2 Nuclear Power Plants are applicable to this case. According to NEA, Article 15a(1) the validity of the operating license for Borssele Nuclear Power Plant will expire at the end of 2033. Furthermore, the revision licence is not a phase of a licensing procedure consisting of several phases. The judgment of the Court of Justice of 17 March 2011,[55] as cited by Appellants, and the Maastricht Recommendations on "Multi-stage decision-making"[56] to which it refers, does not give sufficient reasons to find that the Aarhus or Espoo Conventions obliges an EIA to be drawn up because an EIA was missing from the long-term operation licence. The procedure before the Aarhus Convention Compliance Committee with regard to a complaint from Greenpeace Netherlands (ACCC/C/2014/410) also does not lead to that conclusion.

Contrary to what the Appellants argue, it also cannot be deduced from the Aarhus and Espoo Conventions that an EIA must be made for every amendment of a licence.

Based on the above, and contrary to the view of the Appellants, it cannot be concluded that by not requiring an EIA for the amendment of the licence there is a conflict with the Aarhus and Espoo Conventions.

6. Holding:

The appeal was found to be without merit and dismissed.

53. Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment, *Official Journal of the European Union* L 124 (25 Apr. 2014) (EU EIA Directive).

54. UNECE (2014), "Decisions adopted by the Meeting of the Parties to the Convention", "Decision VI/2, Review of compliance with the Convention", ECE/MP.EIA/20.Add.1 –ECE/MP.EIA/SEA/4.Add.1, Meeting of the Parties to the Convention on its sixth session and of the Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol on its second session, Geneva, 2-5 June 2014.

55. Judgment of 17 March 2011, *Brussels Hoofdstedelijk Gewest and Others v. Vlaamse Gewest*, C-275/09, ECLI:EU:C:2011:154.

56. UNECE (2015), *Maastricht Recommendations on Promoting Effective Public Participation in Decision-making in Environmental Matters: Prepared under the Aarhus Convention*, UNECE, Geneva.

NETHERLANDS

Vereniging World Information Service on Energy Amsterdam en Stichting Greenpeace Nederland v. Autoriteit Nucleaire Veiligheid en Stralingsbescherming [Association World Information Service on Energy Amsterdam and Greenpeace Netherlands Foundation v. Authority for Nuclear Safety and Radiation Protection]

Raad van State [Council of State], 2021
ECLI:NL:RVS:2021:174

1. Parties:

The Appellants were two non-governmental organisations: Vereniging World Information Service on Energy Amsterdam (WISE) and Stichting Greenpeace Nederland (Greenpeace Netherlands). The Defendant was the Authority for Nuclear Safety and Radiation Protection (ANVS).

2. Issue(s):

Whether ANVS's amendment of the licence conditions for NV Elektriciteits-Produktiemaatschappij Zuid-Nederland (EPZ)'s Borssele Nuclear Power Plant due to the implementation of the Western European Nuclear Regulators Association's (WENRA) Reference Levels (RL) must be proceeded by an environmental impact assessment (EIA).

3. Facts:

EPZ has a licence based on the Nuclear Energy Act of 21 February 1963 (Stb. 1963, No. 82), as amended (NEA) for the operation of the Borssele Nuclear Power Plant. Although the licence was issued for an indefinite period in 1973, in the original design and construction, the Borssele Nuclear Power Plant had a design lifetime of 40 years from the start of operation in 1973. EPZ agreed in the Borssele Nuclear Power Plant Covenant[57] in 2006 to limit the operating time, despite the indefinite term of the licence, to an ultimate shutdown date of 31 December 2033 (thus a 60-year operating life). The 31 December 2033 shutdown date was also set out in NEA, Article 15a(1) in 2010.[58]

Long-term operation licence amendment. The justification for Borssele's design lifetime was set out in the Safety Report, which forms a part of the initial operation licence granted in 1973 and because of this, any changes to the Safety Report necessitate an amendment to the licence. Therefore, to continue to operate the Borssele Nuclear Power Plant after 2013, EPZ had to apply for a licence approving long-term operation. This application was submitted in 2012. The Minister of Economic Affairs issued the long-term operation licence on 18 March 2013

57. Borssele Nuclear Power Plant Covenant, *Staatscourant* [*Government Gazette*], No. 136, 17 July 2006, p. 29.

58. "To the extent that it covers the release of nuclear energy, the licence granted pursuant to Article 15b for the operation of the Borssele Nuclear Power Plant that was commissioned in 1973 shall be revoked with effect from 31 December 2033."

with the decision "Amendment of the Nuclear Energy Act Licence granted to N.V. Elektriciteits-Produktiemaatschappij Zuid-Nederland (NV EPZ) for the extension of the design lifetime of the Borssele Nuclear Power Plant". This licence amended the licence conditions related to updating the Safety Report containing the justification for an extension of the design lifetime from 40 to 60 years, until the end of December 2033.

Eleven-measures licence amendment/revision licence. Following the completion of the third 10-year periodic safety review (PSR) in 2013 and the post-Fukushima European Complementary Safety Margin Assessment (CSA) (or stress test), EPZ agreed to implement 11 measures that required a modification of the licence because of their significance and impact on the Safety Report. Because the Safety Report forms a part of the initial operation licence granted in 1973, any changes to the Safety Report necessitate an amendment to the licence.

On 11 September 2015, the Minister of Infrastructure and the Environment decided that it was not necessary to conduct an EIA for the implementation of the 11 safety measures, because the activity was not expected to have any significant adverse impacts on the environment.

On 9 December 2015, EPZ applied for a licence amendment.

On 12 July 2016, the Minister of Infrastructure and the Environment agreed to the requested amendments to the licence and EPZ's licence conditions. With this amendment, the Minister implemented the 11 safety measures from the third PSR and the CSA to improve the nuclear safety of the Borssele Nuclear Power Plant. EPZ's application to amend the licence was also used by the Minister to issue a so-called "revision licence" which, in addition to implementing the 11 safety measures, replaced all previously granted licences.

WENRA RLs licence amendment. On 4 December 2018, ANVS amended the licence conditions of EPZ's amended licence of 12 July 2016. With this amendment, ANVS implemented particular WERNA RLs for the operation of nuclear power plants. These RLs, issued from 2006 to 2008, consist of updated standards regarding nuclear safety. All WENRA members are expected to implement the RLs.

The first set of RLs was implemented in EPZ's licence in 2010. In September 2014, the RLs were reconsidered and updated by WENRA based on the European Complementary Safety Assessment and the lessons learned from the TEPCO Fukushima Daiichi accident. In 2015[59] and 2017[60] most of the updated RLs were implemented in regulations. The RLs that had not yet been implemented were included in the NEA licence for the Borssele Nuclear Power Plant via the *ex officio* amendment of the licence conditions by ANVS on 4 December 2018.

4. Past procedure:

Eleven-measures licence amendment/revision licence. Greenpeace Netherlands and Stichting LAKA [LAndelijk Kernenergie Archief – National Nuclear Energy Archive] Foundation appealed the 12 July 2016 decision granting the licence amendment to the Raad van State [Council of State, the highest administrative appeal body]. Greenpeace Netherlands and the LAKA Foundation argued *inter alia* that the measures forming the basis for the licence modification could have serious consequences for the environment, which would necessitate an EIA under the Environmental Management Act of 13 June 1979 (Stb.

59. *Handreiking VOBK (Veilig Ontwerp en het veilig Bedrijven van Kernreactoren)* [VOBK Handbook (Safe Design and Safe Operation of Nuclear Reactors)], 19 October 2015.

60. *Regeling nucleaire veiligheid kerninstallaties* [Nuclear Safety Regulations for Nuclear Installations], *Staatscourant* [*Government Gazette*], No. 30889, 13 June 2017.

1979, No. 442), as amended, the Espoo Convention,[61] the Aarhus Convention,[62] and the EU EIA Directive.[63]

On 2 May 2018, the Raad van State issued its judgment declaring the appeal unfounded and dismissed the case.[64] In its decision, the Raad van State found *inter alia* that the licence amendment did not relate to an extension of the design life of the Borssele plant, as the long-term operation licence was already granted years earlier. Further, Greenpeace Netherlands and the LAKA Foundation could not substantiate their claim that an EIA was necessary for any change to a licence for a nuclear power plant.

WENRA RLs licence amendment. Greenpeace Netherlands and WISE appealed the 4 December 2018 licensing decision on the grounds that this licence amendment should have been preceded by an EIA in the context of the lifetime extension of the Borssele Nuclear Power Plant from 2013 to 2033. The Appellants' main arguments for requiring an EIA were based on the:

- changed environmental conditions and changed risk perceptions since 2013, for example higher population in the area and more nature reserves;
- opinion of the Advocate General of the Court of Justice of the European Union (CJEU) regarding the lifetime extension of the Belgian Doel 1 and Doel 2 Nuclear Power Plants from 2015 until 2025 and the obligation to conduct an EIA on the basis of the Aarhus and Espoo and Conventions,[65] the EU EIA Directive and the Habitats Directive;[66] and
- findings of the Compliance Committee of the Aarhus Convention in the case against the Netherlands regarding the licensing decision of 2013 for the long-term operation of the Borssele Nuclear Power Plant from 2013-2033.[67] As there was no public participation in the long-term operation licence decision, this should have happened with the WENRA RLs licence decision.

While the Appellants stated that their appeal should not be construed as a request for review of the 2 May 2018 decision on the 11-measures licence amendment, their arguments amounted to a complaint that because an EIA was not done, then it needed to be done in conjunction with the next licence amendment, namely the addition of the WENRA RLs in the 4 December 2018 licensing decision.

5. Analysis:

The Raad van State notes that the WENRA RLs licence amendment did not change the lifetime of the Borssele Nuclear Power Plant, it only added a set of additional safety regulations to the licence. There were to be no physical changes to the Borssele Nuclear Power Plant as a result of the licence and, furthermore, the decision would not affect the radiation risk associated with the Borssele Nuclear Power Plant.

61. Convention on Environmental Impact Assessment in a Transboundary Context (1991), 1989 UNTS 310, entered into force 10 Sept. 1997 (Espoo Convention).
62. Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (1998), 2161 UNTS 450, entered into force 30 Oct. 2001 (Aarhus Convention).
63. Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment, *Official Journal of the European Union* L 124 (25 Apr. 2014) (EU EIA Directive).
64. Judgment of 2 May 2018, *Stichting Greenpeace Nederland en Stichting Laka v. minister van Infrastructuur en Milieu*, ECLI:NL:RVS:2018:1448.
65. Opinion of Advocate General Kokott, 29 November 2018, *Inter-Environnement Wallonie ASBL and Bond Beter Leefmilieu Vlaanderen ASBL v. Conseil des ministers*, C-411/17, ECLI:EU:C:2018:972.
66. Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, OJ L 206 (22 July 1992).
67. Findings Compliance Committee Aarhus Convention of 4 October 2018 (ACCC/C/2014/104).

The Raad van State further found that the advice of the Compliance Committee is not applicable to this case, because the WENRA RLs licence only attaches additional safety regulations to the conditions of the Borssele Nuclear Power Plant licence and does not reconsider or amend of the lifetime of the plant.

Furthermore, the Raad van State found that the ruling of the CJEU[68] regarding the Doel 1 and Doel 2 Nuclear Power Plants in Belgium is not applicable. In the Doel case the CJEU gave an explanation of the concept of "project" and an opinion on the physical renovation work specific to the extension of the lifetime of the Doel 1 and Doel 2 Nuclear Power Plants. In the present case, no physical works are being undertaken and the lifetime of the Borssele Nuclear Power Plant is not being extended.

Therefore, the Raad van State found no basis to conclude that the WENRA RLs licence amendment could not be issued without an EIA. Furthermore, the Raad van State held that no other facts and circumstances were submitted by Appellants that make it impossible to follow the judgment in the earlier ruling of the Raad van State of 2 May 2018.

6. Holding:

The appeal was found to be without merit and dismissed.

68. Judgment of 29 July 2019, *Inter-Environnement Wallonie ASBL and Bond Beter Leefmilieu Vlaanderen ASBL v. Conseil des ministers*, C-411/17, ECLI:EU:C:2019:622.

SWITZERLAND

BKW FMB Energie AG und Eidgenössisches Departement für Umwelt, Verkehr, Energie und Kommunikation gegen X. und 115 Mitbeteiligte [BKW FMB Energie AG and the Federal Department for the Environment, Transport, Energy and Communication (DETEC) v. X. and 115 Participants]

Schweizerisches Bundesgericht [Swiss Federal Supreme Court], 2013
BGE 139 II 185, 2C_347/2012; 2C_357/2012

1. Parties:

The Appellants were BKW FMB Energie AG (BWK) and the Federal Department of the Environment, Transport, Energy and Communications (Département fédéral de l'environnement, des transports, de l'énergie et de la communication – DETEC). The Complainants were a number of private individuals.

2. Issue(s):

Whether the time limitation on the operating license for the Mühleberg Nuclear Power Plant (to 31 December 2012) should be revoked or extended according to the (then new) Nuclear Energy Act of 21 March 2003 (Classified Compilation (CC) 732.1) (NEA) that came into force on February 1, 2005.

In addition, the Federal Supreme Court clarified the relationship between the licensing and supervisory authorities as well as their respective responsibilities. It also commented on the scope of the Federal Administrative Court's jurisdiction to review cases concerning special expert knowledge.

3. Facts:

The Mühleberg Nuclear Power Plant is a single unit boiling water reactor owned and operated by BKW that entered into operation in 1972. At the time of initial licensing it was granted a time-limited operating licence.

On 28 October 1998, the Swiss Federal Council extended the operating licence until 31 December 2012.

On 25 January 2005, BKW submitted a request to the Swiss Federal Council to have the time limit lifted (i.e. to have an unlimited operating licence) when the new Nuclear Energy Act of 21 March 2003 (SR 732.1) came into force on 1 February 2005. On the basis that it did not have jurisdiction, the Federal Council did not consider BKW's application and referred it to DETEC for further consideration.

On 13 June 2006, DETEC rejected certain requests from BKW and did not consider the others.

On 13 July 2006, BKW appealed the ruling to the Federal Administrative Court, which rejected the appeal on 8 March 2007 (judgment A-2089/2006, BVGE_2008/8). However, the request was approved insofar as the matter was referred back to DETEC with the instruction to

deal with the request to lift the time limit according to the rules on reconsideration or revocation of orders.

On 26 April 2007, DETEC appealed the judgment to the Federal Supreme Court, arguing that a formal licensing procedure should be carried out in accordance with the NEA.

On 21 January 2008, the Federal Supreme Court dismissed the appeal and upheld the Federal Administrative Court's decision that BKW was entitled to have its application reviewed under the rules on the reconsideration or revocation of orders.

Thereafter, DETEC published BKW's application for public consultation in June/July 2008, during which time around 1 900 objections were received, primarily related to safety-related aspects, including from the Complainants.

On 17 December 2009, DETEC approved BKW's application and lifted the time limit on the operating licence for the Mühleberg Nuclear Power Plant.

4. Past procedure:

On 1 February 2010, some Complainants raised a complaint to the Federal Administrative Court (case A-667/2010). On 12 February 2010, additional Complainants raised an identical complaint with the Federal Administrative Court (case A-863/2010). The two complaints were combined under case A-667/2010.

On 1 March 2012, the Federal Administrative Court decided to limit the operating licence until 28 June 2013. In addition, BKW was required to submit a comprehensive maintenance plan to DETEC along with any new application for an extension of the operating licence.

BKW and DETEC filed appeals with the Federal Supreme Court against the Federal Administrative Court's ruling on 20 April 2012 and 23 April 2012, respectively.

5. Analysis:

Legal qualification of the operating licence and requirements for a time limit: The operating licence for a nuclear installation is what is known in Switzerland as a "police licence" and is granted only if all the required conditions (in this case, in accordance with the NEA) are met. The law only provides for a time limit as an exception. A time limit is equivalent to a conditional withdrawal of the licence. A time limit might be ordered if the permit would have to be refused in principle because of minor deficiencies, but the likelihood that these deficiencies will be rectified is so high that it appears commensurate simply to limit the licence. The Federal Supreme Court pointed out that the short time limit set by the Federal Administrative Court (given the known duration of the ongoing proceedings) was in fact more akin to a withdrawal than a time limit. The Federal Supreme Court took the view that a time limit is neither appropriate nor necessary as a means to ensure the safety of a nuclear power plant.

Relationship between the licensing authority DETEC and the supervisory authority ENSI: During the licensing procedure, DETEC, as the licensing authority, must decide on safety issues based on the safety requirements applicable at the time of licensing. The possibility that safety levels may deteriorate in the future or fall short of advancing standards is not a reason to refuse the licence. In this regard, the Federal Supreme Court held that DETEC lacks the technical expertise to assess nuclear safety. Accordingly, the licensing authority must base its assessment of nuclear safety on the assessment made by ENSI and may only deviate for good reasons.

After an operating licence is granted, ENSI has the task, as part of its ongoing supervision, of ensuring the safety of the nuclear installation and of issuing orders in this regard. The purpose of supervision is to prevent safety levels from deteriorating because of the passage of time or from falling short of the constantly evolving safety requirements that apply over time.

Review powers: The Federal Supreme Court also held that, while the Federal Administrative Court, in principle, has unlimited scope in reaching its decisions, where it has no particular expertise it must respect ENSI's discretion. In particular, it is not up to the court to take on the role of a supervisory authority or to define the standard for safety-related concerns itself. There is no legal basis for the Federal Administrative Court to make a further operating licence conditional on submission of a maintenance plan. In particular, it is not the task of the licensing or supervisory authority to assess the economic viability of continued operation.

6. Holding:

The Federal Supreme Court held that an operating licence must be granted for a nuclear installation if the requirements under the NEA are met. An operating licence is, in principle, unlimited in time.

DETEC is responsible for issuing an operating licence. Once the licence has been issued, the supervisory authority, ENSI, is responsible for nuclear safety.

Where an authority or court has no expertise, it must respect ENSI's discretion as the specialist authority, while at the same time critically evaluating the assessment.

The law makes no provision for a maintenance plan, which consequently may not be made a condition for granting an operating licence.

UNITED STATES

In the Matter of Baltimore Gas & Electric Co.

US Nuclear Regulatory Commission (1998)
CLI-98-25, 48 NRC 325

1. Parties:

The Petitioner in this proceeding is the National Whistleblower Center (NWC), which challenged the licence renewal application submitted to the United States (US) Nuclear Regulatory Commission (NRC) by Baltimore Gas and Electric Company (BG&E or the licensee).

2. Issue(s):

Whether NWC, whose contentions before the US NRC were dismissed because they were untimely filed, had ample time under US NRC regulations to prepare an adjudicatory challenge.

3. Facts:

On 8 April 1998, the licensee filed an application to renew its operating licences for Units 1 and 2 of the Calvert Cliffs Nuclear Power Plant. The proposed licence renewal would extend the Calvert Cliffs operating licence for an additional 20-year period beyond the original expiration dates of 31 July 2014 and 13 August 2016, respectively.

An application to renew the operating licence of a commercial nuclear power plant in the United States may be granted only if the US NRC Commission finds that the continued operation of the facility "will be in accord with the common defense and security and will provide adequate protection to the health and safety of the public." 42 United States Code (USC) 2232(a). The regulations implementing this statutory requirement are set out in 10 Code of Federal Regulations (CFR) Part 54, "Requirements for Renewal of Operating Licenses for Nuclear Power Plants".

A notice of opportunity to request a hearing on the licence renewal application was published on 8 July 1998. The notice specified that petitioners must submit their contentions "not later than fifteen … days prior to the first prehearing conference."

Directives issued by the US NRC Commission and the Atomic Safety and Licensing Board Panel (ASLBP), which conducts the US NRC's adjudicatory hearings, mandated that for NWC contentions regarding the BG&E application to be timely, the contentions and supporting bases had to be submitted by 1 October 1998. Although NWC submitted its petition to intervene/request for hearing in a timely manner on 7 August, it missed the deadline to file its contentions, and instead it filed its two contentions on 13 October 1998. In its untimely filing, NWC failed to address the standards governing the admissibility of late-filed contentions found in 10 CFR 2.714(a).

4. Past procedure:

On 16 October 1998, the ASLBP determined that NWC had failed to submit any contentions by the 1 October 1998 deadline or to show that the 13 October 1998 contentions had met the US NRC Commission's standards for late-filed contentions. Based on these conclusions, the ASLBP denied NWC's petition to intervene and terminated the adjudicatory proceeding. Baltimore Gas & Electric Company (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), LBP-98-26, 48 NRC 232 (1998).

On 26 October 1998, NWC appealed the ASLBP's order to the Commission of the US NRC, which hears appeals and petitions for review of the decisions of the ASLBP. Both BG&E and the US NRC Staff opposed NWC's appeal.

5. Analysis:

On appeal, the Commission of the US NRC explained that the need for stability and predictiveness in the licensing process requires intervenors to comply with schedules issued by the ASLBP. Although the ASLBP has discretion to depart from the milestones that are presumptively applicable to each hearing request filed, it is proper to insist upon a demonstration of good cause to depart from the schedule that has been issued.

6. Holding:

The Commission of the US NRC affirmed the dismissal of NWC's contentions.

UNITED STATES

In the Matter of Entergy Nuclear Vermont Yankee LLC

US Nuclear Regulatory Commission (2010)
CLI-10-17, 72 NRC 1

1. Parties:

This proceeding stems from an application submitted by Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. (collectively, the licensee) for a 20-year renewal of the operating licence for the Vermont Yankee Nuclear Power Station (a single unit boiling water reactor), located in the state of Vermont.

There were four parties to the proceeding and two "interested states" that participated pursuant to 10 Code of Federal Regulations (CFR) 2.315(c).

New England Coalition (NEC), an environmental organisation, and the Vermont Department of Public Service (Vermont) sought and were granted the right to intervene and challenge the application.

The United States (US) Nuclear Regulatory Commission (NRC) Staff and the licensee also participated as parties in the proceeding.

The State of New Hampshire and the Commonwealth of Massachusetts participated in this adjudicatory proceeding as interested states.

2. Issue(s):

Whether the licensee had adequately demonstrated that certain reactor components would not fail due to metal fatigue during the period of extended operation.

3. Facts:

On 25 January 2006, the licensee filed its licence renewal application with the US NRC. The proposed licence renewal would extend the Vermont Yankee operating licence for an additional 20-year period beyond the original expiration date of 21 March 2012.

An application to renew the operating licence of a commercial nuclear power plant in the United States may be granted only if the US NRC Commission finds that the continued operation of the facility "will be in accord with the common defense and security and will provide adequate protection to the health and safety of the public." 42 United States Code (USC) 2232(a). The regulations implementing this statutory requirement are set out in 10 CFR Part 54, "Requirements for Renewal of Operating Licenses for Nuclear Power Plants".

A notice of opportunity to request a hearing on the licence renewal application was published on 27 March 2006.

4. Past procedure:

NRC adjudicatory hearings are conducted by the Atomic Safety and Licensing Board Panel (ASLBP), which is composed of administrative judges who are lawyers, engineers and scientists.

Several entities filed petitions to intervene and requests for hearing, each including one or more contentions (or challenges) to the licence renewal application. The licensee and the US NRC Staff filed answers, arguing that the petitions should be denied because none of the Petitioners had submitted an admissible contention as required by 10 CFR 2.309(a).

After a series of additional briefings and an oral argument on contention admissibility, the ASLBP admitted five of the nine proposed contentions. Subsequently, two of the five admitted contentions were resolved: following an appeal on the admissibility of a contention, the US NRC Commission ruled it was not admissible, and another contention was dismissed following a settlement agreement between Vermont and NEC with the licensee.

The ASLBP held an evidentiary hearing in July 2008 on the three remaining contentions.

On 24 November 2008, the ASLBP issued a partial initial decision concluding, *inter alia*, that the licensee's metal fatigue analyses of the core spray and reactor recirculation outlet nozzles did not comply with the time-limited ageing analysis (TLAA) requirements of 10 CFR 54.21(c)(1) and did not provide the reasonable assurance of safety required by 10 CFR 54.29. Accordingly, the ASLBP ruled that the licence renewal was not authorised and could not be granted until 45 days after the licensee satisfactorily completes TLAA metal fatigue calculations and serves them on the US NRC Staff and the other parties to the proceeding. Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc. (Vermont Yankee Nuclear Power Station), LBP-08-25, 68 NRC 763 (2008).

As a consequence, the licensee modified its Fatigue Monitoring Program, or ageing management programme (AMP), to comply with 10 CFR 54.21(c)(1), the assessment of which NEC continued to challenge.

The US NRC Staff appealed the ASLBP's partial initial decision to the Commission of the US NRC, which hears appeals and petitions for review of the decisions of the ASLBP.

5. Analysis:

On appeal, the Commission of the US NRC ruled that the applicant's metal fatigue calculations, as originally prepared, complied with the relevant regulation. It determined that the applicant's AMP complied with standards set forth in NUREG-1801, "Generic Aging Lessons Learned Report", Rev. 1 (September 2005) (GALL Report). The GALL Report identifies AMPs that were determined to be acceptable programmes to manage the ageing effects of systems, structures and components in the scope of licence renewal, as required by 10 CFR Part 54.

6. Holding:

The Commission of the US NRC determined that the licence renewal application was legally and technically sufficient.

REACTOR RESTART FOLLOWING A NON-ROUTINE SHUTDOWN

JAPAN

Fukuoka High Court case rejecting a provisional injunction against the restart of the Sendai nuclear power plant

Judgment of the Miyazaki Branch of the Fukuoka High Court of 6 April 2016[69]
Hanrei Jihou Vol. 2290, p. 90
2015 (Heisei 27) (ラ:Ra) No.33

1. Parties:

The plaintiffs were the residents living within a radius of 250 kilometres (km) from the Sendai nuclear power plant. The defendant was Kyushu Electric Power Company, which is the operator of the nuclear power plant in question.

2. Issue(s):

Although the plaintiffs submitted plenty of legal issues[70] on this case, it is possible to focus on two as the main issues: (1) whether the operator should make a *prima facie* showing of no actual risks of the facility in question; and (2) whether the regulatory requirements or the regulatory review concerning external events such as earthquakes and volcanic activities etc. were reasonable or not, including whether there were errors or omissions, which could not be overlooked, in the NRA's safety review on external events such as earthquakes and volcanic activities etc.

3. Facts:

Kyushu Electric Power Company started operation of Unit 1 of the Sendai nuclear power plant in 1984 and Unit 2 in 1985.

Following the routine shutdown for maintenance after the Fukushima Daiichi Nuclear Power Plant accident, Kyushu Electric Power Company applied for the necessary licences to comply with the new regulatory requirements set by the Nuclear Regulation Authority (NRA) in 2013.

The NRA granted the permission for the basic design changes of Units 1 and 2 of the Sendai nuclear power plant in September 2014, and gave other necessary approvals, which were preconditions for restarting the facilities, by May 2015.

69. For a detailed explanation of the case, including translation of parts of the judgment, see Hase, H. (2018), "Legal challenges to the operation of nuclear reactors in Japan", *Nuclear Law Bulletin*, No. 100, OECD Publishing, Paris, pp. 53-56.

70. Hashimoto, H. (2017), "The claims and *prima facie* showing in the provisional disposition case on the operation of nuclear power plant", *Jurist* No. 1505, p. 59 (Japanese language publication: 橋本博之「原子力発電所の稼働差止めを求める仮処分命令申立事件における主張・疎明のあり方」『ジュリスト No. 1505』（2017 年）59 ページ).

4. Past procedure:

The plaintiffs filed for a provisional injunction under the Civil Provisional Remedies Act (Act No. 91 of 1989) with the Kagoshima District Court against Kyushu Electric Power Company to prohibit operation of Units 1 and 2 of the Sendai nuclear power plant.

However, on 22 April 2015, the Kagoshima District Court rejected the residents' petition, finding that the NRA's new regulatory requirements and the NRA's safety review, etc. were not unreasonable.

The residents appealed to the Miyazaki Branch of the Fukuoka High Court.

5. Analysis:

The Fukuoka High Court stated that the safety level of nuclear power plants should be decided on the basis of the risk level that is socially acceptable, and it stated that considering the legislative purpose of amending the Regulation of Nuclear Source Material, Nuclear Fuel Material and Reactors (Act No. 166 of 1957) in 2012, the social convention does not require absolute safety (zero risk) for nuclear power plant operation. The High Court concluded that the social convention requires nuclear power safety based on reasonably predicted natural disasters in light of the latest science.

Taking into account that the operator has the professional expertise and information regarding the safety of its nuclear power plant, the Fukuoka High Court concluded that the operator must first make a *prima facie* showing that there is no specific risk of radiation exposure in the area near the nuclear power plant and therefore no risk of infringement of the residents' life and health due to the operation of the reactor. And the High Court stated that the operators can make this *prima facie* showing by providing evidence that the NRA's regulatory requirements, the NRA's determination that the nuclear power plant complied with these requirements and the NRA's review process are not unreasonable.

With regard to the reasonableness of the NRA's regulatory requirements and the NRA review process, the Fukuoka High Court stated that the NRA's regulatory requirements and review concerning earthquakes etc. are reasonable; however, it concluded that the regulatory requirements for volcanic events, i.e. the evaluation guideline for volcanic events, are not reasonable in the light of the latest science because the guideline presumes that the time and scale of eruption can be predicted long before its occurrence. Despite pointing out that the evaluation guideline for volcanic events is unreasonable, the High Court concluded that considering the difficulty of predicting volcanic events reasonably in the light of the latest science, the Sendai nuclear power plant does not lack safety against volcanic events and the NRA's regulatory review is not unreasonable on the grounds of the social convention.

6. Holding:

The Fukuoka High Court declined the residents' appeal that sought a provisional injunction against the restart of operation of Units 1 and 2 of the Sendai nuclear power plant.

JAPAN

Civil injunction against the restart of Tokai No. 2 nuclear power plant stating evacuation plans were inadequate

Judgment of the Mito District Court of 18 March 2021
Hanrei Jihou Vol. 2524/2525, p. 40
[the case is pending before the Tokyo High Court]
2012 (Heisei 24) (行ウ:Gyo-U) No. 15

1. Parties:

The plaintiffs are the residents living about 1.69 kilometres (Ibaraki prefecture) to 1073.53 km (Kagoshima prefecture) of the Tokai No. 2 nuclear power plant. The defendant is Japan Atomic Power Company (JAPC), the operator of the nuclear power plant in question.

2. Issue(s):

Although the plaintiffs submitted plenty of legal issues in this case, the main legal issues before the District Court were (1) whether the level of nuclear safety at the Tokai No. 2 nuclear power plant was sufficient and (2) whether the evacuation plans set by local governments were effective.

3. Facts:

JAPC started the operation of Tokai No. 2 in 1978.

JAPC applied for the necessary licences in order to comply with the new regulatory requirements set by the Nuclear Regulation Authority (NRA) in 2014.

At the time of the proceeding, the NRA was reviewing the safety of the Tokai No. 2 nuclear power plant.

4. Past procedure:

In 2012, the plaintiffs filed an injunction based on personal rights[71] with the Mito District Court against JAPC claiming that there was a possibility of a threat to life and health resulting from operating the Tokai No. 2 nuclear power plant. (Concurrently, the same residents filed an administrative lawsuit with the same court against the Government of Japan; however, they dropped the legal case later.)

71. Hase, H. (2018), "Legal challenges to the operation of nuclear reactors in Japan", *Nuclear Law Bulletin*, No. 100, OECD Publishing, Paris, p. 45, explains injunctions based on personal rights in detail.

5. Analysis:

The Mito District Court stated that the safety of nuclear power plants should be considered to be assured if all five levels of the "defence in depth," which are described in the *Fundamental Safety Principles* (IAEA Safety Standards Series No. SF-1) and the *Safety of Nuclear Power Plants: Design* (IAEA Safety Standards Series No. SSR-2/1 (Rev. 1)), are effectively in place, and the Court concluded that a specific risk of an infringement of residents' personal rights should be recognised due to the inadequate evacuation plans.

The District Court considered that the Regulation of Nuclear Source Material, Nuclear Fuel Material and Reactors (Act No. 166 of 1957; hereinafter referred to as the "Regulation Act") and the NRA's new regulatory requirements were based on the first four levels of "defence in depth", and it concluded that there was no unreasonableness in the new regulatory requirements or the NRA's review process regarding the nuclear power plant's safety measures against earthquakes, tsunamis, and volcanic events, etc.

As for the fifth level of "defence in depth", the District Court considered that the Regulation Act does not address the matter of evacuation plans and recognised that the Basic Act on Disaster Management (Act No. 223 of 1961) and the Act on Special Measures Concerning Nuclear Emergency Preparedness (Act No. 156 of 1999) deal with the enhancement and strengthening of evacuation plans set by local governments.[72] The Mito District Court found that although the area-wide evacuation plan for the Ibaraki Prefecture was formulated in March 2015, only 5 out of 14 municipalities in the "Precautionary Action Zone" and the "Urgent Protective Action Planning Zone" have set their evacuation plans due to the difficulty to set feasible evacuation plan for heavily populated area and the District Court concluded that because the local government's evacuation plans were not sufficient, there was a specific risk of infringing residents' personal rights to life and health.

6. Holding:

The Mito District Court accepted part of the residents' claim and granted an injunction against JAPC to prohibit the operation of the Tokai No. 2 nuclear power plant.

JAPC filed an appeal to the Tokyo High Court on 19 March 2021.[73] As of the date of publication, the case is still pending.

72. Cabinet Office Japan (2022), *White Paper on Disaster Management 2022* (English version), www.bousai.go.jp/en/documentation/white_paper/2022.html, explains evacuation plans set by local government in detail.

73. JAPC, Press Release, "Regarding the appeal trial of the lawsuit against the operation of the Tokai No. 2 Power Station Submission of grounds for appeal by the JAPC" (7 May 2021), available at: www.japc.co.jp/news/press/2021/pdf/210507.pdf (in Japanese).

OTHER LICENSING AND REGULATORY ACTIONS (NOT NECESSARILY A RESTRICTED TO NUCLEAR POWER REACTORS)

CANADA

Sevidal et al. v. Chopra et al.

Ontario (High Court of Justice), 1987
[1987] O.J. No. 732

1. Parties:

The Plaintiffs (Mr and Mrs Sevidal) brought an action against the vendors (Mr and Mrs Chopra), the real estate agent working for Northgate Realty Ltd. and the Atomic Energy and Control Board (AECB). The AECB was the government agency responsible for regulating nuclear power and materials in Canada.[74]

2. Issue(s):

Among others,[75] the Court looked at whether the AECB owed a duty of care to the Sevidals and whether it had breached that duty and was therefore liable in negligence.

3. Facts:

During the 1940's a former officer of Eldorado Nuclear operated a business in the Toronto area, Radium Luminous Industries. Among the experiments this company undertook was the recovery of radium from rags that had been used for luminous dial painting. The rags were collected and taken to a 10-acre plot of land situated in Scarborough, known as the Ivanenko farm. The rags were burned in a pot-bellied stove in one of two small farm outbuildings to reduce and concentrate the radium in the ashes. The ashes were collected, put in wooden barrels and shipped to Eldorado Nuclear at Port Hope for further processing. Small amounts of radioactive material were lost either through the grate in the stove or in the transfer of the ashes to the barrels. In 1974, a portion of a subdivision in Scarborough, known as the Malvern subdivision, was developed over the original Ivanenko farmhouse and its outbuildings. The property in question was built in this subdivision.

In 1975, because of the discovery of radioactive contamination in part of a building in downtown Toronto which had been used by Radium Luminous Industries, AECB investigated

74. The AECB was replaced by the Canadian Nuclear Safety Commission (CNSC) in 2000 when the Atomic Energy and Control Act was replaced by the Nuclear Safety and Control Act.

75. The issues of the action were: Was the radioactive material, found in the area of and in the soil at the residence, a danger or potential danger to the owners? Did the Chopras owe a duty to the Sevidals to disclose the presence of radioactive material in the area before the agreement to purchase was signed or to disclose the discovery of radioactive material in the backyard before the closing? Did AECB owe a duty of care to the Sevidals and did they breach that duty? Did the real estate agent meet an appropriate level of competence expected for the work which she undertook for the Sevidals? Did the lawyer advising the Sevidals meet an appropriate level of competence expected from a solicitor for the work which he undertook for the Sevidals? At what time should the house be valued to determine the damages, what is the measure of damages and did the Sevidals mitigate their damages?

for other possible locations of radioactive contamination. One of the locations identified was the Ivanenko farm.

In 1976, a federal/provincial task force was formed to bring under its control previously uncontrolled radioactive material, to reduce the risk to the public of exposure to radiation and to arrange for the removal of any loose radioactive matter. AECB was the lead agency for the task force. No radioactive material was found in the area.

In 1980, students from Ryerson Polytechnical Institute carried out tests for a school project and found an elevated gamma radiation reading in the backyard of the property across the street from the property in question in this matter. In 1981, the Plaintiffs agreed to buy the house from the Chopras. The agreement was conditional on availability of mortgage financing on certain terms, but on the advice of the real estate agent who had arranged the transaction, the Plaintiffs waived the condition.

After reading a newspaper report about radioactive contamination in the area, the Plaintiffs contacted the AECB and were informed that there was no radioactive soil on the property they had purchased, and that contaminated soil in the vicinity would be removed. Testing in the area was incomplete, however, and one week before the closing of the land transaction, contaminated soil was found at the property. The vendors were informed, the Plaintiffs were not, and the sale closed.

In 1984, the Plaintiffs sold their house at a loss.[76]

4. Analysis:

On the issue of Crown liability, the approach was to first look at whether there was a negligent misrepresentation by AECB or its employees. Then the Court looked at whether the AECB, as a public body, through its employees, was close enough to give rise to a duty of care which, if breached, would make it negligent.

The Court found that the AECB, through section 8 of the Atomic Energy Control Act, assumed responsibility for disseminating information about radioactivity, and employed an officer to carry out part of that task. It failed to exercise the standard of care required in the circumstances, and the AECB staff member's information had constituted negligent misrepresentations.

Although the AECB had a right, as a policy matter, to decide to whom information would be disseminated, that was not the issue here. In this case, the employee of the AECB provided some incomplete and inaccurate positive information to a member of the public without advising that person of the policy with respect to disseminating negative information. As a result, the employee did not alert that person to the need to make other inquiries and to the danger of relying on the information given without qualification. The Court found that Parliament certainly never intended a public authority to exercise its policy-making powers in such a way that non-disclosure of the policy would mislead a member of the public who made an appropriate inquiry.

The Court found that the AECB through its employees, owed a duty of care to the Sevidals and had been negligent in the performance of that duty. The Sevidals suffered loss because of this negligence in the same way as they did from the negligent misrepresentation.

76. Interestingly, in 1986 the house was sold by the subsequent owners to the Ontario government.

5. Holding:

It was held that all the Defendants were liable. The vendors were liable in deceit for failing to disclose a dangerous latent defect. The real estate agent was liable for advising the Plaintiffs to waive the financing condition, since, in the absence of the waiver, they would have been able to avoid the transaction. The AECB was liable in negligence for misrepresenting the true state of the property by providing incomplete information.

The Court also denied the AECB's claim for indemnity.

CANADA

Fond du Lac Denesuline First Nation v. Canada (Attorney General)

Federal Court of Appeal (FCA), 2012
2012 FCA 73

1. Parties:

The Appellants were the Fond du Lac First Nation, Black Lake Denesuline First Nation, Hatchet Lake Denesuline First Nation and the Non-First Nation Aboriginal, Provincial Communities of Camsell Portage, Uranium City, Stony Rapids and Wollaston Lake ("Athabasca Regional Government"). The decision from the Federal Court of Appeal was an appeal from a lower court judicial review decision reviewing the Canadian Nuclear Safety Commission (CNSC) licence renewal decision respecting a uranium mine and mill operating licence held by AREVA Resources Canada Inc. (AREVA).

2. Issue(s):

The issue before the Federal Court of Appeal was whether the Federal Court Judge erred in dismissing the judicial review application and determining that the Appellants did not establish a right to be consulted on the licence renewal matter before the Commission made its licensing decision.

3. Facts:

AREVA has a uranium mine and mill operation in the Athabasca Basin of northern Saskatchewan, and it sought renewal of its operating licence, as well as consolidation of two separate licences, in 2009. In the licensing hearing before the Commission, a group calling itself the "Athabasca Regional Government", made up of three recognised First Nations groups and some non-First Nation municipalities in the region, was granted intervener status to participate in the proceeding, and expressed concern respecting environmental protection and the potential effects on the community if the Commission renewed and consolidated the licences. The group submitted that there was a duty to consult with them before the licensing decision was made.

Canada's constitution recognises the existing Aboriginal and Treaty rights of Canada's Aboriginal peoples, the First Nations, Inuit and Métis peoples. The Crown's duty to consult stems from this recognition and reflects the intention of reconciliation between Canada and its Indigenous peoples.

In its licensing decision, the Commission noted that the concerns of the interveners related mostly to information and the ability of community members to understand the relevant information and that, "in this case, the submissions of the interveners did not indicate that there were specific unresolved impacts on rights, which could be addressed within the authority of the Commission's powers." The Commission concluded:

> The Commission is satisfied that the interveners have been informed of the Commission process and of the licensing action at issue, and have had a full opportunity to express their concerns and identify issues … to the extent that a duty to consult was engaged, it

> was fulfilled in this case respecting the licensing action, by the Commission process and by the opportunities that were afforded for consultation within that process.

The Commission renewed AREVA's operating licence for eight years. The intervener group applied to the Federal Court for judicial review of the Commission's decision on the basis that their constitutional right to be consulted with respect to the decision to license AREVA's operation had not been respected.

4. Past procedure:

The Federal Court determined that the intervener group had not established a reviewable error in the Commission's decision. The Court ruled that the Applicants had failed to identify or establish specific Aboriginal or Treaty rights that could potentially be adversely affected by a decision to grant AREVA's application and failed to provide evidence of adverse impact or interference with specific Aboriginal rights. Instead, the Court found that the Applicants had expressed broad and generalised concerns on matters unrelated to the particular licensing application before the Commission.

With respect to the appropriate role of the Commission, the Court found that as an agent of the Crown with a broad mandate over health, safety and environmental protection arising from nuclear-related activities, the Commission had a process that was the appropriate forum in which to address potential impacts on Aboriginal rights, such as protected hunting and fishing rights. With its remedial powers and ability to set terms and conditions of licences, the Commission would be well-placed to do the consultation and mitigation of impacts, should there be potential effects on Aboriginal rights, which was not the case here. The intervener group appealed this decision.

5. Analysis:

Firstly, the Federal Court of Appeal recognised that before exercising its licensing powers the Commission had implicit jurisdiction to determine whether the Appellants had an Aboriginal right to be consulted on the licence renewal and, if they did, whether it had been satisfied. It noted that the Canadian Parliament should not be taken to have authorised the Commission to renew AREVA's licence if the First Nations' constitutional right to be consulted had not been satisfied.

Secondly, with respect to the Appellants' principal ground of appeal, that the Commission's decision was erroneous in law because it was made in breach of their constitutional right to be consulted, the Court observed that the Appellants adduced no evidence that the proposed licence might harm a protected Aboriginal or Treaty right:

> We agree with the Judge that the Appellants did not establish that a duty to consult arose on the present facts, because they failed to identify any potential harm to an Aboriginal or Treaty right that might be caused by the Commission's decision to renew AREVA's licence.
>
> True, the First Nations Appellants have existing Treaty rights to hunt and fish for food over an area of land that includes the McClean Lake and Midwest sites. However, they adduced no evidence that these Treaty rights might be harmed in some non-trivial manner by the licence renewal.

6. Holding:

The Court was not persuaded that the Federal Court below had made any error that would warrant interference when it held that the Appellants had not established that any of them, including the three First Nations Appellants, had a right to be consulted on the matter before the Commission made its licensing decision.

CANADA

Regan Dow v. Canadian Nuclear Safety Commission

Federal Court of Appeal (FCA), 2021
2021 FCA 117

1. Parties:

The Appellant, Regan Dow, is a former employee of Canadian Nuclear Laboratories (CNL). CNL is a nuclear science and technology laboratory owned by Atomic Energy of Canada Limited (a Federal Crown Corporation). CNL is a holder of licences issued under the Nuclear Safety and Control Act (NSCA or Act). The Respondent, the Canadian Nuclear Safety Commission (CNSC), is the Canadian regulator.

2. Issue(s):

Among other things, the Complainant alleged that CNL terminated her employment because of information she provided to the CNSC about her employer's actions relating to alleged environmental damage.

It is an offence under paragraph 48(g) of the NSCA to take "disciplinary action against a person who assists or gives information to an inspector, a designated officer or the Commission in the performance of the person's functions or duties under this Act." It was pursuant to this provision of the Act that the Complainant would come to argue the CNSC was obligated to her as a whistleblower.

3. Facts:

In 2017, Ms Dow complained to the CNSC, alleging that the licensee had taken disciplinary action against her for giving information to the CNSC regarding the conduct of the company.

The CNSC investigated the complaints. Not finding an evidentiary basis to substantiate the claims or to ground the prosecution of a regulatory offence under the NSCA, the CNSC informed the Complainant that no further action would be taken regarding the complaint. The Complainant applied to the Federal Court for judicial review of that determination.

4. Past procedure:

The Federal Court dismissed the application for judicial review finding that the Complainant lacked standing to bring the application for judicial review because she was not directly affected by the decision, and dismissed the application on that ground.

The Federal Court's decision notes that an administrative body's conduct does not trigger a right to bring a judicial review application where the conduct attacked "fails to affect legal rights, impose legal obligations, or cause prejudicial effects." The Court recognised that the Complainant did not suggest any legal obligations were imposed on her in this matter, and that while she claimed that her professional reputation could have been affected, she did not provide the Court with any evidence that the disposition of the complaint affected her professional reputation in any way.

The Federal Court also determined that the disposition of the complaint does not deprive the Complainant of a legal remedy to which she might otherwise have had recourse, and therefore ultimately found she does not have standing to bring this application for judicial review.

5. Analysis:

The Federal Court of Appeal confirmed the CNSC's and the Federal Court's understanding of the NSCA and its offence provision 48(g). The Federal Court of Appeal stated, of the regulatory regime and the CNSC's authorities:

> The steps that the CNSC may take in relation to an allegation that an offence has been committed under paragraph 48(g) of the *NSCA* are consistent with the object of the *NSCA*, which is to regulate the nuclear industry, and not to resolve disputes between employers and employees. The CNSC addresses non-compliance through orders, licence revocations, administrative monetary penalties, and prosecutions. The regulatory and enforcement actions contemplated in the *NSCA* affect the rights and interests of the regulated entities, and not their individual employees. The CNSC is not empowered to sit as an adjudicator to decide disputes between private parties, nor does it have the ability to grant remedies to those who submit external complaints.

The CNSC's role in investigating potential violations of the NSCA is more analogous to that of the police investigating crimes, and their investigators share many of the same powers in investigating an offence. Whether and how the CNSC decides to prosecute a regulated entity does not "directly affect" a Complainant.

The Federal Court of Appeal added that the offence provision is to prevent and punish a licensee for acting against any would be whistleblower and presumably to discourage licensee retaliation. However, the offence provision is not a true whistleblower protection provision in that the NSCA provides no remedial powers relevant to the employee/whistleblower.

6. Holding:

The Appellant did not persuade the Federal Court of Appeal that there were overriding errors in the lower court's finding that she had not established that she had the standing necessary to bring her application for judicial review. The appeal was dismissed with costs to the CNSC. The CNSC waived its entitlement to costs.

GERMANY

RWE Power AG v. Federal State of Hessen

Higher Administrative Court of the *Land* Hesse (*Hessischer Verwaltungsgerichtshof* – VGH)
VGH, Judgment (*Urteil*) of 27 February 2013 – 6 C 824/11.T / 6 C 825/11.T;
Federal Administrative Court (*Bundesverwaltungsgericht* – BVerwG)
BVerwG, Order (*Beschluss*) of 20 December 2013 – 7 B 18.13/ 7 B 19.13

1. Parties:

The operator of the Biblis Nuclear Power Plant (the Claimant) brought an administrative suit against the Ministry for the Environment, Energy, Agriculture and Consumer Protection of the federal state ("*Land*") Hesse (the Defendant) in its capacity as the competent licensing and supervisory authority.

2. Issue(s):

Whether the Defendants' administrative acts of 18 March 2011 (in response to the Fukushima Daiichi Nuclear Power Plant accident) based on section 19(3), sentence 2, No. 3 of the Act on the Peaceful Utilisation of Atomic Energy and the Protection against its Hazards (Atomic Energy Act) suspending the operation of Biblis Nuclear Power Plant Unit A (Biblis A) for the duration of three months and prohibiting resumed operation of Biblis Nuclear Power Plant Unit B (Biblis B) were lawful.

3. Facts:

On 11 March 2011, an earthquake struck below the North Pacific, east of Japan. It triggered a tsunami, which caused the meltdown of three reactor cores at the Fukushima Daiichi Nuclear Power Plant.

Consequently, the German Federal Government and the Minister-Presidents (*Ministerpräsidenten*) of the *Länder* where nuclear power plants were being operated agreed on 15 March 2011 to re-evaluate within three months the safety of Germany's nuclear power plants in terms of possible scenarios based on what was known at that time about the accident at Fukushima. In addition, it was agreed to take the seven oldest nuclear power plants off the grid for the duration of this safety review. A press conference was held on the same day with the Federal Chancellor, members of the Federal Cabinet and a number of *Länder* Minister-Presidents. There was also extensive media coverage of the agreements reached.

On 16 March 2011, the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety informed the competent regulatory bodies of the *Länder* in writing about the substantive aspects of suspending the operation of the seven oldest nuclear power plants for the three-month safety review.

On 18 March 2011, the Defendant instructed the Claimant to suspend the operation of Biblis A for the three-month safety review and prohibited the resumed operation of Biblis B, which at that time was not in operation. The Defendants' administrative acts were based on section 19(3), second sentence, No. 3 of the Atomic Energy Act. According to section 19(3), first sentence, "[t]he supervisory authority may order that a situation be discontinued […] which

may constitute a hazard to life, health or property because of the effects of ionising radiation." To this end, section 19(3), second sentence, No. 3 of the Atomic Energy Act stipulates that "[i]n particular the supervisory authority may order that […] the operation of [nuclear power plants] shall be suspended […]." To justify the three-month suspension of operation, the Defendant included the substantive reasons from the Federal Ministry's letter of 16 March 2011 in the administrative orders.

Prior to the issuance of the administrative acts, the Defendant did not give the Claimant the opportunity for a hearing. Hessian Administrative Procedure Act, section 28(1) stipulates that "[b]efore an administrative act affecting the right of a participant may be enforced, the latter must be given the opportunity to comment on the facts relevant to the decision." Hessian Administrative Procedure Act, section 28(2) provides for certain exceptions from the right to a hearing. In the Defendant's view, a hearing was not required as the facts of the decisions were well known and had already been commented on by the Claimant in the media.

4. Past procedure:

The Claimant brought an administrative suit against the Defendant seeking a declaratory judgment that the administrative acts suspending the operation of Biblis A and prohibiting resumed operation of Biblis B were unlawful. The Higher Administrative Court of the *Land* Hesse, by judgments of 27 February 2013, granted the request and ruled that the administrative orders were unlawful.

Firstly, the administrative acts were unlawful for procedural reasons. The Defendant was required under section 28(1) of the Hessian Administrative Procedure Act to hear the Claimant before they were issued. There were no exceptions under section 28(2) Hessian Administrative Procedure Act that could have justified forgoing a prior hearing of the Claimant.

Secondly, the administrative acts were unlawful for substantive reasons. The prerequisites for the three-month suspension of operation were not met. It was unproven that the continuation of the operation of the Biblis Nuclear Power Plant would constitute hazards as described in section 19(3), first sentence of the Atomic Energy Act, requiring action from the Defendant as specified in section 19(3), second sentence of the Act. Furthermore, the Defendant could not simply rely on the Federal Ministry`s letter of 16 March 2011; instead it had the duty to use its own discretion when it ordered the three-month suspension of operation under section 19(3), second sentence, No. 3 of the Atomic Energy Act.

The Higher Administrative Court of the *Land* Hesse did not allow the judgments to be appealed (*Revision*). The Defendant challenged this before the Federal Administrative Court.

5. Analysis:

The Federal Administrative Court rejected the challenge by means of orders of 20 December 2013 and confirmed the judgments of the Higher Administrative Court of the *Land* Hesse.

Within the federal structure of Germany, the *Länder* implement the Atomic Energy Act on behalf of the Federation. This is known as *Bundesauftragsverwaltung*. Under the *Bundesauftragsverwaltung,* only the *Länder* have the authority to enforce decisions against licensees. In doing so, the relevant provisions of *Länder* administrative procedure laws apply. Therefore, a prior hearing of the Claimant by the Defendant under section 28(1) of the Hessian Administrative Procedure Act would have been mandatory. Only under section 28(2) of the Hessian Administrative Procedure Act would the Defendant not have been required to do so. However, this would only have been possible under certain circumstances (such as a previous opportunity for the operators to comment on the relevant facts in the context of informal contact with the Federal Government), which did not exist in the present case.

In addition, the failure to grant a hearing to the Claimant prior to the administrative acts was relevant. According to the Defendant, in view of the agreement of 15 March 2011 between

the Federal Government and the Minister-Presidents of the *Länder*, the decision for the three-month suspension of operation would have been the same even if the Claimant had been granted a hearing before the administrative acts were issued. However, in the Court's view, it is beyond question that the Claimant in a hypothetical hearing by the Defendant prior to the administrative acts would have made the same submissions as to the Court and that those submissions could have had an impact on the planned decision under section 19(3), second sentence, No. 3 of the Atomic Energy Act.

6. Holding:

The Defendants' administrative acts of 18 March 2011 (in response to the Fukushima Daiichi Nuclear Power Plant accident) based on section 19(3), second sentence, No. 3 of the Atomic Energy Act suspending the operation of Biblis A for the duration of three months and prohibiting resumed operation of Biblis B were unlawful.

NETHERLANDS

Stichting Greenpeace Nederland v. ministers van Volkshuisvesting, Ruimtelijke Ordening en Milieubeheer, van Economische Zaken en van Sociale Zaken en Werkgelegenheid [Greenpeace Netherlands Foundation v. Ministers of Housing, Spatial Planning and the Environment, of Economic Affairs and of Social Affairs and Employment]

Raad van State [Council of State], 2008
ECLI:NL:RVS:2008:BG4711

1. Parties:

The Appellant was Stichting Greenpeace Nederland (Greenpeace Netherlands), a non-governmental organisation. The Defendants were the Minister of Housing, Spatial Planning and the Environment, the Minister of Economic Affairs, and the Minister of Social Affairs and Employment (the Ministers).

2. Issue(s):

Whether environmental consequences should be weighed against economic interests when examining the principle of justification as laid down in Article 6(1) of the 1996 Euratom Basic Safety Standards Directive.[77] Whether the licence amendment should have been preceded by an assessment of animal protection under the Nature Conservation Act of 25 May 1998 and exemptions under the Flora and Fauna Act of 25 May 1998.

3. Facts:

On 15 October 2007, the Ministers granted Urenco Nederland B.V. (Urenco) a licence amendment for their uranium enrichment plants and the operation of the entire facility. These changes included an expansion of the enrichment capacity from 3 500 tonnes to 4 500 tonnes SWU[78] per year, an onsite railway connection for the supply and removal of raw materials and products and changes in the storage locations and storage quantities.

77. Council Directive 96/29/Euratom of 13 May 1996 laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionizing radiation, *Official Journal of the European Union* L 159 (29 June 1996) (1996 Euratom Basic Safety Standards Directive).

78. SWU stands for separative work unit and it "is the standard measure of the effort required to separate isotopes of uranium (U_{235} and U_{238}) during an enrichment process in nuclear facilities. 1 SWU is equivalent to 1 kg of separative work. As a larger unit, 1 tonne of separative work units or tSWU equals 1,000 kg of separative work." Eurostat (2017), "Glossary: Separative Work Unit (SWU)", https://ec.europa.eu/eurostat/statistics-explained/index.php?title=glossary:separative_work_unit_(swu).

4. Past procedure:

On 4 December 2007, as supplemented on 3 January 2008, Greenpeace Netherlands challenged the October 2007 licensing decision on the grounds that the requirements of Article 15 of the Nuclear Energy Act of 21 February 1963 (Stb. 1963, No. 82), as amended (NEA) and underlying legislation were not met in multiple ways, including the failure of the Ministers to consider environmental consequences when examining the principle of justification as well as to consider the interest of animal protection under the Nature Conservation Act and the Flora and Fauna Act.

5. Analysis:

On 19 November 2008, the Raad van State declared the appeal of Greenpeace Netherlands unfounded. Under NEA, Article 15b(1), a licence may be refused for defined reasons including if doing so is in the interest of protecting people, animals, plants and property. Insofar as the adverse impacts of the activity on people, animals, plants and goods cannot be prevented by attaching stipulations to the permit, a licence will be subject to stipulations that offer the greatest possible protection against those consequences, unless this is not reasonably possible.

Pursuant to Article 4 of the Dutch Radiation Protection Decree of 16 July 2001 (Stb. 2001, No. 197), which transposes the first paragraph of Article 6 of the 1996 Euratom Basic Safety Standards Directive, an act is permitted so long as it is justified by the Ministers for Housing, Regional Planning and the Environment and for Social Affairs and Employment. An act or category of acts can only be justified if their economic, social and other benefits outweigh any damage to human health it may cause.

Under No I.B.6 of Annex 1 of the Regulation on the Analysis of the Effects of Ionising Radiation (AGIS Regulation), an increase in the mass activity concentration of U_{235} with the aim of making uranium suitable for use as fuel by enrichment via ultracentrifuge is listed as a justified act. In the contested decision, the Ministers discussed the justification for extending the enrichment capacity from 3 500 to 4 500 tonnes SWU per year where they confirmed that market conditions and potential market growth necessitates the increase in capacity. Furthermore, according to the Ministers, centrifuge technology is still the most appropriate method for uranium enrichment, because it presents no additional risks to human health.

When making a justification decision, only the damage to human health can be weighed against the economic, social and other benefits of the act. The fears expressed by Greenpeace Netherlands that there will be no destination for depleted uranium do not relate to human health damage and are therefore not a disadvantage that the Ministers had to weigh against the benefits of expanding production capacity in this context. Because of this, it was found there was no reason to consider environmental consequences in general.

On the issue of assessing the interest of animal protection under the Nature Conservation Act and exemptions under the Flora and Fauna Act, the Raad van State held, based on licence application and documents submitted that the facility and the to-be-constructed railway track were not located within the sphere of influence of an area that has been designated pursuant to Article 10, Article 10a or Article 12 of the Nature Conservation Act. Therefore, the Raad van State considered that it must be assumed that a permit under the Nature Conservation Act is not required in this case. Moreover, insofar as the NEA contains an additional test for the negative consequences not regulated in the Flora and Fauna Act, there is no apparent reason to conclude that such consequences occurred in this case.

6. Holding:

The appeal was found to be without merit and dismissed.

NETHERLANDS

Stichting Greenpeace Nederland et al. v. minister van Economische Zaken, Landbouw en Innovatie [Greenpeace Netherlands Foundation et al. v. Minister of Economic Affairs, Agriculture and Innovation]

Raad van State [Council of State], 2013
ECLI:NL:RVS:2013:BZ1263

1. Parties:

The Appellants were three non-governmental organisations – Stichting Greenpeace Nederland (Greenpeace Netherlands), Stichting De Natuur- en Milieufederaties, and Vereniging Zeeuwse milieufederatie – and a number of individuals (Greenpeace Netherlands and others). The Defendant was the Minister of Economic Affairs, Agriculture and Innovation (Minister).

2. Issue(s):

Whether persons living near the Borssele Nuclear Power Plant can be considered an "interested party" in a licensing procedure.

3. Facts:

On 24 June 2011, the Minister granted NV Elektriciteits-Produktiemaatschappij Zuid-Nederland (EPZ) a licence on the basis of the Nuclear Energy Act of 21 February 1963 (Stb. 1963, No. 82), as amended (NEA) for fuel diversification at the Borssele Nuclear Power Plant.

4. Past procedure:

Article 20.1(1) of the Environmental Management Act of 13 June 1979 (Stb. 1979, No. 442), as amended, allows an interested party to appeal a decision made under the NEA. Article 1:2(1) of the General Administration Law Act of 4 June 1992 [*Algemene wet bestuursrecht* – Awb] defines an interested party as any person whose interest is directly involved in a decision.

To be regarded as an interested party under the Awb, a natural person must have a sufficiently objective personal interest that distinguishes them from the general public that is directly affected by the contested decision. According to the Nuclear Installations Disaster Management Plan, Version 1.0 of 2011, zones of 5 kilometres (km), 10 km and 20 km around the Borssele Nuclear Power Plant are considered as an evacuation zone, iodine prophylaxis zone and shelter zone, respectively. Persons residing within these zones differ sufficiently from others in terms of the risk of consequences of an incident and as such can be considered as interested parties.

This is a case in the first instance. For the licence, the Minister followed the Uniform Public Preparation Procedure [*Uniforme Openbare Voorbereidingsprocedure* – UOV] of Awb, section 3.4. Pursuant to the UOV, anyone can submit their views on the draft licence and on the EIA before the final licence is issued. For licences that have been established with the UOV, appeal

to the Raad van State, the highest administrative court in the Netherlands, is only remedy available. The right to appeal a licence decision is reserved for interested parties.

Greenpeace Netherlands and others appealed this decision on the grounds that the content of the contested decision is not sufficiently known to third parties and as such their right to legal protection is insufficiently guaranteed. Greenpeace Netherlands and others argued that the requested permit should not have been granted until more was known about the impact of the use of MOX (mixed oxide) fuel on the course of the accident at the Fukushima Daiichi Nuclear Power Plant in Japan on 11 March 2011. They claimed the Minister erred in not including the knowledge gained from the Fukushima Daiichi accident about the impact of MOX fuel on the course of an accident in their assessment. They further argued that the accident showed that the probabilistic safety assessment (PSA) method misjudges the likelihood of a meltdown.

Furthermore, the Appellants argued that the Minister erred in attaching Regulation II.A.23, which allows for a 10% differentiation in the composition of MOX fuel from what has been requested, in terms of the ratio between the components mentioned in the regulation, to the licence and did not sufficiently justify this decision. They also claimed that the requirements of Regulations II.A.10[79] and II.A.11[80] should have been submitted at the time of the application for authorisation and without these submissions the Minister should have not granted the licence.

5. Analysis:

The Raad van State found that to be regarded as an interested party within the meaning of the Awb, a natural person must have a sufficiently objective and current, individual and personal interest that sufficiently distinguishes them from others and is directly affected by the contested order. Persons living within the evacuation zones, iodine prophylaxis zones and shelter in place zones of the Borssele Nuclear Power Plant (zones of 5 km, 10 km and 20 km respectively) have sufficiently different risks resulting from a potential incident at the Borssele Nuclear Power Plant and can be regarded as having an interest in the licensing procedure.

Some of the Appellants live less than 20 km from the Borssele Nuclear Power Plant, and as such are interested parties in the contested decision. One Appellant, however, lives approximately 130 km from the Borssele Nuclear Power Plant and therefore is well outside the aforementioned zones. There are no special circumstances on the basis of which this individual Appellant must be regarded as an interested party in the contested decision. For that reason, the appeal of that Appellant is inadmissible.

The Raad van State dismissed the other aspects of the appeal as unfounded. It held that the Borssele Nuclear Power Plant meets all safety requirements and the Minister's decision did not need to take into account further study on the impact of MOX fuel on the course of an accident in their assessment. Further the Raad van State was not convinced that the PSA incorrectly misjudges the likelihood of a meltdown.

The Raad van State also held that the Appellants did not adequately demonstrate that the Minister incorrectly added Regulation II.A.23 to the licence as Regulation II.A.23 shall apply only when the plutonium composition described in the application for authorisation is no longer available and Borssele Nuclear Power Plant would need to submit new core calculations for approval before applying a different concentration of MOX. With regard to permit requirements II.A.10 and II.A.11, the Raad van State held that the Minister provided sufficient

79. Regulation II.A.10 provides that EPZ shall establish and implement a qualification process programme, including following the relevant international research programmes.

80. Regulation II.A.11 provides that the evidence for the required undercriticality of the fuel storage basin shall be updated for the storage of MOX and c-ERU fuel elements in the fuel storage basin.

justification that the programme for a qualification process and the update of the evidence for undercriticality serve as an additional control and that there was no reason from a safety point of view to deny authorisation.

6. Holding:

The appeal of the individual Appellant was declared inadmissible. The appeal of the other Appellants was declared without merit and dismissed.

SPAIN

Ascó Vandellós Nuclear Association (ANAV) et al. v. Single Investigating Court of Gandesa Challenge to the licensee and the regulator for release of radioactive material in Ascó Nuclear Power Plant

Provincial Court of Tarragona, 2020
Resolution No. 226/2020, ECLI:ES:APT:2020:1411A

1. Parties:

The Appellants were the Ascó Vandellós Nuclear Association (ANAV) and three former directors of the Ascó Nuclear Power Plant who appealed the order of the Juzgado de Instrucción Único de Gandesa (Tarragona) [Single Investigating Court of Gandesa (Tarragona)] to initiate the abbreviated procedure.[81]

2. Issue(s):

The appeal was lodged against the 25 May 2018 order initiating the abbreviated procedure. The Appellants challenged the absence of rational evidence of criminality justifying their indictment as perpetrators of a crime under Articles 325, 326, 343 and 344 of the Criminal Code,[82] since it has not been established that the exposure to ionising radiation resulting from an operational incident at the Ascó Nuclear Power Plant constituted a serious danger to human life or health or the environment.

3. Facts:

On 26 November 2007, an operational incident occurred at the end of the 19th refuelling outage of Unit 1 of the Ascó Nuclear Power Plant. While manually pouring the liquid contents of a vacuum cleaner (radioactive sludge, water and debris) into the spent fuel pool (an action not provided for in procedures), part of the contents entered the ventilation system. Radioactive material was released into the atmosphere through the chimney of the auxiliary building of the plant.

4. Past procedure:

On 4 February 2011, the Environmental Prosecutor's Office of Tarragona filed a complaint before the Single Investigating Court of Gandesa, which led, during preliminary proceedings, to the indictment of three directors of the Ascó Nuclear Power Plant and two resident inspectors of the Consejo de Seguridad Nuclear [Nuclear Safety Council – CSN].

81. An abbreviated procedure is a special criminal procedure used in Spain to expedite the investigation, prosecution and verdict of certain crimes to try offences that carry a punishment of up to nine years in prison or other non-custodial sentences.

82. Organic Law 10/1995, of 23 November, of the Criminal Code (*Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal*).

Following the order of provisional dismissal of the case dated 21 October 2015, Ecologistas en Acción, a non-governmental organisation (NGO), filed an appeal on 13 November 2015 in front of the Court of Gandesa, to which Greenpeace, another NGO, subsequently joined.

In the order of 25 October 2016, the Court of Gandesa partially upheld the appeal and agreed with Ecologistas en Acción. It confirmed the dismissal of the case only against the two CSN resident inspectors, after having been requested by the Prosecutor's Office on 29 July 2015, and previously by the State Attorney's Office and the ANAV, taking into account that the prosecution did not file an appeal. In this sense, regarding the referred inspectors, the Court held that "in the absence of an accusation against the aforementioned investigated persons, it is only possible to agree to dismiss the case against them, by virtue of the accusatory principle".

Furthermore, the order makes explicit the necessary obligation to assess in oral proceedings the contradictions that exist between the experts of both parties in relation to the possible existence of risk and its nature in the alleged crimes related to ionising radiation and against the environment. "Given that we are in the presence of experts who reach different conclusions, it must be in the act of an oral trial where the evidence is examined in all its extension in order to determine what effects on people, property and the environment were produced by the release," the Court reasoned.

The order to initiate the abbreviated procedure against ANAV and the three former directors of the Ascó Nuclear Power Plant was issued by the Single Investigating Court of Gandesa on 25 May 2018 (Abbreviated Procedure No. 31/2018), which is the subject of the appeal in front of the Provincial Court of Tarragona.

In addition, mention must be made of the administrative case associated with the criminal case. The administrative case relates to the infringement procedure initiated by the Ministry of Industry, Tourism and Commerce on 11 May 2009 against Endesa Generación, SA as the responsible operator of the Ascó Nuclear Power Plant for four offences with fines totalling EUR 15.3 million based on the same 26 November 2007 operational incident (the facts of which were established in a March 2009 CSN report). Endesa Generación, SA filed a contentious-administrative appeal against the four sanctions. The contentious administrative procedure was suspended during the criminal case. The National Audience, by judgment of 18 March 2022,[83] dismissed the contentious-administrative appeal confirming the four sanctions imposed.

5. Analysis:

Articles 343 and 344 of the Criminal Code are contained in the section "Crimes Related to Nuclear Energy and Ionising Radiation", which creates a legal right to collective security in the use of nuclear energy. The Criminal Code distinguishes between crimes of concrete danger from those that are of an abstract danger. Specifically, the crimes articulated in Articles 343 and 344 of the Criminal Code are those of concrete danger, that is, as an essential element of the crime, there must be a verifiable danger to the life, integrity, health of people or their property, or endangerment of the quality of the air, soil or water, or of animals or plants.

Article 344 of the Criminal Code punishes such conduct when it is carried out through serious negligence. Therefore, in order to justify the indictment of the Appellants as alleged perpetrators of such crimes, it is necessary to prove that the emission, discharge or release of ionising radiation has taken place and that such release has endangered the life, integrity, or health of people or their property, or endangered the quality of the air, soil, or water, or animals or plants.

83. Judgment of 18 March 2022, National Audience, Administrative Litigation Chamber, Roj: SAN 1036/2022, ECLI:ES:AN:2022:1036.

In this case, a release of ionising radiation was clearly identified and this was not disputed in the criminal proceedings. However, the Court found the evidence presented in the order and pre-trial proceedings to be insufficient to justify the indictment of the Appellants.

The present case was initiated as a result of a CSN report on the incident at the Ascó Nuclear Power Plant. In different parts of the CSN report it is shown that the exposure of people, inside or outside of the nuclear installation, to ionising radiation above the acceptable limits is very remote; therefore, this incident is not considered to have been a situation of serious danger. The CSN reiterates such an absence of serious danger at different points in the report. The CSN issued its final report in March 2009, which reached two important conclusions. The report recognises with "a high level of confidence" the absence of a real, significant impact on people, whether workers or the general public. But, the report also acknowledges that while the real risk to people was very low, in relation to potential risk, the possibility of worker exposure to radiation levels higher than the legally established limits cannot be ruled out. The report itself, when assessing this last conclusion, acknowledges the theoretical possibilities of various scenarios. Ultimately, the CSN report failed to find sufficient evidence of danger to life, integrity or health to warrant the criminal charges brought against the Appellants.

Based on this, the Court held that the contested decision does not sufficiently justify why the Appellants should be prosecuted for the criminal offences established in the order, nor does it adequately establish why it considers the facts as described to constitute criminal offences. The order under appeal does not reveal any evidence or investigative measures that can prove the necessary elements of criminal action for which the abbreviated procedure was initiated, such as danger to the life, integrity, health or property of one or more persons or serious environmental harm.

6. Holding:

The Court held that there was extensive expert evidence to rule out human and environmental risks after extensive analysis of the radioactive release. Additionally, the Court found the documentation on possible radioactive effects provided by the NGOs does not contain "any scientific element" and provides "generic and imprecise" conclusions.

Therefore, the Court granted the appeal and revoked the 25 May 2018 order issued by the Single Investigating Court of Gandesa in Abbreviated Procedure No. 31/2018 and archived the case.

SWITZERLAND

Eidgenössisches Nuklearsicherheitsinspektorat gegen A. und B. [Federal Nuclear Safety Inspectorate v. A. and B.]

Schweizerisches Bundesgericht [Swiss Federal Supreme Court], 2014
BGE 140 II 315, 2C_255/2013

1. Parties:

Two individuals, A. and B., brought a claim against the Swiss Federal Nuclear Safety Inspectorate (Eidgenössische Nuklearsicherheitsinspektorat – ENSI) over ENSI's safety assessment of the Mühleberg Nuclear Power Plant.

2. Issue(s):

Whether ENSI could be required to issue a so-called ruling on real acts on its supervisory activities in relation to accident prevention in accordance with Article 25a of the Federal Act on Administrative Procedure (Classified Compilation (CC) 172.021) (APA), and who is entitled to request such a ruling.

3. Facts:

On 18 March 2011, following the Fukushima Daiichi Nuclear Power Plant accident, ENSI issued a directive requiring all Swiss nuclear power plant operators to immediately begin reviewing the design of their plants with regard to their ability to withstand earthquakes and flooding.

On 1 April 2011, ENSI issued another directive requiring all Swiss nuclear power plants to submit appropriate proof regarding their ability to withstand a 10 000-year flood and a 10 000-year earthquake, as well as, if applicable, the combined ability to withstand a 10 000-year earthquake and subsequent dam break near the nuclear power plant (i.e. earthquake-induced flooding).

As a result of this directive, the operator of the Mühleberg Nuclear Power Plant, BKW Energie AG (BKW), had to provide, among other things, deterministic proof of its ability to cope with a 10 000-year flood. As a limiting condition for this, ENSI required the assumption that any cooling water intakes affected by the flood would fail if blockage or damage to the river water intake structures cannot be ruled out.

BKW submitted the required proof to ENSI on 30 June 2011. In its statement of 31 August 2011, ENSI assumed, among other things, that the use of mobile pumps would enable the SUSAN[84] emergency system to be supplied with cooling water even in the event of a blockage of the SUSAN screen by organic substances ("ENSI statement of 31 August 2011 (ENSI 11/1481)

84. The "SUSAN", *Selbstständiges, Unabhängiges System zur Abfuhr der Nachzerfallswärme* [autonomous, independent system for removing decay heat], is a bunkerised and partially underground emergency building at the Mühleberg Nuclear Power Plant that is designed to ensure an emergency shutdown of the reactor in case of extreme external events.

on the deterministic proof of the KKM [Mühleberg Nuclear Power Plant] for controlling the 10,000-year flood").

4. Past procedure:

On 20 March 2012, A. and B. applied to ENSI to issue a ruling on real acts under APA, Article 25a. The Applicants argued that ENSI was exercising its supervision unlawfully, in particular because it was allowing the use of mobile pumps stored on the site as deterministic proof in the assessment of the Mühleberg Nuclear Power Plant's ability to cope with a 10 000-year flood.

On 5 October 2012, ENSI issued a decision in which it declined to consider A. and B.'s application on the grounds that the Applicants had not plausibly explained the extent to which their own legal positions were affected and had not shown that any effect was of sufficient intensity.

On 5 November 2012, A. and B. filed a complaint with the Federal Administrative Court against the ENSI decision.

On 7 February 2013, the Federal Administrative Court upheld the appeal against this decision and referred the matter back to ENSI with the instruction to perform a substantive assessment of the application.

ENSI appealed the decision of Federal Administrative Court to the Federal Supreme Court, requesting that the Federal Administrative Court's decision be set aside.

5. Analysis:

Right to a ruling on real acts under APA, Article 25a in relation to ENSI's supervisory activities: APA, Article 25a grants a person with a legitimate interest the right to an independent administrative procedure, which results in a ruling on the contested administrative act (declaratory ruling). An objection can be made not only to an official action but also to an omission, and an official act can be demanded accordingly. In all cases, the authority has a specific duty to act (unlawfulness). Article 64(3) of the Nuclear Energy Act of 21 March 2003 (Classified Compilation (CC) 732.1) (NEA), on the other hand, stipulates that only the Applicant (i.e. the operator) has the right to be a party in the procedure for permits granted by the supervisory authority.

The Federal Supreme Court held that the case under consideration does not concern permits, but supervisory activities following a safety review ordered by ENSI. NEA, Article 64(3) therefore does not prevent APA, Article 25a from being applicable. The Court held that this is appropriate, as there was a proven legitimate interest in having a proper safety review. A safety review is the basis for assessing, within the framework of ongoing supervision, whether the nuclear safety of the nuclear power plant is still guaranteed, whether there are any outstanding safety issues and whether any deficiencies can be remedied by retrofitting measures. By providing legal recourse against ENSI's supervisory activities, regardless of the form of action, APA, Article 25a permits the judicial review of the correct application of the NEA and thus requires ENSI – at least indirectly – to fulfil the fundamental task of providing protection through its ongoing supervision.

Legal standing: Further, Claimants must demonstrate that they have a legitimate interest. Under the NEA, persons living close to nuclear power plants have a legitimate interest and thereby have legal standing. The legislation aims, in particular, to protect people and the environment from the dangers of nuclear energy. NEA, Article 4(1) establishes the obligation to take precautions against the unauthorised release of radioactive substances and against the unauthorised irradiation of persons during normal operation as well as in the event of any potential accidents. Any person living within an area that would be seriously affected by an accident has a legitimate interest in ensuring that protective measures appropriate to the nature and magnitude of the hazard are taken. The Claimants are within a specific spatial

proximity to the nuclear power plant, which fulfils the requirement of being personally affected. The fact that an incident to be assessed occurs only rarely does not alter the legitimacy of the interest. If this were the case, the area of statutory accident prevention, and thus a central component of ensuring nuclear safety, would be largely exempt from judicial review. For residents living in Emergency Protection Zone 1 (i.e. within a 3 to 5 kilometre radius of the nuclear power plant), a legitimate interest must be upheld. A legitimate interest for residents in Emergency Protection Zone 2 (i.e. within a 20 kilometre radius of the nuclear power plant, approximately) was not examined. Accordingly, the question as it relates to residents in Emergency Protection Zone 2 is still unresolved.

6. Holding:

The Federal Supreme Court held that the NEA does not exclude the application of APA, Article 25a (declaratory ruling) to ENSI's supervisory activities relating to accident prevention. Because the Claimants live within Emergency Protection Zone 1, they have a legitimate interest that entitles them to take legal action and request an order on administrative acts. The fact that an accident to be assessed occurs only rarely does not alter the legitimacy of the interest.

SWITZERLAND

Beschwerdeführer gegen Axpo Power AG und Eidgenössisches Nuklearsicherheitsinspektorat [Complainants v. Axpo Power AG and Federal Nuclear Safety Inspectorate]

Schweizerisches Bundesgericht [Swiss Federal Supreme Court], 2021
2C_206/2019

1. Parties:

The Appellants are 13 individual persons, the majority of whom live in Emergency Planning Zone 1 around the Beznau Nuclear Power Plant. The Respondent is Axpo Power AG, the operator of the Beznau Nuclear Power Plant, and the Swiss Federal Nuclear Safety Inspectorate (Eidgenössische Nuklearsicherheitsinspektorat – ENSI).

2. Issue(s):

(1) Whether an accident resulting from a 10 000-year earthquake should be assigned as a Category 3 design basis accident (rarest accidents), for which a dose limit of 100 mSv must not be exceeded, or whether this event should be assigned as a Category 2 design basis accident, for which a dose limit of 1 mSv must not be exceeded. To put it another way, whether, for a deterministic proof of safety for the control of the rarest and strongest earthquake, about which reliable statements could (still) be made at the relevant time, the dose limit of 1 mSv or that of 100 mSv applies.

(2) Whether ENSI was justified in requesting only a deterministic proof of safety for the 10 000-year earthquake.

3. Facts:

On 18 March 2011, following the Fukushima Daiichi Nuclear Power Plant accident, ENSI issued a directive requiring all Swiss nuclear power plant operators to immediately begin reviewing the design of their plants with regard to their ability to withstand earthquakes and flooding.

On 1 April 2011, ENSI issued another directive requiring all Swiss nuclear power plants to submit appropriate proof regarding their ability to withstand a 10 000-year flood and a 10 000-year earthquake, as well as, if applicable, the combined ability to withstand a 10 000-year earthquake and subsequent dam break near the nuclear power plant (i.e. earthquake-induced flooding).

The safety review required deterministic proof that the core cooling, the spent fuel pool cooling system, and the spent fuel pools located outside of primary containment at the Beznau Nuclear Power Plant are technically guaranteed in the event of a 10 000-year earthquake and subsequent earthquake-induced flooding and that radiation exposure would remain below the dose limit of 100 mSv.

On 30 March 2012, Axpo Power AG submitted their review to ENSI.

On 7 July 2012, ENSI issued a statement stating that the deterministic proof provided by Axpo Power AG had been provided in full and therefore an immediate provisional

decommissioning of the Beznau Nuclear Power Plant was not required ("ENSI statement of 7 July 2012 (ENSI 14/1658) on the deterministic verification of the KKB [Beznau Nuclear Power Plant] to control the 10,000-year earthquake").

On 13 July 2012, ENSI published a notification on its website that the 10 000-year earthquake is the most extreme earthquake to consider and assigned this earthquake as a Category 3 accident, for which a dose limit of 100 mSv was decisive. It stated that the Beznau Nuclear Power Plant complied with this limit value.

4. Past procedure:

On 19 August 2015, the Appellants applied to ENSI for an order concerning the lawfulness of its review.

In response, ENSI issued a decision on 27 February 2017 affirming that its acceptance of Axpo Power AG's review was lawful.

On 3 April 2017, the Appellants filed an appeal against ENSI's decision with the Federal Administrative Court on the basis of a claimed unlawful operation of the Beznau Nuclear Power Plant, an unlawful assumption of risk and an unlawful calculation of the additional dose resulting from an accident.

On 22 January 2019, the Federal Administrative Court dismissed the appeal and ordered the Appellants to pay the costs of the proceedings as well as CHF 60 000 in compensation to Axpo Power AG.

On 25 February 2019, the Appellants filed an appeal to the Federal Supreme Court. In their response to the complaint and appeal, Axpo Power AG and ENSI requested that the complaint be dismissed, with costs and compensation consequences to be borne by the Appellants.

5. Analysis:

As to the first issue, the Federal Supreme Court stated at the outset that the probability of an earthquake cannot be determined exactly. Accordingly, it did not make sense to speak of a 10 000-year earthquake, as the Appellants did. It was not a purely mathematically defined earthquake, but rather the most extreme earthquake that must be considered. ENSI thus correctly assumed that no reliable statements can be made *a priori* about the strength and effects of earthquakes that occur less frequently than in the order of 10^{-4} per year. After considering the relevant regulations, the Federal Supreme Court concluded that the 10 000-year earthquake is to be assigned to a Category 3 design basis accident and that a dose limit of 100 mSv must be applied.

As to the second issue, the Federal Supreme Court found that a safety assessment for the 10 000-year earthquake and compliance with the dose limit of 100 mSv is of limited value in relation to safety and compliance with the correspondingly lower dose limit of 1 mSv for accidents with a greater frequency. In addition to a safety assessment for the 10 000-year earthquake, ENSI should also have demanded a safety assessment for an earthquake with an accident frequency representative of a Category 2 design basis accident and compliance with the corresponding lower dose limit of 1 mSv.

In a subsidiary point, the Federal Supreme Court noted that in accordance with the Aarhus Convention,[85] proceedings on environmental matters must not be unreasonably expensive. While the Aarhus Convention is not directly applicable, the third pillar of the Aarhus

85. Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (1998), 2161 UNTS 450, entered into force 30 Oct. 2001 (Aarhus Convention).

Convention – access to justice in environmental matters – must be taken into account as a guiding principle or interpretative maxim when interpreting and applying national procedural rules. In the interests of environmental protection, the procedural route should not be excessively expensive. Accordingly, the costs to be paid to the Respondent by the Appellants, who lost the case for the most part, will be reduced.

6. Holding:

The appeal was partially upheld. The Federal Supreme Court found partially for Axpo Power AG and ENSI in that a 10 000-year earthquake is to be assigned to Category 3, with a 100 mSv dose limit. It also found ENSI's reached its conclusions (that the core cooling and the cooling of the spent fuel pools are technically guaranteed under the effects of a 10 000-year earthquake and the combination of such an earthquake with earthquake-related flooding and that the dose limit of 100 mSv is also not reached) in accordance with federal law. Therefore, the requirements for an immediate temporary shutdown were not met at the relevant point in time.

On the other hand, the Federal Supreme Court found partially for the Appellants in that ENSI should also have demanded a deterministic proof of safety from Axpo Power AG for an earthquake with a Category 2 incident and ENSI is obliged to demand a corresponding proof of safety, unless this has become irrelevant through other checks.

Otherwise, the complaint is unfounded and should be dismissed to the extent that it can be acted on.

DECOMMISSIONING ACTIVITIES (e.g. LICENCE TRANSFER, DECOMMISSIONING LICENCE, REGULATORY RELEASE)

NETHERLANDS

Gemeenschappelijke Kernenergiecentrale Nederland B.V. v. ministers van Economische Zaken en van Financiën
[Joint Nuclear Power Plant Netherlands B.V. v. Ministers of Economic Affairs and of Finance]

Raad van State [Council of State], 2021
ECLI:NL:RVS:2021:2442

1. Parties:

The Appellant was Gemeenschappelijke Kernenergiecentrale Nederland [Joint Nuclear Power Plant Netherlands – GKN], a nuclear power plant operator. The Defendants were the State Secretary of Infrastructure and Water Management (now the Minister of Infrastructure and Water Management) and the Minister of Finance (together, the Ministers).

2. Issue(s):

Whether the permanent incapability of GKN to meet the requirements for the approval of its application for financial security means the Ministers should therefore grant approval and annul the rejection of the application.

3. Facts:

On 9 January 2019, the Ministers rejected an application from GKN for the financial security it had provided on the basis of Article 15f of the Nuclear Energy Act of 21 February 1963 (Stb. 1963, No. 82), as amended (NEA). GKN is the owner of the Dodewaard Nuclear Power Plant, which was shut down in 1997.

On 1 May 2002, GKN was granted a licence to keep the Dodewaard Nuclear Power Plant in a state of safe containment for a period of 40 years until its actual decommissioning. This was chosen because it would, amongst other things, entail financial advantages. During this 40-year period, GKN's assets could grow with interest accrual to the amount needed for decommissioning. This licence was subject to conditions, including that GKN was obliged to make the necessary arrangements for the management of the financial resources necessary for the completion of the eventual decommissioning of the plant.

In 2011, both the NEA and the Nuclear Installations, Fissionable Materials and Ores Decree of 4 September 1969 (Stb. 1969, No. 403), as amended (the Bkse) were amended. The amendment introduces a legal regulation for the decommissioning of nuclear power plants. As a result, the provision on financial security associated with the 2002 licence was cancelled. Under the new scheme, GKN had two obligations. First, it must have an approved decommissioning plan that sets out how the decommissioning will actually be carried out. This plan must be updated every five years. The decommissioning plan submitted by GKN for the Dodewaard Nuclear Power Plant was last approved by decision of 14 September 2016 by the Minister of Infrastructure and the Environment. Secondly, under the new regulation, GKN must provide an approved financial security that demonstrates that it can cover the decommissioning costs.

On 1 October 2016, GKN submitted an application for approval of the financial security as referred to in NEA, Article 15f. The application is based on the decision of 14 September 2016

approving GKN's decommissioning plan. In the application, GKN has indicated that the costs for decommissioning will be EUR 189.7 million.

On 9 January 2019, the Ministers refused to approve the financial security provided by GKN for the dismantling of the Dodewaard Nuclear Power Plant. According to the Ministers, the application does not comply with Bkse, Article 44a(2)b-c because the cost estimate is not fully based on a generally accepted method. Furthermore, the application would also be in conflict with Article 13(a), in conjunction with Article 11(a) of the Nuclear Facilities Decommissioning and Dismantling Regulation.[86]

GKN argues that it is unable to meet the demands of the Ministers and therefore its application must be approved. Since GKN ceased operation of the Dodewaard Nuclear Power Plant, it does not have the opportunity to generate income and cannot provide more financial security than it has already. GKN explained that at the time the nuclear power plant was shut down in 1997, Article15f of the NEA and Article 44(2)(a) of the Bkse had not yet entered into force. When these articles came into effect, no exception was made for nuclear power plants that were already shut down. Since the Dodewaard Nuclear Power Plant had already been shut down at that time, GKN does not have any ability to generate new income and additional capital, other than by accruing interest from the capital available at the time of closure. According to GKN, this is different for nuclear power plants that are still in operation at the time of entry into force of the relevant NEA and Bkse articles.

4. Past procedure:

This is a case in the first instance. However, the lawsuit between GKN and the government is partly a repetition of legal manoeuvres. In 2015, GKN was also unable to demonstrate that there was sufficient financial capacity for the dismantling and lost a case about the same matter before the Raad van State in 2016.[87]

5. Analysis:

The Court found that regardless of whether GKN is incapable of ever having sufficient financial resources, its financial status cannot lead to an annulment of the decision. Even if it were established that GKN is permanently unable to meet the requirements for the approval of its application, this does not lead to the conclusion that the Ministers should therefore have granted approval. The current legal framework does not allow for this. The NEA and the Bkse do not contain any provisions on the basis of which the Ministers may approve the application if there is no financial security to cover the costs of decommissioning. Moreover, the Court did not establish at the hearing that GKN is unable to gather of sufficient resources. A procedure is still pending in the civil court.

6. Holding:

The appeal was found to be without merit and dismissed.

86. Regulation of the Minister of Economic Affairs, Agriculture and Innovation and the State Secretary for Social Affairs and Employment of 23 February 2011, No. WJZ/11005409 containing rules on the decommissioning and dismantling of nuclear facilities and on the application for approval of the way in which a financial security has been furnished for the costs of the decommissioning and dismantling of nuclear facilities at which nuclear energy can be or was able to be released (Nuclear Facilities Decommissioning and Dismantling Regulation).

87. *Gemeenschappelijke Kernenergiecentrale Nederland B.V. v. ministers van Economische Zaken en van Financiën* [Joint Nuclear Power Plant Netherlands B.V. v. Ministers of Economic Affairs and of Finance], ECLI:NL:RVS:2016:649.

UNITED STATES

Shieldalloy Metallurgical Corp. v. NRC

United States Court of Appeals for the District of Columbia Circuit, 2014
768 F.3d 1205

1. Parties:

The Plaintiff is Shieldalloy Metallurgical Corp., a licensee of the United States (US) Nuclear Regulatory Commission (NRC). The Defendant is the US NRC.

2. Issue(s):

Whether the US NRC's transfer of authority to the US state of New Jersey to regulate source material violated the US Atomic Energy Act of 1954, as amended (AEA) because it resulted in a regulatory scheme that was less restrictive than that required under federal law. The Court considered whether New Jersey's regulations, which favoured decommissioning for unrestricted release rather than restricted release, were compatible with the US NRC's regulatory scheme.

3. Facts:

Since the 1990s, Shieldalloy was pursuing licence termination for the company's metal alloy manufacturing site in Newfield, New Jersey. It sought to decommission this site for restricted release, i.e. through the use of institutional controls that would limit access to radioactive material left on site, and it applied to the US NRC for authorisation to pursue this path.

In 2009, after submitting its fourth restricted release plan to the US NRC for review and approval, the US NRC designated New Jersey as an "Agreement State". Section 274 of the AEA provides a statutory basis under which the US NRC relinquishes to authorised states portions of its regulatory authority to licence and regulate byproduct materials (radioisotopes); source materials (uranium and thorium); and certain quantities of special nuclear materials. The US NRC can do this if it finds that the state's regulatory program is "adequate" to protect the public health and safety with respect to the materials the state seeks to regulate and is "compatible" with its programme for regulation of such materials. 42 United States Code (USC) 2021.

When authority over the Shieldalloy site was transferred to New Jersey, Shieldalloy was unable to obtain authorisation for decommissioning from the state because New Jersey found that the restricted release plan did not meet the state's remediation requirements.

4. Past procedure:

Shieldalloy previously obtained relief from the Court on two separate occasions.

In 2010, the Court of Appeals for the District of Columbia (DC) Circuit held that the transfer of authority was invalid because the US NRC had not adequately explained how the transfer did not unduly interfere with Shieldalloy's application and, as a consequence, invalidated the transfer (i.e. transferring regulatory authority back to the US NRC) and remanded the case back to the Commission. Shieldalloy Metallurgical Corp. v. NRC, 624 F.3d 489 (DC Cir. 2010).

After the US NRC cured this deficiency and reinstated the transfer to regulatory authority over the site to New Jersey, Shieldalloy appealed again in the DC Circuit, asserting that the US NRC's standards concerning eligibility for restricted release had not been adequately explained.

On 19 February 2013, the DC Circuit vacated the transfer for a second time. Although it found that New Jersey's licence termination regulations were "adequate" and "compatible" with the US NRC's regulations, the US NRC had failed to explain how its interpretation of one particular provision, 10 Code of Federal Regulations (CFR) 20.1403(a), was grounded in the regulatory text (meaning, how New Jersey's rules governing licence termination were compatible with the NRC's restricted release provision). The Court remanded the case to the US NRC for further explanation of this issue. Shieldalloy Metallurgical Corp. v. NRC, 707 F.3d 371 (DC Cir. 2013).

In an opinion issued in August 2013, the US NRC responded to the DC Circuit's remand and reinstated its transfer of authority to New Jersey. In the opinion, the US NRC explained its "preference," set forth in its regulations, "that licensees satisfy [its] radiation dose criteria for license termination through unrestricted-release decommissioning if it is cost-beneficial to do so."

5. Analysis:

The Court upheld the US NRC's explanation of the text of its regulation, deferring to what it considered to be a reasonable interpretation. It held that the US NRC had properly determined that the relevant regulation constituted an "eligibility test" for using restricted release forms of decommissioning and that such an approach could only be undertaken if the licensee could "explain why, based on a cost-benefit analysis, it should be relieved of its burden to take further remedial measures required for unrestricted release."

6. Holding:

The Court held that the agency had reasonably interpreted its rule, and that, as a result of this interpretation, New Jersey's standard was consistent with US NRC's requirements. As a consequence, the Court dismissed Shieldalloy's challenge to the transfer of authority to New Jersey to regulate the site.

UNITED STATES

In the Matter of Entergy Nuclear Vermont Yankee LLC

US Nuclear Regulatory Commission, 2016
CLI-16-17, 84 NRC 99

1. Parties:

The state of Vermont, the Vermont Yankee Nuclear Power Corporation (the prior owner and operator of Vermont Yankee Nuclear Power Station) and Green Mountain Power Corporation are the Petitioners in this case.

The Petitioners sought review of, and a discretionary hearing on, a number of issues associated with the use of decommissioning trust funds at the Vermont Yankee Nuclear Power Station (a single unit boiling water reactor), located in the state of Vermont.

2. Issue(s):

Whether the United States (US) Nuclear Regulatory Commission's (NRC) issuance of an exemption to its regulations governing decommissioning constituted an amendment to the power plant owner's licence.

Whether the issuance of the exemptions was illegal because the US NRC had not considered the environmental impacts of the exemptions, as required by the National Environmental Policy Act of 1969, as amended (NEPA).

3. Facts:

In 2002, the US NRC approved the transfer of the Vermont Yankee licence from Vermont Yankee Nuclear Power Corporation to Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc. The transfer was subject to several conditions related to the decommissioning trust fund, and these conditions were incorporated into the licence.

In September 2014, Entergy submitted to the US NRC a request to amend the Vermont Yankee operating licence to delete the decommissioning trust fund license conditions, which would have required Entergy to follow 10 Code of Federal Regulations (CFR) 50.75(h)(1)-(3) instead of the licence conditions that were imposed upon the transfer of the plant to Entergy.

A few months later, Entergy requested an exemption from US NRC requirements related to the decommissioning trust fund, which the US NRC approved in June 2015. Specifically, the Commission permitted the plant owner to use money in the trust fund to pay for irradiated fuel management. In approving the exemption, the US NRC determined that the exemption was eligible for a categorical exclusion and therefore did not require an environmental assessment or an environmental impact statement to comply with NEPA.

On 29 December 2014, Vermont Yankee was permanently shut down and all fuel was removed from the reactor on 12 January 2015.

4. Past procedure:

In April 2015, the state of Vermont sought a hearing on Entergy's licence amendment request, which was granted by the Atomic Safety and Licensing Board Panel (ASLBP). The ASLBP conducts the US NRC's adjudicatory hearings. In September 2015, Entergy moved to withdraw its licence amendment request and dismiss the proceedings, which the ASLBP granted subject to two conditions related to decommissioning trust fund notifications.

On 4 November 2015, Petitioners filed a petition before the Commission of the US NRC seeking "a robust, comprehensive, and participatory review of Entergy's use of the Vermont Yankee Nuclear Decommissioning Trust Fund." Such a petition is not contemplated by the US NRC's procedural rules and Petitioners did not establish that they have a right to an adjudicatory hearing on the issues raised pursuant to section 189a of the US Atomic Energy Act of 1954, as amended. The Commission of the US NRC nevertheless considered the petition as a discretionary exercise of its inherent supervisory authority over agency proceedings.

5. Analysis:

The Commission of the US NRC determined that the agency had validly issued the exemption, in accordance with the criteria for a reactor licensee to obtain an exemption under 10 CFR 50.12, i.e. that it is authorised by law, will not present an undue risk to public health and safety, and is consistent with the common defence and security. The Commission noted that, even with the issuance of the exemption, the plant owner could not make a withdrawal that would inhibit its ability to complete decommissioning, and that the licensee was required to provide annual financial assurance reports and make up any shortfalls if the report reveals that funding is insufficient. It further ruled that issuance of the exemption was justified by "special circumstances" and the fact that similar exemptions had been granted to other licensees did not mean that the agency had effectively modified the underlying legal requirement. However, the Commission determined that the agency was required to perform an environmental analysis of the exemption because the "categorical exclusion" to the requirement to perform such an analysis, which had been enacted by a prior rulemaking of the agency, was designed to cover recordkeeping and administrative requirements and was not applicable here.

6. Holding:

The Commission of the US NRC determined that no hearing was required because the facility licence had not been amended. However, it directed the US NRC Staff to perform an environmental analysis of the exemption issued to the licensee. And it concluded that any concerns that the parties seeking relief had about the dissipation of the decommissioning trust fund were properly recognised as enforcement issues to be raised by the US NRC Staff to pursuant to the "citizen petition" mechanism in 10 CFR 2.206.

UNITED STATES

Public Watchdogs v. Southern California Edison Co.

United States Court of Appeals for the Ninth Circuit
984 F.3d 744 (2020); 833 F. App'x 460 (2021)

1. Parties:

Public Watchdogs, a public interest organisation, sued the United States (US) Nuclear Regulatory Commission (NRC) and the operator/licensee of the San Onofre Nuclear Generating Station (SONGS), Southern California Edison Company (SCE), asserting that the US NRC and the plant operator had impermissibly permitted dangerous conditions to exist in the loading and storage of spent nuclear fuel in canisters.

2. Issue(s):

Whether the US NRC had improperly granted exemptions to the requirements of its regulations and its licence, and whether it had failed in its responsibility to enforce legal requirements by not ordering the cessation of spent fuel loading activities and dismantlement of the spent fuel pool.

3. Facts:

In 2013, SCE permanently ceased operation of SONGS, Units 2 and 3 (Unit 1 was permanently shut down in 1992). In 2015, the US NRC amended the operating licences for Units 2 and 3 to require the licensees to "[t]ake actions necessary to decommission the plant and continue to maintain the facility including … the storage, control, and maintenance of the spent fuel in a safe condition." The licensees elected to use dry cask storage from Holtec International (Holtec) for storage of their spent nuclear fuel as part of their decommissioning plan. This Holtec dry cask spent fuel storage system had been approved by the US NRC through a certificate of compliance issued after a rulemaking process in which the public had an opportunity to participate and that was subject to judicial review.

During the loading of fuel into the Holtec spent nuclear fuel canisters, the licensee experienced a misalignment incident. Public Watchdogs claimed that the incident called into question the design of the fuel storage system and the licensee's ability to complete decommissioning of the site in a safe manner. It sought to stop loading activities and to require the US NRC to take action to preserve the spent fuel pool building in case fuel could not be safely held in dry storage.

4. Past procedure:

In August 2019, Public Watchdogs sued SCE, Holtec, the US NRC and others seeking to enjoin allegedly negligent decommissioning activities at SONGS. Public Watchdogs challenged, among other matters, the 2015 licence amendments that the US NRC issued for SONGS and the US NRC's grant of a certificate of compliance for a dry cask spent fuel storage system to Holtec.

Public Watchdogs also filed a motion for preliminary injunction and a temporary restraining order that sought to prevent the transfer of additional spent nuclear fuel into the Holtec canisters and, in turn, the SONGS independent spent fuel storage installation.

On 24 September 2019, Public Watchdogs submitted a petition under 10 Code of Federal Regulations (CFR) 2.206 for an order immediately suspending all decommissioning operations at SONGS and requiring SCE to submit an amended decommissioning plan to account for spent nuclear fuel being placed in storage at SONGS.

On 3 December 2019, the District Court for the Southern District of California granted the Defendants' motions to dismiss, denied Public Watchdog's motion for a preliminary injunction, and dismissed the case with prejudice, ruling that the challenge was effectively a challenge to the design of the storage facility, which had previously been licensed. However, the Court noted that Public Watchdogs had the option of pursuing and in fact had filed a petition under 10 CFR 2.206 asking the agency to take enforcement action with respect to the storage facility.

On 26 February 2020, the US NRC denied Public Watchdog's 2.206 petition, determining that it had taken appropriate action with respect to the misalignment issue and that further action was not warranted.

Public Watchdogs appealed both the District Court's decision and the US NRC's 2.206 petition decision.

5. Analysis:

The Court ruled that it lacked authority to question the agency's prior licensing decision, because the storage system, as well as any amendments to the facility licence permitting it to decommission the site, were no longer subject to review. The Court further ruled that the determinations concerning the appropriate enforcement action to take, if any, are committed to the discretion of the agency and, absent exceptional circumstances amounting to an abdication of statutory responsibility, cannot be reviewed by the courts. It further recognised that the agency has previously determined that fuel can be safely stored at reactor sites prior to shipment to a repository, even if, at some point, the storage systems require replacement. And it noted that decommissioning reactors must annually report the amounts of money they have on reserve to complete the decommissioning process and to make up any shortfalls between that amount and the estimated cost of completion.

6. Holding:

The Court dismissed both legal challenges brought by Public Watchdogs, holding that the design of the storage system was no longer reviewable and that the issues that Public Watchdogs raised were questions of enforcement of legal requirements, which fell within the technical expertise of the agency and, except in the most egregious of circumstances that were not present in this case, were not properly reviewed by non-expert judges.

STORAGE AND DISPOSAL OF RADIOACTIVE WASTE

AUSTRALIA

Barngarla Determination Aboriginal Corporation RNTBC v. District Council of Kimba (No. 2)

Full Court of the Federal Court of Australia, 2020
[2020] FCAFC 39

1. Parties:

The Appellant is the Barngarla Determination Aboriginal Corporation RNTBC (BDAC). The Barngarla People are the holders of native title in an area of land situated on the Eyre Peninsula in South Australia.

The BDAC is a body corporate established under the Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth) (the CATSI Act). The BDAC was registered with the Office of the Registrar of Indigenous Corporations on 11 April 2017 and is the prescribed body corporate for the purposes of section 57(2) of the Native Title Act 1993 (Cth) in respect of the land described in the determination.

As is commonplace, the determination identified areas within the overall determination area within which native title exists and areas in respect of which it has been extinguished. The native rights declared in the determination are non-exclusive rights to use and enjoy the land and waters in accordance with the traditional laws and customs of the Barngarla People.

The Respondent is the District Council of Kimba (the Council). The Council is a council constituted under the Local Government Act 1999 (SA) (the LG Act) and is responsible for an area of approximately 3 500 square kilometres on the Eyre Peninsula. The land described in the determination is situated in its local government area. Land over which the Barngarla People have been determined to have native title comprises approximately 10% of the Council's local government area.

The Intervener is the Attorney-General for the State of South Australia. The government of South Australia intervened in support of the Council and in response to a notice that a constitutional question arose in relation to the validity of the LG Act. However, this argument was not pursued at trial and the Attorney-General made no submissions.

2. Issue(s):

At first instance, the BDAC sought declaratory relief to the effect that excluding its members from a non-binding poll to gauge community support for the construction of a radioactive waste management facility within the Kimba local government area was unlawful on a number of grounds. Leading up to the poll, the Council had made a number of resolutions in determining to conduct the poll, the effect of which were that mere possession of native title rights over land within the local government area of Kimba would not qualify a person to participate in the poll.

A single judge of the Court sitting in its original jurisdiction ultimately held that the Council did not contravene sections 9(1) or 9(1A) of the Racial Discrimination Act 1975 (Cth) (RDA) in passing resolutions for the conduct of the non-binding poll.

The Full Court of the Federal Court of Australia then considered an appeal made by the BDAC against this decision.

BDAC's oral submissions proceeded from the starting point that its members were excluded from the ballot. From there it was submitted that because all of the BDAC's members were Aboriginal, the practical effect of the resolutions was to exclude the BDAC's members from participating in the poll by reference to their Aboriginality. It was argued that the special nature of the members' interests in the land neighbouring the nominated sites for the waste management facility meant that no justification advanced by the Council could withstand objective scrutiny and that, accordingly, the exclusion of the BDAC's members must necessarily be characterised as an act referable to the race of the BDAC's members.

The Full Court ultimately made its decision on the basis of two issues. The first issue was whether the primary judge erred in concluding that the actions of the Council did not involve a distinction, exclusion, restriction or preference based on race within the meaning of RDA, section 9(1). The second issue was whether the primary judge erred in admitting and considering the evidence of the Council's Chief Executive Officer (CEO) in respect of the Council's reasons for adopting the requirements for voting set out in section 14 of the Local Government (Elections) Act 1999 (SA) (LGE Act).

3. Facts:

In 2017, two sites within the Council area were nominated by their owners under section 7 of the National Radioactive Waste Management Act 2012 (Cth) (NRWM Act) as possible sites for the construction of a national radioactive waste management facility (Facility). The nominated sites each neighbour land to which the Barngarla People hold native title rights and interests. The determination of native title in favour of the Barngarla People provided that native title in respect of the nominated sites had been extinguished. However, native title was determined to exist in relation to areas proximate to each site.

The object of the NRWM Act, as stated in section 3, is to provide for the selection of a site for the Facility and for the establishment and operation of the Facility on the selected site so as to ensure that radioactive waste generated, possessed or controlled by the Commonwealth of Australia or a Commonwealth entity is safely and securely managed. Under NRWM Act, section 9 the relevant Minister may, in their absolute discretion, approve nominated land as a site for the Facility. By NRWM Act, section 14 the Minister may, in their absolute discretion, declare that a site approved under section 9 is selected as the site for the Facility.

It was common ground that the Minister had adopted a voluntary nomination process with respect to proposed sites for the Facility.

After consideration of the respective nominations, the Minister initiated a process, referred to as the Phase 1 Consultation, with respect to each of the two sites. The Phase 1 Consultation involved the obtaining of feedback from community members and the receipt of submissions.

In May and June 2017, at the request of the Minister, the Council conducted a poll of its community with a view to obtaining an indication of the level of support for the nominated sites as the site for the Facility (2017 Poll). The franchise for the poll comprised those eligible to vote in Council elections under LGE Act, section 14. In total, 690 persons voted in the 2017 Poll, with 396 (57.4%) in favour of the establishment of a Facility and 294 (42.6%) opposed.

At the conclusion of the Phase 1 Consultation, the Minister announced his decision to proceed to Phase 2. The Minister said that "[t]here will be another decision at the end of Phase 2, after further technical work and community consultations have been completed, for the community to determine if they want to progress this proposal further".

In about April 2018, communication occurred between the Council and the Minister concerning the conduct of a second ballot and, subsequently, the Council resolved to conduct a non-binding ballot to ascertain the support within its community for the construction and maintenance of a radioactive waste management facility within its local government area. The Minister proposed that the second ballot be:

- conducted before 4 September 2018 with a five week voting period;

- conducted by the Australian Electoral Commission (AEC) on behalf of the Council; and
- the subject of arrangements between the Council and the AEC but with the "default position" being the same basis on which the 2017 Poll was conducted.

The Council acceded to the Minister's proposal. It passed a number of resolutions giving effect to that decision with the effect, first, that the Council would retain the AEC to conduct a ballot of members of the community and, secondly, that the ballot was to be conducted in accordance with the provisions of the LGE Act. For this purpose, the CEO was authorised to provide the AEC with the roll of those eligible to vote in Council elections under LGE Act, section 14.

As of 30 June 2018, the BDAC had 211 members. The addresses for those members at 30 June 2018 shown in the General Report filed with the Office of the Registrar of Indigenous Corporations suggest that at that time none of them resided within the Council's area and, consequently, none of the BDAC's members were, by reason of being a native title holder, included on the Council's roll.

Commencing on 30 May 2018, the BDAC made a number of representations to the Council to have its members permitted to vote in the ballot. The BDAC submitted that its members should be entered on the Council's own voter roll pursuant to LGE Act, sections 14 and 15 or, alternatively, that the Council prepare a separate and specific roll of voters for the purpose of the ballot that included its members.

The Council responded to the BDAC through its CEO acknowledging that the BDAC's members hold native title in respect of several parcels of land within its local government area and, further, while those native title rights and interests satisfied the definition of "owner" in the LG Act, this ownership did not entitle the BDAC's members to be included on the voters' roll as the land was "non-rateable", and the native title holders were not ratepayers. Accordingly, they did not meet the enrolment criteria contained in LGE Act, section 14(1)(ab), (b) or (c). The Council accepted that some of the BDAC members may be eligible to vote in the ballot pursuant to LGE Act, section 14(1)(a) on the basis that they resided within the local government area.

4. Past procedure:

The BDAC lodged an originating application in the Federal Court of Australia alleging that the Council had contravened RDA, sections 9(1) and 9(1A) by passing resolutions for the conduct of a non-binding poll to gauge the level of community support for the construction of a radioactive waste management facility on sites within the Council's local government area nominated by the site's owners for this purpose. Among other things, it was alleged that the passage of the resolutions was an act involving a distinction, exclusion, restriction or preference based on race.

The primary judge dismissed the originating application – Barngarla Determination Aboriginal Corporation RNTBC v. District Council of Kimba [2019] FCA 1092 – stating:

> In my opinion, it should be accepted that the non-inclusion of the members of BDAC in the franchise for the ballot involve distinction or exclusion. They (and others who did not meet the requirements for the franchise) were thereby precluded from participating in the ballot being arranged by the Council for the purposes of ascertaining the views of the Kimba "community", using that term in an extended sense. […] However, accepting that that is so, BDAC does not establish that the exclusion was "based on" the Aboriginality of its members. In particular, it has not established that the decision concerning the franchise for the ballot was referrable to the Aboriginality of its members.

The primary judge considered it pertinent that the BDAC members who could satisfy the section 14 criteria (by virtue of place of residence, for example) were eligible to vote. That fact, he said "militates against a conclusion that their exclusion is referrable to their Aboriginality".

5. Analysis:

On the first issue of whether the primary judge erred in concluding that the actions of the Council did not involve a distinction, exclusion, restriction or preference based on race within the meaning of RDA, section 9(1), the Full Court noted:

> that to prove a contravention of s 9(1) of the RDA it is not necessary to prove the existence of a subjective motivation to exclude the complainant based on his or her race. But that is not to say that the subjective motivations of the alleged contravener are irrelevant. Whilst the absence of a subjective motivation will not be determinative, proof of the existence of a subjective motivation to discriminate may point to a conclusion that the relevant act involved an exclusion based on race.

In regard to the evidence of the CEO, the Court found that the primary judge did not err in admitting her evidence, stating "there was no objection to that evidence at first instance, whether on the ground of relevance or on the ground that [the CEO] could not depose to the reasoning process of the members of the Council who passed the resolutions complained of."

The Court also concluded "as to the findings based on [the CEO's] evidence, BDAC faces the considerable difficulty that the evidence went unchallenged. In the circumstances, it was clearly open to the primary judge to conclude that the Council's reasons for adopting the [requirements for voting] were as [the CEO] had asserted them to be. However, that conclusion was not determinative." The Court based its conclusions on the following points:

- any person who fulfilled one or more of the section 14 criteria could participate in the ballot irrespective of the person's race;
- the classes of persons who were excluded from voting included persons who were Aboriginal and persons who were not;
- there was preference afforded to persons having interests in land that was rateable over those having interests in land that was not. And non-rateable land in the Council area did not comprise only that land falling within the determination area, but included all non-rateable land, irrespective of the race of the person having a recognisable interest in it; and
- each of the matters advanced by the Council to justify the resolutions were shown to be referable to "sensible" concerns that were unrelated to race.

The Court was satisfied that the passing of the resolution in relation to LGE Action, section 14 was not based on race notwithstanding the special interests of the Barngarla People in the outcome of the ballot.

Ultimately, the Full Court found that:

> [i]t is not correct to say that BDAC's members were excluded from the ballot. Membership of BDAC was not a characteristic that disqualified any person from the franchise. Rather, the effect of the resolutions was that possession of native title rights and interests was not included among the various qualifying criteria. The distinction is important. For as the primary judge concluded, any person who fulfilled one or more of the s 14 criteria could participate in the ballot irrespective of the person's race. Similarly, the classes of persons who were excluded from the franchise included persons who were Aboriginal and persons who were not. The primary judge was correct to find that these features of the resolutions militated against a conclusion that the relevant act involved an exclusion based on race.

6. Holding:

The appeal was dismissed.

CZECHIA

Spolek V havarijní zóně JE Temelín v. Ministerstvo pro místní rozvoj [Association in the emergency zone of Temelín NPP v. Ministry of Regional Development]

The Supreme Administrative Court of the Czech Republic, 2018
7 As 225/2018-116

1. Parties:

The non-governmental organisation (NGO) Spolek V havarijní zóně JE Temelín brought a claim against the Ministry of Regional Development (the Defendant) for issuing a planning permit to ČEZ, the operator of two nuclear power plants in Czechia.

2. Issue(s):

Whether the assessment of potential accidents at the spent nuclear fuel storage facility carried out as part of the environmental impact assessment (EIA) process was sufficient under Article 5(3) of Act No. 100/2001 Coll., on Environmental Impact Assessment and on Amending Certain Related Acts (EIA Act).

Whether the Ministry of Regional Development committed such procedural errors in the appeal proceedings that the Municipal Court in Prague should have annulled its decision.

3. Facts:

ČEZ applied to obtain a zoning decision on the location of a future spent nuclear fuel storage facility at the Temelín Nuclear Power Plant. The building authority, the Regional Authority of the South Bohemian Region, issued a decision pursuant to section 39 of Act No. 50/1976 Coll., on Spatial Planning and Building Regulations (the Building Act), authorising the location of the building, a so-called "planning permit" (first instance administrative decision).

4. Past procedure:

The planning permit was subject to multiple appeals by the Complainant NGO that were repeatedly reviewed by the Ministry of Regional Development. These subsequent decisions were annulled by the Municipal Court in Prague for various procedural defects (final decisions of a regional court in administrative justice review). The Defendant's last decision rejected the appeal of the Complainant (and other persons) and confirmed the zoning decision. The Complainant challenged this decision by bringing an action, once again, before the Municipal Court in Prague that then annulled both the Defendant's last decision to reject the Complainant's appeal and the original zoning decision of the first instance administrative authority and returned the case to the Defendant for further proceedings (final decisions of a regional court in administrative justice review).

The Ministry of Regional Development and ČEZ appealed this judgment to the Supreme Administrative Court (remedy against the final decision of a regional court in administrative justice review).

5. Analysis:

The Supreme Administrative Court did not agree that there were grounds for annulment of the administrative decisions of the Ministry of Regional Development. According to the Supreme Administrative Court, a sufficient assessment of possible accidents in the spent nuclear fuel storage facility was carried out as part of the EIA process, and therefore there was no breach of the EIA Act.

In the opinion of the Supreme Administrative Court, the EIA process, which culminated in the issuance of the consent opinion of the Ministry of the Environment, sufficiently assessed the impact of a possible accident at the storage site. That opinion then formed the basis for the decision of the administrative authorities deciding the zoning procedure.

The Supreme Administrative Court also stated that the EIA process should primarily examine possible and relevant accidents, not extremely improbable ones. The obligation to assess accidents under the EIA Act presupposes the assessment of impacts related to the normal operation of the project as well as impacts resulting from the vulnerability of the project to major accidents or disasters that are relevant to the project.

The Supreme Administrative Court recalled that in the case at hand other possible accidents were also examined, including earthquakes, ground and air terrorist attacks, etc. In addition, the Municipal Court did not indicate what other initiating events of a beyond design basis accident should be considered in the EIA process.

The Applicants' disagreement with the reasoning and conclusions of the contested decision does not render it unreviewable. The lack of reviewability is not a manifestation of the Complainant's unfulfilled subjective idea of the level of detail of reasons for the decision, but an objective obstacle that prevented the Supreme Administrative Court from reviewing this decision.

Therefore, the Supreme Administrative Court set aside the judgment of the Municipal Court and referred the case back to it with a binding legal opinion for further proceeding.

6. Holding:

The Court decided that there was no reviewable error made in the EIA conducted by the Ministry of the Environment and therefore the subsequent decision of the Ministry of Regional Development to issue a planning permit for the construction of the spent nuclear fuel storage facility was not illegal. The EIA process should primarily investigate possible and relevant accidents, not extremely improbable ones. When examining each individual case or setting criteria or thresholds, account shall be taken of the risks of accidents arising from the particular substances or technologies used.

UNITED STATES

In re: Aiken County

United States Court of Appeals for the District of Columbia Circuit, 2013
725 F.3d 255

1. Parties:

Three of the Petitioners – Aiken County in the United States (US) state of South Carolina, the US state of South Carolina, and the US state of Washington – are state or local governments of localities that are home to sites that temporarily store spent nuclear fuel and high-level radioactive waste pending the opening of a federal nuclear waste repository. The remaining Petitioners are three private citizens who live and work near one of those sites.

These various entities sought to compel the US Government (through a writ of mandamus[88]) to issue a licence for the construction of a repository for nuclear waste, challenging the US Nuclear Regulatory Commission's (NRC) decision to discontinue its consideration of the application by the US Department of Energy (DOE) for a construction authorisation for a high-level waste (HLW) repository at Yucca Mountain, in the US state of Nevada.

2. Issue(s):

Whether the US NRC lawfully exercised its discretion in choosing not to use the remaining funds appropriated to it after Congress and the Executive Branch abandoned support for the Yucca Mountain project. To put it another way, whether the US NRC's decision, made in light of the fact that the US DOE had deemed the repository site unworkable and Congress had ceased providing additional funding for the project, violated its obligation to comply with its statutory obligation to issue a decision on the application.

3. Facts:

The US Nuclear Waste Policy Act of 1982 (NWPA), 42 United States Code (USC) 10134(d), directed the US DOE to site, construct and operate a geologic repository for high-level waste. In 1987, amendments to the NWPA directed DOE to focus its work solely on Yucca Mountain, in the US state of Nevada. The US DOE determined in 2002 that Yucca Mountain would be a suitable location for a repository. Congress and the President endorsed that decision, and the US DOE was directed to submit its licence application to the US NRC.

In June 2008, the US DOE submitted a licence application for the construction of a HLW repository at Yucca Mountain.

88. "Mandamus is an extraordinary remedy that takes account of equitable considerations", and it may be granted "to correct transparent violations of a clear duty to act." In re American Rivers and Idaho Rivers United, 372 F.3d 413, 418 (DC Cir. 2004) (internal quotation marks omitted), In re: Aiken County, 725 F.3d 255, 258 (DC Cir. 2013).

The section 114(d) of the NWPA mandates that the US NRC "issue a final decision approving or disapproving the issuance of a construction authorization not later than the expiration of 3 years after the date of the submission of such application, except that the Commission may extend such deadline by not more than 12 months" subject to specified reporting requirements.

The US NRC docketed the application in September 2008 and the US NRC's technical staff began its review. After docketing the application in 2008, the US NRC published a notice of hearing and opportunity to participate in the hearing. US NRC adjudicatory hearings are conducted by the Atomic Safety and Licensing Board Panel (ASLBP), which is composed of administrative judges who are lawyers, engineers and scientists. Approximately 300 legal and technical contentions were admitted and multiple Boards of three judges each were appointed to hear the contentions.

On 3 March 2010, the US DOE filed a motion to withdraw its application with prejudice. Conceding that the application is not flawed nor the site unsafe, the US Secretary of Energy sought to withdraw the application with prejudice as a "matter of policy" because the Nevada site "is not a workable option."

On 28 June 2010, the ASLBP issued an order denying the request, concluding that the NWPA "does not permit the [US DOE] Secretary to withdraw the Application that the NWPA mandates the Secretary file." LBP-10-11, 71 NRC 609, 617 (2010).

On 9 September 2011, the Commission of the US NRC, which hears appeals and petitions for review of the decisions of the ASLBP, issued an order stating that it was evenly divided on whether to overturn or uphold the ASLBP's decision to deny the DOE's motion to withdraw its application, CLI-11-7, 74 NRC 212 (2011). Due to budgetary limitations associated with the high-level waste programme, the US NRC directed the ASLBP to complete necessary case management activities, such as disposing of matters pending before it and documenting the history of the proceeding, before the fiscal year ended on 30 September 2011.

Congress ceased appropriating new funds for the licensing process in fiscal year 2011.

As of 2013, the Commission had approximately USD 11 million in appropriated funds remaining to continue consideration of the licence application. This amount was not sufficient for the US NRC to complete the licensing process.

4. Past procedure:

The parties petitioned the US Court of Appeals for the District of Columbia (DC) Circuit for a writ of mandamus ordering the US NRC to resume the licensing process for a nuclear waste repository at Yucca Mountain in Nevada.

In the first ruling on the mandamus petition, the DC Court of Appeals dismissed the petitions for lack of jurisdiction, stating that they were not yet ripe for determination and not justiciable. However, the "Court [did] indicate[] that, if the Commission failed to act on the Department of Energy's license application within the deadlines specified by the Nuclear Waste Policy Act, mandamus likely would be appropriate. See In re: Aiken County, 645 F.3d 428, 436 (DC Cir. 2011)", 725 F.3d 255, 258 (DC Cir. 2013)

A new mandamus petition was filed in 2012 and in that case, the DC Circuit ordered that the case be held in abeyance until the US Congress issued its fiscal year 2013 appropriations to see if Congress took any steps to clarify the status of the Yucca Mountain HLW repository. In re Aiken County, No. 11-1271, (DC Cir. 3 Aug. 2012).

In 2013, with neither Congress nor the US NRC having acted to change the status quo, the DC Circuit granted the petition, reasoning that the US NRC's inaction had gone on too long in spite of explicit direction from the Court and, therefore, that the circumstances merited mandamus.

5. Analysis:

The Court determined that the US NRC lacked the authority to unilaterally discontinue the licensing process and was required, under the NWPA and principles of constitutional law, to spend the money that Congress had appropriated for the project. The US NRC must continue the licensing process so long as funds remain.

6. Holding:

On 13 August 2013, the DC Circuit Court of Appeals issued a writ of mandamus and ordered the US NRC to spend the remaining funds that Congress had previously appropriated in furtherance of the licensing process for the construction authorisation application for the DOE Yucca Mountain HLW repository.

LEGISLATIVE ACTIONS

CANADA

Energy Probe v. Canada (Attorney General)

Ontario Court (General Division), 1994
[1994] O.J. No. 553

1. Parties:

The Plaintiff, Energy Probe, is a non-governmental organisation. Its research team actively campaigns against nuclear power and it is dedicated to effective utility regulation.

2. Issue(s):

The issues are (1) whether the provisions of the Nuclear Liability Act[89] (NLA or Act) are within the legislative authority of the Parliament of Canada or the legislature of a Province; and (2) whether the NLA infringes the constitutional rights of Canadians by providing for a lower degree of nuclear safety.

3. Facts:

In 1960, the Canadian Cabinet (executive arm of the federal government) formed a committee to examine the issues surrounding third party liability for nuclear hazards. At the time, Canada did not have legislation to address nuclear third party liability. The NLA came into force in 1976; it channelled liability for nuclear accidents to the operators and also limited the level of liability.

The Plaintiffs sought declarations that certain sections of the NLA are unconstitutional, on the basis that the statutory limit on liability of the operator would reduce the operator's incentive to operate safely, thus increasing risk to the public. They also argued that the NLA is legislation in relation to property and civil rights in a province, therefore beyond the legislative powers of the federal Parliament.

4. Analysis:

On the issue of division of legislative powers, the Judge disagreed with the Plaintiffs' characterisation of the purpose of the NLA and declared that it was within the jurisdiction of Parliament to enact. The Court confirmed that the chief purpose of the NLA is to facilitate the development of nuclear energy for peaceful purposes. Without such legislation, and the indemnities which preceded it, the industry would not exist today. Due to the inherent risks associated with nuclear power, the federal government faced certain problems in developing nuclear energy for peaceful purposes. Nuclear suppliers and operators expressed concern as to their potential liability, the fact that insurance coverage was not available in the amounts necessary for the possible consequences of a nuclear incident and its own concerns for

89. RSC 1985, c. N-2.

providing compensation to potential victims of a nuclear incident. The Canadian Parliament has legislative competence over the development, application and use of nuclear energy, using its federal power to legislate for the peace, order, and good government of Canada under section 91 of the Constitution Act.[90] Parliament's legislative competence over nuclear energy operations is also derived from subsection 91(29) and paragraph 92(10)(c) of the Constitution Act.

On the Charter issues, the Plaintiffs argued that the NLA's limits on liability infringe both section 7 of the Canadian Charter of Rights and Freedoms[91] by increasing the risk of nuclear incidents and compromising the safe operation of nuclear plants, and section 15 because victims of nuclear incidents would be treated differently than victims of other incidents who have full resort to the court system for all claims for damages.

The Court disagreed, finding that, realistically, in a nuclear incident, government would step in to provide full compensation, which is anticipated in the enactment of the Act. Potential victims of a nuclear disaster are not disadvantaged like they would be, if left to their common law remedies. The Court added that it would be outrageous and "political suicide" if a federal government did not compensate beyond the then $75 million limit. Therefore, the Act does not infringe the Charter.

The Plaintiffs claimed that persons living close to a nuclear reactor are more susceptible to sustaining injuries because of the risk of a nuclear incident. They therefore suffer discrimination by bearing the burden of the production of electricity by nuclear power while others living farther away enjoy only the benefits. But the Court concluded that the Plaintiffs failed to substantiate their allegation of discrimination and s. 15 cannot be invoked to protect a hypothetical class of persons, i.e. "potential victims of a nuclear incident". The Act does not deprive potential victims of benefits, but exchanges certain potential rights in favour of others in the context of the statutory scheme as a whole.

The Plaintiffs argued that the existence of the liability scheme had the effect of lessening nuclear safety, and the liability limit was therefore unconstitutional as this made nuclear facility operators operate less safely. The Court rejected this reasoning, finding that there was no connection between safe operation under regulation by the then Atomic Energy and Control Board on the one hand, and the NLA liability scheme on the other. The Court concluded that nuclear safety regulation had nothing to do with the policy choice made by Parliament to enact an economic protection scheme to deal with the catastrophic consequences of a nuclear incident. In particular, the Court found:

> [105] A review of the role of the regulator in the safe operation of nuclear reactors leaves minimal opportunity for the NLA to have any impact on safety…
>
> …
>
> [114] Nuclear reactors have operated safely in Canada since 1962 generally, and since 1976 under the N.L.A. I heard no evidence describing the standard of care for the operation of a nuclear reactor, nor was any evidence presented to show that nuclear reactors in Canada are not operating safely.
>
> …
>
> [116] No direct evidence was presented that the N.L.A. has had any effect on the safe operation of nuclear reactors. Of the 1,092 exhibits filed there is no hint that the N.L.A. was ever considered in any safety decisions made by either the operator or the regulator. When officials of the operator and regulator were questioned as to any role played by the N.L.A. in their decision-making process, the answers were all negative.

90. The Constitution Act, 1867, 30 and 31 Vict, c. 3.

91. The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK), 1982, c. 11.

The Plaintiffs failed to show on a balance of probabilities that nuclear reactors are less safe because of the Act.

5. Holding:

The Plaintiffs' action was dismissed.

GERMANY

A natural person v. the Minister for Labour, Health and Social Affairs and the Minister for Economic Affairs and Transport of North Rhine-Westphalia

Federal Constitutional Court (Bundesverfassungsgericht – BVerfG)
BVerfG, Order (Beschluss) of 8 August 1978 – 2 BvL 8/77

1. Parties:

The Claimant was a private individual who ran a farm approximately one kilometre (km) from the site of the planned fast breeder nuclear power station. The Claimant brought a suit against the Minister for Labour, Health and Social Affairs and the Minister for Economic Affairs and Transport of the federal state ("*Land*") North Rhine-Westphalia, who granted Schnell-Brüter-Kernkraftwerksgesellschaft mbH Essen the first partial construction permit for the SNR-300 fast breeder nuclear power station at Kalkar.

2. Issue(s):

Whether sections 7(1) and (2) of the Act on the Peaceful Utilisation of Atomic Energy and the Protection against its Hazards of 23 December 1959 (*Bundesgesetzblatt* [Federal Law Gazette – BGBl.] I, p. 814) in the version published on 31 October 1976 (BGBl. I, p. 3053) (Atomic Energy Act) are constitutional in relation to the licensing of fast breeder nuclear power stations.

3. Facts:

Atomic Energy Act, section 7(1) requires "[w]hoever erects, operates or otherwise holds a stationary installation for the production, treatment, processing or fission of nuclear fuel, or for the reprocessing of irradiated nuclear fuel, or essentially modifies such installation or its operation, shall require a licence."

Atomic Energy Act, section 7(2) lays down the requirements for the granting of the licence, including that authorities may only grant such a licence if the licensee takes "the necessary precautions […] in the light of the state-of-the-art of science and technology to prevent damage resulting from the erection and operation of the installation."

By the decision of 18 December 1972, the Minister of Labour, Health and Social Affairs and the Minister of Economic Affairs and Transport of the *Land* of North Rhine-Westphalia granted Schnell-Brüter-Kernkraftwerksgesellschaft mbH Essen the first partial construction permit for the SNR-300 fast breeder nuclear power station at Kalkar. According to the permit, the selected site was suitable for a nuclear power station. In addition, the basic design features of the nuclear power station were approved with some restrictions.

4. Past procedure:

In February 1973, the Claimant filed a complaint with the Düsseldorf Administrative Court against the Kalkar construction permit. The Court dismissed the complaint on 30 October 1973.

The appeal proceedings took place before the Administrative Court of Appeals of the *Land* of North Rhine-Westphalia in Münster. On 18 August 1977, the Administrative Court of Appeals submitted the matter to the Federal Constitutional Court.[92] The Administrative Court of Appeals was of the opinion that sections 7(1) and (2) of the Atomic Energy Act violate the Basic Law (*Grundgesetz* – the Constitution) of Germany for a number of reasons.

5. Analysis:

On 8 December 1978, the Federal Constitutional Court published its decision taken on 8 August 1978 rejecting the different arguments put forward by the Administrative Court of Appeals and the Claimant. The Federal Constitutional Court found that sections 7(1) and (2) of the Atomic Energy Act are compatible with the Basic Law insofar as they permit the licensing of fast breeder nuclear power stations.

The present case concerns the area of legislation, i.e. an area for which the Basic Law – in Article 73 No. 14 – allocates competences to the legislative power of the Federation. Under the principle of legality, acts of the executive that considerably affect citizens' rights of freedom and equality must be based on a formal law (*förmliches Gesetz*).

The legislator is obliged to make all crucial decisions in fundamental normative areas, especially in cases where basic rights become subject to government regulation. To determine those areas in which government acts must be based on a formal law, one must consider the subject matter and intensity of the planned or enacted regulation, particularly taking into account the fundamental rights granted by the Basic Law. In addition, the Constitution mandates that the legislator establishes the essential legal standards for the matter to be regulated and does not leave this for the administration to determine.

The normative decision for or against the permissibility of the peaceful uses of nuclear energy in Germany is a fundamental and essential decision in the sense that a specific enactment is constitutionally required. This follows from the decision's far-reaching effects on citizens, in particular on their freedom and equality, as well as on their general living conditions, and from the kind and intensity of regulation necessarily connected with it. Only the legislator has the authority to make such a decision. The same applies to regulations fixing the licensing of nuclear installations within the meaning of section 7(1) of the Atomic Energy Act. The legislator opted to promote the peaceful use of nuclear energy by means of a formal law – the Atomic Energy Act – and this decision includes fast breeder nuclear power stations, even if these are not explicitly mentioned in section 7(1) of the Atomic Energy Act.

In addition, the Federal Constitutional Court found that, as constitutionally required, sections 7(1) and (2) of the Atomic Energy Act regulate all essential and fundamental questions of the licensing procedure and set with sufficient precision the requirements for the construction, operation, and modification of nuclear installations, including fast breeder nuclear power stations. And, because the reactor to be built in Kalkar is only a prototype, the construction and operation of this reactor do not indicate a decision to use it on a large industrial scale. Under these circumstances, it is not the function of the courts to substitute their judgment for that of the political branches when assessing the situation.

Finally, sections 7(1) and (2) of the Atomic Energy Act do not violate the constitutional requirement that laws be drafted with sufficient precision because it uses undefined legal terms such as "reliability" and "necessary knowledge". The use of these terms is constitutionally permissible; it is at the legislator's discretion to use either undefined legal terms or precise

92. Only the Federal Constitutional Court is competent to rule on the constitutionality of laws. If a non-constitutional court considers a law, for which its validity is at stake in the decision, to be unconstitutional, it shall suspend the proceedings and obtain the decision of the Federal Constitutional Court pursuant to Art. 100(1) of the Basic Law.

terminology. When setting norms in line with scientific and technological developments, the legislator has a number of options available to make these developments legally binding. By using undefined legal terms, the legislator shifts the difficulties involved in giving these terms specific binding character and aligning them with scientific and technological developments to the executive bodies and – should litigation arise – the judiciary. Thus, the executive authorities and the courts must make up for the regulatory deficit incurred by the legislator.

There are good reasons justifying the use of undefined legal terms and in this case, the setting of a safety standard by establishing rigid rules, if even possible, would impede rather than promote technical development and adequate safeguards for fundamental rights. The assessment of risks resulting from a nuclear installation depends upon a multitude of circumstances, many of which are constantly evolving. In the interest of flexible protection of life and property, the executive bodies must assess and constantly adjust safety measures – a task they are better equipped to perform than the legislator.

6. Holding:

Atomic Energy Act, sections 7(1) and (2) of 23 December 1959 (BGBl. I, p. 814), in the version published on 31 October 1976 (BGBl. I, p. 3053), is compatible with the Basic Law insofar as it permits the licensing of fast breeder nuclear power stations.

GERMANY

E.ON Kernkraft GmbH and others v. Article 1(1)(a) of the Thirteenth Act Amending the Atomic Energy Act of 31 July 2011

Federal Constitutional Court (Bundesverfassungsgericht – BVerfG)
BVerfG, Judgment (Urteil) of 6 December 2016 – 1 BvR 2821/11, 1 BvR 321/12, 1 BvR 1456/12

1. Parties:

The Complainants were the nuclear energy subsidiaries of three of Germany's four largest energy suppliers (E.ON Kernkraft GmbH, RWE Power AG and Vattenfall Europe Nuclear Energy GmbH) as well as one nuclear power plant operating company (Kernkraftwerk Krümmel GmbH & Co. oHG).

2. Issue(s):

Whether the Thirteenth Act Amending the Atomic Energy Act (*Dreizehntes Gesetz zur Änderung des Atomgesetzes* – 13th AtG Amendment) of 31 July 2011 (*Bundesgesetzblatt* [Federal Law Gazette – BGBl.] I, p. 1704) which accelerated the nuclear phase-out is compatible with the Basic Law (*Grundgesetz* – the Constitution). The 13th AtG Amendment introduced fixed dates for the operation of nuclear power plants and revoked the prolongation of the operational lifetimes of nuclear power plants from 2010. The fundamental decision from 2002 in favour of nuclear phase-out is undisputed.

3. Facts:

The constitutional complaints were directed against the 13th AtG Amendment, which accelerated the nuclear phase-out. The fundamental decision in favour of nuclear phase-out – which is undisputed by the parties – had already been taken in 2002 (*Gesetz zur geordneten Beendigung der Kernenergienutzung zur gewerblichen Erzeugung von Elektrizität* – Phase-out Amendment Act of 22 April 2002 – BGBl. I, p. 1351). Individual nuclear power plants were allocated a residual electricity volume that could be transferred to other, newer plants. Once these were used up, the plants were to be shut down. The Phase-out Amendment Act did not contain a fixed end date for nuclear power operation.

At the end of 2010, the legislator granted nuclear power plants additional residual electricity volumes, thus prolonging the operational lifetimes of German nuclear power plants (*Elftes Gesetz zur Änderung des Atomgesetzes* – 11th AtG Amendment of 8 December 2010 – BGBl. I, p. 1814).

Following the Fukushima Daiichi Nuclear Power Plant accident, the legislator, for the first time, statutorily set out fixed end dates for the operation of nuclear power plants by enacting the 13th AtG Amendment (section 7(1a) first sentence of the Act on the Peaceful Utilisation of Atomic Energy and the Protection against its Hazards – Atomic Energy Act). In addition, the legislator struck down the prolongation of the operational lifetimes of the nuclear power plants undertaken in the 11th AtG Amendment.

The Complainants principally challenged a violation of the freedom of property as set out in Article 14 of the Basic Law. Article 14(1) of the Basic Law stipulates that "[p]roperty […] shall be guaranteed" (first sentence) and that its "content and limits shall be defined by the laws" (second sentence). Article 14(2) of the Basic Law stipulates that "[p]roperty entails obligations" and "[i]ts use shall also serve the public good". Article 14(3) of the Basic Law regulates the expropriation for the public good against compensation.

4. Past procedure:

Any natural or legal person may file a constitutional complaint claiming that their basic rights (*Grundrechte*) or certain rights that are equivalent to basic rights have been violated by an act of a German public authority.

5. Analysis:

The Federal Constitutional Court found the 13th AtG Amendment for the most part to be compatible with the Basic Law.

Nuclear power plants and property interests related thereto constitute property with a particularly strong social dimension. Over the past few decades, the public has become aware that nuclear energy is a high-risk technology with extreme risks of harm, among other issues, as well as problems of final disposal that have yet to be resolved. Therefore, the legislator has particularly broad leeway to design the law relating to atomic energy, even in respect of existing property interests, without, however, completely depriving them of protection.

The provisions of the 13th AtG Amendment affect the complaints' property interests under Article 14 of the Basic Law in several respects. The provisions of the 13th AtG Amendment affect the ownership of the Complainants' nuclear power plants, the usage of which was authorised under the Atomic Energy Act. The residual electricity volumes allocated to the individual nuclear power plants in 2002 and in 2010 do not enjoy stand-alone protection. Given that the residual electricity volumes are significant parameters for the use of the power plants, they do, however, benefit from the constitutional protection of property that Article 14 of the Basic Law confers on the use of property in a licensed nuclear power plant.

The provisions of the 13th AtG Amendment that are set out to accelerate the nuclear phase-out do not amount to an expropriation of property. An expropriation under Article 14(3) of the Basic Law presupposes the deprivation of property through a change in the assignment of ownership and a process for the acquisition of goods. In contrast, restrictions of the power of use and disposition over property qualify as content and limits within the meaning of Article 14(1) (second sentence) of the Basic Law. The provisions of the 13th AtG Amendment lack the element of an acquisition of goods that is indispensable for an expropriation. Limiting the operational lifetimes of nuclear power plants or revoking the residual electricity volumes from 2010 do not transfer the interests concerned to the state or to a third party.

Therefore, the provisions of the 13th AtG Amendment qualify as content and limits within the meaning of Article 14(1) (second sentence) of the Basic Law. Insofar as restrictions of the power of use and disposition over property qualifying as content and limits within the meaning of Article 14(1) (second sentence) of the Basic Law lead to a deprivation of specific property interests without contributing to the acquisition of goods, enhanced requirements must apply with regard to their proportionality. In such cases, the question arises whether a settlement provision is required.

Using this framework, the revocation of the prolongation of the operational lifetimes of the nuclear power plants that had been set down statutorily at the end of 2010 is constitutional. The property interests concerned are limited in several ways in their worthiness for protection, meaning that the interference in the overall balance with the public good is proportionate and therefore constitutional. It is not objectionable that the legislator was reacting to the Fukushima

Daiichi Nuclear Power Plant accident to accommodate fears amongst the population or a change in risk tolerance regarding nuclear power.

On the other hand, the provisions of the 13th AtG Amendment are incompatible with constitutional law insofar as, due to the statutorily fixed shutdown dates of the nuclear power plants, two Complainants can no longer use up the residual electricity volumes from 2002 within their intra-corporate network and the legislation does not provide for appropriate settlement. This interference – in absence of any provision for appropriate settlement – is unconstitutional as the residual electricity volumes from 2002 were established to provide a special protection of legitimate expectations for owners and operators of nuclear power plants for the remaining operational lifetime. Furthermore, the shutdown dates impose an additional burden on the two complaints in relation to competing corporations that can use up the residual electricity volumes from 2002 within the operational lifetime of their nuclear power plants.

In addition, the provisions of the 13th AtG Amendment are incompatible with constitutional law insofar as they do not provide for any settlement for investments in nuclear power plants that had been made in legitimate expectation of the additional residual electricity volumes allocated in 2010 and were subsequently devalued by the change of the legal framework (frustrated investments).

6. Holding:

The Federal Constitutional Court held that it was not warranted to declare the whole legislation unconstitutional, but that the legislator was obliged to undertake corrections to the legislation to accommodate the legitimate concerns in regard to the intra-corporate use of the residual electricity volumes from 2002 and the protection of frustrated investments. As a result, the Eighteenth Act Amending the Atomic Energy Act (*Achtzehntes Gesetz zur Änderung des Atomgesetzes*) of 10 August 2021 (BGBl. I, p. 3530) was adopted. It corrects the objected violations of the Basic Law.

Annex 1: **Nuclear law case chart**

Country	Year	Case name	Topic	Description	Court	Citation	NLB Issue*
ENVIRONMENTAL PROTECTION (ENV)							
Belgium	2019	Inter-Environnement Wallonie ASBL and Bond Beter Leefmilieu Vlaanderen ASBL v. Council of Ministers	ENV	The Court ruled that the ten-year lifetime extension of Units 1 and 2 of the Doel Nuclear Power Plant established by Belgian legislation in 2015, constituted a "project" under the EU Environmental Impact Assessment Directive. Therefore, the extension should have been subject to an environmental impact assessment (EIA).	Court of Justice of the European Union	Case C-411/17, EU:C:2019:622	NLB 104, pp. 31-31
Canada	2014	Greenpeace Canada et al. v. Attorney General of Canada and Ontario Power Generation Inc.	ENV	Court allowed in part the challenge to the environmental assessment (EA) for the Darlington site, determining that the EA failed to comply with the Canadian Environmental Assessment Act (CEAA) as its analysis of hazardous substance emissions and onsite chemical inventories, spent nuclear fuel and severe common cause accidents was deficient. The EA was not quashed entirely as it was sent back to the Joint Review Panel for reconsideration on only those three matters and found that the applicant's Plant Perimeter Envelope approach was acceptable for an EA.	Federal Court	2014 FC 463	NLB 94, pp. 113-115
Canada	2015	Canada et al. v. Greenpeace Canada et al.	ENV	Overturns the Federal Court decision and states that the environmental assessment (EA) is complete and has no gaps, that it was adequate and met the requirements of the relevant legislation, and that the licence to prepare the site, which was issued by the Canadian Nuclear Safety Commission (CNSC) on the basis of the EA decision, is reinstated. The Court of Appeal gave a good degree of deference to the expert scientific body that heard the evidence (the Panel, whose statutory task was to evaluate the potential environmental effects of the new build project) and reversed what it saw as the lower court's substitution of its view for that of the expert body.	Federal Court of Appeal	2015 FCA 186	NLB 96, pp. 63-66
Canada	2016	Greenpeace Canada et al. v. Attorney General of Canada and Ontario Power Generation Inc.	ENV	Court decided that there was no reviewable error made in an environmental assessment (EA) conducted by the "Responsible Authorities", the Canadian Nuclear Safety Commission (CNSC) and the Department of Fisheries and Oceans (DFO), for a nuclear project. The EA had concluded that the refurbishment and continued operation of the Darlington Nuclear Generating Station was not likely to cause significant adverse environmental effects. At present, at the appellate court level in Canada, there is a consistent message of deference to the Canadian nuclear regulator, the CNSC, in its EA decision making.	Federal Court of Appeal	2016 FCA 114	NLB 97, pp. 71-75

* All issues of the *Nuclear Law Bulletin* (NLB) are available at www.oecd-nea.org/jcms/pl_21586.

Country	Year	Case name	Topic	Description	Court	Citation	NLB Issue
Czechia	2007	Jihočeské matky (NGO) v. State Office for Nuclear Safety	ENV	Applicant for a licence to operate Temelín, Unit 1 in accordance with section 9(d) of the Atomic Act is the sole participant in this proceeding and the entities defined in section 70(2) and (3) of the Nature and Landscape Protection Act are not participants in this proceeding. It is sufficient, if public participation is ensured in those proceedings in which the environmental impact of such operations is directly considered (e.g. under Act No. 100/2001 Coll., on Environmental Impact Assessment). A different situation would arise if there were only a single administrative procedure to bring a nuclear power plant into operation. In such a case, a systematic interpretation would lead to a different conclusion and participation in such proceedings would also have to be granted to the civic associations whose main objective is to protect nature and landscape.	The Supreme Administrative Court of the Czech Republic	2 As 12/2006-111	n/a
Czechia	2016	Brigitte Artmann v. Czechia	ENV	A member of the public submitted a communication to the Compliance Committee under the Aarhus Convention alleging that Czechia failed to comply with its obligations under Article 3(9), Article 6 and Article 9 of the Aarhus Convention (specifically, that members of the public in Germany did not have the same possibility to participate in the decision-making procedure concerning the two new reactors at the Temelín Nuclear Power Plant as members of the public in Czechia). The Committee found that Czechia failed to comply with the Convention by not providing a clear requirement in its legal framework to ensure that public authorities, when selecting means of notifying the public, are bound to select such means which, bearing in mind the nature of the proposed activity, would ensure that all those who potentially could be concerned, including the public outside the territory of the party concerned, have a reasonable chance to learn about the proposed activity. Regarding the decision making on the Temelín plant, the Committee is convinced that if the public participation procedure on the environmental impact assessment (EIA) stage were to remain the last possibility for the public concerned, including the public concerned in Germany, to participate in the permitting procedure for the Temelín Plant, the party concerned would fail to comply with the Convention. On the other hand, the use of the "envelope" or "black box" approach at the EIA stage does not in itself constitute non-compliance with the Convention; however, if the permitting procedure were to continue without providing the public concerned with the opportunity to participate effectively in that stage, the party concerned would be in non-compliance with the Convention.	Compliance Committee of the Aarhus Convention	ACCC/C/2012/71 Czech Republic	n/a
Czechia	2018	V havarijní zóně JE Temelín (NGO) v. Ministry of Regional Development	ENV	Court decided that there was no reviewable error made in an environmental impact assessment (EIA) conducted by the Ministry of Environment and therefore the subsequent decision on the Ministry of Regional Development on the location of the structure of spent nuclear fuel storage is not illegal. The EIA process should primarily investigate possible (relevant) and not totally unlikely accidents. When examining each individual case or setting criteria or thresholds, account shall be taken of the risks of accidents arising from particular substances or technologies used.	The Supreme Administrative Court of the Czech Republic	7 As 225/2018-116	n/a

Country	Year	Case name	Topic	Description	Court	Citation	NLB Issue
Finland	2015	KHO 13.1.2015/53	ENV	Local organisation appealed the decision made by the Centre for Economic Development, Transport and the Environment concerning deviation of the demands on the preservation of the environment under the Environmental Protection Act at the Hanhikivi-1 Nuclear Power Plant construction site. The appeal was dismissed.	Supreme Administrative Court of Finland	3678/1/13	n/a
Finland	2017	KHO 9.2.2017/508	ENV	Local property owner appealed the decision made by the Regional State Administrative Agency concerning compensation of the harm caused by the cooling and waste water discharges sourcing from the Loviisa Nuclear Power Plant. The Court ruled that the original amount of compensation was adequate.	Supreme Administrative Court of Finland	3895/1/15 and 3925/1/15	n/a
Finland	2019	KHO 1.12.2014/3793	ENV	Local organisation appealed on the adequacy of environmental impact assessment (EIA) regarding the environmental and water permits of the new Hanhikivi-1 Nuclear Power Plant that is currently applying for a construction licence. The main issue was the disposal of spent fuel. The Court ruled that the EIA procedure had been performed appropriately and adequately given the stage of the process and the ongoing separate process for disposal of spent fuel. The appeal was dismissed.	Supreme Administrative Court of Finland	3228/1/14	n/a
France	2007	Decision of the Conseil d'État Quashing a Decree Concerning a Nuclear Installation in Brennilis, for the Want of Public Information and Consultation	ENV	The Conseil d'Etat revoked Decree No. 2006-147 of 9 February 2006 authorising Électricité de France (EDF) to carry out final shutdown operations and full dismantling of the nuclear installation EL-4-D, a disposal facility for materials at the Monts d'Arrée (Brennilis) Nuclear Power Plant in the Finistère. The Conseil d'État judged that the proceedings that led to the decision to grant a licence did not comply with the purposes required by European Law on Public Information and Consultation, notably Council Directive 85/337/EC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment.	Conseil d'État [State Council]	N° 292386; ECLI:FR:CESSR: 2007:292386. 20070606	NLB 80, p. 65
France	2009	Judgment of the Conseil d'État rejecting the claims made by environmental NGOs against the Decree licensing the construction of the EPR at Flamanville	ENV	Three associations for environmental protection entered actions for annulment against the Decree licensing the construction of the nuclear installation Flamanville 3. Among her recommendations, the Rapporteur Public considered that the Aarhus Convention had no direct effect in the domestic legal system and that the application comprised a full EIA that was submitted to the public before the licence was delivered. The Rapporteur Public also found that there was no infringement of the Council Directive 85/337/EEC of 27 June 1985, on the assessment of certain public and private projects on the environment, and that EDF had sufficient financial capacity to cover future dismantling costs. The Conseil d'État followed all of the Rapporteur Public's recommendations and rejected the three actions filed against the Decree licensing the construction of Flamanville 3.	Conseil d'État [State Council]	Decision N° 306242; ECLI:FR:CESSR: 2009:306242. 20090423	NLB 83, pp. 91-93
France	2011	SARL Auxiliaire du Tricastin – SOCATRI (Areva)	ENV	Court acknowledged that no harm to the flora and fauna has been caused by the spillage of uranium-bearing effluent by SOCATRI following an incident in 2008, but as it temporarily led to modification of the normal water supply regime and restricted the use of swimming areas, the Court found SOCATRI guilty of polluting waterways and not declaring the incident without delay.	Court of Appeal of Nîmes	Judgment No. 11-00899	NLB 89, pp. 109-110

Country	Year	Case name	Topic	Description	Court	Citation	NLB Issue
France	2011	Association Réseau sortir du nucléaire v. Électricité de France (EDF)	ENV	The Conseil recognised that all obligations required to obtain an authorisation for the full dismantling of the Bugey Nuclear Power Plant (information delivery to the public, public survey, public debate) have been complied with by EDF.	Conseil d'État [State Council]	Decision (Request No. 324294)	NLB 89, p. 110
France	2014	Association Réseau sortir du nucléaire and others v. ASN and Électricité de France (EDF)	ENV	The Conseil found no error in the ASN's (French Nuclear Safety Authority) assessment in not annulling two resolutions regarding reinforcements to the Fessenheim No. 1 reactor basemat. Environmental protection associations challenged the resolutions, stating that work on the basemat is a significant modification of a basic nuclear installation, which would require a new authorisation and a public enquiry.	Conseil d'État [State Council]	Decision (Request No. 367013)	NLB 96, p. 67
France	2016	EDF v. Republic and Canton of Geneva relative to the Bugey NPP	ENV	The Conseil found that ASN (French Nuclear Safety Authority) resolutions prescribing additional safety requirements following the Bugey Nuclear Power Plant 3rd PSR were not implicit authorisation decrees. Further, there was no "implicit or disclosed" resolutions of the Ministry of Ecology, Sustainable Development and Energy and the ASN authorising the continued operation of the Bugey-2 and Bugey-4 reactors because reactors in France have no set time period for the operating life and as long as no decree is passed enforcing final shutdown and decommissioning, a reactor is authorised to operate under safe conditions. Lastly, to the extent that the ASN resolutions establishing the additional safety requirements do not constitute operating authorisations, they are not subject to a mandatory environmental impact assessment and do not require a notification as stipulated in the Espoo Convention.	Conseil d'État [State Council]	Decision (Request No. 373516)	NLB 98, pp. 63-64
India	2012	G. Sundarrajan v. Union of India and Others	ENV	Court dismissed eight writ petitions mostly claiming that the Kudankulam Nuclear Power Project violated current environmental laws. Environmental clearance for Kudankulam units 1 and 2 was obtained in 1989 at which time an environmental impact assessment report and a public hearing were not required as part of the clearance process. Court found that Kudankulam units 1 and 2 has all necessary clearances, including environmental, and can therefore move forward with commissioning.	High Court of Judicature at Madras	Common Order dated 31-08-2012	NLB 90, pp. 103-109
The Netherlands	2008	Greenpeace Netherlands Foundation v. Ministers of Housing, Spatial Planning and the Environment, of Economic Affairs and of Social Affairs and Employment	ENV	The Court dismissed a claim against three Ministers over their decision to issue a licence amendment to Urenco for their uranium enrichment facility. The licensing decision was challenged on the grounds that the requirements of the Nuclear Energy Act and underlying legislation were not met. The Court dismissed the appeal as unfounded, holding that: (1) the enrichment of uranium is a justified act under the Regulation on the Analysis of the Effects of Ionising Radiation; (2) when making a justification decision only damage to human health can be weighed against the economic, social and other benefits of the act and there was no reason to consider environmental consequences in general; and (3) because the facility was not located within the sphere of influence of a designated area under the Nature Conservation Act a permit under this Act is not required.	Raad van State [Council of State]	ECLI:NL:RVS: 2008:BG4711	n/a

Country	Year	Case name	Topic	Description	Court	Citation	NLB Issue
The Netherlands	2014	Greenpeace Netherlands Foundation v. Minister of Economic Affairs	ENV	Four non-governmental organisations (NGOs) appealed the decision of the Minster of Economic Affairs to amend the Borssele Nuclear Power Plant licence to extend the design lifetime claiming the amendment must be proceeded by an environmental impact assessment (EIA). The Appellants argued that the not conducting an EIA is contrary to Dutch obligations under the Espoo Convention and the EU EIA Directive. In addition, the Appellants took the position that the Dutch EIA Decree is applicable, because the disputed decision also involves a change to when the Borssele plant is to be decommissioned, thus an obligation exists to perform an EIA. The Council of State held that there was no evidence that the EU EIA Directive was incorrectly applied to Dutch regulations and therefore has no direct effect. Further, the Court found that, the requested changes do not result in physical works taking place at the Borssele plant, but exclusively to the update of the Safety Report. Therefore, these changes are not considered "an activity" subject to an EIA. The appeal was found to be without merit and the case dismissed.	Raad van State [Council of State]	ECLI:NL:RVS: 2014:517	n/a
The Netherlands	2018	Greenpeace Netherlands Foundation and LAKA Foundation v. Minister of Infrastructure and the Environment	ENV	Two non-governmental organisations challenged the revision of the licence conditions of the Borssele Nuclear Power Plant claiming the implementation of 11 new safety measures must be proceeded by an environmental impact assessment (EIA) under the Dutch EIA Decree and the Aarhus and Espoo Conventions. The Appellants filed an appeal of the revised licence with the Council of State. The Council of State held that the 11 safety measures had no impact on the licence amendment. Further, the Court held that the Dutch EIA Decree had been correctly implemented and there is no requirement under the Aarhus and Espoo Conventions to perform an EIA for every licence amendment. The appeal was found to be without merit and the case dismissed.	Raad van State [Council of State]	ECLI:NL:RVS: 2018:1448	n/a
The Netherlands	2021	Association World Information Service on Energy Amsterdam and Greenpeace Netherlands Foundation v. Authority for Nuclear Safety and Radiation Protection	ENV	Two non-governmental organisations appealed the decision of the Council of State's judgment regarding the amendment of the licence conditions for Borssele Nuclear Power Plant on the basis that the implementation of the Western European Nuclear Regulators Association's (WENRA) Reference Levels (RL) must be proceeded by an environmental impact assessment (EIA). The Court noted that the WENRA RLs licence amendment did not change the lifetime of the Borssele plant, it only added a set of additional safety regulations to the licence that would not lead to any physical changes or affect the radiation risk of the facility. Furthermore, the Court found that the ruling of the EU Court of Justice regarding the Doel 1 and Doel 2 Nuclear Power Plants in Belgium is not applicable as no physical works are being undertaken and the lifetime of the Borssele plant is not being extended. The appeal was found to be without merit and dismissed.	Raad van State [Council of State]	ECLI:NL:RVS: 2021:174	n/a
Slovak Republic	2010	Friends of Earth and others v. Slovak Nuclear Regulatory Authority (NRA)	ENV	The Compliance Committee found that the Slovak Republic failed to provide for early and effective public participation in the decision-making process with respect to the grant of an additional construction permit related to the Mochovce Nuclear Power Plant. The Committee recommended that the Slovak Republic review its legal framework.	Compliance Committee of the Aarhus Convention	Case C/41 (2009); ACCC/C/2009/41	NLB 88, pp. 71-72

Country	Year	Case name	Topic	Description	Court	Citation	NLB Issue
Slovak Republic	2013	Greenpeace Slovakia v. Slovak Nuclear Regulatory Authority (NRA)	ENV	In 2008, the NRA approved modifications to construction, prior to the completion of the Mochovce Units 3 and 4 by the licensee (Slovenske elektrarne) (Decision No. 246/2008). Greenpeace Slovakia appealed NRA Decision No. 246/2008 stating: it should be considered a "participant" under the Aarhus Convention to the administrative procedures for the approval of the modifications and that a full-scope EIA was required. In 2009, Greenpeace was admitted as a participant but in Decision No. 79/2009 the NRA dismissed Greenpeace's appeal. On appeal, the District Court found in favour of the NRA. However, the Supreme Court overturned the District Court's decision and abolished Decision No. 79/2009. Therefore, the NRA is obliged to renew the administrative proceedings on Greenpeace's original appeal against Decision No. 246/2008 and hold EIA proceedings. The NRA reopened the administrative proceedings and issued a first Decision No. 761/2013 that denied the suspensory effect of the Greenpeace appeal on the NRA's 2008 decision.	Slovak Nuclear Regulatory Authority (NRA)	Decision No. 761/2013	NLB 92, pp. 89-91
Slovak Republic	2013	Greenpeace Slovakia v. Slovak Nuclear Regulatory Authority (NRA)	ENV	Attorney General denied Greenpeace Slovakia's protest against Decision No. 761/2013.	Attorney General	VI/1 Gd 343/13 - 7	NLB 93, p. 91
Slovak Republic	2013	Slovenske elektrarne v. Slovak Nuclear Regulatory Authority (NRA)	ENV	Slovenske elektrarne filed a constitutional claim with the Slovak Constitutional Court objecting to the denial of its basic rights by the Supreme Court judgment (requiring the NRA to renew its administrative proceedings on Greenpeace's original appeal against Decision No. 246/2008 and hold EIA proceedings) because its rights were directly affected by the judgment without being afforded the opportunity to participate and defend its interests.	Constitutional Court	[Unknown]	NLB 93, p. 91
Slovak Republic	2014	Greenpeace Slovakia v. Slovak Nuclear Regulatory Authority (NRA)	ENV	Following a two-day public hearing, the NRC issued Decision No. 291/2014 dismissing Greenpeace Slovakia's appeal of Decision No. 246/2008, and at the same time confirming Decision No. 246/2008. This decision closed Greenpeace Slovakia's claims.	Slovak Nuclear Regulatory Authority (NRA)	Decision No. 291/2014	NLB 95, p. 65
Slovak Republic	2014	Slovenske elektrarne v. Slovak Nuclear Regulatory Authority (NRA)	ENV	The Constitutional Court found it to be a breach of the licensee's (Slovenske elektrarne) right to be a participant in the Supreme Court proceeding. But, due to the already existing second instance administrative decision issued by the NRA in favour of Slovenske elektrarne (Decision No. 291/2014), it was not necessary to cancel the judgment of the Supreme Court and send the decision back for a new judicial procedure.	Constitutional Court	III. ÚS 304/14-88	NLB 95, p. 65
Slovak Republic	2014	Greenpeace Slovakia v. Slovak Nuclear Regulatory Authority (NRA)	ENV	The NRA informed the Regional Court of Bratislava (the court of first instance review of administrative decisions) about the Constitutional Court decision, as well as about the existing valid second instance NRA decision (No. 291/2014). When the Court asked Greenpeace Slovakia for their final statement prior to the adoption of the court decision, Greenpeace Slovakia withdrew its claim and the Court ceased the proceedings.	Regional Court of Bratislava	[Unknown]	NLB 95, p. 65

Country	Year	Case name	Topic	Description	Court	Citation	NLB Issue
Slovak Republic	2013	Greenpeace Slovakia v. Slovak Nuclear Regulatory Authority (NRA)	ENV	Greenpeace Slovakia demanded that the NRA disclose the text of the preliminary safety report on Mochovce units 3 and 4 in accordance with Act No.211/2000 Coll. Freedom of Information Act, as amended. Greenpeace wanted information, especially environmental information, and the NRA dismissed Greenpeace's application in NRA Decision No. 39/2010, stating that such important information may endanger the public security if made publicly available. Greenpeace lodged a claim for review of the lawfulness of the decision with the District Court. The District Court decided in favour of the NRA, denying Greenpeace's claim. Greenpeace then appealed this decision to the Supreme Court, which reversed the District Court judgment. The case was then returned to the District Court. On remand, the District Court overturned NRA Decision No. 39/2010 and returned the case to the NRA for renewed administrative proceedings.	District Court	3S/142/2010-212	NLB 92, p. 91
Slovak Republic	2015	Greenpeace Slovakia v. Slovak Nuclear Regulatory Authority (NRA)	ENV	On appeal by the NRA to the Supreme Court, the judgment of the District Court was confirmed and the NRA was required to reopen the previous administrative proceedings and include Greenpeace and the licensee (Slovenske elektrarne) as participants. A redacted version of the safety documentation for Mochovce Units 3 and 4 had previously been made available. When asked by the District Court if it wished to have access to the preliminary safety report, Greenpeace withdrew its appeal reasoning that the legislative restrictions on the disclosure of sensitive information and the cost of copying the redacted preliminary safety report was not justified without the ability to gain any relevant or meaningful information. Thus, the NRA closed the reopened administrative proceedings.	Supreme Court	3Sži/22/2014	NLB 96, p. 78
Slovak Republic	2013	Greenpeace Slovakia v. Nuclear Regulatory Authority of the Slovak Republic (ÚJD SR)	ENV	The Appellant contested the decision of the ÚJD SR on the grounds that they should be allowed to participate in the permit procedure regarding modifications to construction prior to the completion of Units 3 and 4 of the Mochovce Nuclear Power Plant. The Appellant filed an appeal with the District Court in Bratislava seeking annulment of decision No. 79/2009. The District Court decided in favour of the ÚJD SR and a subsequent appeal was filed with the Supreme Court. The Supreme Court decided in favour of the Appellant on the grounds that public participation is mandatory under the national legislation of the Slovak Republic, the EU Environmental Impact Assessment Directive and the Aarhus Convention. The Supreme Court reversed the judgment of the District Court and annulled ÚJD SR decision No. 79/2009. The case was remanded to the ÚJD SR to renew the proceeding. The ÚJD SR held a public hearing and issued a decision dismissing the appeal and confirming their earlier decision.	Supreme Court	5Sžp/21/2012	n/a

Country	Year	Case name	Topic	Description	Court	Citation	NLB Issue
United States	2006	San Luis Obispo Mothers for Peace v. US NRC	ENV	San Luis Obispo Mothers for Peace (SLOMFP) challenged two US NRC decisions in a proceeding to license an independent spent fuel storage installation (ISFSI) at the Diablo Canyon Power Plant. The first US NRC decision declined to suspend the ISFSI licensing proceedings to await US NRC physical security enhancements. The second US NRC decision rejected contentions filed by SLOMFP relating to the NRC's analysis of the potential environmental consequences of a terrorist attack under the US National Environmental Policy Act (NEPA), as they had previously determined that an environmental analysis of the potential environmental consequences of terrorist attacks was not necessary in the matter of private fuel storage. The Court held that it was unreasonable for the US NRC to refuse to consider the environmental effects of a terrorist attack on nuclear facilities and remanded the case to the NRC for further NEPA proceedings on the terrorist issue. However, the Court upheld the US NRC's decision not to suspend its licensing proceeding and agreed that a licensing proceeding was not an appropriate forum to revisit the validity of US NRC security regulations.	Federal Circuit Court of Appeals	449 F.3d 1016 (9th Cir. 2006)	NLB 80, pp. 67-68
United States	2007	Pacific Gas and Electric Company v. San Luis Obispo Mothers for Peace, et al.	ENV	PG&E filed a writ of certiorari with the US Supreme Court, which was denied. The US Department of Justice agreed that the 9th Cir. decision on the NEPA terrorism issue was incorrect but did not support Supreme Court review at the time.	Supreme Court	127 S.Ct. 1124 (2007)	NLB 80, pp. 67-68
United States	2007	Nuclear Information & Resource Service v. US NRC	ENV	The Court dismissed the claims that the US Nuclear Regulatory Commission (NRC), in issuing a licence to the Louisiana Energy Services, LP (LES) Uranium Enrichment Facility in New Mexico, violated the Atomic Energy Act (AEA) by "supplementing" the environmental impact statement (EIS) after the hearing closed and determining that LES had presented a reasonable cost estimate for disposal of depleted uranium waste, as well as violated the National Environmental Policy Act (NEPA) by insufficiently analysing the environmental impacts of depleted uranium waste from the LES facility. The Court found that the Petitioners' EIS claims under the AEA were irrelevant because the agency "prepared" an EIS before the hearing was completed. The Court also held that the Petitioners had not presented sufficient evidence that the NRC's cost estimate was unreasonable. Additionally, the Court found the Petitioners' NEPA claim unpersuasive as both the EIS and the administrative record demonstrated that the agency met the requisite NEPA "hard look" standard for assessing environmental impacts of waste disposal. Finally, the Court dismissed the claim that NRC Commissioner McGaffigan should have disqualified himself from the licensing proceeding as it is presumed that administrative officers are objective and capable of judging a particular controversy fairly.	Federal Circuit Court of Appeals	509 F.3d 562 (DC Cir. 2007)	NLB 81, pp. 100-101
United States	2009	Entergy Corp. v. Riverkeeper, Inc.	ENV	The Court upheld the US Environmental Protection Agency's reliance on cost-benefit analysis in determining national performance standards as well as permitting cost-benefit variances from those standards to determine the best technology available to minimise the adverse environmental impact of cooling water intake structures. In doing so, the Court applied the general rules of statutory construction and the *Chevron* standard of deference. It held that the Clean Water Act need not be interpreted so strictly as to require facilities to spend billions of dollars on improved cooling technology that would have little or no environmental benefit.	Supreme Court	556 US 208 (2009)	NLB 83, pp. 96-98

Country	Year	Case name	Topic	Description	Court	Citation	NLB Issue
United States	2009	New Jersey Dep't of Env. Prot. v. NRC	ENV	A New Jersey state agency challenged the NRC's decision to relicense a nuclear power plant located in the state, arguing that an analysis of the environmental impacts of an airborne terrorist attack on the nuclear power plant was required by NEPA prior to relicensing. The Court ruled that the NRC was not required to consider terrorism in its NEPA analysis. NRC relicensing would not be a reasonably close cause of terrorist attacks and their resulting environmental effects as a terrorist attack lengthens the causal chain beyond the "reasonably close causal relationship" required. Amongst other justifications, the Court held that such an attack would be extraordinarily unusual, wrongful and independent of the NRC and would be far more responsible for resulting harms than the NRC's decision to relicense a nuclear plant.	Federal Circuit Court of Appeals	561 F.3d 132 (3rd Cir. 2009)	NLB 84, pp. 124-127
United States	2009	New York v. US NRC	ENV	The NRC's generic treatment of the environmental impacts of spent fuel pool fires at nuclear power plants (finding that the risk is low and does not create a significant environmental impact within the meaning of the National Environmental Policy Act) was acceptable.	Federal Circuit Court of Appeals	589 F.3d 551 (2nd Cir. 2009)	NLB 85, pp. 99-100
United States	2010	Morris v. US NRC	ENV	The Court upheld the NRC's issuance of a licence to conduct *in situ* leach mining for uranium on four sites, finding that the NRC's decision did not violate either the Atomic Energy Act or the National Environmental Policy Act because its consideration of airborne radiation at the sites was not plainly erroneous or inconsistent with the plain language of the regulation; it sufficiently considered the cumulative environmental effects of past and future operations; and the NRC's final environmental impact statement took a "hard look" at the environmental impacts of the proposed mining operations on groundwater.	Federal Circuit Court of Appeals	598 F.3d 677 (10th Cir. 2010)	NLB 85, pp. 101-102
United States	2011	San Luis Obispo Mothers for Peace v. US NRC	ENV	The Court held that neither the Atomic Energy Act nor the National Environmental Policy Act require the NRC to hold a closed hearing to allow public access to sensitive security information that are part of the environmental review that the NRC was required to complement by considering environmental impacts of terrorist attacks.	Federal Circuit Court of Appeals	635 F.3d 1109 (9th Cir. 2011)	NLB 87, pp. 88-90
United States	2011	Brodsky v. US NRC	ENV	The Court held that the NRC has authority to issue exemptions to its fire safety regulation; a hearing is not mandatory for challenges to exemptions; the NRC reasonably determined that an environmental impact statement was not necessary; and the NRC's decision to issue the exemption was not arbitrary or capricious, in violation of the Administrative Procedure Act.	Federal District Court	783 F. Supp. 2d 448 (S.D.N.Y. 2011)	NLB 87, pp. 90-91
United States	2013	Brodsky v. US NRC	ENV	The Court affirmed the validity of the NRC's actions regarding the issuance of exemptions to its regulations, but it reversed the District Court's decision regarding its conclusion concerning the right of the public to participate in the Commission's preparation of an Environmental Assessment (EA) and Finding of No Significant Impacts (FONSI). In that respect, the Court found that the record before it did not adequately explain why the EA/FONSI excluded an opportunity for public comment. Case was remanded to the District Court with instructions to remand to the NRC.	Federal Circuit Court of Appeals	704 F.3d 113 (2nd Cir. 2013)	NLB 91, pp. 109-110
United States	2016	Brodsky v. US NRC	ENV	The Court found that the NRC was not arbitrary or capricious, in violation of the Administrative Procedure Act, in considering risks from terrorism when determining that granting a nuclear power plant licensee an exemption from a federal fire safety regulation would have no significant impact on the environment under the National Environmental Policy Act.	Federal Circuit Court of Appeals	650 F. App'x 804 (2nd Cir. 2016)	NLB 98, pp. 64-65

Country	Year	Case name	Topic	Description	Court	Citation	NLB Issue
United States	2012	New York v. US NRC	ENV	The Court found that the US NRC update of its 2010 Waste Confidence Decision, which enables the NRC to license reactors or to renew their licences without examining the environmental effects of extended waste storage for each individual site pending ultimate disposal is a "major federal action" requiring the NRC to either (1) take a "hard look" at the environmental consequences of the revisions in an environmental impact statement (EIS) or (2) develop an environmental assessment that demonstrates that the revisions will have no significant environmental impact and thus that no EIS "hard look" is required.	Federal Circuit Court of Appeals	681 F.3d 471 (DC Cir. 2012)	NLB 90, pp. 110-112
United States	2013	Beyond Nuclear v. US NRC	ENV	The Court found that the NRC did not violate the National Environmental Policy Act in its review of the applicant's Environmental Report, which did not consider wind power as an energy alternative to relicensing. The Court found that a "reasonable alternative" is that which can bring about the ends of the project being contemplated; here, baseload power generation. In addition, the NRC was rational in relying on near-term technology as a proxy for energy alternatives during the renewal period.	Federal Circuit Court of Appeals	704 F.3d 12 (1st Cir. 2013)	NLB 91, pp. 108-109
United States	2013	Massachusetts v. US NRC	ENV	The Court denied petition to reopen and suspend a licence renewal finding that the severe accident mitigation alternatives (SAMA) analyses in the Pilgrim Nuclear Power Plant supplemental environmental impact statement and the analysis of spent fuel pool environmental impacts (specifically as it pertains to spent fuel pool fires) in the generic environmental impact statement for licence renewal do not need to be updated because the Fukushima Daiichi Nuclear Power Plant accident did not present "new and significant information".	Federal Circuit Court of Appeals	708 F.3d 63 (1st Cir. 2013)	NLB 91, pp. 110-111
United States	2013	Blue Ridge Environmental Defense League v. US NRC	ENV	The Court rejected Petitioners' claim that the Fukushima Task Force Report constitutes "new and significant circumstances or information" requiring supplementation of an environmental impact statement (EIS), holding that the EIS in fact considered severe accidents and "precisely the types of harm that occurred as a result of the Fukushima accident." The Court also rejected the argument that the NRC's recognition of Fukushima as a "safety-significant" event automatically rendered it "environmentally significant" for purposes of needing to supplement the EIS.	Federal Circuit Court of Appeals	716 F.3d 183 (DC Cir. 2013)	NLB 91, pp. 112-113
United States	2015	DTE Electric Co. (Fermi Nuclear Power Plant, Unit 3)	ENV	The Petitioners asked the NRC to suspend licensing activities because, without the "reasonable assurance findings" that a repository for spent fuel disposal is technically feasible, the Petitioners argued that the NRC lacks a lawful basis under the Atomic Energy Act (AEA) to issue initial or renewed licences. The Commission reaffirmed its historic interpretation of the AEA that an explicit finding regarding the technical feasibility of spent fuel disposal is not required as a prerequisite to reactor licensing decisions.	Commission of the US NRC	CLI-15-4, 81 NRC 221 (2015)	NLB 95, pp. 66-67

Country	Year	Case name	Topic	Description	Court	Citation	NLB Issue
United States	2016	Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. (Vermont Yankee Nuclear Power Station)	ENV	The Petitioners sought review of, and a discretionary hearing on, the legality of the US NRC's issuance of an exemption to its regulations governing decommissioning on the grounds that it was a licence amendment and as such inadequately considered the environmental impacts of the exemptions. The Commission of the US NRC determined that the Agency had validly issued the exemption. It further ruled that issuance of the exemption was justified by "special circumstances" and the fact that similar exemptions had been granted to other licensees did not mean that the Agency had effectively modified the underlying legal requirement. The Commission of the US NRC determined that no hearing was required because the facility licence had not been amended. However, it directed the US NRC Staff to perform an environmental analysis of the exemption.	Commission of the US NRC	CLI-16-17, 84 NRC 99 (2016)	n/a
United States	2018	Natural Resources Defense Council v. NRC	ENV	Plaintiffs argued that the US Nuclear Regulatory Commission (NRC) failed to comply with the National Environmental Policy Act by providing an inadequate final environmental impact statement (FEIS) before issuing a licence to an *in situ* uranium mining facility. Upon review, the NRC Atomic Safety and Licensing Board (the Board) determined that, despite lacking sufficient information in the FEIS, the evidentiary statements made by NRC staff supplemented the FEIS. On appeal to the DC Circuit, following an appeal to the NRC Commission, the Court rejected the claim that the Board could not supplement the FEIS with evidentiary testimony after the issuance of the licence.	Federal Circuit Court of Appeals	Decision No. 16-1298, 2018 WL 472547 (DC Cir. 2018)	NLB 100, pp. 89-90
United States	2018	Oglala Sioux Tribe v. US Nuclear Regulatory Commission	ENV	The Oglala Sioux Tribe filed a petition for review on the grounds that the US Nuclear Regulatory Commission (NRC) failed to comply with the National Environmental Policy Act (NEPA) and the National Historic Preservation Act of 1966 (NHPA) during the licensing adjudication procedure for an *in situ* uranium recovery project. They also challenged the NRC decision to affirm a decision by the Atomic Safety and Licensing Board Panel's (ASLBP) keeping the licence in place despite identification of deficiencies under NEPA and NHPA. The Court held they lacked jurisdiction over most of the Tribe's NEPA challenges because the NRC's adjudication was not yet complete, but did exercise jurisdiction over the Commission's decision to keep the licence in place pending completion of the NRC adjudication. Although the Court held that because the NRC considered the non-compliance to be "significant", the Commission erred in requiring the Petitioners to show irreparable harm in order to obtain vacatur or suspension of the licence, the Court did not vacate the licence, and instead remanded the case to the Agency for further proceedings. The administrative adjudication remains ongoing.	Federal Circuit Court of Appeals	896 F.3d 520 (DC Cir. 2018)	NLB 101, pp. 71-72

Country	Year	Case name	Topic	Description	Court	Citation	NLB Issue
United States	2022	Oglala Sioux Tribe v. NRC	ENV	The US Court of Appeals for the District of Columbia Circuit denied a petition for review of the NRC's decision to issue a licence to Powertech, Inc., for a proposed *in situ* uranium recovery facility in South Dakota. The petition claimed that the NRC failed to meet its obligations under the National Environmental Policy Act (NEPA) and the National Historic Preservation Act (NHPA). The Court held that the NRC did not violate NEPA, nor was further supplementation of the agency's environmental impact statement required, because the Agency made reasonable efforts to gather information concerning the Tribe's cultural resources and had already explained, in the Agency's hearing record, why the additional cultural resource information was "effectively unavailable". The Court also held that the NRC had satisfied its obligations under the NHPA, because the NRC had offered the statutorily required opportunities to the Tribe to provide input regarding cultural resources. Additionally, the Court upheld the NRC's dismissal of environmental contentions relating to the NRC staff's analysis of groundwater impacts, disposal of byproduct material generated from uranium extraction and potential measures to mitigate environmental impacts. The Petitioners sought rehearing *en banc* before the full DC Circuit, which was declined.	Federal Circuit Court of Appeals	45 F.4th 291 (DC Cir. 2022)	NLB 108/109, pp. 100-101
United States	2018	City of Boston Delegation v. FERC	ENV	The Court of Appeals for the District of Columbia upheld the US Federal Energy Regulatory Commission's (FERC's) authorisation of a project to upgrade Algonquin Gas Transmission, LLC's natural gas pipeline. The Court held that FERC adequately considered the cumulative impacts of other projects in its analysis, did not act arbitrarily and capriciously by declining to consider three projects in a single environmental impact statement (EIS), and appropriately relied on another Federal agency's analysis in addressing safety concerns about project activities near a nuclear energy facility.	Federal Circuit Court of Appeals	897 F.3d 241 (DC Cir. 2018)	NLB 101, pp. 74-75
United States	2019	Interim Storage Partners LLC (Consolidated Interim Storage Facility)	ENV	The NRC Atomic Safety and Licensing Board (ASLB) issued a decision in the case challenging Interim Storage Partners, LLC's (ISP) licence application to build and operate a consolidated interim storage facility (CISF) for spent nuclear fuel and greater-than-Class C waste (SNF) in Andrews County, Texas. ISP seeks a 40-year licence to store canisters of SNF. The ASLB granted the Sierra Club's request for a hearing and petition to intervene based on the unavailability of ecological studies that ISP relied on in its Environmental Report. ISP provided these studies and requested the ASLB dismiss the contention. In response, Sierra Club filed an amended contention for the ASLB's consideration. Appeals by the other Petitioners and the application are pending before the NRC Commission.	NRC Atomic Safety and Licensing Board	LBP-19-7, 90 NRC 31 (2019)	NLB 103, p. 50
United States	2021	Interim Storage Partners LLC (WCS Consolidated Interim Storage Facility)	ENV	Fasken Land and Minerals, Ltd. and Permian Basin Land and Royalty Owners (Fasken) sought to reopen proceedings against Interim Storage Partners LLC (ISP) regarding their application for a licence to construct and operate a consolidated interim storage facility (CISF). Fasken alleged that there was new information concerning the adequacy of the NRC staff's environmental analysis of transportation routes to and from the proposed CISF. The Board found that the contention was virtually identical to a previous inadmissible contention and therefore did not warrant the reopening of proceedings.	NRC Atomic Safety and Licensing Board	LBP-21-2, 93 NRC 104 (2021)	NLB 107, pp. 57-58

Country	Year	Case name	Topic	Description	Court	Citation	NLB Issue
United States	2021	Interim Storage Partners LLC (WCS Consolidated Interim Storage Facility)	ENV	Fasken Land and Minerals, Ltd. and Permian Basin Land and Royalty Owners (Fasken) appealed the decision of the NRC Atomic Safety and Licensing Board not to reopen proceedings against Interim Storage Partners LLC (ISP) to the Commission who dismissed the claim. The Commission issued ISP a licence for consolidated interim storage facility (CISF). This decision is currently being appealed before the DC Circuit. The licence is also subject to a challenge before the Fifth Circuit Court of Appeals of its legality under a newly enacted state statute	Commission of the US NRC	CLI-21-9, 93 NRC 244 (2021.)	NLB 107, pp. 57-58
United States	2021	Friends of the Earth, et al. v. US Nuclear Regulatory Commission	ENV	The DC Circuit Court of Appeals dismissed a petition for review concerning the NRC's renewal of the operating licences for two nuclear power reactor units at the Turkey Point Nuclear Generating Station. The operator submitted an application seeking approval of a second 20-year renewal of its licences, making this the NRC's first issuance of a subsequent licence renewal. The Plaintiffs sought a hearing concerning the plant's environmental impacts and the sufficiency of the NRC staff's environmental analysis. The NRC's Board denied the request and ruled that the NRC staff's environmental impact statement was sufficient and that the Plaintiffs were improperly challenging the validity of codified NRC regulations on generic environmental impact determinations. After the Board dismissed the hearing request, the NRC staff issued the renewed licences. The Plaintiffs appealed to the Commission. While their administrative appeals before the Commission were still pending, they also sought judicial review of the decision to issue the licences. The DC Circuit dismissed the petition for judicial review as premature as only "final orders" of NRC licensing decisions can be challenged in federal court and held that the Plaintiffs could not simultaneously seek judicial review during the pendency of their separate administrative appeal. The administrative appeals remain pending before the Commission.	Federal Circuit Court of Appeals	No. 20-1026 (DC Cir. 2021)	NLB 107, pp. 56-57
United States	2022	Florida Power & Light Co. (Turkey Point Nuclear Generating Units 3 and 4)	ENV	The Commission of the US NRC reversed its earlier rulings and held that the generic environmental impact statement for licence renewal at nuclear power plants (LR GEIS) only applied to the initial licence renewal proceedings and not subsequent licence renewal (SLR) proceedings. The Commission, separately, directed the US NRC Staff to provide a rulemaking plan to update the LR GEIS to clearly include evaluation of the environmental impacts of SLR. The Commission also directed US NRC Staff to shorten the licence terms of the Turkey Point Nuclear Generating Station in Florida until completion of the National Environmental Policy Act analysis. The Commission approved the NRC staff's recommendation to update the LR GEIS to clearly include evaluation of the environmental impacts of SLR and to amend NRC regulations codifying the conclusions of the LR GEIS.	Commission of the US NRC	CLI-22-2, 95 NRC 26 (2022)	NLB 108/109, pp. 101-102

Country	Year	Case name	Topic	Description	Court	Citation	NLB Issue
United States	2022	Duke Energy Carolinas, LLC (Oconee Nuclear Station, Units 1, 2, and 3)	ENV	The Commission of the US NRC reversed its earlier rulings and held that the generic environmental impact statement for licence renewal at nuclear power plants (LR GEIS) only applied to the initial licence renewal proceedings and not subsequent licence renewal (SLR) proceedings. The Commission, separately, directed the US NRC Staff to provide a rulemaking plan to update the LR GEIS to clearly include evaluation of the environmental impacts of SLR. Contentions in the currently pending SLR proceedings are dismissed and can be refiled once the NRC staff completes the update to the LR GEIS or an applicant elects to provide a site-specific analysis of the issues previously resolved generically in the LR GEIS. The Commission approved the NRC staff's recommendation update the LR GEIS to clearly include evaluation of the environmental impacts of SLR and to amend NRC regulations codifying the conclusions of the LR GEIS.	Commission of the US NRC	CLI-22-3, 95 NRC 40 (2022)	NLB 108/109, pp, 101-102
United States	2022	Exelon Generation Co., LLC (Peach Bottom Atomic Power Station, Units 2 and 3)	ENV	The Commission of the US NRC reversed its earlier rulings and held that the generic environmental impact statement for licence renewal at nuclear power plants (LR GEIS) only applied to the initial licence renewal proceedings and not subsequent licence renewal (SLR) proceedings. The Commission, separately, directed the US NRC Staff to provide a rulemaking plan to update the LR GEIS to clearly include evaluation of the environmental impacts of SLR. The Commission also directed US NRC Staff to shorten the licence terms of the Peach Bottom Atomic Power Station in Pennsylvania, until completion of National Environmental Policy Act analysis. The Commission approved the NRC staff's recommendation update the LR GEIS to clearly include evaluation of the environmental impacts of SLR and to amend NRC regulations codifying the conclusions of the LR GEIS.	Commission of the US NRC	CLI-22-4, 95 NRC 44 (2022)	NLB 108/109, pp. 101-102
LICENSING AND REGULATION (LR)							
Belgium	2018	Greenpeace Belgium v. Federal Agency for Nuclear Control (FANC)	LR	Greenpeace Belgium brought a case against the FANC contesting the legality of an authorisation for the transport of spent fuel. The claim was based on two parts of Euratom's Basic Safety Standards Directive: the failure of FANC to perform a justification study and an issue related to the ALARA principle. On the first issue, the Council held that a justification study is only required when the scope of the authorisation concerns an act that is considered a new type of practice, not those that have already been justified. On the second issue, the Council ruled that the application of the ALARA principle was correct, and therefore the regulator is not obliged to evaluate possible transport alternatives.	Raad van State [Council of State]	Nr. 241.575	NLB 102, p. 81

Country	Year	Case name	Topic	Description	Court	Citation	NLB Issue
Belgium	2020	Ruling by the Court of First Instance in Brussels, 3 September 2020, regarding Tihange 2	LR	The Court of First Instance in Brussels ruled in favour of the Federal Agency for Nuclear Control (FANC) regarding the restart of the Tihange 2 Nuclear Power Plant. The Plaintiffs filed a claim against the FANC, the Belgian State and the operator, Electrabel, to prevent the restart of Tihange 2 in 2015 after hydrogen flakes were found in the reactor vessel in 2012. The Plaintiffs alleged that the FANC made the decision to restart based on an insufficient examination, failed to act in a transparent way and intentionally withheld evidence from the public. They further claimed to be suffering psychological damage caused by the constant fear of an imminent severe accident because of the presence of the hydrogen flakes. The Court rejected these claims and held that the FANC had acted as a diligent regulator when evaluating the restart of Tihange 2 by conducting a thorough safety examination and communicating with the public clearly and transparently. Furthermore, the Court held that no legal framework exists with regard to the phenomena of hydrogen flakes and their presence does not exclude the safe operation of a reactor vessel.	Court of First Instance in Brussels	[Unknown]	NLB 105, pp. 87-88
Brazil	2009	Public Prosecutor v. National Nuclear Energy Commission (Comissão Nacional de Energia Nuclear – CNEN)	LR	Court confirmed the legality of the partial construction licence granted to Eletrobràs Termonuclear SA – Eletronuclear for preliminary works carried out at the Angra III Nuclear Power Plant. The public prosecutor had filed a public claim against the National Nuclear Energy Commission (Comissão Nacional de Energia Nuclear – CNEN) arguing that its granting of the partial construction licence was not lawful as Act No. 6/189/74 does not explicitly mention partial construction licences, though it does allow for a licence under specific conditions as long as it is in accordance with CNEN's prerogatives. The Court found that CNEN acted within the limits of its regulatory powers.	1st Federal Court (Angra dos Reis region)	[Unknown]	NLB 85, pp. 93-94
Canada	2012	Fond du Lac Denesuline First Nation v. Canada (Attorney General)	LR	Appellants challenge a licence renewal decision made by the Canadian Nuclear Safety Commission (CNSC) respecting a uranium mine and mill operating licence held by AREVA Resources Canada Inc. (AREVA). Court recognised that the CNSC has jurisdiction to determine whether a constitutional duty to consult Aboriginal groups has been triggered by a potential licensing decision to operate a uranium mine and mill, and if so, whether that duty has been satisfied through its licensing process and decision making. The Court also makes clear that for the constitutional duty to consult to be found, there must be evidence that a right may be harmed in some non-trivial, non-speculative way.	Federal Court of Appeal	2012 FCA 73	NLB 89, pp. 107-109

Country	Year	Case name	Topic	Description	Court	Citation	NLB Issue
Canada	2022	Citizens Against Radioactive Neighbourhoods (CARN) v. BWXT Nuclear Energy Canada Inc.	LR	The Federal Court of Canada dismissed a judicial review application to challenge a licensing decision of the Canadian Nuclear Safety Commission (CNSC). The applicant argued that the CNSC's decision to renew BWXT Nuclear Energy Canada Inc.'s licence to operate two nuclear fuel fabrication facilities was unlawful and unreasonable. The applicant argued for judicial review on the grounds that the CSNC failed to meet the appropriate standard of review, the licence renewal application materials and information provided for hearings were insufficient, the use of "hold point" licence conditions was unlawful and the CNSC exercised its statutory discretion unreasonably in light of the ALARA, justification and precautionary principles. The Court found the applicant's claims to be insufficient and concluded that the CNSC's decision was lawful and reasonable, and dismissed the application seeking to have the licence decision quashed.	Federal Court	2022 FC 849	NLB 108/109, pp. 91-97
Czechia	2009	Land Oberösterreich v. ČEZ a.s.	LR	The Court held that a licence issued to a nuclear power plant by the competent authorities in Czechia had to be considered as valid in Austria due to the principle of mutual recognition of licences. Nuclear facilities can only be licensed by competent authorities if they comply with the required safety standards, which are, on a high level, uniform in the EU. This is because the Euratom Treaty and secondary legislation establish a common EU legislative framework for nuclear safety, ensuring the protection of the health and safety standards of EU citizens. Consequently, the provision of Austrian law that provided differential treatment to the Czech nuclear power plant because it was authorised by another member state (rather than Austria) could not be applied in the Austrian courts, in the case of.	Court of Justice of the European Union (Grand Chamber)	Case C-115/08, ECLI:EU:C: 2009:660	NLB 84, pp. 118-120 NLB 106, pp. 22-23
Finland	2019	KHO 29.8.2019/3864	LR	Local co-operative associations appealed the issuance of the operating licence for the new 3-unit Olkiluoto Nuclear Power Plant claiming that the safety requirements concerning the area of the nuclear power plant were not met and therefore the decision was unlawful. The Court ruled that no evidence concerning safety or other matters were found that would result in the decision being unlawful. The appeal was dismissed.	Supreme Administrative Court of Finland	1475/1/19 and 1805/1/19	n/a
Finland	2014	KHO 1.12.2014/3793	LR	Local organisation appealed the Decision-in-Principle (DiP) made by the Government and confirmed by the Parliament concerning the new, planned Hanhikivi-1 Nuclear Power Plant. Since the national legislation does not allow for appeals against DiP, the appeal was not investigated.	Supreme Administrative Court of Finland	3228/1/14	n/a
Finland	2013	KHO 5.12.2013/3825	LR	NGO and private persons appealed the Government decision for uranium production in the Talvivaara mine claiming that the decision was unlawful. The Court returned the decision to the Government for reconsideration as to whether the application fulfilled the requirements that were set for granting the licence. Reconsideration was also needed because of the economic changes in the company after the licence was granted.	Supreme Administrative Court of Finland	1035/1/12	n/a

Country	Year	Case name	Topic	Description	Court	Citation	NLB Issue
France	2007	L'affaire Collectif national d'information et d'opposition à l'usine Melox – Collectif Stop Melox et MOX v. France	LR	The European Court of Human Rights (ECHR) dismissed the claim of Collectif Stop Melox et MOX concerning a decree authorising increased production of nuclear fuels from mixed oxides uranium/plutonium (MOX) at the Melox plant. The applicant lodged an appeal against this decree to the Council of State in 1999, which was dismissed, and the Plaintiff was required to pay FRF 5 000 (EUR 750) to the operator, Cogema. Before the ECHR, the applicant claimed a violation of Article 6(1) of the European Convention on Human Rights, on the grounds that the Council of State had not questioned the standing of a private law company, Cogema, to intervene in an action against a ministerial decision. The ECHR held that there had been no violation of Article 6(1) and Cogema was entitled to intervene in litigation concerning a ministerial decision directly affecting its economic activity.	European Court of Human Rights (ECHR)	N° 75218/01; ECLI:CE:ECHR: 2007: 0612JUD007521 801	NLB 80, p. 65
France	2011	Association trinationale de protection nucléaire (ATPN) v. Minister of Economy, Industry and Labour	LR	The Court confirmed the government's refusal to immediately close the Fessenheim Nuclear Power Plant. Such a decision must be made by decree by the Conseil d'État, after review by the Autorité de Sûreté Nucléaire (ASN). The Court recognised that the Fessenheim Plant was not in compliance with the Law on Water but complainants had not demonstrated the existence of a serious risk posed by the water releases such that a decision to shut down the plant would be required.	Administrative Court in Strasbourg	Tb. Adm. Strasbourg, n° 0805582	NLB 87, pp. 87-88
France	2013	Association trinationale de protection nucléaire (ATPN) v. Minister of Economy, Industry and Labour	LR	The Conseil concluded that continued operation of the Fessenheim Nuclear Power Plant does not pose any serious risk and dismissed a claim calling for the immediate suspension of operation of the Fessenheim Plant for insufficient consideration of seismic and flood risk, an abnormal number of incidents since 2004 and illegal water disposal standards.	Conseil d'État [State Council]	Decision (Request Nos. 351986, 358080, 358094, 358095)	NLB 92, p. 89
France	2012	Atelier de technologie de Plutonium, Collectif antinucléaire 13 et Association les amis de la terre de France v. Prime Minister	LR	The Conseil refused to annul a decree authorising the French Alternative Energies and Atomic Energy Commission (CEA) to carry out the operations of final shutdown and dismantling of the Atelier de technologie de plutonium (facility for plutonium technology or ATPu) located at the Cadarache site. Conseil found that the insufficiencies of the hazards study as well as the risks entailed in final shutdown and dismantling does not require an annulment of the decree insofar as the operations are carried out in compliance with the ASN's (French Nuclear Safety Authority) requirements.	Conseil d'État [State Council]	Decision (Request No. 346395)	NLB 90, pp. 101-102
France	2018	La commune de Fessenheim, et al., la Fédération CGE-CGC Energies, et la Fédération FO Énergie et Mines v. Prime Minister	LR	The Conseil repealed Decree No. 2017-508 of 8 April 2017, which revoked the operating licence held by Électricité de France (EDF) for the Fessenheim Nuclear Power Plant. A claim to repeal the decree was brought by the municipality of Fessenheim and various trade unions in the region, on the basis that a revocation of a licence could only be issued at the request of a licensee, pursuant to Article L. 311-5-5 of the Energy Code. The Conseil held that revocation of the licence to operate had not been issued at EDF's request and therefore the decree should be repealed.	Conseil d'État [State Council]	Decision Nos. 410109, 410622, 410624	NLB 101, p. 71

Country	Year	Case name	Topic	Description	Court	Citation	NLB Issue
India	2013	G. Sundarrajan v. Union of India and Others	LR	The Court rejected the arguments put forward in the public interest litigation petition which sought to obtain the closure of the Kudankulam Nuclear Power Station (KKNPS) based particularly on the larger reasoning that it is not for courts to scrutinise a particular policy (such as the government's nuclear energy policy) or decisions taken in fulfilment of that policy, in this case the establishment of the KKNPS. Of note, the Court stated that it cannot sit in judgment on the views expressed by the technical and scientific bodies in setting up of the KKNPS at Kudankulam and on its safety and security.	Supreme Court	Civil Appeal No. 4440 of 2013	NLB 91, p. 107
Japan	1992	The Ikata Supreme Court decision	LR	The residents living in Ehime Prefecture, in which the Ikata Nuclear Power Plant is located, filed the administrative litigation against the nuclear power regulator in order to revoke the permission for the nuclear power plant in question. The Supreme Court upheld the High Court's judgment, which had determined that the permission was legal, and dismissed the residents' final appeal. The Supreme Court decision concerning this case, which is generally called "The Ikata Supreme Court decision," is recognised as the leading case in which it provides the judicial review standards for administrative cases over the permission for installing a nuclear power reactor. The judicial review standards address the following legal issues, for example, (a) whether a safety standard which has not been set in detailed and concrete terms is reasonable or legal, (b) to what extent a nuclear regulator has an administrative discretion, (c) to what extent judicial review can be made, and (d) whether the nuclear power regulator bears burden of proof of showing the reasonability of its decision to give a permission, etc.	Supreme Court	1985 (Showa 60) (行ツ: Gyo-Tsu) No. 133 (Judgment of the First Petty Bench of the Supreme Court of 29 Oct. 1992, *Minshu* Vol. 46, No. 7, p. 1174)	n/a
Japan	1992	Monju Fast Breeder Reactor Case	LR	In this case, the legal issue before the Supreme Court was whether the residents living about 29 to 58 kilometres away from the fast breeder reactor (FBR) with an electrical power of 280 MW, called "Monju", and was in the research and developing phase at the time of the judicial review by the Supreme Court, had standing to sue for seeking a declaration of nullity of the permission for the FBR in question under the Article 36 of the Administrative Case Litigation Act (Act No. 139 of 1962). The Supreme Court ruled in favour of the residents, stating that they had standing to sue under the Article 36 of the Administrative Case Litigation Act.	Supreme Court	1989 (Heisei 1) (行ツ: Gyo-Tsu) No. 130 (Judgment of the Third Petty Bench of the Supreme Court of 22 Sept. 1992, *Minshu* Vol. 46, No. 6, p. 571)	n/a

Country	Year	Case name	Topic	Description	Court	Citation	NLB Issue
Japan	1992	Monju Fast Breeder Reactor Case	LR	In this case, the legal issue before the Supreme Court was whether the residents who had already filed another civil lawsuit seeking an injunction against the fast breeder reactor (FBR) called "Monju" had standing to sue under the Article 36 of the Administrative Case Litigation Act (Act No. 139 of 1962). The Supreme Court ruled in favour of the residents, stating that they had standing to sue under the Article 36 of the Administrative Case Litigation Act. This Supreme Court case is known as the leading case judging the relationship of a civil injunction lawsuit and an administrative lawsuit for nullity of an administrative disposition such as granting a permission.	Supreme Court	1989 (Heisei 1) (行ツ: Gyo-Tsu) No. 131 (Judgment of the Third Petty Bench of the Supreme Court of 22 Sept. 1992, *Minshu* Vol. 46, No. 6, p. 1090)	n/a
Japan	2015	Petition filed by citizens from Kagoshima opposed to the restart of Units 1 and 2 of the Sendai Nuclear Power Plant v. Kyushu Electric Power Company	LR	The Court rejected the claim against the restart of Sendai Nuclear Power Plant finding that the safety goals established by the NRA took into account the latest expertise, including experience in the Fukushima Daiichi Nuclear Power Plant accident and that as long as these safety goals are assured, the risk of a severe accident with the release of radioactive materials causing health damage should be insignificant to the public, if not assuring absolute safety; therefore, the Court did not consider that there was any actual risk against the rights of residents.	Kagoshima District Court	2014 (Heisei 26) (ヨ) No. 36 (Judgment of the Kagoshima District Court of 22 Apr. 2015, *Hanrei Jihou* Vol. 2290, p. 147)	NLB 96, pp. 71-72
Japan	2015	Masada Tadashi and others v. Kansai Electric Power Co. Ltd.	LR	The Court granted a temporary injunction against the restart of Takahama Nuclear Power Plant Units 3 and 4 finding that nuclear regulatory requirements must be strict enough to ensure that a severe disaster never occurs at a nuclear power plant operating in conformance with the regulatory requirements. In reviewing the Nuclear Regulation Authority's (NRA's) new regulatory requirements, the District Court found that they do not address post-Fukushima safety measures and thus are not justified. The Court also reviewed the risk of the Takahama units without reference to the NRA's new regulatory requirements, finding that the units have many weaknesses that need to be addressed, with the Court outlining the required measures.	Fukui District Court	2014 (Heisei 26) (ヨ) No. 31 (Judgment of the Fukui District Court of 24 Dec. 2015, *Hanrei Jihou* Vol. 2290, p. 73)	NLB 96, pp. 71-72
Japan	2017	Decision regarding operations at the Ikata Nuclear Power Plant	LR	The Plaintiff sought a preliminary injunction against operations at the Ikata Nuclear Power Plant. The Hiroshima District Court ruled against the Plaintiffs and denied their petitions. The District Court determined that the Volcanic Effects Assessment Guide was based on the premise that the timing and extent of any eruption could be predicted with considerable accuracy and a considerable time in advance and concluded that this premise was not realistic. Thus, the Nuclear Regulation Authority's decision is consistent with the purpose of the Act on the Regulation of Nuclear Source Material, Nuclear Fuel Material and Reactors, even if the site is deemed appropriate. The Court held that the NRA's determination and the location of the Ikata plant were appropriate.	Hiroshima District Court	2016 (Heisei 28) (ヨ) No. 38, No. 109 (Judgment of the Hiroshima District Court of 30 Mar. 2017, *Hanrei Jihou* Vol. 2357/2358, p. 160)	NLB 102, pp. 82-84

Country	Year	Case name	Topic	Description	Court	Citation	NLB Issue
Japan	2017	Decision regarding operations at the Ikata Nuclear Power Plant	LR	The Plaintiffs appealed the Hiroshima District Court decision and the Hiroshima High Court issued a decision in favour of the Plaintiffs approving the injunction suspending operation of the Ikata Nuclear Power Plant. The High Court decided there was insufficient evidence to support the judgment that the possibility of volcanic activity was sufficiently small during the period of operation and determined that the siting of the Ikata plant was inappropriate because such an evaluation was impossible to carry out based on submitted arguments and premises. However, the High Court did conclude that, apart from this issue, the Nuclear Regulation Authority's Volcanic Effects Assessment Guide was consistent with international standards and affirmed that its content was appropriate.	Hiroshima High Court	2017 (Heisei 29) (ラ) No. 63 (Decision of the Hiroshima High Court of 13 Dec. 2017, *Hanrei Jihou* Vol. 2357/2358, p. 300)	NLB 102, pp. 82-84
Japan	2018	Decision regarding operations at the Ikata Nuclear Power Plant	LR	The Defendant petitioned the Hiroshima High Court with an objection to the injunction, resulting in an appeal where the decision was overturned, and the Plaintiff's complaint was dismissed. Like in the District Court decision, the High Court noted the Volcanic Effects Assessment Guide was based on an unrealistic premise. Therefore, assumption of risk should be based on social common sense, meaning when risk is of such sufficiently low frequency as to not be regarded as a problem by the general public. Applying the theory of social common sense to this case, the Court found that the Nuclear Regulation Authority's (NRA) determination was not contrary to the purpose of the Act on the Regulation of Nuclear Source Material, Nuclear Fuel Material and Reactors and concluded on appeal that the NRA's determination and the location of the Ikata plant were appropriate.	Hiroshima High Court	2017 (Heisei 29) (ウ) No. 62 (Decision of the Hiroshima High Court of 25 Sept. 2018, on the Court website)	NLB 102, pp. 82-84
Japan	2020	Decision regarding operations at the Ikata Nuclear Power Plant	LR	The Hiroshima High Court issued a second preliminary injunction suspending operation of the Ikata Nuclear Power Plant. Plaintiffs brought this case on the grounds that it infringed their personal rights. The Court held that the safety assessments conducted by the operator were insufficient in assessing potential earthquake and volcano impacts and therefore the Nuclear Regulation Authority erred in granting a licence. The High Court held that the Ikata plant could not pass the Site Assessment in accordance with the Volcanic Effects Assessment Guide. However, since social common sense accepts, to a certain extent, the risk of catastrophic eruptions, it would violate that principle to conclude that the plant does not recognise the existence of specific hazards based on this reason alone. In response, the High Court partially modified the Volcanic Effects Assessment Guide in consideration of social common sense to assume an eruption of a level just below that of the subject volcano's (Mount Aso) fourth largest eruption.	Hiroshima High Court	2019 (Heisei 31) (ラ) No. 48 (Judgment of the Hiroshima High Court of 17 Jan. 2020, on the Court website)	NLB 104, pp. 10-12

Country	Year	Case name	Topic	Description	Court	Citation	NLB Issue
Japan	2017	Petition filed by citizens from Fukushima v. government of Japan and TEPCO	LR	The Court acknowledged that both the government of Japan and the Tokyo Electric Power Company (TEPCO) were liable for the Fukushima Daiichi Nuclear Power Plant accident. The Court determined that the Government not only failed to account for a tsunami but also failed to exercise its regulatory authority over TEPCO, considering these failures to be irrational and illegal. The Government and TEPCO were ordered to pay equal compensation for damages.	Maebashi District Court	2013 (Heisei 25) (ワ) No. 478 2014 (Heisei 26) (ワ) No. 111, No. 466 (Judgment of the Maebashi District Court of 17 Mar. 2017 *Shoumu Geppou* Vol. 64, No. 4, p. 481)	NLB 100, pp. 87-89
Japan	2017	Petition filed by citizens from Fukushima v. government of Japan and TEPCO	LR	The Court rejected the claim that the government of Japan should be held liable for failure to exercise regulatory authority over the Tokyo Electric Power Company (TEPCO) but found liability on the part of TEPCO for the Fukushima Daiichi Nuclear Power Plant accident. While recognising that the Government did not take preventive measures against tsunamis, the Court found that the Government was not irrational in prioritising preventive measures against earthquakes.	Chiba District Court	2013 (Heisei 25) (ワ) No. 515, No. 1476, No. 1477 (Judgment of the Chiba District Court of 22 Sept. 2017 Shouhishahou News Vol. 114, p. 224)	NLB 100, p. 87-89
Japan	2017	Petition filed by citizens from Fukushima v. government of Japan and TEPCO	LR	The Court recognised that both the government of Japan and the Tokyo Electric Power Company (TEPCO) were liable for the Fukushima Daiichi Nuclear Power Plant accident. The Court determined that the Government could foresee the tsunami and failed to exercise effective regulatory authority over TEPCO. The failure to take preventive measures was found to be irrational and illegal. The Government and TEPCO were ordered to pay equal compensation for damages as both parties were found at fault.	Fukushima District Court	2013 (Heisei 25) (ワ) No. 38, No. 94, No. 175 2014 (Heisei 26) (ワ) No. 14, No. 165, No. 166 (Judgment of the Fukushima District Court of 10 Oct. 2017, *Hanrei Jihou* Vol. 2256, p. 3)	NLB 100, pp. 87-89

Country	Year	Case name	Topic	Description	Court	Citation	NLB Issue
Japan	2019	Petition filed by citizens from Fukushima v. government of Japan and TEPCO	LR	Plaintiffs filed a lawsuit seeking a total of JPY 1.44 billion in damages against the government of Japan and TEPCO. The Court allowed the claim against TEPCO but denied Government responsibility, which both parties appealed. The decision was rendered on the following points: whether the Government had regulatory authority; whether the tsunami was foreseeable; and whether the accident could have been prevented had regulatory authority been exercised. The Court found that the Government did have the regulatory authority to order TEPCO to enact protective measures. However, the level of foreseeability of the tsunami was low and, even if regulatory authority had been exercised, the protective measures advocated by the Plaintiffs likely would have been incomplete at the time of the Fukushima accident. The Court found that the government did not act unreasonably by failing to order the adoption of protective measures and therefore liability cannot be established under the State Redress Act.	Nagoya District Court	2013 (Heisei 25) (ワ) No. 2710, No. 5612 2014 (Heisei 26) (ワ) No. 884 2016 (Heisei 28) (ワ) No. 612, No. 5238 (Judgment of the Nagoya District Court of 2 Aug. 2019, *Shoumu Geppou* Vol. 67, No. 1, p. 1)	NLB 103, pp. 47-49
Japan	2020	Petition filed by citizens from Fukushima and nearby prefectures v. Government of Japan and TEPCO	LR	The Court reviewed a class action lawsuit in which the Plaintiffs sought compensation for damages from both the government of Japan and TEPCO after being forced to evacuate their homes due to the Fukushima Daiichi nuclear accident. Basing its judgment on Supreme Court precedents, the Court acknowledged the Government's responsibility by following the conventional framework that dictates whether a claim for compensation is justified or not based on the Government's non-intervention. The Court found both the Government and TEPCO equally liable and ordered compensation of approximately JPY 1.01 billion. This marks the first time the appellate court explicitly ruled the illegality of the Government in a compensation lawsuit over the Fukushima accident. In response to this judgment, TEPCO and the Government appealed to the Supreme Court.	Sendai High Court	2017 (Heisei 29) (ネ) No.373 2020 (Reiwa 2) (ネ) No. 56, No. 62 (Judgment of the Sendai High Court of 30 Sept. 2020, *Hanrei Jihou* Vol. 2484, p. 185)	NLB 106, pp. 25-27
Japan	2020	Decision regarding the request for injunction against prior consent to restart Onagawa Nuclear Power Plant	LR	Sendai District Court denied the petition for a preliminary injunction to block the prior consent of the local government for the restarting of the Onagawa Nuclear Power Plant. The Plaintiffs were residents close to the Onagawa plant who sought an injunction blocking the local government's prior consent claiming that the consent procedures are a crucial condition of restart and therefore present a significant threat or hazard to their personal rights. The Court held that there was no significant infringement on the personal rights of the Plaintiffs as consent is not a necessary legal procedure for restart and there are other procedural regulations that must be carried out by the Nuclear Regulatory Authority (NRA). Furthermore, the Plaintiffs failed to present *prima facie* evidence that these other regulations are a mere formality as they claimed, so it cannot be said that the Onagawa plant will immediately restart based on this prior consent. Therefore, an injunction against the consent is not warranted. However, this does indicate that there are more ways for individuals and groups to request injunctions than have previously been seen.	Sendai District Court	2019 (Reiwa 1) (ヨ) No. 99	NLB 105, pp. 88-90

Country	Year	Case name	Topic	Description	Court	Citation	NLB Issue
Japan	2021	Injunction against nuclear power plant operation based on inadequate evacuation plans (Tokai-2)	LR	The Mito District Court issued an injunction against Japan Atomic Power Company (JAPC) to prohibit the operation of the Tokai No. 2 nuclear power plant on the ground that the evacuation plans in the event of a nuclear accident were inadequate. JAPC filed an appeal to the Tokyo High Court on 19 March 2021. As of the date of publication, the case is still pending.	Mito District Court	2012 (Heisei 24) (行ウ) No. 15 (Judgment of the Mito District Court of 18 Mar. 2021, *Hanrei Jihou* Vol. 2524/2525, p. 40)	NLB 107, pp. 51-55
Japan	2019	Prosecution on charges of professional negligence resulting in death and injury for the former TEPCO executives	LR	Three former executives of Tokyo Electric Power Co. (TEPCO) were acquitted by the Tokyo District Court of charges of professional negligence resulting in the death and injury of people living in the Fukushima prefecture at the time of the Fukushima Daiichi Nuclear Power Plant accident. The Tokyo District Court determined that in order to avoid the consequences from the accident, the Defendants would have had to take certain actions before early March 2011. However, the Court stated that it is doubtful that TEPCO could have completed these measures before the accident and the only realistic way TEPCO could have avoided the consequences from the accident was to have suspended the operation of the nuclear power plant before early March in 2011. The Court concluded that the former TEPCO executives did not have an obligation to suspend operation of the nuclear power plant before early March 2011, because it was not possible to foresee, beyond a reasonable doubt, the occurrence of a tsunami of sufficient scale to cause the Fukushima Daiichi accident. On appeal, the Tokyo High Court upheld the Tokyo District Court judgment on 18 January 2023.	Tokyo District Court	2016 (Heisei 28) (刑わ) No. 374 (Judgment of the Tokyo District Court of 19 Sept. 2019, *Hanrei Jihou* Vol. 2431/2432, p. 5)	NLB 107, pp. 55-56
Japan	2020	Judgment framework of the court on the provisional disposition against the operation of the Ikata Nuclear Power Plant	LR	People living about 60 kilometres (km), 100 km and 130 km away from the Ikata Nuclear Power Plant filed a petition for a provisional disposition order of an injunction against the operation of Unit 3 at the site operated by Shikoku Electric Power Company (SEPCO), based on the specific risk that such operation might infringe on their personal rights for life etc. because the plant lacks safety against earthquakes. The Court decided not to grant a provisional injunction and dismissed the petition. One of the remarkable aspects of the decision is that the Court did not adopt the Ikata decision framework established by the Supreme Court in 1992 because this framework should be applied to administrative litigation and not to civil provisional remedies.	Hiroshima District Court	2020 (Reiwa 2) (ヨ) No. 35 (Decision of the Hiroshima District Court of 4 Nov. 2021, on the Court website)	NLB 108/109, pp. 97-100

Country	Year	Case name	Topic	Description	Court	Citation	NLB Issue
The Netherlands	2013	Greenpeace Netherlands Foundation et al. v. Minister of Economic Affairs, Agriculture and Innovation	LR	The Appellants appealed the decision of the Minister of Economic Affairs, Agriculture and Innovation to issue a licence for fuel diversification at the Borssele Nuclear Power Plant. The Appellants claimed the licence should not have been issued because the Minister erred in not including relevant information on how the use of MOX (mixed oxide) fuel could impact a potential accident and that the probabilistic safety assessment (PSA) method misjudges the likelihood of a meltdown. The appeal of the Appellant who lives approximately 130 km from the Borssele plant was declared inadmissible. The Court dismissed the other aspects of the appeal as unfounded. It held that the Borssele plant meets all safety requirements and the Minister's decision did not need to take into account further study on the impact of MOX fuel on the course of an accident in their assessment. Further, the Court was not convinced that the PSA incorrectly misjudges the likelihood of a meltdown.	Raad van State [Council of State]	ECLI:NL:RVS: 2013:BZ1263	n/a
The Netherlands	2021	Joint Nuclear Power Plant Netherlands B.V. v. Ministers of Economic Affairs and of Finance	LR	The operator of the Dodewaard Nuclear Power Plant brought a claim against the State Secretary of Infrastructure and Water Management and the Minister of Finance for rejecting its application for decommissioning on the basis that it failed to meet the financial security requirements of dismantling and decommissioning. The operator claimed that their permanent incapability to meet the financial security requirements for decommissioning meant their application should be approved. The Court found that regardless of whether the operator is incapable of ever having sufficient financial resources, its financial status cannot lead to an annulment of the decision as the Nuclear Energy Act and the Nuclear Installations, Fissionable Materials and Ores Decree do not contain any provisions for the Ministers to approve the application if there is no financial security to cover the costs of decommissioning. Moreover, the Court did not establish at the hearing that the operator is unable to gather sufficient resources, and a procedure is still pending in civil court on this matter. The appeal was found to be without merit and dismissed.	Raad van State [Council of State]	ECLI:NL:RVS: 2021:2442	n/a
South Africa	2007	McDonald & others v. Minister of Minerals and Energy & others	LR	The Court held that Regulation 3 of the National Nuclear Regulator Act 47 of 1999 (NNRA) was invalid based of the maxim *delegates delegare non potest* and represented an unauthorised delegation of the Minister of Minerals and Energy's regulatory power to the National Nuclear Regulator (Regulator). The Plaintiffs sought to challenge the restriction of development of property located within a 5 km radius of the Koeberg Nuclear Power Station on the basis that Regulation 3 and any requirements created by the Regulator were invalid. The Court held that such delegation by the Minister under Regulation 3 was clearly unauthorised and amounts to an impermissible abdication by the Minister of the power to regulate. Further, the Court denied the Regulator's request to suspend operation of the judgment for a period of a year to avoid any gap created by the setting aside of the regulation and the requirements as development within the 5 km zone from the Koeberg plant is still governed by the terms of the Structure Plan (Guide Plan), which has statutory force and effect independently of the NNRA and one of the provisions of the Guide Plan is a restriction on further development within a 5 km radius of the Koeberg plant unless such development forms an integral part of the Koeberg plant.	Cape High Court (Cape Provincial Division)	2007 (5) SA 642 (C)	NLB 80, p. 66

Country	Year	Case name	Topic	Description	Court	Citation	NLB Issue
Sweden	2006	Ringhals Aktiebolag	LR	Permit procedure for nuclear power plant according to the Environmental Code. The Court found that an appropriate balance is established between, on the one hand, the governmental authorities for nuclear activities and, on the other hand, the environmental court if the authorities regulate the activity in more detail and the Court makes a general assessment between the cost and the benefit that will be presented through the prescribed permit condition on further investigation measures.	Land and Environment Court of Appeal	MÖD 2006:70	n/a
Sweden	2018	Swedish Nuclear Fuel and Waste Management Company (SKB)	LR	The Court concluded that the activity (i.e. the final repository for spent nuclear fuel) is permissible if: • SKB produces evidence that the repository in the long term will meet the requirements of the Environmental Code, despite remaining uncertainties regarding how the protective capability of the canister may be affected by corrosion. • The long-term responsibility for the final repository according to the Environmental Code has been clearly assigned. Before permission is given, SKB must also provide a comprehensive report of the activity's surface operations and indicate the siting of two possible ventilation towers. The Court gave this opinion to the Swedish Government. It is now up to the government to decide.	Land and Environmental Court	Case no. M 1333-11	n/a
Switzerland	2012	Ursula Balmer-Schafroth and others v. DETEC	LR	The Mühleberg Nuclear Power Plant was originally granted a 40-year licence, to expire in 2012. In 2009, the Federal Department of the Environment, Transport, Energy and Communications (DETEC) repealed the time limitation in light of the establishment of the Swiss Federal Nuclear Safety Inspectorate (ENSI). This decision was appealed to the Federal Administrative Court, which was approved in part. The Court confirmed the revocation of the original time limitation but stated that a new time limitation was required for policy reasons and DETEC had until mid-2013 to establish the new time limitation. The Court cited safety concerns as the reason and stated that if the licensee wishes to extend the licence beyond the time limitation, it must file an application for such extension with DETEC accompanied by a comprehensive maintenance plan for the plant.	Federal Administrative Court	A 667/2010	NLB 89, pp. 110-111
Switzerland	2012	Ursula Balmer-Schafroth and others v. DETEC	LR	Court provided that DETEC must examine the merits of a request to revoke the operating licence for the Mühleberg Nuclear Power Plant due to serious safety concerns.	Federal Administrative Court	A 6030/2011	NLB 90, pp. 109-110
Switzerland	2013	DETEC and Forces motrices bernoises (FMB) Energie SA v. Ursula Balmer-Schafroth and others	LR	Court found in favour of DETEC and FMB, deciding that the Mühleberg Nuclear Power Plant should be granted an unlimited-duration operating licence. FMB alleged primarily that the new time limit and the new deadline were illegal and arbitrary, while DETEC focused mainly on issues of institutional law, since it considered that the decision of the Federal Administrative Court went against the distribution of competencies purposely institutionalised by legislation between the administration (i.e. DETEC and the Swiss Federal Office of Energy – SFOE) and the safety authority (ENSI).	Federal Supreme Court	BGE 139 II 185, 2C_347/2012; 2C_357/2012	NLB 91, p. 108

Country	Year	Case name	Topic	Description	Court	Citation	NLB Issue
Switzerland	2014	Federal Nuclear Safety Inspectorate v. A. and B.	LR	The Swiss Federal Nuclear Safety Inspectorate (ENSI) appealed the decision of Federal Administrative Court requiring it to perform a substantive assessment of the safety assessment of the Mühleberg Nuclear Power Plant to the Federal Supreme Court. The Federal Supreme Court dismissed ENSI's appeal and upheld the decision of the Federal Administrative Court finding that the Claimants living within Emergency Protection Zone 1 (i.e. within a 3 to 5 kilometre radius of the plant) have a legitimate interest that entitles them to take legal action and request an order on administrative acts. The fact that an accident to be assessed occurs only rarely does not alter the legitimacy of the interest. A legitimate interest for residents in Emergency Protection Zone 2 (i.e. within a 20 kilometre radius of the plant) was not examined and remains unresolved.	Swiss Federal Supreme Court	BGE 140 II 315, 2C_255/2013	n/a
Switzerland	2021	Several private individuals v. Axpo Power AG and Federal Nuclear Safety Inspectorate	LR	The Court rejected the main ground of an appeal concerning the seismic safety assessment for the Beznau Nuclear Power Plant requested by the Swiss Federal Nuclear Safety Inspectorate (ENSI) after the Fukushima Daiichi Nuclear Power Plant accident in 2011. ENSI had already requested seismic safety assessments from the Beznau Nuclear Power Plant in 2016 and in 2017, it was determined that they fully complied with applicable legal requirements. ENSI was therefore not required to request new ones. However, the Court did partially grant the appeal as, according to the applicable law in 2017 (at the time of the decision), ENSI should have requested an additional safety assessment. The Court held that in such a case, ENSI must ask the Beznau Nuclear Power Plant's operator for the relevant additional safety assessment, unless it had already requested new fault analyses in the meantime. As this was indeed the case and the review of the safety assessments provided was completed in February 2021, ENSI has no obligation to request new assessments.	Federal Supreme Court	2C_206/2019	NLB 106, pp. 27-28
United States	1998	Baltimore Gas & Electric Co. (Calvert Cliffs Nuclear Power Plant, Units 1 and 2)	LR	Petitioner challenged the licence renewal application submitted to the US NRC by Baltimore Gas and Electric Company. Petitioner submitted its petition to intervene/request for hearing in a timely manner, but it missed the deadline to file its contentions. The contentions were filed late and failed to address the standards governing the admissibility of late-filed contentions found in 10 CFR 2.714(a) leading to the denial of their petition. This decision was appealed to the Commission of the US NRC who affirmed the dismissal of Petitioner's contentions.	Commission of the US NRC	CLI-98-25, 48 NRC 325 (1998)	n/a

Country	Year	Case name	Topic	Description	Court	Citation	NLB Issue
United States	2008	Spano v. US Nuclear Regulatory Commission	LR	The Federal Court of Appeals for the Second Circuit dismissed the Petitioners' appeal of the denial by the US Nuclear Regulatory Commission (NRC) of their petitions to revise the NRC's nuclear power plant licensing regulations so that a licence renewal would be subject to the same standards as an initial licence application. Petitioners challenged the denial on the grounds that the NRC did not provide Petitioners with an opportunity to supplement their petitions, did not hold a hearing or conduct fact-finding, improperly relied on the existence of other administrative remedies and did not consider the "new information" and "new issues" raised in the petitions. The Court dismissed the claim that the NRC did not allow the Petitioners to supplement their petitions, noting the distinction between an incomplete petition for rulemaking and one that is merely unpersuasive. Furthermore, the Court held that NRC's decisions to not hold a hearing or conduct fact-finding, rely on other administrative remedies and not consider "new information" and "new issues" raised in the petitions were reasonable.	Federal Circuit Court of Appeals	293 F. App'x 91 (2nd Cir. 2008).	NLB 82, pp. 116-117
United States	2009	Public Citizen, San Luis Obispo Mothers for Peace, and State of New York v. US Nuclear Regulatory Commission	LR	The US Nuclear Regulatory Commission (NRC) determined that air-based attacks were beyond the scope of the design basis threat rule because the federal government was responsible for defending against such threats. The Petitioners alleged that in doing so, the NRC had acted arbitrarily, capriciously and in violation of law. The Court held that the NRC had acted lawfully in excluding air-based threats from the scope of the rule. In its decision, the Court recognised that the design basis threat rule considered the credibility of the threat, whether private forces could reasonably be expected to actively engage that threat and that there was also a low likelihood of damaging the reactor core and releasing radioactivity that could affect public health and safety. It also highlighted that relying on other governmental bodies to address the risk is not equivalent to ignoring the risk.	Federal Circuit Court of Appeals	573 F.3d 916 (9th Cir. 2009)	NLB 84, pp. 120-122
United States	2010	Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. (Vermont Yankee Nuclear Power Station)	LR	Petitioners were granted the right to intervene in the licensing procedure over whether the licensee had adequately demonstrated that certain reactor components would not fail due to metal fatigue during the period of extended operation. The Atomic Safety and Licensing Board Panel (ASLBP) issued a partial initial decision concluding, *inter alia*, that the licensee's metal fatigue analyses did not comply with the time-limited aging analysis (TLAA) requirements and did not provide the reasonable assurance of safety required by 10 CFR 54.29. Accordingly, the ASLBP ruled that the licence renewal was not authorised and could not be granted until 45 days after the licensee satisfactorily completes TLAA metal fatigue calculations and serves them on the US NRC Staff and the other parties to the proceeding. The US NRC Staff appealed the ASLBP's partial initial decision to the Commission of the US NRC, which ruled that the applicant's metal fatigue calculations, as originally prepared, complied with the relevant regulation. The Commission of the US NRC determined that the licence renewal application was legally and technically sufficient.	Commission of the US NRC	CLI-10-17, 72 NRC 1 (2010)	n/a

Country	Year	Case name	Topic	Description	Court	Citation	NLB Issue
United States	2011	New Jersey Environmental Federation v. US NRC	LR	Court ruled that the NRC properly rejected the technical challenges related to concrete and the drywell shell because they were filed after the initial deadline for contentions and were not based on new, previously unavailable information. Regarding a technical contention on metal fatigue, the Court ruled that the NRC reasonably applied the elevated pleading standards in its regulation governing the reopening of a closed record. Finally, the Court deferred to the NRC's conclusion that its regulations require disputes to be raised with an applicant's submissions, not with the Staff's review.	Federal Circuit Court of Appeals	645 F.3d 220 (3d Cir. 2011)	NLB 88, pp. 72-73
United States	2012	Calvert Cliffs Nuclear Project, LLC	LR	The Board concluded that because Applicants in this case are owned by a US corporation that is 100% owned by a foreign corporation, Applicants are rendered per se ineligible, notwithstanding any other factors such as a negation action plan, to apply for or obtain a licence as long as the current ownership arrangement is in effect. The Atomic Energy Act states that a licence cannot be issued to any corporation if they are owned, controlled, or dominated by a foreign corporation or foreign government.	NRC Atomic Safety and Licensing Board	LBP-12-19, 76 NRC 184 (2012)	NLB 90, pp. 113-114
United States	2012	South Carolina Electric & Gas Company and South Carolina Public Service Authority (also referred to as Santee Cooper) (Virgil C. Summer Nuclear Station, Units 2 and 3)	LR	In response to the granting of a combined licence application to build and operate two additional units at the V.C. Summer Nuclear Station, the Claimants requested a hearing before the US Atomic Safety and Licensing Board Panel (ASLBP). The ASLBP found that only the Sierra Club had demonstrated standing but that none of the proposed conditions by any Petitioner was admissible. The ASLBP therefore denied the hearing requests. All three parties appealed to the Commission of the US NRC, which affirmed the ASLBP's decision except with respect to one proposed contention, relating to the requirement to consider energy alternatives and remanded the issue to the ASLBP for further consideration. On remand, the ASLBP concluded that the contention was inadmissible, which the Commission of the US NRC affirmed on appeal. Friends of the Earth and the South Carolina Chapter of the Sierra Club joined in a petition to suspend licensing decisions while the Commission of the US NRC considered the impacts of the earthquake and tsunami at the Fukushima Daiichi Nuclear Power Plant in Japan. The Commission of the US NRC granted the petition in part and denied it in part. The Commission determined that the agency's safety and environmental review was consistent with the requirements of the US Atomic Energy Act and the National Environmental Policy Act. The Commission of the US NRC authorised the US NRC Staff to issue the licences. In addition, it directed the US NRC Staff to include in the licence certain conditions related to a surveillance programme for squib valves and the development of strategies to address beyond design basis external events.	Commission of the US NRC	CLI-12-9, 75 NRC 421 (2012)	n/a

Country	Year	Case name	Topic	Description	Court	Citation	NLB Issue
United States	2013	Shieldalloy Metallurgical Corp. v. NRC	LR	The Court deferred to the NRC's conclusions that: (1) the agency lacks authority under the Atomic Energy Act to retain jurisdiction over a site at a licensee's request where the state is willing to assume regulatory authority over the site and meets other applicable criteria; and (2) the NRC's agreement state assessment, which requires that discontinuance of the NRC's regulatory authority not result in interference or interruption of the licensing process, did not compel the NRC to retain jurisdiction over the Shieldalloy site. However, on a third issue, the Court found that the NRC failed to explain how the state's rules governing licence termination were compatible with the NRC's restricted release provision. The case was remanded to the NRC for further explanation of this issue.	Federal Circuit Court of Appeals	707 F.3d 371 (DC Cir. 2013)	NLB 91, pp. 111-112
United States	2013	Shieldalloy Metallurgical Corp. (Decommissioning of the Newfield, New Jersey Site)	LR	The NRC responded to the DC Circuit's remand, explaining that because the state has adopted the objective of seeking to limit the use of restricted release, and because the state has adopted more stringent criteria for licence termination under restricted release than for unrestricted release, as well as more conservative criteria than the NRC's, the NRC deemed the state's regulations to be compatible with its programme under its agreement state policy. Therefore, the NRC reinstated its transfer of authority over the Shieldalloy site to the state.	Commission of the US NRC	CLI-13-6, 78 NRC 155 (2013)	NLB 92, pp. 94-95
United States	2014	Shaw AREVA MOX Services, LLC (Mixed Oxide Fuel Fabrication Facility Possession and Use License)	LR	Applicant submitted a Fundamental Nuclear Material Control Plan, which contained a proposed automated material control and accounting system to satisfy certain NRC requirements for the control and accounting of special nuclear material. After two evidentiary hearings, it was found that the applicant's Fundamental Nuclear Material Control Plan complies with NRC requirements. Decision was appealed to the Commission of the US NRC.	NRC Atomic Safety and Licensing Board	LBP-14-1, 79 NRC 39 (2014)	NLB 93, pp. 93-94
United States	2014	Nuclear Innovation North America LLC (South Texas Project Units 3 and 4)	LR	The applicant sufficiently demonstrated by a preponderance of the evidence that it is not subject to impermissible foreign ownership, control or domination, contrary to the Atomic Energy Act and NRC regulations. The applicant is pursuing two new reactor licences as part of a joint venture with Toshiba American Nuclear Energy Corporation (TANE), which is a wholly-owned subsidiary of Toshiba America, Inc., which in turn is a wholly-owned subsidiary of Toshiba Corporation, a Japanese corporation. Decision was appealed to the Commission of the US NRC.	NRC Atomic Safety and Licensing Board	LBP-14-3, 79 NRC 267 (2014)	NLB 94, pp. 117-118
United States	2017	Virginia Uranium, Inc. v. Warren	LR	The Court found that under the Atomic Energy Act conventional uranium mining on non-federal land is not regulated by the US Nuclear Regulatory Commission (NRC). Therefore, a state moratorium on uranium mining is not pre-empted by federal law.	Federal Circuit Court of Appeals	848 F.3d 590 (4th Cir. 2017)	NLB 99, pp. 71-72
United States	2019	Virginia Uranium, Inc. v. Warren	LR	The Supreme Court upheld the decision of the 4th Circuit Court that the Virginia ban on uranium mining on private land is not pre-empted by federal law. However, while the Court felt it was inappropriate in this instance to ascertain the motivation of the state of Virginia in creating the ban, the decision did not rule out the possibility that a state's regulation, which was found to either intend to interfere, or have the effect of interfering, with matters close to the core of the NRC's authority could be pre-empted.	Supreme Court	139 S. Ct. 1894 (2019)	NLB 103, pp. 49-50

Country	Year	Case name	Topic	Description	Court	Citation	NLB Issue
United States	2019	Holtec International (HI-STORE Consolidated Interim Storage Facility)	LR	The NRC Atomic Safety and Licensing Board (ASLB) issued a decision denying challenges to the licence application by Holtec International to build and operate a consolidated interim storage facility (CISF) for spent nuclear fuel and greater-than-Class C waste (SNF) in Lea County, New Mexico. Holtec is seeking a 40-year licence to store canisters of SNF. While the ASLB held that three Petitioners demonstrated standing, it determined that none of their contentions were admissible. Appeals of the ASLB's ruling are pending before the NRC Commission and the NRC staff's review of the application is ongoing.	NRC Atomic Safety and Licensing Board	LBP-19-4, 89 NRC 353 (2019)	NLB 103, p. 50
United States	2021	Holtec International (HI-STORE Consolidated Interim Storage Facility)	LR	Fasken Land and Minerals, Ltd. And Permian Basin Land and Royalty Owners (together, Fasken) sought to reopen a proceeding regarding Holtec International's application for a licence to build and operate a consolidated interim storage facility (CISF). Fasken argued that the proposed CISF would interfere with mineral development in the area and that the NRC staff had insufficiently analysed this issue. The Commission denied Fasken's appeal and upheld the Board's previous determination. The Commission also rejected Fasken's motion to reopen the record to litigate issues concerning the NRC staff's analysis of land use, rights, and restrictions under and around the proposed facility, rejecting Fasken's argument that new and materially different information that had come to light in the form of public comments on the NRC's draft environmental impact statement. The NRC's licensing decision is pending. A subsequent appeal brought before the DC Circuit is currently being held in abeyance pending said licensing decision.	Commission of the US NRC	CLI-21-7, 93 NRC 215 (2021)	NLB 107, pp. 57-58
United States	2019	Public Watchdogs v. Southern California Edison Co.	LR	In August 2019, the public interest group "Public Watchdogs" brought suit against the licensees for the San Onofre Nuclear Generating Station (SONGS), Holtec International (Holtec), the US Nuclear Regulatory Commission (NRC), and others allegedly involved in negligent decommissioning activities at SONGS. It challenged, amongst others, licence amendments that the NRC issued for SONGS in 2015. The District Court for the Southern District of California dismissed the complaint for lack of jurisdiction and held that under the Administrative Orders Review Act ("The Hobbs Act"), a court of appeals had exclusive jurisdiction to hear Public Watchdogs' claims.	Federal District Court	No. 19-CV-1635 JLS (MSB), 2019 WL 6497886 (S.D. Cal. 2019) (unpublished)	NLB 106, pp. 28-29
United States	2020	Public Watchdogs v. Southern California Edison Co.	LR	In December 2020, the Court of Appeal affirmed the lower court's decision to dismiss the complaint. Under the Hobbs Act, courts of appeals have exclusive jurisdiction to review "final orders" of the NRC, which should be read broadly to include all NRC decisions that are preliminary, ancillary or incidental to licensing proceedings. As all of Public Watchdogs' claims related to NRC decisions on licensing, the claims fell under the scope of the Hobbs Act and therefore, the lower court lacked jurisdiction to hear them.	Federal Circuit Court of Appeals	984 F.3d 744 (9th Cir. 2020)	NLB 106, pp. 28-29

Country	Year	Case name	Topic	Description	Court	Citation	NLB Issue
United States	2021	Public Watchdogs v. US NRC	LR	In September 2019, Public Watchdog challenged the NRC's denial of its petition under 10 CFR 2.206 for an order suspending decommissioning operations at the San Onofre Nuclear Generating Station (SONGS). A decision not to institute an enforcement proceeding is presumptively unreviewable unless the NRC "consciously and expressly adopted a general policy that is so extreme as to amount to an abdication of its statutory responsibilities" or there is law providing "meaningful standards for defining the limits of [the NRC's] discretion" in declining to take enforcement action. Public Watchdogs did not overcome the presumption that the NRC's denial of the 2.206 petition is unreviewable and the Court dismissed the petition for review	Federal Circuit Court of Appeals	833 F. App'x 460 (9th Cir. 2021)	NLB 106, pp. 28-29
United States	2021	Virginia Electric and Power Company (North Anna Power Station, Units 1 and 2)	LR	The NRC's Atomic Safety and Licensing Board recently issued a decision denying intervention in subsequent licence renewal (SLR) proceedings concerning an application submitted by Virginia Electric and Power Company (VEPCO) for a second 20-year renewal of its operating licences for 2 nuclear power reactor units at the North Anna Power Station in Virginia. Various environmental organisations filed a hearing request, contesting portions of VEPCO's SLR application on the basis that it failed to discuss the environmental significance of the 2011 Mineral, Virginia earthquake. The Board denied the request for a hearing on the grounds that the safety impact of the 2011 Mineral earthquake had already been fully assessed by VEPCO and the NRC staff by a post-incident review and a seismic probabilistic risk assessment. An appeal of this decision is currently pending before the Commission.	NRC Atomic Safety and Licensing Board	LBP-21-4, 93 NRC 179 (2021)	NLB 107, p. 59
United States	2021	NextEra Energy Point Beach, LLC (Point Beach Nuclear Plant, Units 1 and 2)	LR	The NRC's Atomic Safety and Licensing Board recently issued a decision denying intervention in subsequent licence renewal (SLR) proceedings concerning an application submitted by NextEra Energy Point Beach, LLC (NextEra) for a second 20-year renewal of its operating licences for two nuclear power reactor units at its Point Beach Nuclear Plant in Wisconsin. Physicians for Social Responsibility Wisconsin filed a hearing request, seeking to admit various contentions challenging the adequacy or accuracy of safety-related and environmental information provided by NextEra in its SLR application. The Board denied their hearing finding their environmental contentions inadmissible and their safety-related contentions impermissible. An appeal of the Board's denial is pending before the Commission.	NRC Atomic Safety and Licensing Board	LBP-21-5, 94 NRC 1 (2021)	NLB 107, p. 59
RADIOACTIVE WASTE MANAGEMENT (RWM)							
Australia	2020	Barngarla Determination Aboriginal Corporation RNTBC v District Council of Kimba (No. 2)	RWM	The Federal Court of Australia dismissed the appeal by Claimants regarding their eligibility to vote in a local ballot on land being considered as a potential national radioactive waste management facility site. The claim was based on the issue of native title, which recognises that Aboriginal people have rights and interests to particular land that come from their traditional laws and customs and can co-exist with non-Aboriginal proprietary rights. The Claimants hold native title to particular land in the local government but reside outside the boundaries of the local government; they argued they had the right to vote based on their native title. It is important to note that native title for the nominated land is not recognised.	Federal Court of Australia	[2020] FCAFC 39	NLB 104, p. 9

Country	Year	Case name	Topic	Description	Court	Citation	NLB Issue
France	2012	EDF v. Roozen France and Scté des Serres	RWM	A Saint-Vulbas regulation on local development planning prohibits "land uses and occupations not connected with or necessary to the activity of the nuclear power station". The Prefect of Ain issued EDF a licence for the construction of a packaging and storage facility for radioactive waste (ICEDA – Installation de Conditionnement et d'Entreposage de Déchets Activés) on land in the Saint-Vulbas municipality, which is already home to the Bugey Nuclear Power Plant. The Court found that ICEDA could not be regarded as only necessary to the activity of the Bugey plant as its purpose is the conditioning and storage of nuclear waste resulting from the decommissioning of the Bugey reactor 1 as well as radioactive waste from other reactors at plants in the process of being dismantled.	Administrative Court of Appeal of Lyon	Judgments Nos. 12LY00233 and 12LY00290	NLB 90, p. 101
France	2014	EDF v. Roozen France and Scté des Serres	RWM	The Conseil found that the ICEDA facility must be regarded as connected with and necessary to the activity of the Bugey Nuclear Power Plant, although it will also be used, even if in a significant way, for the conditioning and storage of waste originating from other facilities. Therefore, the Conseil overturned the Court of Appeals ruling confirming the annulment of the construction licence for the ICEDA facility and referred the case back to the Court of Appeals.	Conseil d'État [State Council]	Decision (Request No. 362001)	NLB 94, pp. 115-116
France	2014	EDF v. Republic and Canton of Geneva and City of Geneva	RWM	The French Environmental Code provides that decrees authorising the construction of the ICEDA (radioactive waste conditioning and storage facility) can be challenged by third parties in particular due to the dangers that the operation of the INB may cause to the environment and to human health but here, the Conseil declared that the Petitioners have not demonstrated a direct and certain interest to seek an annulment of the decree authorising the construction of the ICEDA facility taking into account its activity, its characteristics and their distance from the site.	Conseil d'État [State Council]	Decision (Request No. 358882)	NLB 94, p. 115
France	2018	Greenpeace France v. ORANO CYCLE	RWM	The Court dismissed Greenpeace's France's request for summary judgment to view the contracts between the Australian Nuclear Science and Technology Organisation (ANSTO) and ORANO CYCLE regarding a trade agreement on the reprocessing of spent fuel from an ANSTO research reactor. The Court dismissed Greenpeace's claims, specifying that although Article L. 542-2 of the French Environmental Code prohibits the disposal of radioactive waste originating from a foreign country, it is possible to introduce and store waste and spent fuel originating from a foreign country for treatment or reprocessing if certain requirements are met.	Cherbourg High Court	No. 18-00061	NLB 102, pp. 81-82
Poland	2015	Local referendum in the Commune of Różan regarding a new radioactive waste repository	RWM	Masovian Voivod annulled a resolution adopted by the Municipal Council to hold a local referendum regarding siting a new radioactive waste repository for both procedural and substantive objections. The Voivod concluded that a local referendum is not a tool to prohibit the siting of a specific type of construction investment on the commune territory because the Municipal Council has exclusive competence on this field.	Masovian Voivod (Governor)	Judgment of 3 July 2015	NLB 96, pp. 72-75

Country	Year	Case name	Topic	Description	Court	Citation	NLB Issue
Poland	2015	Local referendum in the Commune of Różan regarding a new radioactive waste repository	RWM	Masovian Voivod annulled a second resolution by the Municipal Council to hold an identical referendum regarding the siting of a new radioactive waste repository in the commune of Różan. The Municipal Council appealed this decision to the relevant voivodship administrative court.	Masovian Voivod (Governor)	Judgment of 28 December 2015	NLB 97, pp. 76-78
United States	2008	Carolina Power & Light Co. v. US	RWM	The Plaintiffs Carolina Power & Light Company and Florida Power Corporation (collectively "Progress Energy") claimed damages of approximately USD 91m from the US Department of Energy (DOE), under the terms of DOE's Standard Contract for Disposal of Spent Nuclear Fuel and/or High-Level Waste (Standard Contract). DOE's liability was previously established and the amount of damages was the sole issue in this case. The Court considered Progress Energy's claimed damages and the DOE's counterclaims, rendering a final judgment for Progress Energy in the amount of approximately USD 83m.	Court of Federal Claims	82 Fed. Cl. 23 (Ct. Cl. 2008)	NLB 82, pp. 114-116
United States	2009	EnergySolutions, LLC v. Northwest Interstate Compact on Low-Level Radioactive Waste Management, Michael Garner, the State of Utah, and the Rocky Mountain Low-Level Radioactive Waste Compact	RWM	In 2007, a company operating a private low-level waste (LLW) disposal facility in Utah ("EnergySolutions") applied to the NRC for a licence to import LLW from Italy. The Northwest Interstate Compact on Low-Level Radioactive Waste Management ("NW Compact", which includes Utah) passed a 2008 Resolution prohibiting EnergySolutions from importing foreign LLW for disposal at the Utah site. EnergySolutions then sued the NW Compact. The Court ruled that Congress did not grant the NW Compact any authority over non-Compact LLW disposed in private facilities. Interstate compacts cannot regulate or otherwise burden interstate commerce in the absence of unambiguous, explicit consent from Congress. The NW Compact and Utah appealed the decision.	Federal District Court	No. 2:08-CV-352 TS (D. Utah 2009)	NLB 84, pp. 124-127
United States	2010	EnergySolutions, LLC v. State of Utah	RWM	The issue in this case is whether the Northwest Interstate Compact on Low-Level Radioactive Waste allows its member states to exclude LLRW from disposal at a Utah site. EnergySolutions is the owner and operator of a facility for the disposal of LLRW located in Clive, Utah. Utah is a member state of the NorthwestCompact, and required EnergySolutions to obtain permission pursuant to the Compact for the importation and disposal of LLRW from a decommissioned reactor in Italy. The member states, including Utah, voted to deny this approval, based on exclusionary authority it claimed through the federal statute approving the terms of the Compact. EnergySolutions contends the Clive Facility should not be subject to the authority of the Northwest Compact. It claims the Compact has limited authority only over regional disposal facilities, which does not include the Clive Facility. The District Court concluded the Northwest Compact does not regulate the disposal of waste at the Clive Facility. The 10th Circuit Court disagreed, holding that the terms of the Compact control in this situation, and the member states were within the bounds of their authority when they denied permission regarding this waste. The case was reversed and remanded.	Federal Circuit Court of Appeals	625 F.3d 1261 (10th Cir. 2010)	n/a
United States	2011	In re: Aiken County	RWM	Petitioners challenged the Department of Energy's (DOE) attempt to withdraw its application for a licence to construct a repository for high-level waste at Yucca Mountain. Petitioners also challenged the DOE's apparent decision to abandon development of the repository. The Court determined that Petitioners' claims were not ripe.	Federal Circuit Court of Appeals	645 F.3d 428 (DC Cir. 2011)	NLB 88, pp. 73-74

Country	Year	Case name	Topic	Description	Court	Citation	NLB Issue
United States	2013	In re: Aiken County	RWM	Petitioners asked for a writ of mandamus in 2011 ordering the NRC to resume the licensing process for a nuclear waste repository at Yucca Mountain in Nevada. At the time the Court held the case in abeyance for Congress to clarify the issue. In 2013, with neither Congress nor the NRC having acted to change the status quo, the DC Circuit granted the petition, reasoning that NRC's inaction had gone on too long in spite of explicit direction from the Court and, therefore, that the circumstances merited mandamus. The Court held that the NRC must continue the licensing process so long as funds remain and that the NRC may not rely on communication from the President or members of Congress to violate its statutory obligations.	Federal Circuit Court of Appeals	725 F.3d 255 (DC Cir. 2013)	NLB 92, p. 92
United States	2013	US Department of Energy (High-Level Waste Repository)	RWM	Commission issued an order setting forth an incremental course of action for resumption of the Yucca Mountain licensing process consistent with the Circuit Court's decision and the resources available to the NRC. This order instructed the NRC staff to complete the remaining volumes of the safety evaluation report and requested that the Department of Energy complete the environmental impact statement supplement for consideration and potential adoption by the NRC staff. The Commission declined to resume the contested adjudication.	Commission of the US NRC	CLI-13-8,78 NRC 219 (2013)	NLB 93, pp. 92-93
United States	2018	Texas v. United States	RWM	The Petitioner sought relief under the Nuclear Waste Policy Act claiming the DOE's intention of consent-based siting was a violation of the Act and holding the NRC proceedings on Yucca Mountain in abeyance was also a violation of the Act and the Court's decision in In re Aiken County. As a majority of the Petitioner's claims fell outside the 180-day limitation period prescribed in 42 USC Sec. 10139(a)(1) the Court addressed this issue and held that the limitation period was not jurisdictional. The Court also held that the Petitioner lacked any basis to challenge the discrete actions that were not time-barred as they were of "no legal consequence" and did not constitute a final decision or action subject to challenge under the Nuclear Waste Policy Act. The Court dismissed all of the Petitioner's claims, concluding that they did not meet the statutory requirements of timeliness or finality.	Federal Circuit Court of Appeals	891 F.3d 553 (5th Cir. 2018)	NLB 101, pp. 72-74
RADIOLOGICAL PROTECTION (RP)							
France	2011	Association française des maladies de la thyroïde and CRIIRAD v. Pierre X.	RP	Following the Chernobyl accident, a complaint for "involuntary grievous bodily harm" was filed alleging that authorities had minimised the significance of radioactive pollution in France and that they were therefore responsible for an increase of thyroid-related illnesses since 1986. The trial judge found that the elements of "involuntary grievous bodily harm" were not satisfied but she charged the former Director of the Central Department for Protection against Ionising Radiation with "aggravated deceit". The Court of Appeals dismissed the case against the Director of the Central Department for Protection against Ionising Radiation as it was not demonstrated that he had in bad faith given wrong, inexact or substantially inaccurate information, failed to provide appropriate controls of foodstuffs tainted by radioactivity or failed to take precautions after the Chernobyl accident, and that, as a result, the elements of deceit or other crimes are not satisfied.	Court of Appeal of Paris	Investigation Chamber, CA Paris 4° section, 7.09.11 (rejet)	NLB 88, p. 71

Country	Year	Case name	Topic	Description	Court	Citation	NLB Issue
France	2012	Association française des maladies de la thyroïde and CRIIRAD v. Pierre X.	RP	Court confirmed the Court of Appeal's judgment dismissing the charge of "aggravated deceit" against the former Director of the Central Department for Protection against Ionising Radiation because the causal link was not proven with certainty and bad faith was not demonstrated.	Court of Cassation, Criminal Chamber	Decision No. 11-87531	NLB 91, pp. 106-107
France	2012	Radioactive effluent of Golfesh, Fédération Réseau Sortir du Nucléaire and others v. EDF	RP	In 2010, a significant amount of radioactive effluents from a nuclear power plant operated by Électricité de France (EDF) was accidentally released into the environment following a series of technical faults. The Court dismissed charges against EDF relating to the absence of environmental protection training for staff, insufficient volume of fluid retention in case of accident and insufficient volume of the sump pit. The Court found EDF guilty for the absence of an alarm system appropriate to the risk and for non-compliant storage and disposal of liquids.	Court of Appeal of Toulouse	Judgment No. 1200867	NLB 91, p. 106
Greenland	2011	Heinz Helmuth Eriksen, Bent Hansen and Brigit Lind v. European Commission	RP	Court dismissed three appeals from Danish workers involved in clean-up activities of nuclear pollution after a US military plane carrying nuclear materials crashed in Greenland in 1968 and caused widespread pollution. The Plaintiffs argued that their subsequent illnesses (or death) were a result of their involvement in this incident, which entitled them to damages. The Plaintiffs sued the European Commission for the Commission's failure to adopt measures against Denmark. The Court found that there was no unlawful conduct by the Commission for not adopting measures against Denmark to comply with the 1996 Basic Safety Standards and that the Commission's only possibility to act was to bring an infringement procedure against a member state, but this is a discretionary power.	Court of Justice of the European Union (5th Chamber)	ECLI:EU:C:2011:10	NLB 88, pp. 70-71
Poland	2013	Petition submitted by the Polish Commissioner for Human Rights on the constitutionality of provision of the Regulation of the Minister of Health of 18 Feb. 2011	RP	Tribunal stated that by issuing a regulation implementing a Euratom Directive that determines the conditions for safe use of ionising radiation for all types of medical exposure and the qualifications required from medical physicians to control radiological equipment, the Minister of Health exceeded its competences provided by the Polish Constitution. Moreover, requirement for medical physician to obtain a relevant certificate is not a limitation of the freedom of occupation as it is beneficial to them.	Constitutional Tribunal	Judgment of 30 July 2013 (Ref. No. U 5/12)	NLB 96, pp. 75-78
United Kingdom	2007	Decision of the Wick Sheriff Court Fining UKAEA for Plutonium Exposure	RP	The United Kingdom (UK) Atomic Energy Authority pled guilty to breaching various sections of the Health and Safety at Work Act 1974 after two workers at the Dounreay nuclear plant were exposed to radioactive plutonium while carrying out work related to the storage of lead bricks and their disposal as intermediate level waste. A GBP 15 000 fine was issued and the UK Atomic Energy Authority has since implemented improvements required by the nuclear installations inspectorate.	Wick Sheriff Court	[Unknown]	NLB 80, p. 67

Country	Year	Case name	Topic	Description	Court	Citation	NLB Issue
United Kingdom	2007	Commission of the European Communities v. United Kingdom of Great Britain and Northern Ireland	RP	The Court of Justice of the European Union (CJEU) held that the United Kingdom failed to fulfil its obligations under Article 53 of Council Directive 96/29/Euratom. Article 53 of the Directive obliges member states to bring into force laws, regulations and administrative decisions to ensure that "where Member States have identified a situation leading to lasting exposure resulting from the after-effects of a radiological emergency or a post practice", specific measures are to be taken. However, the UK has only imposed an obligation to intervene if a situation of radioactive contamination results from a present or past activity for which a licence was granted. The UK Government admitted the validity of the Commission's claims and stated that transposition of the article into national legislation is in process.	Court of Justice of the European Union (3rd Chamber)	Case C-127/05; ECLI:EU:C: 2007:338	NLB 81, p. 99
GENERAL LITIGATION (GEN)							
Belgium	2010	Constitutionality of the 2008 Programme Act	GEN	Court found that the nuclear taxes imposed by Belgium on nuclear operators and shareholders of Belgian nuclear power plants in 2008 are lawful. The Court found that there is no unreasonable difference in treatment between them and the producers of non-nuclear generated electricity and other players in the Belgian electricity market, such as electricity importers, transporters, distributors and suppliers.	Constitutional Court	Decision No. 32/2010	NLB 85, p. 93
Canada	1987	Sevidal et al. v. Chopra et al. (H.C.J.)	GEN	Plaintiffs brought an action against the vendors, the real estate agent and the Atomic Energy and Control Board (AECB) over a breach of duty of care in purchasing a property. The Plaintiffs bought a piece of property from the vendors and the real estate agent who failed to disclose the presence of contaminated soil at the property. Further the AECB disclosed the presence of contaminated soil to the vendors, but not the Plaintiffs. The Court found that the AECB assumed responsibility for disseminating information about radioactivity and employed an officer to carry out part of that task. It failed to exercise the standard of care required in the circumstances, and the AECB staff member's information had constituted negligent misrepresentations. The Court found that the AECB, through its employees, owed a duty of care to the Plaintiffs and had been negligent in the performance of that duty. The Court held that all the defendants were liable. Further, the Court also denied the AECB's claim for indemnity.	Ontario (High Court of Justice)	[1987] O.J. No. 732	n/a
Canada	1994	Energy Probe v. Canada (Attorney General)	GEN	Plaintiff brought a claim against the government of Canada over the legality of the Canadian Nuclear Liability Act (NLA). They claimed that certain provisions of the NLA are beyond the legislative authority of the Parliament of Canada and the NLA infringes the constitutional rights of Canadians by providing for a lower degree of nuclear safety. The Court held that the Canadian Parliament has legislative competence over the development, application and use of nuclear energy, using its federal power to legislate for the peace, order, and good government of Canada under section 91 of the Constitution Act. Further, the Court rejected the claim that a liability scheme made operators act less safely, as the Plaintiffs failed to show on a balance of probabilities that nuclear reactors are less safe because of the NLA. Their action was dismissed.	Ontario Court (General Division)	[1994] O.J. No. 553	n/a

Country	Year	Case name	Topic	Description	Court	Citation	NLB Issue
Canada	2008	Brunswick News Inc. v. Her Majesty the Queen	GEN	The Plaintiff applied to the New Brunswick Minister of Energy under the provincial Right to Information Act for copies of two feasibility studies concerning the construction of a second nuclear power reactor at Point Lepreau, New Brunswick. The Minister provided a copy of one study but refused access to the other study in its entirety based on certain provisions of the Act. In addition to the grounds provided by the Minister, Atomic Energy of Canada Ltd. (AECL) claimed the study was legally protected by the Act's confidentiality provision, para. 6(a). The Court concluded that the study in its entirety was not subject to release on the basis of the confidentiality provision. To note, a new provision was added to the federal Access to Information Act to provide a general exclusion from the provisions of the legislation with respect to records containing information under the control of AECL, and the Canadian Parliament has expressed an intention to exclude records from the Access to Information Act such as the ones considered in this case. However, it is too early to determine the extent to which such a provision may be interpreted by Canadian courts in the future.	New Brunswick Court of Queen's Bench	2008 NBQB 299, [2008] N.B.J. No. 329	NLB 82, pp. 111-113
Canada	2009	Linda Keen v. Attorney General of Canada	GEN	Ms. Keen, the former President of the Canadian Nuclear Safety Commission (CNSC), submitted an application for judicial review challenging the legality of the Order in Council that removed her as CNSC President. The Court dismissed the application, finding that the decision had been lawful as the minimum procedural fairness obligations that were required in order to remove an "at pleasure" appointee had been observed. The Court's decision also confirms that removal of a designation as President does not silence the decision-making voice of a Commission member.	Federal Court of Canada	2009 FC 353	NLB 83, pp. 87-91
Canada	2009	Atomic Energy of Canada Ltd (AECL) v. AREVA NP Canada Ltd	GEN	Court dismissed the major aspects of a claim that was brought by AECL against AREVA alleging violation of its intellectual property rights (trademark infringement, passing off and copyright infringement), considering that the sophistication of the industry and the lengthy and detailed procurement processes would make any chance of "subtle influence on consumer behaviour" effectively impossible.	Federal Court	2009 FC 980	NLB 85, pp. 94-99
Canada	2009	R v. Bruce Power Inc.	GEN	The Court found that when the Crown prosecutor comes into possession of a defendant's document that is protected by solicitor-client privilege and litigation privilege, it will be presumed that prejudice will be caused by use of the document. Although this is a rebuttable presumption, here, the presumption had not been rebutted. The Court held that the purpose of the internal investigation was to prepare a strategy for litigation in contemplation of charges and underlined that it is abusive to seek to use such information against a person, the sanctioning of which could be seen to erode the notion of solicitor-client privilege that is fundamental to the Canadian justice system. The Court was satisfied that the appropriate remedy in this matter was a stay of the charges laid against Bruce Power.	Ontario Court of Appeal	2009 ONCA 573	NLB 84, pp. 115-118

Country	Year	Case name	Topic	Description	Court	Citation	NLB Issue
Canada	2021	Regan Dow v. Canadian Nuclear Safety Commission	GEN	The Federal Court of Appeal (FCA) of Canada upheld the ruling of the lower courts that the CNSC is not empowered to adjudicate disputes between private parties or grant remedies to those who submit external complaints. The Complainant alleged their former employer had taken disciplinary action against them for giving information to the CNSC. The CNSC investigated the complaints and failed to find an evidentiary basis to substantiate the claims or to ground the prosecution of a regulatory offence under the Nuclear Safety and Control Act (NSCA). The Complainant applied to the Federal Court for judicial review. The Court dismissed the application for judicial review, finding that the Complainant lacked standing because they were not directly affected by the decision. The Court also determined that the disposition of the complaint does not deprive the Complainant of a legal remedy to which they might otherwise have had recourse. The Complainant appealed the decision to the FCA. In upholding the lower court's decision, the FCA confirmed the CNSC's and the lower court's understanding of the NSCA and its offence provision in paragraph 48(g). The FCA ruled that while the offence provision is meant to prevent and punish a licensee for taking action against any would-be whistleblower and discourage retaliation, it is not a true whistleblower protection provision as the NSCA provides no remedial powers relevant to the whistleblower.	Federal Court of Appeal	2021 FCA 117	NLB 107, pp. 45-47
Spain	2020	Ascó Vandellós Nuclear Association (ANAV) et al. v. Single Investigating Court of Gandesa	GEN	The Appellants (Ascó Vandellós Nuclear Association [ANAV] and three former directors of the Ascó Nuclear Power Plant) appealed the order of the Single Investigating Court of Gandesa to initiate the abbreviated procedure (a special criminal procedure to expedite the investigation, prosecution and verdict of certain crimes to try offences that carry a punishment of up to nine years in prison or other noncustodial sentences). The Appellants challenged the absence of rational evidence of criminality justifying their indictment as perpetrators of a crime under the Criminal Code, since it has not been established that the exposure to ionising radiation resulting from an operational incident at the Ascó plant constituted a serious danger to human life or health or the environment. The Court found that a report by the Nuclear Safety Council failed to find sufficient evidence of danger to life, integrity or health to warrant the criminal charges brought against the Appellants and therefore does not sufficiently justify the prosecution for the criminal offences established in the order, nor does it adequately establish why it considers the facts as described to constitute criminal offences. The Court granted the appeal, revoked the order and archived the case.	Provincial Court of Tarragona	Resolution No. 226/2020; ECLI:ES:APT:2020 :1411A	n/a
United Kingdom	2018	Republic of Austria v. European Commission	GEN	Austria challenged a 2014 decision by the European Commission declaring state aid compatible with measures to support Hinkley Point C nuclear power station on the grounds that supporting nuclear energy was not an objective of common interest because of conflicts with environmental objectives or principles. Austria also challenged the necessity and proportionality of the decision. In 2018, the General Court dismissed Austria's claims on the basis that the measures to support Hinkley Point C were necessary to fulfil the objective of public interest of promotion of nuclear energy set out in the Euratom Treaty.	The General Court (Fifth Chamber)	Case T-356/15; ECLI:EU:T: 2018:439	NLB 105, pp. 90-91

Country	Year	Case name	Topic	Description	Court	Citation	NLB Issue
United Kingdom	2020	Republic of Austria v. European Commission	GEN	The Court of Justice of the European Union (CJEU) rejected Austria's appeal of the decision of the General Court, affirming the judgment and the Commission decision. The CJEU stated that the Commission correctly identified the development of nuclear energy production as an economic activity and confirmed that the aid measures adopted by the United Kingdom were proportionate. In line with the reasoning of the Advocate General (ECLI:EU:C:2020:352), the CJEU established that the compatibility of state aid pursuant to the TFEU does not depend on the pursuit of an objective of common interest. The Court also held that state aid for an economic activity falling within the nuclear energy sector cannot be declared compatible with the internal market when it is shown to contravene EU environmental law. Finally, the Court acknowledged that a member state is free to determine the conditions for exploiting its energy resources, its choice between different energy sources and the general structure of its energy supply.	Court of Justice of the European Union (Grand Chamber)	Case C-594/18 P; ECLI:EU:C: 2020:742	NLB 105, pp. 90-91
United States	2012	Entergy Nuclear Vermont Yankee, LLC v. Shumlin	GEN	Court granted a permanent injunction against the enforcement of two state laws based on its finding that these laws were primarily motivated by radiological safety concerns and therefore pre-empted by the Atomic Energy Act (AEA). As the US Supreme Court had previously ruled, the AEA vests exclusive jurisdiction over the radiological health and safety of a nuclear power plant in the NRC and states are pre-empted under the US Constitution from regulating such matters – states are only allowed to regulate economic and other non-safety aspects of nuclear power.	Federal District Court	838 F. Supp. 2d 183 (D. Vt. 2012)	NLB 89, pp. 111-112
United States	2013	Entergy Nuclear Vermont Yankee, LLC v. Shumlin	GEN	Court upheld the District Court conclusion that the state legislature was primarily motivated by radiological safety concerns and expressly sought to avoid expressing those concerns in order to evade federal pre-emption. Because the state was primarily motivated by concerns about radiological safety, and because the state's stated purposes for the laws were unpersuasive, the Court upheld the grant of permanent injunction based on its finding that the two laws are pre-empted by the Atomic Energy Act.	Federal Circuit Court of Appeals	733 F.3d 393 (2nd Cir. 2013)	NLB 92, pp. 93-94
United States	2017	United States v. Energy Solutions, Inc.; Rockwell Holdco, Inc.; Andrews County Holdings, Inc.; and Waste Control Specialists, LLC.	GEN	Court enjoined Energy's Solutions' acquisition of Waste Control Specialists, two competitors in the market of the disposal of low-level radioactive waste, as the acquisition would have anticompetitive effects. Because the case did not involve health and safety issues or protection of the public from radiological hazards, the US Nuclear Regulatory Commission was not a party to the case and did not take a position with respect to the proposed acquisition.	Federal District Court	2017 WL 2991799 (D. Del. 2017)	NLB 99, pp. 72-73
United States	2017	Virginia Uranium, Inc. v. Warren	GEN	Petitioners argued that under the Supremacy Clause of the US Constitution, a state conventional uranium mining ban was pre-empted by the Atomic Energy Act because it was motivated by radiological safety concerns associated with downstream activities that the NRC regulates: milling and tailings storage. Court affirmed a US District Court ruling that conventional uranium mining is not under the exclusive regulatory authority of the US Nuclear Regulatory Commission under the AEA, and it can therefore be regulated by Virginia under state law.	Federal Circuit Court of Appeals	848 F.3d 590 (4th Cir. 2017)	NLB 100, pp. 90-92

Country	Year	Case name	Topic	Description	Court	Citation	NLB Issue
United States	2019	Virginia Uranium, Inc. v. Warren	GEN	The Supreme Court upheld the decision of the 4th Circuit Court that Virginia ban on uranium mining on private land is not pre-empted by federal law. However, while the Court felt it was inappropriate in this instance to ascertain the motivation of the state of Virginia in creating the ban, the decision did not rule out the possibility that a state's regulation, which was found to either intend to interfere or have the effect of interfering with matters close to the core of the NRC's authority could be pre-empted.	Supreme Court	139 S.Ct. 1894 (2019)	NLB 103, pp. 49-50
United States	2019	State of Nevada v. US Nuclear Regulatory Commission and David A. Wright	GEN	The state of Nevada brought a petition for review challenging the decision of Commissioner David Wright of the US Nuclear Regulatory Commission (NRC) not to recuse himself from the licensing proceeding for a proposed nuclear waste repository at Yucca Mountain, Nevada. Referencing past decisions and statements regarding Yucca Mountain made by the Commissioner, Nevada felt he could not be an unbiased judge in the licensing process. The NRC moved to dismiss Nevada's petition. The Court issued an unpublished *per curiam* opinion granting the NRC's motion to dismiss on the ground that the case was not ripe for review because it "rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all[,]".	Federal Circuit Court of Appeals	No. 18-1232 (unpublished) (DC Cir. 2019)	NLB 102, p. 87

Annex 2:
Relevant laws

Australia

- Australian Radiation Protection and Nuclear Safety Act 1998, No. 133
- Work Health and Safety Act 2011, No. 137

Austria

- Radiation Protection Act 2020 (StrSchG) // Bundesgesetz über Maßnahmen zum Schutz vor Gefahren durch ionisierende Strahlung (Strahlenschutzgesetz 2020, StrSchG), BGBI. I Nr. 50/2020
- Environmental Impact Assessment Act 2000 (UVP-G 2000) // Bundesgesetz über die Prüfung der Umweltverträglichkeit (Umweltverträglichkeitsprüfungsgesetz 2000 – UVP-G 2000), BGBl. Nr. 697/1993
- General Administrative Procedure Act 1991 (AVG) // Allgemeines Verwaltungsverfahrensgesetz 1991 (AVG)
- Administrative Penal Act 1991 (VStG) // Verwaltungsstrafgesetz 1991 (VStG), BGBl. Nr. 52/1991
- Administrative Enforcement Act 1991 // Verwaltungsvollstreckungsgesetz 1991 (VVG), BGBl. Nr. 53/1991
- Administrative Court Act 1985 // Verwaltungsgerichtshofgesetz 1985 (VwGG), BGBl. Nr. 10/1985
- Constitutional Court Act 1953 // Verfassungsgerichtshofgesetz 1953 (VfGG), BGBl. Nr. 85/1953
- Federal Constitutional Act for a Nonnuclear Austria // Atomfreies Österreich, BGBl. I Nr. 149/1999

Belgium

- Federal Act of 15 April 1994 related to the protection of population and environment against the hazards of ionising radiation and on the Federal Agency for Nuclear Control
- Coordinated Acts of 12 January 1973 related to the State Council

Canada

- Nuclear Safety and Control Act (SC 1997, c. 9)
- Federal Courts Act (RSC 1985, c. F-7)
- Federal Courts Rules (SOR/98-106)
- Crown Liability and Proceeding Act (RSC 1985, c. C-50)

Czechia

- Act No. 263/2016 Coll., Atomic Act
- Act No. 100/2001 Coll., on Environmental Impact Assessment
- Act No. 150/2002 Coll., Code of Administrative Justice
- Act No. 183/2006 Coll., On Town and Country Planning and Building Code (Building Act)
- Act No. 500/2004 Coll., Code of Administrative Procedure

- Act No. 99/1963 Coll., on Civil Procedure
- Act No. 114/1992 Coll., on Nature and Landscape Protection
- Act No. 106/1999 Coll., on Free Access to Information

Finland

- Nuclear Energy Act (990/1987)
- Administrative Judicial Procedure Act (808/2019)
- Administrative Procedure Act (434/2003)

France

- Environmental Code
- Criminal Code

Germany

- Basic Law // Grundgesetz
- Atomic Energy Act // Atomgesetz (AtG)
- Code of Administrative Court Procedure (VwGO) // Verwaltungsgerichtsordnung (VwGO)
- Code of Civil Procedure (ZPO) // Zivilprozessordnung (ZPO)
- Code of Criminal Procedure (StPO) // Strafprozeßordnung (StPO)

Japan

- Atomic Energy Basic Act, Act No. 186 of 19 December 1955
- Act on the Regulation of Nuclear Source Material, Nuclear Fuel Material and Reactors, Act No. 166 of 10 June 1957
- Administrative Case Litigation Act, Act No. 139 of 16 May 1962
- Administrative Complaint Review Act, Act No. 68 of 13 June 2014
- Civil Provisional Remedies Act, Act No. 91 of 22 December 1989
- Code of Civil Procedure, Act No. 109 of 26 June 1996
- Code of Criminal Procedure, Act No. 131 of 10 July 1948
- State Redress Act, Act No. 125 of 27 October 1947

Korea

- Framework Act on Atomic Energy, Law No. 483 of 11 March 1958, as amended
- Nuclear Safety Act (NSA), Law No. 10911 of 25 July 2011
- Administrative Litigation Act

Netherlands

- Nuclear Energy Act // Kernenergiewet (Kew) (Stb. 1963, No. 82)
- General Administrative Law Act // Algemene wet bestuursrecht (Awb)

Poland

- Atomic Law Act of 29 November 2000 // Ustawa z dnia 29 listopada 2000 r. – Prawo atomowe (Dz. U. z 2023 r. poz. 1173)
- Code of Administrative Procedure of 14 June 1960 // Ustawa z dnia 14 czerwca 1960 r. Kodeks postępowania administracyjnego (Dz. U. z 2023 r. poz. 775)
- Law on Proceedings before Administrative Courts of 30 August 2002 // Ustawa z dnia 30 sierpnia 2002 r. - Prawo o postępowaniu przed sądami administracyjnymi (Dz. U. z 2023 r. poz. 259, 803)

Portugal

- Decree-Law 262/2012 of 17 December 2012 that establishes the conditions for nuclear installations operators.
- Decree-Law 108/2018 of 3 December 2018, amended by Decree-Law 81/2022, of 6 December, that establishes the radiological protection regime
- Code of Administrative Courts Procedure, approved by Law No. 15/2002, of February 22 (amended by Law No. 118/2019, of September 17)
- Code of Administrative Procedure, approved by Decree-Law 4/2015, of 7 January 2015 (amended by the Decree-Law 11/2023 of 10 February 2023)

Romania

- Law No. 111/1996 on the Safe Conduct, Regulation, Authorisation and Control of Nuclear Activities
- Law No. 554 /2004 on Administrative Litigation
- Civil Code, Law No. 287/2009
- Criminal Code, Law No. 286/2009

Russia

- Federal Law No. 170-FZ of 21 November 1995 "On the Use of Atomic Energy"
- Government Decree No. 401 of 30 July 2004 "On the Federal Service for Environmental, Technological and Nuclear Supervision"
- Civil Procedure Code, No. 138-FZ of 14 November 2002
- Arbitration Procedural Code, No. 95-FZ of 24 July 2002
- Administrative Procedure Code, No. 21-FZ of 8 March 2015
- Criminal Procedure Code, No. 174-FZ of 18 December 2001

Slovak Republic

- Act No. 541/2004 Coll. on the Peaceful Use of Nuclear Energy (Atomic Act) and on the amendments and supplements to some acts, as amended
- Act No. 71/1967 Coll. on Administrative Proceedings, as amended (Act on Administrative Order)
- Act No. 162/2015 Coll. on Administrative Court Proceedings, as amended
- Act No. 24/2006 Coll. on Environmental Impacts Assessment and on amendments and supplements to certain acts, as amended
- Act No. 50/1976 Coll. on Town and Country Planning and Building Code (Building Act), as amended
- Act No. 200/2022 Coll. on Spatial Planning, as amended
- Act No. 201/2022 Coll. on Construction, as amended
- Act No. 757/2004 Coll. on Courts and on amendment and supplement of certain acts, as amended
- Act No. 314/2018 Coll. on Constitutional Court and on amendment and supplement of certain acts, as amended

Slovenia

- Nuclear Safety and Radiation Protection Act (ZVISJV-1), *Official Gazette of the Republic of Slovenia*, No. 76/17 and 26/19

Spain	• Law 25/1964 of 29 April, on Nuclear Energy • Law 39/2015 of 1 October, on the Common Administrative Procedure of Public Administrations • Law 29/1998 of 13 July, on Contentious Administrative Jurisdiction • Law 15/1980 of 22 April, creating the Nuclear Safety Council • Organic Law 10/1995 of 23 November, on the Penal Code
Sweden	• Nuclear Activities Act (1984:3) • Radiation Protection Act (2018:396) • Administrative Procedure Act (2017:900) • Environmental Code (2000:61)
Switzerland	• Federal Nuclear Energy Act of 21 March 2003 (NEA) (RS 732.1) • Federal Act on Administrative Procedure of 20 December 1968 (APA) (RS 170.021) • Federal Administrative Court Act of 17 June 2005 (FACA) (RS 173.32) • Federal Supreme Court Act of 17 June 2005 (FSCA) (RS 173.110)
Türkiye	• Nuclear Regulatory Law (Law No. 7381) • Procedure of Administrative Justice Act (Act No. 2577) • Turkish Code of Obligations (Law No. 6098) • Turkish Criminal Law (Law No. 5237)
Ukraine	• The Constitution of Ukraine • Law of Ukraine on the Nuclear Energy Use and Radiation Safety
United Kingdom	• Energy Act 2013 • Nuclear Installations Act 1965 • Health and Safety at Work etc. Act 1974
United States	• Atomic Energy Act of 1954 (42 USC sections 2011-21, 2022-86, 2296-97) • Administrative Procedure Act (5 USC sections 551-559) • National Environmental Policy Act of 1969 (42 USC sections 4321, 4331-35, 4341-47, 4361-70j) • Clean Water Act (33 USC section 1251 et seq.) • Clean Air Act (42 USC sections 7401-7671q) • National Historic Preservation Act (54 USC sections 300101-307108) • Coastal Zone Management Act (16 USC sections 1451-1464)

Annex 3:
Survey on legal challenges related to nuclear safety

Country Name: Respondent(s):

For now, the responses to this survey will only be shared with the Working Party on the Legal Aspects of Nuclear Safety (WPLANS) and the Nuclear Law Committee (NLC). If a report is published based on the survey, can your survey response be included in an Appendix? ☐ YES, please include this survey response. ☐ NO, do not include this survey response. ☐ I will decide later.

For any questions with this Survey, please do not hesitate to contact Kimberly Sexton NICK at:
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WPLANS Survey Summary

This Survey is intended to obtain information related to Intermediate Output Result 1.2, "Framework for Legal Challenges related to Nuclear Safety" in the 2019-2020 Working Party on the Legal Aspects of Nuclear Safety (WPLANS) Programme of Work [NEA/NLC/WPLANS(2018)2]. As explained in that document, each country's framework for legal challenges related to the peaceful use of nuclear energy depends on its national legal culture, which in many respects also depends on each country's national culture. Because each country's national legal culture is different, it is important for lawyers, as well as law- and policy-makers, to have a comparative understanding of the different frameworks for legal challenges.

The survey is intended to compile information and identify commonalities and differences in OECD Nuclear Energy Agency (NEA) member country frameworks for legal challenges related to nuclear safety, without, however, making any general recommendations. In accordance with the Programme of Work, the main specific areas of study will be:

- types of procedures for legal challenges related to nuclear safety;
- stages of the legal challenge process, both internal to an agency and in a judicial forum;
- identifying the parties to proceedings and how they become parties; and
- types of decisions/actions related to nuclear safety that can be challenged.

Basic Information

Respondent(s): The individual(s) listed as Respondent(s) will be the NEA Secretariat's point(s) of contact for any questions.

Subject of Responses: This survey focuses on legal challenges related to nuclear safety,[94] which may include both technical and environmental issues. This includes not only specific decisions made (such as issuing licences[95] and authorisations[96]) and approvals[97] granted by regulatory authorities and the government related to nuclear safety, but it may also include possible challenges made to all operations associated with the production of nuclear energy.[98] In addition, responses to the survey could also include legal challenges related to policies, plans and programmes related to the production of nuclear energy as they relate to nuclear safety.

94. "The achievement of proper operating conditions, prevention of accidents or mitigation of accident consequences, resulting in protection of workers, the public and the environment from undue radiation risks." IAEA (2014), *Radiation Protection and Safety of Radiation Sources: International Basic Safety Standards*, General Safety Requirements Part 3, IAEA Doc. No. GSR Part 3, p. 405.

95. "Any authorization granted by the regulatory body to the applicant to have the responsibility for the siting, design, construction, commissioning, operation or decommissioning of a nuclear installation." Convention on Nuclear Safety (1994), IAEA Doc. INFCIRC/449, 1963 UNTS 293, entered into force 24 October 1996 (CNS), Article 2(iii).

96. "The granting by a regulatory body or other governmental body of written permission for a person or organization (the operator) to conduct specified activities." IAEA (2014), *supra* note 1, p. 383; IAEA (2019), *IAEA Safety Glossary: Terminology Used in Nuclear Safety and Radiation Protection* (2018 Edition), IAEA Doc. STI/PUB/1830, p. 27.

97. "The granting of consent by a regulatory body. NOTE: Typically used to represent any form of consent from the regulatory body that does not meet the definition of authorization." IAEA (2014), *supra* note 1, p. 382; IAEA (2019), *supra* note 3, p. 21.

98. According to the IAEA definition of "nuclear fuel cycle", this includes: "(a) Mining and processing of uranium ores or thorium ores; (b) Enrichment of uranium; (c) Manufacture of nuclear fuel; (d) Operation of nuclear reactors (including research reactors); (e) Reprocessing of spent fuel; (f) All waste management activities (including decommissioning) relating to operations associated with the production of nuclear energy; (g) Any related research and development activities." IAEA (2019), *supra* note 3, pp. 153.

Procedure Used to Challenge Nuclear Safety: In many countries, the type of legal procedure used to carry out challenges to nuclear safety will change based on the subject matter of the challenge. For example, if one is challenging a licence application, the procedure may be administrative. If one is challenging a law, the procedure may be civil. The type of legal procedure can impact many different aspects of the legal challenge addressed within this survey like legal basis, standing, legal process, judgment, remedies, etc. In answering questions 8 and 10, respondents are asked to please provide a general overview of how the procedure changes according to the subject of the challenge. In answering the questions in Parts 2-5, please respond based on the most commonly employed procedure used to challenge nuclear safety. More detailed responses can be provided in response to the open-ended questions at the end of each Part of this survey.

INTRODUCTORY QUESTION						
1	Are legal challenges related to nuclear safety allowed? [please tick the appropriate box]					
	☐	YES, legal challenges are allowed	☐	NO, legal challenges are not allowed		
2	If legal challenges are not allowed, are there other mechanisms or types of recourse for members of the public and other stakeholders to raise safety concerns and receive a response? ANSWER:					
3	If legal challenges are not allowed, is there a legal principle or specific law that prohibits such legal challenges? Or, are legal challenges simply not provided for? [please tick the appropriate box]					
	☐	Legal challenges are prohibited	☐	Legal challenges are not provided for		
4	If legal challenges are prohibited, what is the legal principle or specific law that prohibits such legal challenges? ANSWER:					
PART 1: RAISING A LEGAL CHALLENGE						
5	What is the name of the main law(s) (including citation) that provides for legal challenges related to nuclear safety? ANSWER:					
6	Has nuclear safety been subjected to a legal challenge in your country? [please tick the appropriate box]					
	☐	YES	☐	NO	☐	OTHER (see e.g. question #29 below)
7	Are there specific procedures to challenge nuclear safety? [please tick the appropriate box]					
	☐	YES	☐	NO		
	If your answer is YES, are these unique procedures specific to nuclear energy? [please tick the appropriate box]					
	☐	ALL procedures are unique to nuclear power	☐	SOME procedures are unique to nuclear power		
	☐	NO procedures are unique to nuclear power	☐	Other [please specify]:		

8	What type of procedure(s) is/are used to carry out challenges related to nuclear safety? [please tick all that apply]			
	☐	Civil	☐	Administrative
	☐	Criminal	☐	Other [please specify]:
9	Which of these may be subjected to a legal challenge related to nuclear safety? [please tick all that apply]			
	☐	Current general state of safety at a facility (regardless of whether there is a violation of a law or regulation)	☐	Current specific safety concern (regardless of whether it is a violation of a law or regulation)
	☐	Current general state of safety at a facility based on a potential violation of a law or regulation	☐	Current specific safety concern based on an asserted violation of a law or regulation
	☐	Design certification	☐	Site permit / licence
	☐	Construction authorisation / permit / licence	☐	Operation authorisation / licence
	☐	Combined construction and operation licence	☐	Licence amendment
	☐	Request to restart a facility following a shutdown	☐	Refurbishment
	☐	Licence renewal	☐	Long-term operation authorisation
	☐	Licence extension	☐	Periodic safety review
	☐	Licence suspension	☐	Licence termination
	☐	Licence transfer	☐	Decommissioning
	☐	Enforcement action taken by the regulatory body	☐	Issuance of a new law
	☐	Amendment of an existing law	☐	Issuance of a new rule / regulation / decree
	☐	Amendment of an existing rule / regulation / decree	☐	Issuance of a nuclear energy-related plan or policy
	☐	Amendment of the country's constitution	☐	Other [please specify]:
10	Does the procedure (in question #8 above) change depending on the subject matter (i.e. the items in question #9 above) of the challenge? [please tick the appropriate box]			
	☐	YES	☐	NO
	If your answer is YES, can you please explain? ANSWER:			

11	On what legal basis can nuclear safety be challenged (e.g., decision based on erroneous findings of fact, lack of legal authority to make a decision, misapplication of substantive law, illegality of the regulation under which a decision was made, the government's failure to act, etc.)? ANSWER:			
12	Is there any requirement for the governmental body making a decision or taking an action to inform members of the public about their right to challenge such decision or action? [please tick the appropriate box]			
	☐	YES	☐	NO
13	Can applicant / licensee / operator actions (unrelated to the subjects listed in question #9 above) be challenged? [please tick the appropriate box]			
	☐	YES	☐	NO
	If your answer is YES, what actions can be challenged? ANSWER:			
14	If any of your answers to the questions in Part 1 change depending on the subject matter of the challenge, please provide more information here. ANSWER:			
15	Is there any additional / clarifying information that might be useful for NEA member countries? ANSWER:			
PART 2: PARTIES				
16	Who can legally raise a challenge to nuclear safety? [please tick all that apply]			
	☐	A single individual	☐	A group of individuals who are not part of a formal group or organisation
	☐	Non-governmental organisations (regardless of their subject matter of interest)	☐	Non-governmental organisations focused on nuclear safety matters
	☐	Non-governmental organisations focused on environmental matters	☐	A governmental entity, like a city, state, county, or self-governing regional or local entity [please specify:]
	☐	A foreign governmental entity, like a national governmental body, city, state, county, or self-governing regional or local entity [please specify:]	☐	Indigenous Peoples / Native American Tribes / First Nations / etc.
	☐	National minorities / ethnic groups	☐	Operator
	☐	Applicant / licensee	☐	Vendor / supplier / other private company
	☐	Other [please specify]:		

<table>
<tr><td rowspan="3">17</td><td colspan="4">If a group of individuals can raise a challenge, is there any requirement regarding commonality (i.e. there are questions of law or fact that are common to the class of individual)? [please tick the appropriate box]</td></tr>
<tr><td>☐</td><td>YES</td><td>☐</td><td>NO</td></tr>
<tr><td colspan="4">If your answer is YES, please explain:</td></tr>
<tr><td rowspan="3">18</td><td colspan="4">If non-governmental organisations are able to raise a challenge, are there any special requirements that apply (such as being officially recognised by the state or having the subject of their challenge be within their governing or organisational document(s))?</td></tr>
<tr><td>☐</td><td>YES</td><td>☐</td><td>NO</td></tr>
<tr><td colspan="4">If your answer is YES, please explain:</td></tr>
<tr><td rowspan="9">19</td><td colspan="4">How does a prospective party establish standing to raise a legal challenge?[99] [please tick all that apply]</td></tr>
<tr><td>☐</td><td>Injury in fact: The plaintiff(s) will directly suffer an actual harm as a result of that which is being challenged. The injury must not be hypothetical or conjectural.</td><td>☐</td><td>Injury in fact: The plaintiff(s) will directly suffer an imminent harm as a result of that which is being challenged. The injury must not be hypothetical or conjectural.</td></tr>
<tr><td>☐</td><td>Injury in fact: The plaintiff(s) may assert the rights of others even if they themselves are not directly suffer an actual harm as a result of that which is being challenged</td><td>☐</td><td>Injury in fact: The plaintiff(s) may assert the rights of others even if they themselves will not directly suffer an imminent harm as a result of that which is being challenged</td></tr>
<tr><td>☐</td><td>Causation: The actual or imminent harm can be traced to the defendant</td><td>☐</td><td>Redressability: The injury suffered or to be suffered by the plaintiff(s) can be redressed by a favourable decision</td></tr>
<tr><td>☐</td><td>Legal interest: The interest to protect is arguably within the zone of interests to be protected or regulated by that which is being challenged</td><td>☐</td><td>Geography is a component (such as a requirement to reside within a certain distance from the nuclear power reactor)</td></tr>
<tr><td>☐</td><td>Automatic standing based on geography (such as a requirement to reside within a certain distance from the nuclear power reactor)</td><td>☐</td><td>Other [please specify]:</td></tr>
<tr><td colspan="4">Would you like to provide any additional clarifying information related to how a prospective party establishes standing?
ANSWER:</td></tr>
<tr><td>20</td><td colspan="4">If there is a geographic component to standing, what is the geographical component?
ANSWER:</td></tr>
</table>

99. The boxes below relate to general principles of judicial standing – injury, causation and redressability – as well as additional criteria that may be included by law, regulation or legal judgments.

21	Is government funding (such as free legal aid or jurisdictional assistance) either automatically provided to or made available to (subject to an application) plaintiffs or prospective plaintiffs specifically to raise their challenges? [please tick the appropriate box]			
	☐	YES, government funding is automatically provided to prospective plaintiffs	☐	YES, government funding is made available to prospective plaintiffs (subject to an application to the government and other possible conditions)
	☐	YES, government funding is automatically provided to plaintiffs	☐	YES, government funding is made available to plaintiffs (subject to an application to the government and other possible conditions)
	☐	NO, there is no government funding to either prospective plaintiffs or plaintiffs		
	If your answer is YES, please describe the nature of the funding (how much is available and what are the conditions to obtain it):			
	If your answer is YES, is the government funding provided for in law, regulation, policy or some other way? [please tick all that apply]			
	☐	Law	☐	Regulation
	☐	Policy	☐	Other [please specify]:
	If your answer is YES, please provide the name of the law / regulation / policy / other and citation. ANSWER:			
22	Who may be the subject / defendant of the nuclear safety challenge? [please tick all that apply]			
	☐	Operator	☐	Applicant / licensee
	☐	Vendor / supplier	☐	Nuclear safety authority (or nuclear regulatory body)
	☐	Another governmental body [please specify]:	☐	Other [please specify]:
23	If only the nuclear safety authority (or nuclear regulatory body) or other governmental body can be sued, does the operator have an automatic right to participate in the proceeding? [please tick the appropriate box]			
	☐	YES	☐	NO
24	If any of your answers to the above questions change depending on the subject matter of the challenge, please provide more information here. ANSWER:			
25	Is there any additional / clarifying information that might be useful for NEA member countries? ANSWER:			

PART 3: PRELIMINARY LEGAL PROCESS				
26	Is there a statute of limitations / prescription period / legal time limit set for raising a challenge? [please tick the appropriate box]			
	☐	YES	☐	NO
	If your answer is YES, what is the statute of limitations / prescription period / legal time limit set for raising a challenge? ANSWER:			
27	If your answer to question #26 is YES, does the statute of limitations / prescription period / legal time limit set differ depending on the subject matter of the challenge? [please tick the appropriate box]			
	☐	YES	☐	NO
	If your answer is YES, can you please explain? ANSWER:			
28	Does a legal challenge generally stay the effectiveness of (i.e. suspend the execution or enforcement of) the decision / action being challenged? [please tick the appropriate box]			
	☐	ALWAYS	☐	CASE-BY-CASE BASIS
	☐	NEVER	☐	Other [please specify]:
	If your answer is ALWAYS or CASE-BY-CASE BASIS, is there any way to make the decision / action effective pending resolution of the challenge? ANSWER:			
	If your answer is NEVER, is there any way to petition / request to stay the effectiveness of (i.e. suspend the execution or enforcement of) the decision / action pending resolution of the challenge? ANSWER:			
29	Are pre-trial or alternative dispute resolution mechanisms available?			
	☐	YES	☐	NO
	If your answer is YES, which of the following mechanisms are provided for:			
	☐	Arbitration	☐	Mediation
	☐	Negotiation	☐	Other [please specify]:
	If your answer is YES, are the pre-trial or alternative dispute resolution mechanisms mandatory or voluntary prior to litigating a challenge to nuclear safety?			
	☐	Mandatory	☐	Voluntary
	If your answer is YES, do pre-trial or alternative dispute resolution mechanisms suspend the statute of limitations / prescription period for raising a challenge?			
	☐	YES	☐	NO

30	Are formal written requests for documents that contain relevant information within the other party's possession, custody or control allowed? [please tick the appropriate box]			
	☐	YES	☐	NO
	☐	CASE-BY-CASE BASIS (please explain):		
	If your answer is YES, must certain documents be produced automatically, without the requirement of a written request (i.e. document production is required according to law / rule / regulation / decree)?			
	☐	YES	☐	NO
31	Are oral depositions of parties and potential witnesses allowed (deposition here is defined as "the taking and recording of testimony of a witness under oath before a court reporter in a place away from the courtroom before trial"[100])?			
	☐	YES	☐	NO
	☐	CASE-BY-CASE BASIS (please explain):		
	If your answer is YES, are there any conditions associated with the ability to conduct depositions? ANSWER:			
32	Are written interrogatories (questions and answers written under oath or other similar obligation to tell the truth) allowed? [please tick the appropriate box]			
	☐	YES	☐	NO
	☐	CASE-BY-CASE BASIS (please explain):		
	If your answer is YES, are there any conditions associated with the ability to conduct depositions? ANSWER:			
33	Are motions for summary judgment allowed? (Summary judgment here is understood to mean a judgment by a court either before trial or at an early stage of the proceedings that either disposes of the entire case or certain issue(s) of the case without a full trial.[101]) [please tick the appropriate box]			
	☐	YES	☐	NO
	☐	CASE-BY-CASE BASIS (please explain):		
	On what basis may a party make a motion for summary judgment? ANSWER:			

100. Law.com (n.d.), "deposition", https://dictionary.law.com/Default.aspx?typed=deposition&type=1. For more information on oral depositions, please see Cornell Law School (n.d.), "Deposition", www.law.cornell.edu/wex/deposition.

101. For more complete definitions, see Law.com (n.d.), "summary judgment", https://dictionary.law.com/Default.aspx?selected=2063 and Thomson Reuters Practical Law (n.d), "Summary judgment", https://uk.practicallaw.thomsonreuters.com/Glossary/UKPracticalLaw/I25019b53e8db11e398db8b09b4f043e0?transitionType=Default&contextData=(sc.Default)&navId=4EF7A6C346911A87BDEB08455FEE8E5B&comp=pluk.

34	If any of your answers to the above questions change depending on the subject matter of the challenge, please provide more information here. ANSWER:			
35	Is there any additional / clarifying information that might be useful for NEA member countries? ANSWER:			
PART 4: LEGAL PROCESS				
36	By what method is the legal challenge adjudicated? [please tick the appropriate box]			
	☐	Solely written pleadings / motions / statements	☐	Solely oral hearing
	☐	Combination of written pleadings / motions / statements and an oral hearing	☐	Other [please specify]:
37	If an oral hearing is allowed, can witnesses be called? [please tick the appropriate box]			
	☐	YES	☐	NO
	☐	CASE-BY-CASE BASIS (please explain):		
38	If witnesses can be called, is cross-examination allowed? [please tick the appropriate box]			
	☐	YES	☐	NO
	☐	CASE-BY-CASE BASIS (please explain):		
39	Are there any unique features of the adjudication process that you would like to specify? ANSWER:			
40	Are the proceedings open to the public? [please tick the appropriate box]			
	☐	YES, all material is released in real time	☐	YES, but only after the conclusion of the proceeding
	☐	NO, the proceedings are never made publicly available	☐	Other [please specify]:
41	Before which court / body / authority must the challenge first be raised? ANSWER:			
42	What type of court / body / authority is this? [please tick all that apply]			
	☐	Civil	☐	Administrative
	☐	Criminal	☐	Other [please specify]:
43	Who renders an initial verdict? [please tick all that apply]			
	☐	Single judge (civil or administrative)	☐	Panel of judges (civil or administrative)
	☐	Administrative officer(s)	☐	Administrative body
	☐	Jury	☐	Other [please specify]:

44	Can the initial decision be appealed to a higher court / body / authority? [please tick the appropriate box]			
	☐	YES	☐	NO
45	On what legal basis can the first decision be appealed? ANSWER:			
46	In front of which court / body / authority must the appeal of the initial decision be brought? ANSWER:			
47	What type of court / body / authority is this? [please tick all that apply]			
	☐	Civil	☐	Administrative
	☐	Criminal	☐	Other [please specify]:
48	Who renders the verdict on appeal? [please tick all that apply]			
	☐	Single judge (civil or administrative)	☐	Panel of judges (civil or administrative)
	☐	Administrative officer(s)	☐	Administrative body
	☐	Jury	☐	Other [please specify]:
49	Can the appellate decision be appealed again to a higher court / body / authority? [please tick the appropriate box]			
	☐	YES	☐	NO
50	On what legal basis can the appellate decision be appealed? ANSWER:			
51	In front of which court / body / authority must the appeal of the appellate decision be brought? ANSWER:			
52	What type of court / body / authority is this? [please tick all that apply]			
	☐	Civil	☐	Administrative
	☐	Criminal	☐	Other [please specify]:
53	Who renders the verdict on appeal? [please tick all that apply]			
	☐	Single judge (civil or administrative)	☐	Panel of judges (civil or administrative)
	☐	Administrative officer(s)	☐	Administrative body
	☐	Jury (civil or criminal)	☐	Other [please specify]:
54	Is this the court / body / authority of last resort (i.e. the court / body / authority of highest power on these matters)? [please tick the appropriate box]			
	☐	YES	☐	NO
	If your answer is NO, what is the court / body / authority of last resort and what is the process for achieving finality of decision? ANSWER:			

55	What type of court / body / authority is this? [please tick all that apply]			
	☐	Civil	☐	Administrative
	☐	Criminal	☐	Other [please specify]:
56	If any of your answers to the above questions change depending on the subject matter of the challenge, please provide more information here. ANSWER:			
57	Is there any additional / clarifying information that might be useful for NEA member countries? ANSWER:			
PART 5: JUDGMENT AND REMEDIES				
58	What type of legal remedies can result from a final decision related to nuclear safety? [please tick all that apply]			
	☐	Affirm original decision	☐	Overturn original decision
	☐	Modify original decision	☐	Remand decision back to the original decision-maker for new or additional analysis
	☐	Injunction	☐	Damages
	☐	Civil monetary penalty / fine	☐	Issuance of a licence / authorisation / permit
	☐	Amendment of a licence / authorisation / permit	☐	Suspension of a licence / authorisation / permit
	☐	Revocation of a licence / authorisation / permit	☐	Issuance of a new law / rule / regulation / decree
	☐	Amendment of an existing law / rule / regulation / decree	☐	Repeal of an existing law / rule / regulation / decree
	☐	Repeal a constitutional amendment	☐	Criminal penalties (please specify:)
	☐	Other [please specify]:		
	Please provide any additional / clarifying information that might be useful for NEA member countries. ANSWER:			
59	Is the prevailing party awarded legal fees as part of the judgment? [please tick the appropriate box]			
	☐	YES, but only the plaintiff	☐	YES, but only the defendant
	☐	YES, either the plaintiff or the defendant	☐	NO

<table>
<tr><td rowspan="4">60</td><td colspan="4">Are legal remedies (monetary damages) available should a party believe they have suffered an injury (any harm, whether economic, physical, reputational, etc.) as a result of the legal challenge? [please tick the appropriate box]</td></tr>
<tr><td>☐</td><td>YES</td><td>☐</td><td>NO</td></tr>
<tr><td colspan="4">If your answer is YES, what sort of legal remedies are available?
ANSWER:</td></tr>
<tr><td colspan="4">If your answer is YES, on what basis may the injured party request said remedy?
ANSWER:</td></tr>
<tr><td>61</td><td colspan="4">Approximately how long, on average, does it take to conclude a proceeding (from start to finish)?
ANSWER:</td></tr>
<tr><td>62</td><td colspan="4">If any of your answers to the above questions change depending on the subject matter of the challenge, please provide more information here.
ANSWER:</td></tr>
<tr><td>63</td><td colspan="4">Is there any additional / clarifying information that might be useful for NEA member countries?
ANSWER:</td></tr>
</table>

Annex 4:
Reporting organisations and contact persons

We would like to thank our numerous contacts worldwide in national administrations and in public companies for their helpful co-operation.

Australia	Martin Reynolds, Australian Radiation Protection and Nuclear Safety Agency
Austria	Dominik Bischof, Federal Ministry for Climate Action, Environment, Energy, Mobility, Innovation and Technology
	Robert Muner, Federal Ministry for Climate Action, Environment, Energy, Mobility, Innovation and Technology
Belgium	Anne Bonet, FPS Economy, SMEs, Self-employed and Energy (formerly)
	Roland Dussart-Desart, Chair, Nuclear Law Committee
Canada	Jasmine Saric, Canadian Nuclear Safety Commission
	Lisa Thiele, Canadian Nuclear Safety Commission
Czechia	Eduard Klobouček, State Office for Nuclear Safety
	Karel Künzel, State Office for Nuclear Safety
Finland	Iida Huhtanen, Ministry of Economic Affairs and Employment
France	Laurence Chabanne-Pouzynin, ORANO
	Fiona Geoffroy, Électricité de France
	Valérie Nicholas, French Alternative Energies and Atomic Energy Commission
	Olivia Passerieux, French Alternative Energies and Atomic Energy Commission
	Florence Touïtou-Durand, French Alternative Energies and Atomic Energy Commission
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	Andrea Küppers, Gesellschaft für Anlagen- und Reaktorsicherheit (GRS) gGmbH

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	Taro Hokugo, Nuclear Damage Compensation and Decommissioning Facilitation Corporation
	Toyohiro Nomura, Japan Energy Law Institute
	Ruri Sakamoto, Nuclear Regulation Authority (formerly)
	Minami Sakaue, Nuclear Regulation Authority (formerly)
	Kazuhiro Sawada, Ministry of Education, Culture, Sports, Science and Technology; Permanent Delegation of Japan to the OECD (formerly)
Korea	Ho Byeong Chae, Korea Institute of Nuclear Safety
Netherlands	Esin Cumert, Ministry of Infrastructure and Water Management
	Patricia Sormani, Authority on Nuclear Safety and Radiation Protection
	Yvette Staal, Authority on Nuclear Safety and Radiation Protection (formerly)
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Portugal	Maria Manuel Meruje, Instituto Superior Técnico
Romania	Liliana Cenusa, National Commission for Nuclear Activities Control
	Laura Constantin, S.N. Nuclearelectrica S.A.
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	Diana Urmanova, Scientific and Engineering Centre for Nuclear and Radiation Safety
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	Gabriela Špačková, Nuclear Regulatory Authority of the Slovak Republic
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	Aleš Škraban, Slovenian Nuclear Safety Administration
Spain	David García López, Nuclear Safety Council
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	Robert Petersson, Ministry of Climate and Enterprise
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	Feyzanur Baykut, Nuclear Regulatory Authority
	Zeynep Melissa Savas Sahin, Nuclear Regulatory Authority
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	Liliia Kukharchuk, SE NNEGC Energoatom
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	Sarah Chatterley, Department for Business, Energy & Industrial Strategy (formerly)
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	Brooke Clark, US Nuclear Regulatory Commission
	Marian Zobler, US Nuclear Regulatory Commission

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Legal Challenges Related to Nuclear Safety

There are many types of legal challenges that can be raised in the context of the peaceful uses of nuclear energy. Each country's framework for legal challenges related to the peaceful use of nuclear energy depends on its national legal system. Because each country's national legal structure is distinct, it is important for lawyers, as well as law and policy makers, to have a comparative understanding of the different frameworks for legal challenges.

Focusing only on legal challenges related to nuclear safety, the aim of this report is to provide insights into the frameworks for legal challenges related to nuclear safety and, without making any general recommendations, identify commonalities and differences that contribute to different countries' approaches. By collecting information from nearly 25 NEA member and non-member countries, this report provides an overall review of the different approaches taken by countries to legal challenges related to nuclear safety, as well as nearly 40 case summaries by 11 different countries and an extensive chart of nuclear law cases from 1987 to the present day.

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