CASE LAW

France

Judgement of the Court of Appeal of Limoges Concerning the Dumping of Radioactive Waste by Areva NC (2006)

On 28 June 2006, the Court of Appeal of Limoges confirmed the judgement of the Magistrates' Court of 14 October 2005 which had discharged Areva NC (formerly Cogema) with regard to the claims of two associations, *Sources et Rivières du Limousin* (Springs and Rivers of Limousin) and the federation *France Nature Environnement* concerning the dumping of radioactive waste and damage to fish fauna (see *Nuclear Law Bulletin* No. 76).

The association Springs and Rivers of Limousin had instituted proceedings in 1999 against Cogema for pollution of various lakes and rivers in Haute-Vienne and the endangering of peoples' lives. The federation *France Nature Environnement* became another civil party to this action in 2002. The examining judge considered that the cause of action involving the endangering of peoples' lives was not applicable but he ordered that the case be returned to the Magistrates' Court to be judged in respect of the offences concerning the dumping of waste containing radioactive substances and water pollution causing damage to fish fauna.

The Court of Appeal of Limoges ruled that Areva NC was not guilty of dumping radioactive waste, and neither had it infringed radiation protection regulations or general mining industry regulations. There was no proof of damage to fish fauna.

Sweden

Judgement on Plans for the Dismantling of Barsebäck (2006)

On 12 July 2006, a Swedish environmental court in Kaevlinge approved plans for decommissioning the two 600 MW Boiling Water Reactors located at Barsebäck, endorsing a decision to delay dismantling until at least 2020.

The first reactor at Barsebäck was shut down in November 1999 through a political decision by the Government following a period of negotiations between the State, owner Sydkraft and national energy company Vattenfall. The decision was made pursuant to the 1997 Act on the Phasing-out of Nuclear Power (see *Nuclear Law Bulletin* No. 61). Barsebäck-2 was shut down on 31 May 2005, again pursuant to the 1997 Act (see *Nuclear Law Bulletin* No. 75).

This court case resulted from a dispute between the operator and the Swedish Government's Swedish Radiation Protection Institute. The Swedish Government wanted decommissioning to commence immediately whereas plant management at Barsebäck had indicated its intention to wait until 2020, when the radiation dose to workers during decommissioning work would be lower. The

court approved the plans to commence dismantling in 2020, when a repository for large reactor components will be ready at the national final repository for radioactive waste at the Forsmark plant.

United Kingdom

Judgement of Carlisle Crown Court Concerning a Leak at Sellafield (2006)

On 16 October 2006, British Nuclear Group Sellafield Ltd. (BNGSL) was fined 500 000 pounds (GBP) plus GBP 68 000 in costs in a case brought by the UK Health and Safety Executive (HSE) for failing to identify and stop an eight-month long leak of 83 400 litres of radioactive liquid at the Thermal Oxide Reprocessing Plant (THORP) at Sellafield in Cumbria.

The prosecution followed a detailed investigation by HSE's Nuclear Installations Inspectorate into the leak which was notified to HSE on 20 April 2005.

The fine was levied at Carlisle Crown Court after BNGSL pleaded guilty, at an earlier hearing, to three counts of breaching conditions attached to the Sellafield site licence, granted under the 1965 Nuclear Installations Act as amended. These conditions require the licensee to make and comply with written instructions; to ensure safety systems are in good working order; and to ensure radioactive material is contained and, if leaks occur, they are detected and reported.

United States

*Judgement of the US Court of Appeals Regarding Disposal of Spent Nuclear Fuel (2006)**

In accordance with the Nuclear Waste Policy Act of 1982, as amended (NWPA) (see *Nuclear Law Bulletin* Nos. 31, 41 and 63), the US Department of Energy (DOE) entered into contracts with more than 45 utilities under which, in return for the payment of fees into the Nuclear Waste Fund, DOE agreed to commence disposal of spent nuclear fuel by 31 January 1998. Because DOE has no facility available to receive such fuel under the NWPA, DOE has been unable to commence disposal. Significant litigation claiming damages for partial breach of contract has ensued (see *Nuclear Law Bulletin* Nos. 58-64, 73). To date, while some cases have been settled, about 57 cases are pending in the Court of Federal Claims. In some of those cases, orders have already been entered establishing the government's liability and the only outstanding issue to be litigated is ascertaining the amount of damages to be awarded. The industry reportedly estimates that damages for all utilities with which DOE has contracts ultimately will be about 50 billion US dollars (USD). DOE considers this estimate to be highly inflated.

On 29 September 2006, the US Court of Appeals decided in one of the spent nuclear fuel cases, *PSEG Nuclear v. United States*,[1] that because no provision of the NWPA provides jurisdiction over PSEG's contract claims in another Court, and because the utility breach of contract claims require resolution of factual issues rather than inquiry limited to an administrative record, the Court of Federal

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* This case note was kindly provided by Ms. Sophia Angelini, Attorney adviser at the Office of the General Counsel of the US Department of Energy. The author alone is responsible for the facts mentioned and opinions expressed herein.

1. Public Service Enterprise Group (PSEG) Nuclear LLC and Public Service Electric and Gas Company v. United States.

Claims has jurisdiction to hear PSEG's breach claims under the Tucker Act which generally vests that Court with jurisdiction to render judgement in government contract disputes. The Court concluded that the NWPA did not strip the Court of Federal Claims of its Tucker Act jurisdiction over PSEG's claims.

The breach of contract claims in this case stem from contracts entered into between PSEG and DOE under Section 302 of the NWPA. The Court stated that the contract term at issue, the 31 January 1998 date for commencing spent nuclear fuel collection, was clearly statutorily mandated. However, for the Court, the key question was not whether the breached contract provision was statutorily mandated but whether the claims at issue involve the DOE's authority under the statutory mandate. As both parties noted, Section 302 of the NWPA required only that DOE include certain obligations in its contracts. Therefore, judicial review as to whether DOE properly incorporated these obligations within its contracts may fall within the jurisdiction conferred on the Courts of Appeal under Section 119 of the NWPA. However, the performance of and any damages for failure to meet those obligations were not provided by statute. The contract claims only involve issues of whether DOE breached its contractual obligations, and if so, to what damages, if any, PSEG is entitled for the breach. Because these are not within DOE's statutory obligations under the NWPA, the Court found that the decision in City of Burbank v. Bonneville Power Administration[2] did not compel a conclusion that Section 119 of the NWPA strips the Claims Court of its Tucker Act jurisdiction over PSEG's claim merely because the claim involves a statutory mandated provision.

European Union

Judgement of the European Court of Justice on Uranium Enrichment (2006)

On 12 September 2006, the European Court of Justice handed down its ruling[3] in the joined cases *Industrias Nucleares do Brasil SA* and *Siemens AG versus UBS AG* [C-123/04] and Texas Utilities Electric Corporation [C-124/04]. This ruling originates in two requests for a preliminary ruling under Article 150 Euratom from the *Oberlandesgericht* Oldenburg in Germany. The German court had asked a number of questions concerning the interpretation of the provisions of the Euratom Treaty on supply, and in particular concerning the enrichment of uranium on the territory of the Community by a national of a non-member State.

Among other statements, the Court ruled that the first paragraph of Article 75 of the Euratom Treaty is to be interpreted as meaning that the terms "processing", "conversion" and "shaping" in that provision also encompass uranium enrichment.

2. 273 F. 3d. 1370 (Fed. Circ. 2001).

3. The text of the ruling is available on the website of the European Court of Justice at www.curia.europa.eu/.