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From communicant

Reaction on the response of the Party

Jan Haverkamp
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Ad 1). Neither the so-called "independent" assessor (*posudkář*), nor the Ministry of Environment has taken the input from the public into account. The reactions of the assessor are virtually without exception defensively showing that the public is wrong. The Ministry of Environment comes in its approval of the EIA Statement to conclusions which do not count at all with input from the public. A few examples:
The Ministry concludes that the new sources (meant is, the nuclear power stations) will have only a low influence on public health and that radiological effects of operation will not threaten the health of citizens near the source. This means that the Ministry has not taken into account submitted studies on the relation between childhood leukaemia and distance from nuclear reactors. Nor did the Ministry ask for new studies in this area. It furthermore did not take into account the health effects after a heavy accident.
As other example, the Ministry states that there will be no influence on the environment after decommissioning of the project, not taking into account the unresolved problem of long-lived radioactive wastes. It even comes to the unholdable conclusion that the impact on the environment after decommissioning will be positive.
The Ministry accepts a salami-procedure (compartmentalisation) for the power station and radioactive waste storage, although it has been informed by the public that this is in breach with the Aarhus Convention.
The Ministry accepts that relevant economic arguments are excluded from the process.

Not all participants in the EIA procedure are entitled to take part in the subsequent procedures and therefore cannot influence whether their input has been taken into due account. There is no legal recourse before these other steps are taken.
On the basis of the "statutory requirements", only the "[...] locally competent unit of a civic association or beneficiary society or a municipality affected by a project may become a part to subsequent proceedings, [...] provided it has submitted written comments on a EIA notification, EIA documentation or EIA expert report within the statutory period, and also provided the competent EIA office has fully or partly incorporated these comments in EIA statement. "

i) Only locally competent units of civic associations. That means that national and international operating civic associations may be refused standing in this procedure.

ii) The subsequent procedure under the building act is also a procedure of public participation as defined under the Aarhus Convention and because it also deals with environmental issues (including submissions from the public taken over – or rejected – in the EIA in an earlier stage), it should be conform the Aarhus Convention. This is not the case, as not all of the potentially impacted public can participate.

iii) If submissions have been rejected in the EIA phase, the public that does not have standing is not allowed to participate further! So there is no chance to influence the procedure of duly taking into account of submissions in the EIA procedure!

iv) The building procedure does not only exclude civic associations that have no local basis, but also all natural persons, excluding those that have property in the direct vicinity.

v) The further mentioned potential for civic associations to participate is undermined by the limitation put on them for active registration (where? when? I nor Greenpeace was formally and actively informed where to register!) and the obligation to submit written submissions.

Ad 2). The EIA Statement will be taken into subsequent account, but potentially not all the justified submissions from the public. When the authority wrongfully rejects certain submissions from the public, part of the public has no way of correction, nor over access to justice as prescribed under AC art. 9, nor otherwise.

Ad 3). In case there is indeed a habit of organising the public hearing procedure in the way it happened, it should have been possible to make time estimations and inform the public interested about an agenda on beforehand. This did not happen. There is no legally prescribed reason to ransom the public by forcing it to listen to viewpoints from local authorities. Indeed, given the mismatch between the content of most of what the local authorities have said and the issues brought forward by the public, there was no reason to steal this time from the public.
Looking the other way around, why were local authorities not forced to listen to the public? Because they were lined up first, hardly any of them was present in the afternoon, and as far as I could observe none in the evening and the night. It seems to me that in public participation procedures, it is more important that the authorities listen to the public than that the public is forced to listen to authorities. (This is also true for the chosen format of public debate instead of a public hearing – the promoter, consultant, and ministry representatives took up far too much of the speaking time).

Ad 4). The documentation did not provide all required information, because differences between the different designs were not indicated. The technical parameters delivered for the different designs concerned only design technique and not their respective potential impacts on the environment, nor differences between the different designs in that respect. For that the "black box" fulfilment of legal criteria was the only reference.

It is not acceptable to refuse to see different technological solutions as potential alternatives, as the Party is doing. This is the very primary reason why an EIA is carried out: to optimise the final decision in such a way that a minimal necessary impact on the environment can be justified. This cannot be done when different technological solutions, including different designs, the zero variant and in this case non-nuclear variants, are not compared.

The term "envelope" method is a euphemism for "black box" method.

It is from an engineering and science point of view indefensible to state that on the basis of this "black box" method an estimate can be made of potential emissions that will not be exceeded. For that, there was a lack information including of indicated risk factors, the potential emissions and potential spreading from each risk, e.g. the provision of more or accurate potential source terms.

The fact that also other countries have made this mistake is no argument in favour. This is the first time that this issue of content is brought forward for an assessment by the ACCC. I can only testify from my involvement in the EIA for the Visaginas project in Lithuania that the issue was also raised there, but that because of juridical irregularities it was not possible for us to submit this to the

judgement of the ACCC yet.

The conclusion is inevitably that the project promoter did not submit sufficient information to the public for meaningful input.

Ad 5). The weakness of the adaptations of the EIA act are clear from this answer:

i) Natural persons - with the exception of those with standing in the building and zoning procedures - are excluded from access to Justice.

ii) Access to justice is not directly granted, but only after conclusion of all procedures (see 1).

iii) Access to justice - which is already late in the procedure! - has no suspensory effect, which means that when a complainant is proven right in court, project preparations and investments in the project have proceeded - possibly beyond a point of no return, and the principle of early participation when all options are open (Aarhus art. 6(4)) is violated.

Ad 6). In case the Party wants to imply with its explanation that natural persons would have the potential to go to court directly after the approval of the EIA statement by the MZP, we have to note the following:

i) The public was not explicitly informed about this possibility by the responsible authority (i.c. MZP). In contrary, previous action from MZP in EIA cases have made clear that the only juridical recourse possibilities are after the construction permit has been granted, which can be years after conclusion of the EIA procedure.

ii) Because legal recourse is expensive, the complainant had to make a decision on when to venture access to justice - costs for two procedures (one now to test the implicit claim of MZP as well as one after the construction permit) would be too high. The complainant therefore decided not to waste any money on an early procedure, as jurisprudence already shows that this would have only a minimal chance.

iv) Repetition of the claim that the affected public has access to justice after the other procedures does not make it true. See earlier points in the statement of the Party. Not all affected public has access to the procedures.

v) The attempt to defend the situation by pointing out the possibility for a provisional ruling as alternative for suspensive effect is contrary to art. 6(4) of the AC, because when non-complained parts of the project still can be implemented, this excludes the implementation of the zero-alternative as option. This is especially relevant in the case of the construction of a new nuclear power plant where zero-option alternatives have not been taken seriously into consideration.

Ad 7). The references made by the Party did not sufficiently take into account the dynamics of public participation:

i) Because of the tiered decision making, there is for very large projects like nuclear power plants a lot of time between the approval of the EIA Statement and the issuance of the final construction permit. This requires from the public an unacceptably long term of engagement with the project and the resulting uncertainty leads to unacceptable levels of stress.

ii) The lack of access to justice by natural persons that are not party to the zoning and construction procedures is once more confirmed.

iii) Access to justice directly after the approval of the EIA Statement would provide both the public and the project promoter with an early level of certainty about the merits of complaints, which can only positively influence the consecutive preparation of the zoning and construction permits. Whereas the costs and time frames of smaller projects, like a pig farm or smaller CHP installation, may warrant the claim that not too much costs are made in the intermediate period, in the case of a nuclear power station this is completely different. Preparation of zoning and construction permits is a cost intensive exercise. Furthermore, because of the large economical impact of these kinds of mammoth scale projects, many other investments depending on the implementation of the project are started during this time. It is evident that after a construction permit has been granted, the chance to have major corrections being made to the project - including the choice for the zero option - because of a successful challenge of public participation in the EIA procedure is minimal. With that, the current practice in the Czech Republic is *de facto* in breach with art. 6(4) of the Aarhus Convention.

Ad 8) The Czech-German Commission refused the complainant access to nuclear safety relevant information that did not contain trade secrets. The only argument used was “atmosphere of trust”.