

Meeting of Aarhus Convention Compliance Committee

Ref. ACCC/C/2012/71

Brigitte Artmann - in Geneva on 26 March 2013

The reason why I am here is: I demand a formal hearing in Germany in EIA Temelin unit 3 and 4 procedure.

Why do I demand it: Czech people did have a **formal hearing** in their own country. They could participate in their own language, did have relatively easy access to the formal public hearing, they did have less cost to go to Ceske Budejovice, they were allowed to start discussing their issues earlier than German citizens and were therefore able to go home earlier. A formal hearing opens access to justice. There should be no discrimination on the basis of citizenship, nationality or domicile. When German citizens get only the possibility to come to Ceske Budejovice, there is a clear act of discrimination in comparison with Czech citizens on the basis of citizenship, nationality or domicile.

I forwarded you already travel time, public transport costs and accommodation costs to document that it was not similarly easy for Germans as for Czechs to go to Ceske Budejovice. The citizens of Hamburg are realistic participants in EIA Temelin, because the rivers Elbe and Moldau connect them with Temelin as well as possible impact by air in a possible INES 7 case.

Germans only got an **informal hearing** in Passau without access to justice.

Provisions of the Convention relevant for the communication, in my opinion, primarily was Aarhus 3.9 – but now I understand there is a mixed legal basis: Article 3.9 and Article 6, as well as Article 3.7 (appropriate... to have hearing) and Article 6.3 (reasonable timeframes) and Article 9 (access to justice).

The response of Czech Republic did raise some questions and I asked Environment Ministry of Bavaria to clear these questions.

It is important to understand, whether Espoo Conventions procedures were applied, in particular whether any public hearing was held under Espoo procedure and if not why. One has to take into account that holding a public hearing under Espoo Convention is a joint responsibility of Germany and Czech

Republic and whether Espoo procedure were finalized. As to Aarhus Convention itself, there might be three possible issues:

- a. The fact the hearing was requested but not held in Germany
- b. Timing (major consultations took place in August)
- c. Timeframes (2 months for consultations on nuclear case may not be enough).

Each of these issues has a mixed legal basis: Article 3.9 and Article 6.

As to hearing in Germany it is necessary to prove it was required. Aarhus Convention does not require hearings. It requires creating possibilities to ensure early, timely public participation. One of the possible arguments is that it was clear that many German citizens expressed concerns and submitted thousands of comments. This justifies having at least one hearing in Germany. Yet, Czech Republic could not organize it on its own: there's a role of Germany also. Why Germany did not offer to host/organize such a hearing? It seems from the letter Czech Republic sent to Committee that they invited Bavaria government to appoint any date and venue.

http://www.unece.org/fileadmin/DAM/env/pp/compliance/C2012-71/Communication_with_the_Party/d1_Lhuta_k_posudku_Bavorsko.doc

Why Bavarian Government did not respond? If they responded, did they ask for public hearing?

In general here is to claim for violation of Article 3.7 (appropriate... to have hearing).

As to timing and timeframes. Time given to comment on EIA documentation in 2010 was just 30 days in August and 30 days of September. August shall not count, as this is vacations period. There's committee's case law on this in Spanish case already. 30 days in September 2010 is not enough given the nature of the project, there's significant case law of the Committee on duration of public consultations in complex cases.

This should be seen as a violation of Article 6.3 (reasonable timeframes).

Additionally it has to be said that Bavarian summer holidays ended in 2010 on exactly the 13 of September. So there were left only 17 days for public

participating. And that submission period in 2012 only lasted from 07 May until 18 June and after four days there was already following formal hearing in Ceske Budejovice on 22 June 2013 with around 40 000 submissions that were sent to Praha.

My questions to the Bavarian Environment Ministry were the above raised questions and further when the response to the German submissions were submitted in German language to Bavaria, when the relevant answers in the Annexes will be translated and whether Czech Republic did already submit these translations. On 15 March 2013 only parts – means exactly 40 pages - of the final report were published in German on Bavarian Environment Ministry website. The relevant Annexes were on 22 March 2013 still missing.

<http://www.stmug.bayern.de/umwelt/reaktorsicherheit/temelin/doc/stanovisko.pdf>

The Bavarian Environment Ministry answered my questions.

Bavaria has decided from the very beginning to participate in the EIA process for Temelin 3 and 4 and has done all necessary and possible steps like publicizing all official documents provided from Czech Republic, submitting own statements and taking part in the public hearing. We have requested from the Czech Republic a German translation of the final report, which we publicized on our web page, as soon as we received it and to which you are also referring. The Annexes concerning the statements from Germany are not yet translated into German, but we try to convince the Czech Republic to provide that as well. If the Czech Republic delivers this translation, we will publicize it as well on our web page. According to our understanding, the EIA is completed with the publication of the final report.

*The letter from the Czech Ministry of Environment dated 30.4.2012, which can be found through the link in your e-mail does indeed state once, that the Czech Republic has invited Bavaria to appoint a date and a venue for a public hearing. But further on in the letter the term "public debate" is used several times and the letter also refers at the end to a letter from 13.2.2011. In that letter the Czech Republic stated clearly, that the public discussion offered to Germany will be held outside the ongoing EIA procedure. **Therefore the Bavarian Parliament decided on 15.3.2012 that the German Government should be asked to request the Czech Government to change that informal public discussion into a formal public hearing as part of the EIA procedure. German Chancellor Ms. Merkel tried whilst her visit in Prague on 3.4.2012 to convince the Czech***

Government to offer a formal EIA hearing in Germany, but that request was not accepted.

We do not know exactly, how many comments of German residents were submitted, since we announced the address of the Czech ministry to the Bavarian public for submission. We have heard from the Czech side of about 3000 comments from Germany 2010 and 50000 in 2012 together from Germany and Austria. If necessary, surely the Czech Ministry of Environment will have the exact numbers. End of answer of Bavarian Environment Ministry.

German Environment Ministry BMU published on its website: The EIA procedure under Espoo was finalized on 18-01-2013. 40.000 submissions were sent from Germany to Czech Republic.

My answer to the response of Czech Republic with letter of 09 January 2013 is: I think my complaint is admissible because the Aarhus Convention is binding law in its member states and access to justice is demanded.

As a natural person I do have no chance to complain against EIA procedure at all after finalizing permission phase. It is right, I cannot complain now after finalizing EIA procedure under Espoo. But I can also not complain as natural person against urban land permit which is the only part of the permission procedure one can complain against EIA procedure. Only cities and NGOs can complain against urban land permit. Natural persons are excluded.

Czech EIA law defines very strictly who is allowed to complain against which part of a permission procedure and natural persons are almost excluded. A natural person has to own land or has to be the owner of a house, tenants are excluded only, only for example, because it is more complicated. I can quote the statement of Mgr. Martin Sip from Czech Republic if you want me to do so. The decision of the reactor type which will be chosen will be made secretly, no public participating is possible. I had several questions I wanted to discuss on formal hearing in Ceske Budejovice and was not able to. Other persons wanted to do the same but had to leave home because their bus left. Names of witnesses were already forwarded to ACCC. My final words after 3:00 in the morning on micro in hearing venue were: I could not participate. I still had questions but was too tired. Czech Republic has the minutes.

Article 3

GENERAL PROVISIONS

7. Each Party shall promote the application of the principles of this Convention in international environmental decision-making processes and within the framework of international organizations in matters relating to the environment.

9. Within the scope of the relevant provisions of this Convention, the public shall have access to information, have the possibility to participate in decision-making and have access to justice in environmental matters without discrimination as to citizenship, nationality or domicile and, in the case of a legal person, without discrimination as to where it has its registered seat or an effective centre of its activities.

Article 6

PUBLIC PARTICIPATION IN DECISIONS ON SPECIFIC ACTIVITIES

1. Each Party:

(a) Shall apply the provisions of this article with respect to decisions on whether to permit proposed activities listed in annex I;

(b) Shall, in accordance with its national law, also apply the provisions of this article to decisions on proposed activities not listed in annex I which may have a significant effect on the environment. To this end, Parties shall determine whether such a proposed activity is subject to these provisions; and

(c) May decide, on a case-by-case basis if so provided under national law, not to apply the provisions of this article to proposed activities serving national defence purposes, if that Party deems that such application would have an adverse effect on these purposes.

2. The public concerned shall be informed, either by public notice or individually as appropriate, early in an environmental decision-making procedure, and in an adequate, timely and effective manner, inter alia, of:

(a) The proposed activity and the application on which a decision will be taken;

(b) The nature of possible decisions or the draft decision;

(c) The public authority responsible for making the decision;

(d) The envisaged procedure, including, as and when this information can be provided:

(i) The commencement of the procedure;

(ii) The opportunities for the public to participate;

(iii) The time and venue of any envisaged public hearing;

(iv) An indication of the public authority from which relevant information can be obtained and where the relevant information has been deposited for examination by the public;

(v) An indication of the relevant public authority or any other official body to which comments or questions can be submitted and of the time schedule for transmittal of comments or questions; and

(vi) An indication of what environmental information relevant to the proposed activity is available; and

(e) The fact that the activity is subject to a national or transboundary environmental impact assessment procedure.

3. The public participation procedures shall include reasonable time-frames for the different phases, allowing sufficient time for informing the public in accordance with paragraph 2 above and for the public to prepare and participate effectively during the environmental decision-making.

4. Each Party shall provide for early public participation, when all options are open and effective public participation can take place.

5. Each Party should, where appropriate, encourage prospective applicants to identify the public concerned, to enter into discussions, and to provide information regarding the objectives of their application before applying for a permit.

6. Each Party shall require the competent public authorities to give the public concerned access for examination, upon request where so required under national law, free of charge and as soon as it becomes available, to all information relevant to the decision-making referred to in this article that is available at the time of the public participation procedure, without prejudice to the right of Parties to refuse to disclose certain information in accordance with article 4, paragraphs 3 and 4. The relevant information shall include at least, and without prejudice to the provisions of article 4:

(a) A description of the site and the physical and technical characteristics of the proposed activity, including an estimate of the expected residues and emissions;

- (b) A description of the significant effects of the proposed activity on the environment;
- (c) A description of the measures envisaged to prevent and/or reduce the effects, including emissions;
- (d) A non-technical summary of the above;
- (e) An outline of the main alternatives studied by the applicant; and
- (f) In accordance with national legislation, the main reports and advice issued to the public authority at the time when the public concerned shall be informed in accordance with paragraph 2 above.

7. Procedures for public participation shall allow the public to submit, in writing or, as appropriate, at a public hearing or inquiry with the applicant, any comments, information, analyses or opinions that it considers relevant to the proposed activity.

8. Each Party shall ensure that in the decision due account is taken of the outcome of the public participation.

9. Each Party shall ensure that, when the decision has been taken by the public authority, the public is promptly informed of the decision in accordance with the appropriate procedures. Each Party shall make accessible to the public the text of the decision along with the reasons and considerations on which the decision is based.

10. Each Party shall ensure that, when a public authority reconsiders or updates the operating conditions for an activity referred to in paragraph 1, the provisions of paragraphs 2 to 9 of this article are applied mutatis mutandis, and where appropriate.

11. Each Party shall, within the framework of its national law, apply, to the extent feasible and appropriate, provisions of this article to decisions on whether to permit the deliberate release of genetically modified organisms into the environment.

Article 9

ACCESS TO JUSTICE

1. Each Party shall, within the framework of its national legislation, ensure that any person who considers that his or her request for information under article 4 has been ignored, wrongfully refused, whether in part or in full, inadequately answered, or otherwise not dealt with in accordance with the provisions of that article, has access to a review procedure before a court of law or another independent and impartial body established by law.

In the circumstances where a Party provides for such a review by a court of law, it shall ensure that such a person also has access to an expeditious procedure established by law that is free of charge or inexpensive for reconsideration by a public authority or review by an independent and impartial body other than a court of law.

Final decisions under this paragraph 1 shall be binding on the public authority holding the information. Reasons shall be stated in writing, at least where access to information is refused under this paragraph.

2. Each Party shall, within the framework of its national legislation, ensure that members of the public concerned

(a) Having a sufficient interest or, alternatively,

(b) Maintaining impairment of a right, where the administrative procedural law of a Party requires this as a precondition,

have access to a review procedure before a court of law and/or another independent and impartial body established by law, to challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of article 6 and, where so provided for under national law and without prejudice to paragraph 3 below, of other relevant provisions of this Convention.

What constitutes a sufficient interest and impairment of a right shall be determined in accordance with the requirements of national law and consistently with the objective of giving the public concerned wide access to justice within the scope of this Convention. To this end, the interest of any non-governmental organization meeting the requirements referred to in article 2, paragraph 5, shall be deemed sufficient for the purpose of subparagraph (a) above. Such organizations shall also be deemed to have rights capable of being impaired for the purpose of subparagraph (b) above.

The provisions of this paragraph 2 shall not exclude the possibility of a preliminary review procedure before an administrative authority and shall not affect the requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures, where such a requirement exists under national law.

3. In addition and without prejudice to the review procedures referred to in paragraphs 1 and 2 above, each Party shall ensure that, where they meet the criteria, if any, laid down in its national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment.

4. In addition and without prejudice to paragraph 1 above, the procedures referred to in paragraphs 1, 2 and 3 above shall provide adequate and effective remedies, including injunctive relief as appropriate, and be fair, equitable, timely and not prohibitively

expensive. Decisions under this article shall be given or recorded in writing. Decisions of courts, and whenever possible of other bodies, shall be publicly accessible.

5. In order to further the effectiveness of the provisions of this article, each Party shall ensure that information is provided to the public on access to administrative and judicial review procedures and shall consider the establishment of appropriate assistance mechanisms to remove or reduce financial and other barriers to access to justice.