

**Environmental controversies
in technical democracy:
Three case studies**

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Foreword

In this research report we present a collection of three case studies that have been undertaken within our work on the research project „Analysing public accountability procedures in contemporary European contexts“.¹ It started in 2001 and is going to finish in 2004. The international research team involves sociologists and political scientists from the Czech Republic, Denmark, France, Germany, Latvia, Portugal, and United Kingdom, and is coordinated from the Centre for the Study of Democracy (University of Westminster, London).

The overall aim of the project is to study opportunities and limits of democracy in societies in which expert knowledge becomes crucial for almost any decision-making and socio-technical networks that shape our daily lives are being openly and widely contested in the public arena. Our conceptual starting point has been the notion of public accountability. To be accountable, in terms of political theory and practice, means to keep under public control those who have power to decide in the name of the others. In other words, public accountability refers to transparent, non-secretive, non-exclusive, and responsible politics. The charm and strength of the concept is in its potential to translate abstract principles of democracy and political representation into more specific, procedural and action-oriented terms. Debates on public accountability relate not only to classical political institutions such as parliaments and political parties, but also bureaucratic structures, administration procedures, media interventions, corporations, NGOs, client groups and so on.

The problem is, however, that as the notion is becoming fashionable among political strategists and theorists, it is sometimes overused and emptied. As formal public accountability procedures have been introduced (some of them as obligatory) and as the very concept of accountability as well as its practical implications is actively and skilfully used by different actors for their own purposes, as a political resource, it has become necessary to rethink its political relevance. Simply put, the concept sounds good in theory, but is difficult to implement in complex and controversial conditions of everyday political struggles. Especially in cases where science and technology are involved and where technicalities of different sorts and specialised knowledge penetrate political agenda, i.e., on the borderline of science and politics, the principles of open, friendly, inclusive and transparent politics (as well as the classical principles of disinterested and independent expertise) get into troubles.

And that is why we decided, in our research, to confront the principle of public accountability with the flesh-and-blood reality of some interesting socio-technical controversies. By means of such an empirical study we hope to give new, fresh and usable meanings to the concept and to offer a more realistic analytical (rather than normative) view of it. Each national team thus made three detailed, empirical case studies that cover different policy levels and issues: the field of household waste management was to represent the most local level; a mezzo-level was represented by a case from the field of regional transport policy; finally the public controversy over genetically modified organisms was to represent a global issue.² The Czech team chose the following particular cases:

- The controversy over the building and operation of the household waste incinerator in Praha-Malešice.

¹ This project is supported by the European Commission, its 5th Framework Programme (under the number HPSE-CT2001-00076).

² Of course, one cannot separate the three levels. Each of the cases involved all of them.

- The public conflicts concerning the highway by-pass around the city of Plzeň.
- Current policies and controversies related to the introduction of GMO into the Czech legal, social, economic and political environment.

The fieldwork for these case studies started in early 2002. We studied administrative, technical and legal documents, media presentations, and expert assessments. We interviewed representatives of the main actors – authorities, companies, experts, activists, politicians, and journalists. Our intention was to take seriously, as much as possible, all the relevant accounts to preserve and grasp multiple perspectives, complex dynamics and ambivalent consequences of each studied case. First drafts of the case studies were completed and submitted to the entire international team in May 2003. Since then, therefore, there is a set of 21 case studies available. Small teams, formed across the original national groups, work on comparative analysis with focus on themes, such as spaces of conflict and mobilization, the role of expertise in public controversies, public-private relationships and accountability, or strategic uses of “Europe” (references to European norms, standards, finances etc.).

Originally, we wrote the case studies as internal working documents. They were considered as background materials for further analysis within the international research team. We did not intend to publish these papers. However, after having discussed the case studies with our colleagues and after we have started comparative work, we realised that it would make sense to make them available even before the end of the project.³ Understandably, it will still take some months to re-write the papers in the form of full-fledged case studies, with explicit theoretical background, abundance of references, elaborate conclusions. We do not withdraw from such a task by publishing these drafts. On the contrary, publication of them already at this moment, in the series of CTS Research Reports, will hopefully help us to gather critical responses from interested readership. It means initiation of a debate that will help us to finalise the texts and refine our arguments.

A note on authorship: As indicated in the Contents and further in the text, individual case studies were written by individual researchers – those who were responsible for respective fieldwork. Nonetheless, this entire set of case studies is pretty much a collective work. We discussed our work continuously, giving feedback to each other, shared some important concepts and views, and there have even been some overlaps in research interviews. Especially the case of by-pass of Plzen has become a subject of intensive interpretive teamwork. In a way, it was a “model case” for developing common understanding of such kind of empirical reality and for further work of our team on the other two cases.

Enjoy reading, comments welcome.

Zdeněk Konopásek
February 24, 2004

³ With the exception of the study on the incinerator in Praha-Malešice, the case studies remained in the form of papers finished in May 2003. Only a few minor revisions were made in February 2004. The case study on waste was more systematically revised and slightly extended in its part related to SEA of the Plan of waste management.

Public controversy over the bypass of Plzeň: The case of transport policy

Lenka Zamykalová

The highway by-pass of Plzen: An overview

Since 1989, the Ministry of Transport and Communications issued three priority documents on transport policy. All were controversial which contributed to the fact that many motorway construction projects have been controversial as well.

We chose the controversy over the construction of the bypass of the town Plzeň. There were two main (southern) variants of motorway construction at stake: the so called K variant nearer to Plzeň and the so called S variant farther from Plzeň. Both were, in different phases of the controversy, approved by government resolution, based on expert reports and supported by municipalities, journalists and citizens' associations. However, the K variant (defeated) was supported above all by experts and ecological activists while the S variant (winning) was supported most by politicians and public servants. During the controversy, several legal actions were taken, including two judgments of the Supreme Court.

All actors emphasised the necessity of a solid expert evaluation and knowledge and put it into a sharp opposition with political forces and strategies. The supporters of the K variant (mainly activists) were much more principal in this. As time went the demand for a final decision increased. Because the growing number of expert reports did not lead to any clear solution, the purely political decision appeared to be the only way of closing the controversy. Paradoxically, this disqualified political actors par excellence, namely the activists who had been systematically insisting on necessity to decide on the purely expert basis.

There was a growing, but mostly unreflected, contradiction between an apparent openness of the controversy „on the paper” and its gradual closing „in the field”. The S variant came „materially” into being (bridges and family houses were built) while controversy remained for a long time relatively open in media and courts.

The most important examples of public accountability practices were the handling and interpretation of the Environmental Impact Assessment (EIA) procedure and the use of legal tools. These practices were themselves controversial, which fueled the conflict even further.

EIA was adopted in the Czech Republic at the time when the Plzeň controversy began as part of the new EU inspired environmental legislation. It was the most important basis for expert assessment and it procedurally anchored public participation and gave the possibility to raise objections and scrutinize the decision-making process. However, decision-making authorities did not comply with every EIA recommendation.

There were two basic strategies of using legal tools. (1) Lawsuits were brought against territorial decisions and constitutional complaints lodged against government resolutions. This strategy was meant to reverse the decision-making process: It used procedural mistakes of public servants to point to other injustices and substantive aspects of the case. (2) A special law was adopted by the Parliament that declared the Plzeň bypass as the construction of public interest and fixed one of the variants. While the first strategy aimed to reverse the decision-making process, this strategy was used to stabilize the (possibly still reversible) decision-making process and to fix one of the variants.

This paper aims at describing and analyzing the controversial case of the construction of the bypass of Plzeň with special attention to its public (accountability) dimension. There are various reasons for choosing this case among many others.¹ It has the longest history of all

¹ At present, there are six main projects of motorway construction, all of them problematized by various actors, mainly ecological NGOs and local villages. Due to their controversial character and the resistance of

motorway constructions projects. It is a case where new law, new procedures (of expert assessment, of public involvement) were first tried. In many respects, it is a paradigmatic case, a precedent having consequences reaching far beyond its (originally) local character. It has provoked propositions to amend some general laws (law On the administrative procedure, law On the protection of nature and landscape) and it led to a special law On bypass construction. And it also, in a substantial way, contributed to the (public) image of environmental activism. The bypass construction was and still is attracting a lot of media attention. All actors involved: activists, politicians, experts and legislators learned a lot throughout its 15-year history. And in a way, the case of Plzeň bypass is also illustrative as an example of different (both failed and successful) public accountability practices.

The study is based on several empirical sources: interviews, monitoring of relevant web pages and media analysis (covering last ten years and both local and national newspapers), analyzing project documentation, court decisions, results of various administrative procedures (territorial decisions), maps, expert reports and visiting and photographing the countryside (potentially) affected by the construction of the respective variants of the bypass. All respondents were very open and willing to express their opinions and to lend us their documents and other materials concerning the bypass construction. The interviewees were chosen to cover more or less symmetrically the supporters of the respective bypass variants: civil servants, experts, activists and politicians.

The following text is divided into four basic parts. First, we present the transport policy in the Czech Republic. We discuss three priority documents approved by the Government on which the transport policy is based and pay a special attention to the way these documents were debated in the public and legitimized. We also give description of the main procedures and actors involved in the discussion of one of these documents. In the second part, we describe the 15-year history of Plzeň bypass construction – development of the controversy, emerging variants of the bypass and actors and strategies of opposing sides. In the third part, we give possible explanations or understandings of the victory of one of the variants and the defeat of the other. In the fourth part we present two examples of practices of public accountability: the new EU inspired environmental assessment procedure (EIA) combining expertise and public involvement, and legal tools (court proceedings and the special law on bypass) used as a strategy to reverse or stabilize the decision-making process and to make the responsible ones accountable for their decisions and sanctioned for their misconduct. In the end, we summarize interesting points of the study, especially those related to the public accountability dimension of the case.

Development of the Czech transport policy after 1989

The position of the Czech Republic in Central Europe means that there are four main transport corridors – northern (Polish border), southern (Austrian border), eastern (Slovak border) and western (German border). After 1989, the main traffic flows have been rerouted with the western and southern direction gaining preference. Since 1990, we can also observe gradual decrease in demand for public transportation (reaching 48 % in 1997) together with an increase of demand for individual means of transport. Decrease in the use of railway

environmentalists, the progress of construction is very slow, sometimes it has stopped altogether. The MTC admitted that the date of completion would rather be the year 2016 and not in 2010 as planned (the money is lacking and the procedures take longer time than expected). According to the COE, the project is „megalomaniac“ (400 milliards Czech crowns are needed, which are not in the budget) and will take another 40 years to be finished.

transport developed in parallel. This situation is often defined as critical (in Prague there are 1.9 person per car) and in need of change.²

Two main actors reacted to these altered conditions and came up with proposals of adequate transport policy measures – the *Ministry of Transport and Communications* (MTC) and environmental nongovernmental organization specializing in transport issues - *Children of the Earth* (COE). In this part of the text we will concentrate mainly on the state (ministerial) transport policy. The comments and alternative proposals of the COE (and other environmental NGOs) will also be presented.

Since 1990, the MTC prepared three priority (or strategic) documents, which aimed at setting the conditions for implementing the above-mentioned new priorities and contexts into practice. These were (in chronological order) – *The Development of Motorway Networks up to 2005*, *The Transport Policy of Czech Republic* and *The Development of Transport Networks up to 2010*. I will go over these conceptual materials in turn as they provide the necessary context to the case study discussed in the second part of this text. They are important because they are at the very beginning of (often long and complicated) decision-making process leading to the motorway construction – and the way public should and could participate in this early phase of the decision-making process (assessment of the documents) is far from clear.

The development of motorway networks up to 2005

In 1993 the right-wing government passed a Decree No 631 on *Development of motorways and expressways up to 2005*, a binding document whose aim was to: „substitute for the old conception of transport development in the Czech Republic“ dating back to 1960s’ (see Patrik 2000). According to Law No. 244/1992 Col. every conceptual material submitted by the Government should go through the procedure of strategic environmental assessment (SEA). In case of this document SEA was not held. Therefore, Children of the Earth (COE) addressed a complaint to the Constitutional Court.

The Government then started „juggling with words“ – the MTC left the word „conception“ out of the document and claimed that the material was thus no longer conceptual. The COE interpreted this as a mere rhetoric that tried to hide the illegitimacy of the Government’s conduct.³ However, the Constitutional Court supported the Government’s interpretation – according to its verdict the material was not a new conception (which would fall within the scope of the Law no. 244/1992) but just an amendment of the conception from 1963. The COE unsuccessfully tried to reverse the case by filing new complaints.

This document was then used by the MTC as the basis for preparing other strategic materials – the motorway and expressway networks defined here have not been changed since. It was also an impulse for the COE to switch its priorities from informing the public about transport issues to mobilization and transport campaigns.⁴

² From the interview with the representative of MTC (the director of a department of transport policy), 17.4. 2002.

³ From the interview with one of the founding members of COE, April 8, 2002.

⁴ Ibid.

The transport policy of the Czech Republic

The Transport Policy of the Czech Republic is a general document that serves as a foundation material for strategic conceptions – it describes the current situation,⁵ sets the priorities and lists the goals to be reached in future, but it is not binding.⁶ The document was published by the MTC in 1998 and the Social-Democratic government adopted it in the same year. It focuses on the process of accession to the European Union and highlights the importance of environmental protection (combined with technological and financial feasibility of the construction projects).

The „pro-environmental“ and „pro-European“ rhetoric of the document is very strong. Among six basic objectives listed in the document, four are explicitly aimed at the environmental protection. The modernization of existing roads and railway infrastructure is to be given preference to the construction of new roads.

According to environmental initiatives, however, the practices are different. If we look at the way the money from the state budget is allocated and at the activities of the MTC and the Government in the field of transport planning, we can see that actually extensive construction of new motorways and expressways is given preference to the modernization of existing infrastructure, environmental protection measures and support of public and ecological means of transport (namely railways).⁷ The attitude of environmental NGOs towards this inconsistency is succinctly expressed in Mr. Patrik's words: „The rhetoric of the Ministry is European, but the practices are Eastern-European.”⁸

The development of transport networks up to 2010

In 1999, the Social-Democratic government approved the proposed *Development of Transport Networks up to 2010* as the priority document in this area. This document is binding and sets out the development plans for the individual transport sectors, their priorities, the schedules for the implementation of these plans, ways of financing etc. In the field of road transport, the construction of transport routes is continuing in line with two above mentioned government-approved development documents.

Before the document was endorsed, the SEA procedure was used. The Institute of Applied Ecology assessed two conceptual documents. (1) The proposal of the Ministry of Transport and Communications (the so called variant X: based on extensive construction of new motorways and expressways, and variant Y: European version of X variant, where some of the motorways and/or expressways were excluded as not needed) and (2) An alternative proposal of the Club of Transporters⁹ (the so called variant Z: ecological one, stressing the importance of railway transport and preferring modernization of existing motorways to the build-up of the new ones).

⁵ In 1998 there were 499 km of motorways, 304 km of expressways and 54 933 km of other roads in operation. Total road density in the Czech Republic is comparable with that of the EU member states (but there are shortcomings in terms of quality of transport routes).

⁶ Based on the version of the document published on the web pages of MTC – <http://www.mdcz.cz/>.

⁷ Even the ministerial official admitted that the current state of prices and taxes both directly and indirectly supports individual means of transport at the expense of the public and combined ones.

⁸ It is interesting to mention that it is one of few documents translated into English and published on the English version of ministerial web pages (other two priority documents mentioned in this text exist in the Czech version only).

⁹ The Club of Transporters (The Union of Czech and Slovak Transporters) is personally connected to the Children of the Earth – via one of its founding members.

The final assessment report recommended the ecological variant Z (in 60 % of planned motorway cases), then the European variant Y (in about 25 %) and just in few cases the ministerial variant X. The Ministry of Environment (ME), as the customer of SEA, then prepared its own recommendations that were partly based on the SEA report. According to the COE, this was a „soft“ ecological variant, a compromise between the variant of the MTC and the Club of Transporters.

At the same time, the procedure of public scoping was applied – there were two public hearings on which anybody could participate and several independent experts were invited (first one took place in the Chamber of Deputies in Prague, second one in Brno). Both proposals were published on the Internet, hundreds of copies were sent to NGOs, local councils and regional departments of the ME. They were made available to the wide public. Dozens of objections were recorded.

The whole procedure took more than half a year. In the end and after several unsuccessful rounds of negotiations between the MTC and the ME (on the level of directors of departments, deputy ministers and ministers themselves) the situation of disagreement remained – the MTC stuck to the variant X in all cases of motorway construction¹⁰ and the ME proposed the variant Y or Z. Therefore the Government discussed the controversial proposal – which is very unusual. As a result of this situation, there were separate discussions and votes on every planned motorway and expressway. The majority of proposals of the MTC were approved; just in two minor cases some of the alternatives advocated by the ME were included. In the end the proposal that the MTC put forward was passed nearly without any changes. The SEA procedure as well as the subsequent governmental discussion is interpreted differently by both the MTC and the COE.

According to the ministerial officials, the way the SEA procedure was handled can be described as above the standard.¹¹ The procedure of public scoping is not obligatory, its results are not legally binding but it was used to make the final proposal publicly legitimate. Anybody could participate – both expert and lay public was invited to discuss this document. All objections raised by participants were carefully read and some of them implemented in the updated versions of the proposal. It was a successful and transparent procedure, open to public scrutiny.

According to the COE, the SEA procedure was used in a formal and „emptied“ way.¹² The public debate was organized but without any real impacts and consequences. The alternatives and recommendations proposed by the Club of Transporters or the ME were ignored as well as the SEA report itself. The MTC observed the law but it was just formalism. The ME was not capable of forcing its opinions through.

¹⁰ There were areas other than road transport as well – water roads, railway transport, public means of transport etc. However, the disagreement in those fields was not so strong.

¹¹ Based on the interview with the ministerial official and on the article in the journal of the MTC: Předpoklady, východiska a prostředky ekologické proveditelnosti koncepce. Návrh rozvoje dopravních sítí v ČR do roku 2010 – procedura, metody a výsledky posuzování vlivů realizace koncepce na životní prostředí. (The prerequisites starting-points and measures of ecological feasibility of the Conception. Proposed Development of Transport Networks in CR up to 2010 – the procedure, methods and results of environmental impact assessment) *Doprava* 2/1999, p. 24-28.

¹² Based on the interview with one of the founding members of COE, April 8, 2002.

The participation of the public in the discussion: the role of the SEA

We can see that the discussion on these conceptual documents was not without problems and controversies. The actors involved – the Ministry of Transport and Communications, the Ministry of Environment and Children of the Earth in particular – disagreed on the definition of good public debate and good handling of the SEA procedure.¹³

In case of the first conception, the SEA was avoided. The document was defined as non-conceptual, even though there were strong doubts if this is the right interpretation or just a way how to omit the public discussion and get by the law.

In case of the second conception, the SEA was realized. The procedure was open to the public, it was transparent, the information was made quite easily accessible via Internet, it was also sent to many NGOs and offices in „paper“ form. But the Government was (according to many) not responsive – the recommendations made by experts and ME and objections raised during the process of public scoping and public hearings were not included. The procedure turned out to be (according to COE) a pure formalism – the document did not change. The result was the same as if the Government passed it straight away after it had been written at the MTC. „It was for nothing, it was a degradation of legal procedure. The Government laughed at the experts, at the public – at all those, who participated and came with reasonable and compromising alternatives,“ said Mr. Patrik. The representative of the ministerial department responsible for preparation of this conceptual material disagrees and narrates a different story: the story of full and above-standard participation of public in the discussion of the material and of responsiveness of the Ministry which included all relevant and justified objections (but it remained unexplained what is meant by relevant and justified).

This ambivalence of the evaluation of this specific SEA procedure and its results may sensitize us to the question: how public is public enough? Is openness of the procedure, accessibility of information and participation of public (or different publics) enough if it is not followed by responsiveness on part of those taking final decision, i.e. the Government? This issue will become even more complex once we take a closer look at concrete example - the case of construction of the bypass of city of Plzeň.

Histories of the bypass construction

The city of Plzeň is the center of the West Bohemian region. After Prague it is the second most developed region in the country (with a level of unemployment under the average and growing interest of foreign investors to build businesses in the region). Plzeň has always been an important city and an important transport nod in the area. The motorway D 5 connecting Prague, Plzeň and the German border was planned in the 1960s' and nowadays it is one of the busiest roads in the CR. Due to the busy exchange of goods between CR and Germany the D 5 is extensively used by long-haul transport companies – with the negative consequences for the health of inhabitants of Plzeň. Therefore, the construction of the bypass of city of Plzeň has soon become one of the priorities of Plzeň city council. But this seemingly noncontroversial project has throughout its 15-year-long history produced several conflicts – both on local and national level.

¹³ Other important actors involved were: the Constitutional Court (complaints of the COE against the decision of the MTC not to include the SEA procedure in the discussion of Development of motorway networks), the Supreme Audit Office, the Government, Institute of Applied Ecology and environmental NGOs other than the COE.

The main conflict line was – which variant of the bypass is the optimal one and thus should be chosen for construction? In the following text we will present variants of the bypass, arguments of their supporters and their histories. There were three main variants of the bypass:¹⁴

1. Northern variant, proposed by the communist government
2. So called K variant, proposed by the federal government and supported by local villages and ecological NGOs. Shorter, southern variant, situated nearer to the centre of Plzeň, cutting through two urban districts; in the end defeated.
3. So called S variant, supported by Plzeň municipality. Southern, longer variant cutting through the hill Val and passing near two villages southern to Plzeň; eventually, the winning variant.¹⁵

North versus south

The history of the bypass of the city of Plzeň dates back to early 70s but we can say it started in 1988 when the communist government approved the northern variant of the bypass. The main reasons for this decision were military interests – the position of the city near the German border and army presence in the southern part of Plzeň region.

The change of the regime altered the situation and the first controversy emerged. The media spoke of the „war of north against south.“ On the one hand there was a broad coalition of villages in the south, which tried to prevent the shift of bypass to their territory. On the other, there were planners, experts and some government politicians, who provided arguments for the change: the north was described as a worse solution imposed by communist regime, without any proper expert assessment and public debate. The main reasons for the change were transport, economic and ecological ones – the southern bypass was said to attract more long-haul transport whereas the northern variant was balancing on the edge of effectiveness. The northern bypass was also said to pose a threat to the popular holiday area and to damage the less urbanized, „wild“, forest character of the countryside. So as the time went by, with more and more expert reports favoring the southern variant, the hopes for the northern corridor of the bypass became unrealistic.

In 1991, 31 experts participated in a multicriterial analysis and recommended one of the variants – the southern K variant near two periphery districts of Plzeň. The negotiations between the ME and the municipality followed and the consensus about constructing this variant was reached. But the local health department official in his expert statement disagreed with the proposed variant. In the end of 1991, the Government finally passed a decree providing for the construction of the K variant.

The unity disappeared. The villages formed what can be seen as basis of future uncompromising opposing camps – those supporting the K variant nearer to Plzeň and those supporting the (emerging) S variant farther from Plzeň. Step by step, new coalitions had been

¹⁴ During the history of the case, approximately 50 variants and subvariants of the bypass were produced, majority of those, however, never left the tables of planners and designers. The Annex provide with quick information on chronology of the case.

¹⁵ In the following text, we will refer mainly to K and S variants, though we admit it is not „reader-friendly“. Occasionally, we will refer to „winning“ and „defeated“ variants.

established: there were politicians, NGOs and experts on both sides, but (in the end) more politicians were in favor of the S variant and more experts in favor of the K variant. The main question from now on was – Where in the south?

Where in the south?

Soon after the governmental decree was passed, the first petition was organized – the inhabitants of two concerned communities protested. The K variant was undermined. Maybe it is somewhere here, where the defeat of the K variant and the victory of the S variant has its roots.

In the very same year (1992) the new, EU inspired, environmental legislation came into force. New procedure – an environmental impact assessment (EIA) – was introduced.¹⁶ Another multicriterial analysis was done, recommending the S variant. This expert report was used as part of the first EIA on the bypass construction.¹⁷ The EIA evaluator assessed the documentation on both S and K variants and recommended the modified S variant.¹⁸ At that time many experts criticized the quality of documentation and assessment as well as the final recommendation (which was adopted by the customer of EIA, the ME). Later on, in 1997, this expertise would be stated illegal by the Supreme Court (as it recommended a variant substantially differing from the assessed ones). However, this expertise provided the basis for the change of governmental decree, which came in 1994 - the new territorial plan of Plzeň region was approved together with the S variant of the bypass construction.

This was also the year when the environmental NGOs entered the controversy – the inhabitants of the concerned villages (affected by the S variant) formed the Association for the protection of hill Val and they asked the COE to help them as experts in ecological campaigns and in the use of administrative law in such controversies.

In 1994, two concerned villages lodged a constitutional complaint against the way the governmental decree from 1991 was revoked and the S variant chosen. They pointed to the absence of the SEA,¹⁹ but the Court did not admit the complaint because of its late submission. Several expert bodies – including the Water Resource Office – disagreed and described the S variant as the worse one (posing a threat to the only source of drinking water in the area). In the end of this year, the administrative proceeding on territorial decision for the bypass construction began.

The coming period (1995-1997) can be characterized by growing resistance against the K variant which went in parallel with its continuing optimalization and improvement. The

¹⁶ Newly introduced laws were: law On the protection of nature and Landscape, No. 114/1992 Col. and law On the Environment impact assessment, No. 244/1992 Col. The second law mentioned can be seen as part of adopting an *acquis communautaire*. For more detailed analysis of the procedure of the EIA see another sub-chapter.

¹⁷ And it was the first ever EIA on motorway construction in the CR. Seen ex post, its „future“ failure (in 1997 it was stated illegal) can be attributed to the lack of experience and knowledge in the field of environmental expertise (from interview with EIA evaluator, 13.12. 2002).

¹⁸ The use of abbreviations – by politicians, experts or media - as names for the respective variants was confusing for many people. It was an important part of the expert and officialese discourse. The „S“ means „stabilized“, the K means „combined“. Throughout the history of bypass construction several subvariants emerged: SU („stabilized and modified“), KU („combined and modified“), SUK 1 and 2 („stabilized, modified and compromising“) and KUO („combined, modified and optimalized“). Still, we will refer just to S and K variants in this text.

¹⁹ In CR, every regional territorial plan has to – as a conceptual and strategical document – go through the process of SEA where public can participate and raise objections.

resistance against the S variant was also strong – there was a heterogeneous coalition of concerned villages, local politicians, public servants from the ME, environmental activists from the COE, the Association for the protection of hill Val, and many experts. Another round of expert reports (recommending both variants), political negotiations and environmental campaigns followed and many procedural and legal mistakes were made (on the part of the local planning and building control office, the Ministry of Regional Development - MRD, the ME and the Government).

In December 1995 the local planning and building control office issued a territorial decision, permitting the construction of the modified S variant. The time available for raising objections was deliberately cut down (from 15 to 10 days) by the director of the office. Later on (1997) the Supreme Court would declare this conduct illegal and make the decision void. During this year, a series of expert statements was issued, once permitting, once abolishing interference of the bypass with the so called important landscape element, the hill of Val. This legal „chaos“ would be also declared illegal by the decision of the Supreme Court in 1997. At the same time, 29 MPs from Social-democratic party lodged a constitutional complaint against the governmental decree from 1994. The complaint was not admitted.²⁰

The year 1995 also brought new strategies of supporters of the K variant. The members of the COE together with inhabitants of affected communities and other people from the whole CR bought small strips of land near Val, in the corridor of S variant. They formed a land trust – as landowners they had to be given the possibility to participate in every administrative proceeding affecting their property.²¹ This strategy was heavily criticized by the opponents – the municipality of Plzeň and the MTC. It was also used as a „preventive pressure“, protracting the decision-making process. However, this was rather inconsistent with the strong expert rhetoric of the activists (COE) and later on this would be one of the factors leading to their defeat.²² So once again, this was the year when many future failures and successes had actually begun (to be constructed by various actors and their actions).

In the end of 1996, the territorial decision on the S variant was issued (by the MRD). The bypass was to be situated further away from Plzeň with the motorway cutting through the hill Val. The supporters of the K variant – the COE and concerned villages - protested and took the legal action.

The following period of 1997-2001 brought the second EIA and two legal proceedings – two judgments of the Supreme Court. On the whole, it can be characterized by the growing „optimization“ of the K variant „on paper“ and by the beginning of a slow „materialization“ of the S variant „in the field“. By 1996/7 the planning permits for two motorway bridges (projected as parts of the S variant) were issued and in the end of 1997 both bridges were already built.²³ This (invested money, materiality of the bridges etc.) contributed substantially

²⁰ Social democrats were an opposition party at that time, lodging a complaint against the decree approved by the right-wing government of Civic Democrats (Vaclav Klaus) can be understood as a part of their political campaign.

²¹ The law On administrative procedure is not clear on the status of NGOs as participants in administrative proceeding, quite often the decisions about their „participant“ status is left to the discretion of public servants. Being a landowner means having the status of „unneglectable“ participant.

²² This strategy was inspired by a successful use of this tool during the campaign against motorway construction in Portugal. From interview with a leader of transport campaign in Plzeň (COE), November 11, 2002.

²³ The usual practice in CR means that big transport projects are divided into several smaller ones (each of them in need of special planning permit), which should make the decision-making process easier. The COE and other environmental activists criticise this policy as a „salami method“ – which make the way for construction of less controversial parts of the motorway and in the end it makes it nearly impossible to choose an alternative variant.

to the growing „stabilization“ of the S variant and to the growing „de-realization“ of the K variant.²⁴

On the other hand, the year 1997 also brought one big victory for the supporters of the K variant. The Supreme Court recognized their objections, made the territorial decision from 1996 void and decided that some parts of the decision-making procedure had to start anew (including a new EIA). The public opinion was also on the side of the K variant and its supporters. In this respect, the coming year 1998 was a year of big expectations, big hopes, mobilization of the public but also a year of big disillusion.

After the court judgment, special negotiations took place on who was to be the EIA evaluator. Finally, the MTC, the ME, the MRD, the COE and the project developer (Road and Motorway Directorate) agreed on Miroslav Martiš from the Institute of Applied Ecology as an unbiased expert. They also agreed to include all existing variants and subvariants into the assessment. This meant, however, that some of the variants were on the edge of comparability (some of them were introduced in early 90s, some of them much later). The supporters of the K variant made public and medialized their will to conform to any result of this independent expertise. The handling of the EIA procedure was above the standard – copies of drafts and final reports on documentation and evaluation were sent to hundreds of NGOs, local communities and to many institutions. Public scoping and two public hearings were organized, with hundreds of people participating in each of them. The evaluator assessed all variants and recommended the combination of the S variant (taking into account the already existing bridges) and the K variant – the bypass should not go through the hill of Val but nearer to Plzeň.

At the same time, the ME annulled (in accordance with the verdict of the Supreme Court) its former decisions on the „important landscape element“ – the hill of Val - and according to many lawyers the realization of the S variant was thus made legally impossible. However, the municipality of Plzeň and the project developer did not want to take other possible variants into account. Thus, a year later in 1999, a new territorial decision on the bypass was issued, again for the S variant. The deciding authority (MRD) did not accept the EIA recommendation, but it did not provide the obligatory explanation of its decision. In reaction to this, the supporters of the K variant took the legal action.

In 1998 there were also elections, both on the local and national level. The „opposition treaty“ enabled a minority social-democratic government (with support of Civic Democrats) and new mayor of Plzeň was elected. The new mayor also brought a new policy – the bypass construction was officially declared the priority of the city and a special team of experts and lawyers with access to the special budget was established. The city council prepared a special media campaign and the public opinion began to switch from supporting the K variant to blaming its proponents for deliberately delaying the construction of the bypass.²⁵ The rhetoric of time pressure and „ecoterorism“ was omnipresent. The question was no longer: Where in the south? Which variant is the best, the optimal? From now on it was: Which variant will be built most quickly?

In the case of Plzeň bypass this practice led to the emergence of several parallel „time-zones“ or chronologies. Some parts are already built by now (2003) and some parts still don't have the planning permit.

²⁴ One of the bridges was declared an illegal construction in 1999 (a court judgment).

²⁵ Several public opinion surveys on the bypass construction were launched in Plzeň (some of them customized by the municipality), from 1998 on a growing support of S variant can be observed. But on the other hand, the „suggestive“ character of questions is rather obvious. Those surveys were a part of a municipal strategy.

The winning variant

The stabilization of the S variant that began in 1996/7 and parallel de-realization and growing „hypothetical“ character of the K variant continued. In 1999, several planning permits for family houses in the corridor of the K variant were issued and by the end of the year, seven houses were built. Even though the court declared some of them (in 2001) illegal and ordered their demolition, it has never been done. In 2000, the municipality of Plzeň wanted to organize a local referendum on the bypass construction, to gain the public support and to legitimize its policy: „We are sure that the majority of people will support our longer variant of the bypass“, said the mayor (see Nedvěd 1999).

At that time, the debate got very heated and emotional („People in Plzeň are dying from cancer because of air pollution“²⁶, „Their situation is similar to that of soldiers with the Gulf syndrome“ – see Emmerová 1999). The public was mobilized on both sides. The petition on „Speed-up of bypass construction“ was launched in Plzeň. In a few weeks it was signed by hundreds of inhabitants including the Chancellor of Plzeň University, managing director of Škoda Plzeň Company or dean of the medical faculty. Everybody wanted the bypass to be built as quickly as possible but „not-in-my-backyard“.

All this was the dawn of defeat of the K variant, which was confirmed by the judgment of the Supreme Court in March 2001. The territorial decision for the S variant from 1999 was declared legal and came into force. The COE left the case, which was interpreted as a betrayal by the rest of the coalition – the concerned villages and Association for the protection of the hill Val.

The „final fixing“ of the S variant was done by the proposition of the special law On the bypass of Plzeň. This proposition had, in fact, anticipated the decision of the Supreme Court, which was at that time processing an appeal of the COE and local villages. Just 13 out of 166 MPs voted against the bill, pointing out that it was a nonstandard way of pushing through such a specific expert decision. It was described as unconstitutional because it collided with the right for private property. The Parliament should not, according to the opposing MPs, intervene in cases that fall under the competence of public administration and/or independent courts. In May 2001, the law came into force. It stated that the bypass is the „construction of public interest“. The administrative procedures' length was cut down by half and the expropriations were made easier.²⁷

In the beginning of 2002, the administrative proceeding for the remaining 4-km long part of the bypass (a tunnel through the hill Val) began together with the expropriation of the landowners who refused to sell their land to the project developer. In the same year, the construction of a prospect tunnel under the Val started – and contrary to the expectations many technological problems arose and led nearly to the doubling of the budget. Nowadays, the completion of the bypass is expected to come to end in 2006. Still, in spite of the special law, the legal actions taken by landowners (some of them may be willing to take the case to the European Court at Strasbourg) can prolong the whole process. However, this development seems now rather hypothetical, because the concerned villages have just arrived at an

²⁶ But the transit – which is blamed for the health impacts - account for 6-10 % of the total amount of transport going through the city (according to J. Petrлік from the COE and the statistics of Plzeň municipality). „The bypass will surely ease the situation but it won't solve the rapid growth in individual car transport. The public transport scheme is needed for Plzeň,“ said Petrлік. See Petrлік 2001. The preparation of a public transport scheme for Plzeň is currently one of the projects of the COE.

²⁷ The Social democrats (ČSSD) unsuccessfully tried to use this law for defining industrial zones as the projects of public interest and legalizing the „easy and quick expropriation“. The Civic democrats (ODS) were against.

agreement with the project developer – the latter has promised to implement some minor technical changes (planting trees along the roadside etc.) and the landowners have promised not to take the case to the court and to sell their property.

Actors, arguments and strategies

So the variant S is the winning variant at the moment and probably nothing can change the present state of affairs (maybe just the „resistance“ of hill Val and its geological profile). Its victory was being prepared during the whole course of the controversy and, by many actions and decisions of various actors. Before we present the possible understandings of this victory (and the defeat of the other side). We will summarize the actors of the controversy and their arguments.

Supporters of the K variant	Supporters of the S variant
<ul style="list-style-type: none"> •Municipalities of small villages near the „S“ line •NGO Children of Earth and other activists •Some experts (for example EIA in 1998) •Some journalists •Some authorities (motor patrol, water resource company) •Some citizens and initiatives (Association for protection of hill Val) •ME (not consistently) 	<ul style="list-style-type: none"> •Municipality of Plzeň •Political parties and parliamentary deputies •Some experts (for example EIA in 1993) •Some journalists •Some authorities (e.g. regional health officer) •Some citizens and initiatives •MTC, MRD •Project developer (Road and Motorway Directorate)

Arguments for the „defeated“ (K) variant	Arguments for the „winning“ (S) variant
<ul style="list-style-type: none"> •Less affects countryside, landscape •Less expensive and less technically complicated (shorter) •Can be completed sooner than „S“ (decreasingly valid) •Has more public support (up to 1998) •Recommended by experts (more and more) •Fits better to the needs of Plzeň •More „ecological“ (keeps the hill Val safe, does not pose a threat to the source of drinking water) •Already confirmed by the decision of the Government (1991) •Not too distant from Plzeň (would not isolate it) 	<ul style="list-style-type: none"> •Directly affects less people (permanent residents) •Less expensive and less technically complicated •Can be completed sooner than other variants •Has more public support •Recommended by experts (decreasingly valid) •Fits better to the needs and territorial plan of Plzeň •More „ecological“ (no importance of the hill Valík) •Already confirmed by the decision of the Government (1994)

<ul style="list-style-type: none"> •More real(istic) than „S“ (legally, technically – decreasingly valid) •Better traffic parameters (more secure) •The „S“ variant was not selected by proper administrative procedures 	<ul style="list-style-type: none"> •Distant enough from Plzeň •Has no real(istic) alternative if it is to be completed in time •It is a result of many compromises
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These tables show well one interesting and important feature of the bypass controversy – the actors involved as well as their arguments were nearly the same.

Concerning actors, there were municipalities, journalists, citizens' initiatives and experts on both sides. The story began as a conflict between municipalities: a big city versus small villages. Only later another possible stories emerged: politicians versus experts, two NIMBY groups, „ecoterorists“ versus „motorway lobby“, two groups of landowners etc. In the course of the controversy, the K – defeated – variant had been supported mainly by experts and ecological activists who were its „media icons.“ And the S variant had been supported mainly by politicians and public servants.

Concerning arguments and strategies, both parts mobilized various public interests, both had strong public and media support (but in different phases of the controversy), both emphasized ecological aspects as well as time and technological feasibility of the variants. However, during the development of the controversy important differences had been constructed. Step by step, the S variant became the real(istic), feasible, ecological, caring for the health of people, responsible and compromising one and the K variant became optimized, expert, but unreal(istic), uncompromising, taking care of nature (and not of people). And these qualities of the winning and the defeated variant were attributed to their respective supporters. The K variant lost not because it was worse (inherently, from the very beginning) but because it had become so as the controversy developed.

Possible understandings

So how to understand this growing and strengthening differentiation of the variants, the victory of one and the defeat of the other? We will present two explanations here. One about the tension between expertise, politics and common sense that finally led to (calling for) the „purely“ political solution and another about the victory of the S variant and the associated „failure“ of expertise and ecological activists.

Expertise, politics and common sense

The case of the bypass construction has a strong political dimension: it influenced local elections in Plzeň in 1998; it led to several legislative efforts, proposals of amendments and a new law. It was discussed on regional level – at the local council of Plzeň - as well as in the Parliament and by the Government. The president also entered the discussion when he vetoed the law On the bypass of Plzeň, because he interpreted it as unconstitutional.

The expert dimension was also very strong. Between 1990-2000 twenty expert reports and statements of different status and quality were produced and mobilized by both sides of the conflict. The majority of these reports were described as controversial by various actors. Many independent experts were involved and there was a lot of allegations of partiality on both sides. The former Minister of Environment, Martin Bursík (1997) said: „I'm not

promoting any of the variants. (...) it is up to experts to say, which way the route around Plzeň will take.²⁸

But there was a certain tension between these two dimensions. The experts (and their reports) often disagreed and the politicians were under pressure of their voters. In the end, one of the important solutions was reached by political means - via adopting a special law in the Parliament.

„Yes, the final decision on the variant was political and it could have not been otherwise“, said the former mayor of Plzeň (1998) Zdeněk Prosek. „The experts agree that both variants are very similar in their projected consequences. Then the decision-making just can't be based on expertise! (...) The motorway is always built at someone's expense; it always damages someone's interests. But can the interests of few hundreds of inhabitants of Štenovice, few frogs and trees outweigh the interests of thousands of inhabitants of Plzeň?“ concluded Prosek (see Brezina 1998).

So one possible understanding of the whole story could be that in the end it was the number of people concerned which provided the basis for decision. At the first place there should be the health of 180 000 inhabitants of Plzeň. Plzeň scores high in the incidence of cancer and chronic respiratory syndroms. The politicians had to weigh the arguments carefully. The health of people was given preference over the (maybe) unique ecosystem of hill Val. According to many, this was neither a political nor an expert decision, but a common sense one – for everyone would prefer the value of health (see Frank 1999).

But the common sense was also mobilized to support the opposite view – the K variant nearer to Plzeň. Brezina, known Czech journalist who is usually very critical of environmental NGOs, visited both places, both locations of proposed variants and he concluded: „From the common sense point of view, the S variant is a complete nonsense, a load of rubbish. The motorway, which could run through a flat country, makes a big curve and cuts through the only hill in the area“ (See Brezina 1998).

What does this all tell us about the bypass controversy? First, that common sense is defined as something outside (and preceding) expertise and political negotiations. Certain things are given – value of health or type of countryside. But more importantly, this aspect of the controversy should sensitize us to the importance of local knowledge and of „materiality“ (of the bypass construction). It is not only about bridges and family houses being built, it is also about the importance of simply „being there“, „seeing the countryside“ and „walking the ground.“ The value of certain expertise was heavily undermined when it came out that the author had never visited the place. Photos, maps – pictures in general – and visits to the field were an important strategy which both groups used to convince others and to enroll new allies.²⁹ Supporters of both variants organized visits (sometimes even in a helicopter) to persuade politicians, public servants, journalists and foreigners of „their truth.“ Each group has its „best views“, their best time of the day, when the sun shines exactly in a way to make the best photos of the hills, curves and vistas. Visiting the countryside and locations of bypass with a supporter of the S variant meant seeing the hill of Val from such a view that it did not look like a hill at all and vice versa. But we would not say that any of these „photographical“ stories was less convincing and more biased than the other. On the contrary – they all have their „objectivity.“

²⁸ See Ministr zažil na vlastní kůži střet názorových skupin (Minister experienced the clash of opposing interest groups), ČTK, *MF Dnes*, October 12, 1997.

²⁹ Another important discourse was the quantification – of impacts, of differences (or similarities) between the variants.

„Failure” of expertise, „failure” of activists

There is yet another thing which is important about the „expert“ and the „political“ in the bypass controversy. As it was already mentioned, many expert reports were produced.³⁰ But according to many, the „final“ decision was the political one, disregarding the (majority of) recommendations of experts. *Experts failed, we have to decide politically*, this was the „motto of the story“ expressed more or less explicitly in many political speeches, newspaper articles and in many „practices“, such as the proposition of law on the bypass or building of the bridges.

All actors emphasized the necessity of a solid expert evaluation and knowledge and put it into a sharp opposition with political forces and strategies (although the expertise was political through and through from the very beginning – namely EIAs). But the COE and supporters of the K variant in general were much more principal in this: playing down the NIMBY motivation, distancing themselves from activism, stressing the expert views as decisive and stressing the nature and natural non-humans as represented by experts. The other side was much more openly political: emphasizing the relative size of the populations affected, accepting different opinions of experts as a „normal thing“ and stressing humans (and above all, their health).

As time went, the demand for a final decision increased. Because the growing number of expert reports did not lead to any clear solution, the purely political decision appeared to be the only way of closing the controversy. Paradoxically, this disqualified political actors par excellence, namely the activists who had been systematically insisting on necessity to decide on the purely expert basis.³¹

And what about the „failure” of expertise? Throughout the years of the controversy, experts gained a lot of experience; their reports became more elaborate, more accurate. They were able to find more and more subtle differences between the variants and to provide stronger evidence for the K variant. However, due to many factors (namely the „materialization“ of the S variant) they were also elaborating and promoting more and more un-real (hypothetical) variant.

So the politics and expertise were separated (at least on the discursive level), but the result of such a „division of labor“ led to the inflation and weakening of expertise on the one side and to illegitimate political decisions on the other.

Practices of public accountability

In the preceding chapter we tried to present a possible explanation of the ending of the bypass controversy – the victory of the S variant and of its supporters, the defeat of the K variant and the “failure” of expertise and ecological activists. And how to understand the associated failures and successes of public accountability procedures? We will try to respond to those

³⁰ In 1990-1991 there were 10 expert reports (8 supporting the K variant, 2 supporting the S variant), these were used as basis for the governmental resolution in 1991 (K). In 1992-1994 there were 9 expert reports (4 supporting the K variant, 3 supporting the S variant one and 2 disagreeing with the S variant). These were used as a basis for the revocation of the governmental resolution in 1994 (S). And in 1998 the last expertise was prepared - the EIA recommending the combination of both variants, but (in the most controversial part of the bypass) actually the K variant.

³¹ This expert rhetoric came together with (in this expert frame „unaccountable”) periods of „hard-core“ activism, e.g. buying strips of land as a strategy to enter and block the administrative proceedings.

questions by presenting some interesting aspects of the above-described history of the bypass construction.

Before the construction of a motorway bypass actually begins there is a long and rather complicated decision-making process. And quite often it is also a controversial process, because there is a lot of money, time and energy involved. Motorway bypasses have deep, long-lasting and in fact irreversible impacts on the region, on the countryside, on nature and people.

In CR, the decision-making process is divided into several administrative procedures – a territorial plan (in case of a regional transport construction approved by the Government), a territorial decision (a responsibility of a local/regional planning departments and the MRD) and a planning permission (responsibility of a local planning and building control office).³² These are also parts of a decision-making process in which public, both lay and expert, can and in fact should participate. The responsible decision-making authorities are politicians and civil servants. The same three procedures are also the main procedures that „translate“ public accountability – the occasions and situation where the public gets informed, can participate, can resist, can scrutinize the process. The way this process, including public debate and expert assessment, is handled contributes to the legitimacy of the decisions (or lack of it). These are formal procedures, often obligatory, defined by the law. In case of the bypass construction, they were more important than informal procedures and even environmental activists used them as their main tools and strategies, much more than e.g. mobilization of public via demonstrations, blockades or petitions.

So, in the following text we will also look closely to those aspects of administrative decision-making process that we see as important attempts of making it „accountable“ (to the public and/or via public).

EIA: combining expertise and public involvement

As we already mentioned, the EIA procedure was introduced with the new EU inspired environmental legislation in the beginning of the 90s. There were two EIAs during the bypass controversy – one in 1993 and second in 1998. But we can also say that there was just one, though long and complicated, process of EIA, which began in 1992 with the introduction of the procedure and ended in 1998.³³

According to the Czech legislation, the EIA is obligatory as a procedure – as a part of administrative proceeding on every transport (and other) construction project affecting the environment. It is a prerequisite for the decision-process to continue – but its results have the status of recommendation only.³⁴ The important characteristic of the EIA is that it is a combination of expertise and public participation in the decision-making process.

³² And as we tried to show in the chapter 2, the course of such a concrete decision-making process is influenced by the (lack of) debate on the transport policy priority documents.

³³ This is the interpretation of the experts involved.

³⁴ The law describes the phases of the EIA: preparation of documentation, assessment of documentation, public review of both documentation and assessment (e.g., public hearing), recommendation. The public scoping which precedes preparation of documentation is not obligatory. The law lists the areas to be evaluated and defines who can prepare the documentation and who can assess it: the ME is the only institution that can grant qualified experts (evaluators) with a special license. Author of documentation and evaluator are both paid by the project developer, evaluator is chosen by the customer (in this case the ME). The usual lengths of the whole procedure is 6 – 12 months.

According to its proponents, the EIA should be a counterbalance to the decisions based purely on political power; it should legitimize administrative and political decisions. It is a new form of governance. The EIA procedure should provide the mutual control of experts and (the possibility of) control of public over the whole process. It should form a pressure on the planner and/or project developer to come to terms with its recommendations and evaluation especially in situation when they are not followed (they have to give the reasons why it was not followed). This is how it should be. But the EIA on bypass construction was not a standard one in many respects.

In 1993, it was the first EIA on a motorway construction to be held in CR and it suffered from all possible problems of the „pioneer“ work. The bypass project was already controversial at the time. The evaluator recommended the S variant. The EIA has been openly politicized, it was used to revoke the governmental resolution (1991), which was in favor of the K variant. It was criticized by many experts and authorities for being biased and of low quality (unreliable methodology, absence of empirical research and field observations).

The context of the second EIA (1998) was also nonstandard – it was initiated by the judgment of the Supreme Court (1997). Special negotiations were needed to select the evaluator and the whole process was medialized. Contrary to the first EIA, the assessment was much more empirical, detailed and reliable, providing quite strong evidence for the K variant (describing it as safer, more ecological, not posing threat to the only source of drinking water in the area etc). According to the evaluator, the assessed documentation prepared by the general planner showed signs of bias (with the S variant being favored). There were even calculation mistakes and the wrong results were used to support the S variant. The evaluator recommended the combination of S and K variants.

Two public hearings were organized - 400 hundred people attended the one in Plzeň, mainly supporters of the S variant. The debate was very heated and the author of the documentation did not reply to any of the questions and objections, including the one about calculation mistakes. The articles in local media described the evaluator as not paying attention to the reality (the time unfeasibility of the K variant) and accused him of being unconcerned about the health impacts posed by the nonexistence of the by-pass. The evaluator reacted by writing an open letter.

The MRD did not follow the recommendation, issued a territorial decision on the S variant, but did not give the reasons why. Several environmental NGOs wrote an open letter to the Minister of Environment asking him why this recommendation was not followed. According to the supporters of the K variant and many environmental NGOs, the conduct of the MRD and project developer was unaccountable (not giving reason why the recommendation was not followed, not answering questions at the public hearing). And it was in sharp contrast with the good handling of the procedure and successful involvement of public in the whole process. This contrast led to the even bitter disappointment of both the experts involved (the evaluator's team) and supporters of the K variant.

Both EIAs were the most important expert reports mobilized in the controversy, the „big“ ones, the new ones, the European ones. They were also the procedures where the public participated and was given the possibility to raise objections and scrutinize the decision-making process. However, its results are regarded as problematic and difficult to evaluate. The link between the procedures, the way they were handled, and the illegitimacy of the (territorial) decisions that were based on them is far from clear. On the one hand, we could speak of a successful implementation of a new procedure, of good expert assessment and good public debate. The success can be further enhanced by the difficult conditions under which the procedure was handled – the complexity of the project, the lack of experience, the

politization of the case, its medialization, various pressures. On the other hand, we could (similarly to the way the SEA on priority transport policy documents was described) speak of the failure of the procedure, of decision-making authorities ignoring the public, both lay and expert. So on one hand, both EIA procedures are interpreted as helping to legitimize decision for the S variant (though in 1993 this meant following the recommendation and in 1998 it meant not following it). On the other hand, they are interpreted as part of the illegitimacy problem of the decisions. Both interpretations can be found in newspapers and other commentaries and both were expressed in many interviews.

Going to court: Reversing the irreversible

During the controversy two basic types of legal proceedings appeared: four constitutional complaints (three of them against the governmental resolution from 1994 and one against the verdict of the Supreme Court from 2001) and two lawsuits protesting against the territorial decisions on bypass construction for the S variant (in 1996 and 1999). All of these legal actions, except one (the constitutional complaint of social-democratic MPs), were taken by the supporters of the K variant. Taking the case to the court was one of their main strategies.

These two types of legal proceedings represented two different types of problematic issues. The constitutional complaints were meant as a protest against the illegal conduct of the Government when revoking the resolution on the territorial plan and the bypass construction in 1994 (and switching from the K to the S variant). The objections were just procedural– the SEA was not organized, the public was not informed about some changes of the territorial plan etc. None of these complaints was admitted by the Constitutional Court; the reasons given varied from the late submission of the complaint to the absence of violation of Constitutional rights in the case, but the majority of them were of a formal nature.³⁵ If any of them were successful, this would mean that the decision-making process on the by-pass construction would have to start completely anew. The last complaint against the governmental resolution from 1994 was lodged in 2000 in a hope that the court would abstract from other than procedural aspects of the case, to behave like an „ideal“ Constitutional Court.

The strategy of the two major legal proceedings being heard at the Supreme Court was different. Procedural mistakes and illegal conduct of public servants were used mainly as a „key“, which would open many other issues. During both judicial proceedings there was an obvious tension between the procedural and substantive aspects of the case.

In 1997, the Supreme Court was processing the lawsuit of the COE and local villages against the territorial decision (of the MRD) for the S variant of the bypass. The Court admitted nearly all objections – the judge himself spoke of a judicial precedent, a real „break-through“ in the practice of administrative legal proceedings. He made the territorial decision void, taking into account not just the procedural mistakes but also „practical“ and „material“ impacts of the illegal conduct. The suitors (supporters of the K variant) were successful in including the substantive questions into the proceeding. The COE were given the right to represent and defend the public interest and not just a right to protest against the violation of their procedural or constitutional rights (namely the protection of private property). The major part of the hearing took place at a round table with a relief model of the bypass in its center. The hill of Val, forests, respective variants, their development and their impacts – all these actors were included in the judicial proceeding. And they contributed to the final verdict. But such a style of the proceeding and such a judgment did not come completely „out of the blue.“

³⁵ From interview with a founding member of Association for the protection of the hill Val (January 7, 2003).

It was a period (1994-1998) of several successful legal actions, where ecological NGOs and local villages won, following more or less the same scenario – using the procedural mistakes of public administration to point to other injustices and substantive problems of environmental controversies. This verdict initiated the need for a new EIA procedure. But as we have seen, the expected „reversing“ impacts of this judgment did not come true. The verdict did not provoke a change of opinion, it did not make the K variant more „real(istic)“.³⁶

In 2001, the Supreme Court was hearing the same objections being raised against nearly the same territorial decision. However, this time the judge let the suitors defend just their procedural and constitutional rights, nothing more. And contrary to the first proceeding, he let the project developer and the municipality of Plzeň participate in the proceeding as the so called side participants. This time it was them who were successful in bringing in their version of the story, their version of „substantive“ and „practical“ aspects of the case. The project developer spoke about the money and time invested, about bridges being already built. The municipality spoke about the inhabitants that could not breathe. None of the objections of the suitors was admitted – the judge pointed to the impossibility of „never-ending“ reversibility, to the impossibility of completely new starts. The territorial decision for the S variant was thus declared legal and came into force. This was one of the most „visible“ ends of the controversy. On a press conference the COE officially announced their withdrawal from the case, using the Indian metaphor of „burying the hatchet“ The winners (the municipality) decorated their lawyers for bravery. The ceremony was performed as the analogy with the battle of Stalingrad.³⁷

But similarly to the results of the EIAs, the evaluation of these legal actions and their impact is not easy and straightforward. Supporters of the K variant used them to defend the „right“ thing, the nature, (their) better variant. The defendant side was (more) openly defending its interests – time and money invested, built bridges. Both parties were defending various public interests (right to information and right to participate in the decision-making process, good environment, the value of health etc.).³⁸ Both parties experienced the winning and the losing of the case. But whereas the victory of the S supporters (in 2001) was quite easily „accountable“, interpretable as another type of stabilization of the variant, the victory of the K supporters was much less „accountable.“ Even worse, later on it would be described as just one more example of their „obstructing“ and delaying tactics.

Special law on bypass: Stabilizing the reversible

In 2001 the Parliament passed the Law On bypass of Plzeň (No. 168/2001 Col.). According to its proponents, four MPs from Plzeň, the aim of the bill was to „prevent casting doubts on the decisions of the executives.“³⁹ The length of proceedings was cut by half and the procedure could not be interrupted. Expropriations were made easier – if the landowner and the project developer did not reach agreement in the limited period of time, the owner would be

³⁶ Our re-construction of the legal proceedings comes from the study of verdicts, lawsuits and interviews with leader of the transport campaign (COE, November 11, 2002), founding member of Association for protection of hill Val, 7.1. 2003) and civil servant responsible for planning permits (the municipality of Plzeň, November 11, 2002).

³⁷ The rhetoric of war – invasion, trench warfare etc. - was an important part of the media discourse.

³⁸ This was typical of the whole controversy, not just for the legal proceedings. Both parts defined themselves as representing various public interests (health, good environment, regional development etc.).

³⁹ The MPs were from all parliamentary parties: Civic democrats - ODS, Social democrats - ČSSD, Christian democrats - KDU-ČSL and Communists - KSČM). See Šídlo (2000).

expropriated (in the name of public interest) and the refund would be based on expert estimate. Environmental NGOs and the deputies who voted against the bill pointed out that it was the wrong handling of procedures by public administration and executive representatives which caused the delay and gave opponents a reason to complain.

But there were other proposed amendments directly inspired by the controversy over the bypass construction and by the resistance of environmentalists. The very same group of MPs from Plzeň has already tried to solve the construction of the bypass in 1998, when they put forward an amendment of Act No 114/1992 On the protection of nature - which would reduce the rights of public to intervene and participate. The countryside would be defined as part of land on which nothing has ever been built. Civic associations would not be let to participate in those administrative proceedings that had been proposed by the project developer (i.e. in the majority of cases). The amendment was aimed against the „dictatorship of ecoterorists“. It was rejected.

The amendment of the Law On administrative procedure was also aimed at reducing the possibility of participation of NGOs in the administrative proceedings. It was explicitly aimed against „green rebels“, „ecological nomads“ and „professional demonstrators“ (see Kholová 2001). The role of the public was defined mainly as one of control and consultation (not participation and effective influence). „The phase of democratization is over. The rights guaranteed by this law are being misused by activists.“, said a proponent of the amendment, Stanislav Gross (Minister of Interior; *Ibid.*). The opponents claimed that if the proposal was passed, the decisions about who can participate and who can be informed would be left to the discretion of public/civil servants. According to environmentalist and the majority of commentators it would encourage corruption and produce asymmetries and injustice. So far, the law has not been amended.

These governmental and/or parliamentary⁴⁰ attempts were criticized by environmental NGOs and the majority of media. In his article called „Motorway bypass or bypass of democracy?“, Martin Schmarz commented: „On few kilometers of the bypass of Plzeň, democracy does not apply. (...) The legislators try to usurp the executive and judicial power and they shield themselves with public interest. They try to rule out the regular process of political negotiations. (...) Czech legislators are not capable of seeing the limits of their own „democratic“ power. This Chamber of Deputies is trying to grasp all power in the state, it is ignoring citizens, the public“ (see Schmarz 2001).

We do not mean to show the „bad“ behaviour of Czech legislators or executives. We wanted to point to the fact that a legal tool – a special law – was used to fix, to „stabilize“ one of the variants being discussed. At the time when the law existed as a proposition only, when it was discussed in the Parliament, it was interpreted as a nonstandard but necessary tool that would stop the „never-ending“ debate on variants. It could be interpreted as an expression of a „trade-off“ between the accountability and effectiveness (time and financial) of the decision-making process. So the proponents of this special law and the supporters of the S variant were still afraid of the „reversibility“ of the controversy, as if the K variant could have posed a threat (in spite of the already-built houses and bridges, despite the territorial decision). It was presented as a useful, powerful tool by some and as a violation of the Constitution and a threat to democracy by others.

⁴⁰ Only the proposed amendments of law On administrative procedure was supported by social democratic government, other two (the law On bypass of city of Plzeň and proposed amendment on law On protection of nature) were not supported – the Government disagreed with the Parliament.

Seen ex post, it was just an „echo“ of the defeat of the K variant. It was (and still is) neither useful, nor powerful. Even the supporters of the winning variant admitted that the special law was good for nothing, may be just as a declaration of political support expressed by the Parliament.⁴¹ In a way, the special law (and other propositions of law amendments it inspired) was partly used to substitute for (accountability) procedures that were not successfully carried out during the decision-making process. If the court proceedings, instigated by the supporters of the K variant, were (unsuccessfully) used to reverse the decisions, than the special law was – with no „real“ effect – used to prevent the potential reversibility of the process. These legal tools and procedures were part of the problem and not its solution.

Conclusions

The construction of the bypass of Plzeň was (and still is) a complex socio-technical controversy. There were many issues at stake – competing public interests, the status of expertise and the legitimacy of political decisions.

All actors of the controversy, mainly politicians and activists, defined themselves as representing the public and its „real“ concerns. And the actions of nearly all actors and institutions were regarded as controversial – the ecological activists finally became the „bad guys“ deliberately delaying the construction, the legislators were said to interfere in the sphere of executives, the politicians were accused of a „machiavelistic“ use of power, the public servants were described as complicating the whole process by making many procedural mistakes and the experts were often accused of being „out-of-reality.“

An interesting dimension of the controversy was the rather strong tension between the expert and the political, leading to calling for more (objective) expertises on the one side and for quick and definitive political solutions on the other. The adopted strategy of a „clear-cut“ division and the discourse of „purism“ finally led to mutual weakening of expertise and politics (inflation of „futile“ expertise and illegitimate political decisions).

Another, and probably the most important, tension was the contrast between the apparent openness of the controversy „on paper“ and its gradual closing „in the field.“ The „materialities“ of the bypass construction – building of bridges and family houses, „walking the ground“ - turned out to be one of the main „winning“ factors (and strategies).

The features leading to the victory of one of the variants were not something inherently present in the variant, though in a way they „were“ there from the very beginning of the controversy. They have been constructed during the development of the case, in the course of the decision-making process and by practices of the actors involved. The K variant lost not because it was worse but because it had become, it had been made so.

During the controversy, the public accountability was not thematized or problematized *per se*. However, there were problematizations of the good handling of public debate, of public participation, of the influence of such an involvement on the decision-making process, of actors' responsibility and of sanctions for their misconduct. The bypass controversy was medialized on both the local and national level (with hundreds of articles written and several TV documents made). It was discussed in many different arenas – in periodicals, at expert conferences, in the Parliament, in municipalities and in the pubs...

The accountability of the decision-making process of the bypass construction was „translated“ by two types of practices (EIA and legal tools). When looking at the ways they were handled

⁴¹ This was mentioned in nearly all interviews.

and their results used, we could describe them as both a failure or a success of public accountability: as ignoring the public and expert recommendation or as introducing new accountability procedures, providing useful learning process and good public involvement. The majority of actors involved interpreted them as having these ambiguous effects. These procedures were not the solutions of the controversy – actually they were its important „fuel.“

The victory of the S variant – and the end of the controversy – was perceived with a similar mixture of contradictory feelings. „The longer we have been optimizing, the more optimal nonsense we finally produced“, this was the succinct expression of the opinion (and disappointment) of many experts involved (see Janková 1994). „The more legal actions we were taking, the more we got lost in (our own) intricacies of the law,“ this could be the analogous sigh of the second „defeated“ group, the activists. Since they were too much concerned about expert and legal aspects of the controversy, they did not pay enough attention to the „practicalities and materialities“ of the decision-making process, to the „stabilization“ of the S variant.

The bypass controversy began under the communist regime and many actors, new procedures and laws entered its course at different times and in different contexts. The possibility to understand and control the process and impacts of one's actions was thus undermined. However, this is not a special feature of the bypass controversy. On the contrary, it is actually typical of many cases and controversies because people rarely have control over the whole process and the information they get is often biased, contradictory and simply too numerous. Nevertheless, certain things may be more visible in this „extreme“ case. After all, it has been an influential and precedent one.

Although the victory of the S variant sometimes looked triumphant (the analogy with the battle of Stalingrad, „decorating“ municipal lawyers for bravery) it may soon become a Pyrrhic victory. The bypass will not solve all the problems that the municipality successfully attached to it when trying to persuade the public. It will „attract“ just around 6-10 % of transit and the city center will still suffer from the heavy transport. The municipality is slowly admitting this. Maybe the coming years will produce yet another versions of the story, new losers and new winners.

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Abbreviations used

MTC – Ministry of Transport and Communications

ME – Ministry of Environment

MRD – Ministry of Regional Development

COE – Children of the Earth (environmental organization)

CR – Czech Republic

EIA – Environmental impact assessment

SEA – Strategic environmental assessment

The public controversy over the Praha-Malešice incinerator: A case of household waste management

Zdeněk Konopásek and Tereza Vajdová

The household waste incinerator in Praha-Malešice: An overview

The case of the Praha-Malešice (PM) household waste incinerator has its broader context in policy processes and measures related to the entire field of waste management. That is why we begin with a brief characterisation of the basic features and problems of the Czech waste policies.

Then we focus upon the process of preparation and approval of the key strategic document called Plan of Waste Management. Because the document was submitted to the SEA (strategic environmental assessment) procedure, we can take the advantage of an insight into one formal public accountability mechanism applied at a very general level, but as such directly related to the issue of the PM incinerator. We discuss complicated relationships between formal and/or European models and standards and actual practices and strategies.

The story of the incinerator itself begins in the communist past: the decision to build the facility was made in 80s. Already at that time, before 1989, local people appealed against the decision and partly formally succeeded: it was decided that the incinerator should have better method of cleaning. But this court decision was ignored in practice and the incinerator was built according to the original plan. Local initiatives and some local politicians attempted to revert the construction by referring to administrative errors in the construction permit procedure. Again, they were partly (in formal terms) successful: the incinerator was an illegal construction for some time and obtained the permit only afterwards, retroactively, when it was practically completed (1997). In 1998 the incinerator was put in operation and in 1999 it introduced a new technology thanks to which the emission of dioxins does not exceed the European limit. Today the controversy is over. Local people do not protest and specialised activists left the case.

How it came? In 1996, an NGO called Children of the Earth (COE) entered the case. COE framed the controversy above all as part of the general struggle against dioxins. Consequently, they relatively played down some more local motives of resistance (noise, visibility, other pollutants, general household waste management strategy for Praha). The struggle against the PM incinerator was, above all, part of the more general and important struggle against dioxins.

As it is clear from what is written above about the introduction of the anti-dioxin technology, COE actually succeeded with their anti-dioxin campaign. The fear some local people had of the incinerator helped to promote this campaign. On the other hand the dominant framing of the case could have prevented other definitions of the situation from emerging – such, that could give local inhabitants more opportunity to become strongly and actively involved. Once the battle concerning the dioxin legislation was over, the main frame of the initiative dissipated, lost its urgency. The incinerator itself thus became a “non-issue” for COE who turned their attention and energy elsewhere. The other activists, i.e., the very few local residents ever concerned with the incinerator, remained without a vision, workable aims, and competencies as well as substantial influence on the development. Despite the substantial improvement of dioxin emissions, neither COE nor local activists consider the case as successful.

In this case study we describe the public controversy over the Praha-Malešice (PM) incinerator.

First, we provide a brief overview of broader contexts. We mention legislation as well as policy documents and we provide information on waste management in relation to the environmental situation in the country. Special emphasis is put on waste as a public and political issue. Policy and deliberative processes related to the Waste Management Plan are discussed.

Second, we tell the story of the PM incinerator, from its beginning to the present days. We characterize the main actors and strategies involved. We explain what remains controversial even after the incinerator has been completed and put into operation. Throughout this account we try to keep different perspectives relevant and meaningful, although some of them contradict each other.

Third, we mention in what ways the presented case exemplifies the culture of public accountability in the Czech Republic – its discourses, its forms and procedures, its chances and pitfalls. We also discuss a couple of aspects of the case that might be interesting for further comparative work. A list of relevant websites and other sources is appended, as well as a list of interviews and of references.

Data used

Generally, we used the following resources for our empirical work:

- Interviews with the main actors of the case;
- Czech legislation on waste, air pollution, and the protection of environment;
- Strategic plans and evaluating reports;
- EU documents and materials related to the issue;
- Web pages of NGOs, companies and state administration bodies;
- Newspaper archives;
- Other documents such as bulletins, posters, official correspondence, court and administrative decisions, and research reports.¹

We made 14 in-depth research interviews with representatives of the main interest groups and administrative bodies that participated in the several-years controversy: ministry, municipalities, activists-environmentalists, civic initiatives, management of the incinerator, and experts. The interviews were tape-recorded and supplemented by extensive textual summaries and excerpts.

It appeared that it was not easy to trace relevant people and documents. The case started before 1989 and is currently considered “closed” by most actors. Many people changed offices and positions, some died, many did not remember well, some important documents appeared to be missing.² Also, a few interviewees have expressed worries about possible misuse of the data or about possible negative consequences of being interviewed and we had to carefully explain our mission and privacy protection principles.

¹ We would like to thank the NGO Arnika (formerly part of COE) who gave us access to their unique archives on the Malesice incinerator case. This was a crucial source of data, without which the case study could not have been written.

² For instance, the current director of the incinerator claims he has no documents dated prior 1997 when he came to office (but not to the incinerator) - he said, during our interview, he was not able to check our question about problems with the permission permit in early 1990 with the help of his entire archive.

Waste management policy in the Czech Republic

The case of the PM household waste incinerator should be viewed in the context of the waste management policy in the country. That is, above all, in the light of the general strategic policy documents, relevant legislation, main problems.

The overall situation and strategic documents

Nowadays, there exist a number of hierarchically ordered normative documents concerning waste management policy in the Czech Republic. All of them take European documents such as Agenda 21, EU Sustainable Development Strategy and the 6th Environment Action Programme as a key frame of reference. They also refer to some more general national policy documents that have to do with the process of EU accession (National Development Plan, The National Programme for the Preparation of EU Membership, The Approximation Strategy for Environment). These general documents are complemented by a series of EU directives and related implementation plans concerning particular fields of waste management, for example landfill of waste, waste packaging, hazardous waste, or waste incineration. All of those are publicly available (i.e., placed on the web site of the Ministry of Environment and of the Regional Environmental Centre).

One of the most important strategic documents in the field is The Plan of Waste Management.³ The Plan evaluates the current situation of waste management, states aims and priorities, as well as conditions of its implementation. It is based upon several preceding conceptions and analyses such as State Environment Policy (Statni politika... 2001) or Waste Management Policies... (2001). Here are the key problems of the waste policy in the Czech Republic as summarised by a draft of the Plan from 2002:

- Insufficient prevention in the field of waste management (which is related, among other things, to a lack of economic incentives).
- Relatively high production of waste (also related to the lack of economic incentives).⁴
- High proportion of all waste is classified as “hazardous”.
- Insufficient degree of separation of different kinds of waste.⁵
- Too much waste is land filled; too little waste is re-used or used as a source of energy.⁶
- Insufficient use of modern technology in hazardous waste management.
- Relatively limited use of incinerators (in comparison to the EU countries, esp. because of high costs of this method).⁷

³ This document was submitted to the SEA evaluation process in 2002 and approved by the Government in June 2003. A separate sub-chapter will deal with this SEA process.

⁴ It makes 35 millions tons per year.

⁵ This concerns especially so-called biodegradable components of household waste, which is currently usually land filled. By 2010 1/3 of this kind of waste should be treated by different methods.

⁶ In 2000 only 3% of waste were recycled and 28,5% were used as secondary raw materials.

⁷ Only 7,5% of solid household waste (2% of all waste) are incinerated. The household waste represents 11% of total waste produced. Currently there exist only three incinerators for this kind of waste: Praha-Malešice, Brno and Liberec. It has to be noted, however, that this particular item was later dropped out of the list of key problems, in response to the claims of environmentalists that the real problem is incineration per se (and not its

- Insufficient enactment of legal duties and responsibilities in the field of waste management; insufficient control.
- Low responsibility of producers for their products during the whole life cycle of these products.
- High number of closed landfills that have not yet been made safe and reclaimed (because of lack of financial resources) – these landfills represent various threats for health and environment.
- Underdeveloped regional waste management.
- Insufficient information for producers of waste on prevention and possibilities of waste reduction.
- Many kinds of recycled materials are not usable because of the limited scope and strength of domestic market.
- Insufficient monitoring of waste and coordination.⁸

The principles for the future waste policies are derived from European directives (already incorporated into other policy materials and laws): the principle of sustainable development, the integrated product policy and the principle of clean production, the European waste hierarchy (esp. landfills as the least appropriate solution), the principle of shared responsibility, the BAT (best available technology) principle. Special emphasis is put on the instrument of voluntary agreements between the public and private sector and on economic instruments (taxes, subventions, fees). The state administration competencies in the field are to be strengthened.

The key legislation and policy materials are mainly products of few recent years (1998-2003). It can be said that nowadays formally declared principles are in harmony with the European policy principles.⁹ And even the practical situation is probably slowly getting better.

Waste management policy as a public issue: The case of SEA

Since 1989, the year when the communist regime ended, the following public disputes related to the waste policy emerged: the controversy over the ways in which municipalities organise and finance disposal of household waste; the dilemma between different kinds of bottles in relation to recycling; the issue of dumps along international roads near borders (created out of “imported” waste), and of illegal dumps filled not by household waste but rather by waste produced in the private sector (as a consequence of the increase of fees for using controlled, official landfills); campaigns in support for sorting the waste;¹⁰ last but not least, the

limited use in comparison to other countries). Thus, although the perspective of environmental NGOs won in the final version of the Plan, we leave this item in place since it completes the picture of waste management in the country.

⁸ It is important to note however, that an information system on waste management has already been established.

⁹ Important steps also are the Law on Integrated Prevention, implying a unified register of toxic substances, and ratification of the Stockholm treaty by both chambers of the Czech parliament. Environmental activists view both these steps as successes of campaigns such as The Future without Toxins.

¹⁰ The need to sort the waste has been often emphasised by several involved actors. It was translated into legal language already in the Law on Waste from 1997. But there are difficulties in practice. People are not disciplined enough. For instance, when containers for biodegradable waste were installed in one district of Prague, as an experiment, people immediately filled them with all kinds of waste. Further, coordination and organisation fails.

campaign against toxic waste, organised by the civil associations *Děti Země* (Children of Earth) and *Arnika*, which was – as we will see – partly associated with the campaign against the PM incinerator. In the following section, however, we will use still another example (on a more general level) to illustrate some aspects of public policy making in the field of waste management. We will focus upon the already mentioned policy document, the Plan of Waste Management, and the related SEA (Strategic Environmental Assessment) process.

The new Law on Waste (185/2001) states that the Ministry of Environment is responsible for preparation of the Plan of Waste Management of the Czech Republic. During 2001-2, several versions of that document were published via the web site of the ministry. In 2002 the Plan was submitted to a SEA process (i.e., strategic environmental assessment procedure, according to the law no. 244/1992). Within such a process, which can be considered as a public accountability procedure, the document is to be critically debated and evaluated by both experts and wider public.

During the first half of 2002, the Plan of Waste Management rarely appeared in the mass media. A full-text search in the archive of most widespread Czech newspaper *MF Dnes* (in mid 2002) gave only two hits, both related to the work not on the national plan but on regional plans.¹¹ Public seminars related to the SEA process seemed to be advertised mainly in specialised forums. It is partly understandable given mostly technical and not (openly) political character of the document.¹² Nobody has visibly protested against the way the debate was organised.¹³

NGOs intervened in the preparation of the Plan and its SEA evaluation in an interesting way. In order to understand the situation, we have first to mention a certain tension between how the Ministry and authors of the Plan evaluate the public consultation and what the SEA team¹⁴ says on this issue. On the web pages of the Ministry of Environment (ME) we could find the information that the Ministry of Environment received 1988 comments on the Plan. 1711 of them, i.e., 86% has been accepted.¹⁵ The accepted comments have been incorporated into the final version of the Plan and then the Plan was submitted to the Legislative Council of the Government in February 14, 2003.¹⁶ The Government approved this version of the Plan in

It seems that despite of many people's effort to properly sort the waste, the sorted waste is sometimes mixed again during the process of incineration. The effort goes in vain.

¹¹ Certain regions received support for preparing the plans in advance, as a kind of pilot projects.

¹² The issue of waste has generally been articulated in a very technical way. Several hundreds of research grants on waste management currently provided by the Czech Grant agency and by several Ministries focus upon various technical issues. None of them (!) reflects political or social dimension of the problem (Koncepce... 2001; Appendix 11: Projects from the Central Register of Research Projects on Waste).

¹³ The public debate was organised by The Regional Environmental Center for Central and Eastern Europe (REC). REC is an independent international organization established in 1990 by the governments of Hungary and USA and by the European Commission – see <http://www.reccr.cz/>.

¹⁴ This SEA team, based at the Institute of applied ecology (Agricultural University Prague), was headed by the same person who was responsible for the EIA on the Plzen by-pass in 1998 – the “unsuccessful” one, which recommended the variant supported by Children of the Earth and municipalities of small villages, but recommendations of which were ignored without explanation (required by the law).

¹⁵ No further mention of the structure of the subjects that submitted their comments (whether they were NGOs, research institutions, public administration bodies...). But a brief glance at the list of inputs and responses shows that an important portion of comments came from public authorities, NGOs and even waste management companies, mostly participants in regional seminars.

¹⁶ Originally, the Plan was to be submitted to the Government by the end of 2002. But it was not. And because of the political crisis in the country and in the main government party (Social Democrats) the schedule of the

June 2003...¹⁷ This is roughly what the Ministry says (footnotes are comments added by the authors of this study). Thus everything seems in perfect order: public consultation was timely and intensive and the response from the ME was largely positive.

Yet, the account by the SEA team (in their final report – Martiš, et al. 2002) offers a somewhat different, slightly more problematic picture. It emphasises different aspects or parts of the entire process. First, the SEA team did not receive any written comments on their outputs from the public during the scoping phase (Spring 2002) and during the phase of elaboration of tentative theses (Summer 2002). There were only oral exchanges during two or three public seminars organised by the SEA team. The evaluators received only one response to a draft of their evaluation report from the public¹⁸ during the last phase of the SEA process (Autumn 2002). This public comment was responded by the authors of SEA in great detail, rather negatively. In sum, the Plan itself, in its various versions, was relatively widely debated, but not its SEA.

Second, the SEA team complains that the authors of the Plan almost did not reflect upon their recommendations and comments: differences between the pre-final version of the Plan submitted in October 2002 for ultimate SEA assessment and the final version that was supposed to reflect all the relevant comments gathered during the SEA process were negligible. Moreover, and contrary to what is required by the rules of the SEA procedure, the SEA team did not receive from the Ministry of Environment any information on how the comments from the public on the October version of the Plan had been settled. Thus, they could not evaluate (in their final December 2002 report) this aspect of the policy process.

From our point of view, however, perhaps the most interesting objection of the SEA team against the Plan and its development was the following one.¹⁹ In the beginning, the SEA team notes, the Plan had been elaborated in two variants of different depth and scope. A ministerial team prepared a more complete and systematic variant, while people from ecological NGOs were formally contracted by the ministry to prepare another variant, a “green mirror”.²⁰ This

Government work was postponed even further. The crisis was deepened by the events around the president elections in 2002/2003. Many other important reforms (such as public finance reform) have been postponed because of that.

¹⁷ NGOs welcomed the decision and called it a first big ecological test of the new Social Democratic government (Mejstříková 2003).

¹⁸ This contribution was submitted by a representative of the Hnutí DUHA/Friends of the Earth Czech republic – we will come back to this later on. The prevailing technical or expert nature of the debates on waste (already mentioned above) can also be illustrated by the character of this response to SEA of the Plan. The document is characteristic by perhaps even more “technical” or “expert” nature of the document than the assessment itself. The argument is based on references to scientific literature and to “proven facts”. It turned out, during the interview with its author, that this was deliberately so. It seemed strategically important to impress the SEA team with a competent and expert-like style of the document.

¹⁹ Of course, the evaluation contained many other more substantial objections. Above all, the Plan was criticised for being too general, too vague, and mistaking aims for means.

²⁰ Actually, this did not happen in the very beginning. Only after activists criticised first outlines of the Plan, the composition of its authorial team and its key principles, the Ministry asked them to prepare the alternative version of the document (in the first half of 2002). Relatively close involvement of activists in the preparation of the plan can also be illustrated by the following: Together with this national Plan, regional plans were elaborated by expert teams that included NGO representatives as well. For instance, the regional plan for the region in which the Praha-Malešice incinerator is located was elaborated by Milan Havel, the leader of activist opposition against the incinerator. The relationships between activists and the ministry were particularly good under the former Minister. Some of his staff came in their offices directly from activist groups. The new Minister is himself a former member of an environmentalist NGO and has ties to people from environmentalist circles.

green variant focused upon the obligatory part of the Plan (while leaving aside the other parts) and it was grounded in the policy priorities of the participating NGOs. The “green mirror” was originally published as an appendix to the text of the Plan (Kropáček, 2002). Later on, however, in October 2002, the Plan was submitted for final SEA evaluation as a “synthetic” material combining both variants into a single version. Authors of SEA complained that by merging the two variants into one it was made impossible to compare alternative scenarios (which is, the evaluators claimed, the essence of any SEA procedure²¹).

The SEA authors also pointed out that the Plan became inconsistent because of this fusion. The “green mirror” proposed, for example, to stop state investments into landfills and incinerators.²² This, according to the evaluators, was in contradiction not only with European trends, but also with the Czech legislation and economic and environmental conditions and needs, otherwise fully recognised in the more general introductory parts of the Plan. The substantive argument was that the Plan (as well as current legislation) presupposes recultivation of landfills and technical upgrades of incinerators. Many old landfills and incinerators can be modernised only by building them practically anew.²³ It thus does not make sense to stop state investments to such facilities. SEA emphasises that such an argument by no means contradicts or challenges the general waste hierarchy, i.e., the priority of prevention, recycling and the need to develop new ways of handling biodegradable waste.

The work on the “green mirror” and the importance of NGOs during the preparation of the Plan has been acknowledged by both the Ministry and participating NGOs. But what authors of SEA in their critical remarks call inclusion of the green mirror into the official version of the Plan (Martiš et al., 2002), activists prefer to phrase in the following way: “we have managed to push through a modern waste management plan”.²⁴ Instead of contracted work of some of them for the Ministry they stress the role of intensive public mobilization and persuasive strength of expertise “prepared in the name of other NGOs”, by means of which they succeeded to convince the officials. The Ministry of Environment is silent about how and why they have incorporated the “green mirror” document into their Plan (as put by the SEA team). They only speak of consultations with the public and representatives of NGOs in general. In other words, the final version of the Plan, which expresses in a relatively straightforward way the standpoint of environmentalists, is not presented as a result of a close and rather formalised collaboration between the Ministry and certain representatives of environmental organizations. Rather, it is presented either as a result of “consultations with the public” (by the ministry) or the result of “confrontations with politicians and of public pressure against their politics” (by the activists).

This might have been so because the collaboration was partly dependent upon informal personal relationships between certain ministry officials and activists. Moreover, a new

²¹ Which, according to the law, is not quite true. Comparison of alternatives is to be done, above all, within the EIA procedure, while SEA, focusing on general conceptions, need not be done in this way.

²² This requirement remained in the Plan even in its final version from February 2003, i.e., in the version finally approved by the Government. As noted by Mejstříková (2003), NGOs were afraid that the Plan would be refused precisely because of the requirement to stop state support for new incinerators.

²³ This view was expressed not only in the SEA report, but also (in his comment on the Brno incinerator) by the director of the PM incinerator (during the interview) and acknowledged, in a way, by the author of the “green mirror” himself (another interview).

²⁴ See <http://www.hnutiduha.cz/odpady/recy.html>

Minister came to office during the process, which intervened in an ambivalent and complicated way to the established personal contacts and their effect on the Plan.²⁵

However, perhaps most interestingly, there is one moment not explicitly mentioned by anybody (including the rather critical authors of SEA). The author of the only written comment on SEA of the Plan (submitted in the name of the Hnutí DUHA/Friends of the Earth Czech republic) and the coordinator of the “green mirror” (and thus the main author of the binding part of the final version of the Plan) are *the same person*. In other words, an important co-author of the Plan commented upon its SEA critical evaluation as a representative of the voice of “the public” (an environmentalist NGO), without ever mentioning this fact in his comments. Indeed, there is no introductory note of this kind in the comments, saying, e.g., “as co-authors of the Plan we would like to react to some criticisms of it in the SEA documents”. Instead, in the beginning of the extensive comment we can read the following sentence: “we welcome that standard [sic!] SEA procedures become a well established part of the work on ministerial conception documents” (see Martiš et al. 2002, Appendix 11).

Thus, one could observe an extensive (yet rather exclusive) public dialogue on the Plan. However, this dialogue did not concern the SEA process and its outputs. The dialogue, which was kept on the level of technical remarks and expert arguments, probably contributed to (or anticipated) the inclusion of the “green mirror” into the final version of the Plan. On the contrary, SEA itself turned to have only negligible relevance. Its recommendations and critical remarks found no response among the authors of the Plan (state administration and NGO representatives) and the wider public and were neglected even during subsequent political decision-making. NGOs craftily used both formal and informal political resources as well as strong expert framing of the issue to push through their vision. It was important that they could simultaneously present themselves as representatives of the public vis a vis the Ministry and at the same time work for the Ministry as hired collaborators and recognised experts, sometimes on the very edge of transparent and accountable politics. It was equally important that NGOs had detailed information (including backstage information) about the situation in the Ministry. No doubt, proponents of incineration used similarly pragmatic strategies, but did not manage to outweigh the activists.

The case of the Plan of Waste Management could be (and was) interpreted as a big substantial victory of environmental activists. On the other hand, one might suspect that it was, in a way, an illusory victory: implementation plans that are being prepared these months and weeks (Winter 2004) indicate that many of the radical principles adopted in the Plan will not actually be implemented. The environmentally radical character of the Plan is not going to be fully translated into practical measures. Too vague formulations and the lack of specific parameters of individual proposed measures, criticised by the SEA team, betrayed its authors and important elements of their success are going to remain on paper only. New incinerators of household waste are planned anyway, but operated by private companies, without state support. This means, among other things, that it would be much more difficult to obtain European funding to improve ecological parameters of the facilities. Furthermore, these incinerators very probably would not be economically viable.²⁶ Since municipalities tend to become dependent upon such facilities, they might be forced to take these incinerators over

²⁵ An activist even told us that the political and personal uncertainties brought about by the new Minister had probably been a quite crucial moment for the activists to push through their vision of waste management.

²⁶ We can suppose that the economic viability would be further undermined by political activities of NGOs for which such facilities would be an easy target.

after some time anyway (as has already become the case with the household incinerator in Liberec).

Let us conclude this general section on broader political context of waste policies by a more general observation:

In the beginning, we mentioned that the policy process in this field often takes the form of neutral or technical implementation of detailed European norms and principles. Throughout our account of the preparation of the Plan of Waste Management we also mentioned prevailing technical and/or expert nature of the debate. Hence an interesting paradox: It seemed that the principle of public participation in technology assessment was respected mainly because it was coming from the EU. To follow the Europe's political model was a strong imperative. And precisely this could give chance for some openness to the public and elements of public consultation. It was possible to accept them pragmatically as a "European trend".²⁷ But at the same time as the European influence was enabling and promoting the principle of public participation, it seemed making the principle empty. Since the Plan was presented as a result of a hierarchical and very technical implementation of indisputable European directives on waste, all political discussions of it could be considered irrelevant – at least in theory. Any substantial objection, even if it managed to cope with the technicalities involved, might have probably been discarded by a reference to the binding character of the European norms and recommendations. Therefore, the same EU import seemed to bring both the possibility and the impossibility of real political debate (involving the public in the broad sense).

However, at a closer (however incomplete) look, the situation gets more complicated. Despite initial expectations we could observe a lively and thrilling political struggle in which European norms and standards played only partial and often ambivalent role. They were not simply external givens, but rather what was at stake (both parties claimed that they represented true European trends). Competent technical expertise was to be found on both sides. NGOs successfully mobilised counter-expertise in support of their arguments. And this counter-expertise even turned into official expertise.

Two issues, however, remain controversial: first, relatively low level of direct or indirect participation of general public in the preparation of the Plan (although some of its paragraphs have direct consequences for budgets, habits and responsibilities of all citizens); second, the problem of public accountability and transparency in political practices of NGOs themselves – our example showed that they sometimes too easily find conflicts of interests and non-transparent behaviour in the opposite camp, while overlooking written and unwritten standards of accountable politics when pursuing their own hard-to-reach aims.

²⁷ It is illustrative, for instance, that only two short paragraphs of one of the earlier versions of the Plan (version 2.2 dated May 5, 2002) substantially mentioned the public: one (2.1.3) concerned the obligation of the public administration to inform the public – it only referred to the law on Freedom of Information (106/1999) and to the law on the Right to Information on Environment (123/1998); the other was entitled "The collaboration of administrative bodies with the public" and contained just one telling note: "to be filled in". Implementation appendices included minor and rather vague references to the public, aimed at better informing the public, the need of a "communication strategy", the involvement of the public in control procedures, and cultivating attitudes of the public toward research and scientific work in the field. The proclamatory nature of these references was reinforced by the fact that the text already *anticipated* the future involvement of the public by stating, in its opening part, that "before the plan *was* approved by the Czech Government it *had been* assessed and debated by means of SEA procedures (as required by the respective legislation)" (freely quoted); yet, at the moment of the publication of this particular version the SEA procedure was just beginning.

The Praha-Malešice household waste incinerator

In the Czech Republic, there are three incinerators for household waste: in Praha (the biggest one – intended for 310 000 tons of waste per year), in Brno (the oldest one – 240 000 tons per year), and in Liberec (96 000 tons per year). What, generally, is at stake about them? What makes them controversial public issues?

Household waste incinerators produce so-called dioxins, very resistible and very toxic, most probably carcinogenic. Although these facilities usually are not the biggest producers of dioxins (actually, they produce just a little fraction of the total yearly dioxin emissions), they have become the symbol of these toxic substances. And symbols of the struggle against them. Environmentalists claim that the public is not openly informed about the risks involved and about the extent of pollution. But counter-arguments exist: advanced technology (dioxin filters), in combination with other waste processing techniques, can make incinerators much more acceptable strategy of waste management than dumps and landfills. This is what EU directive and policy materials stress.

However, advanced technology is very expensive. Both in terms of purchase costs and of operating costs. Reduction of the level of dioxins is as difficult and costly as measuring it and controlling it. This is also why the incinerator plants are so big. Huge amounts of waste processed are to compensate high costs. But the problem is that the capacity of the facilities is not fully used.²⁸ The incinerators therefore seem oversized and this brings back economic problems. The solution how to keep the incinerators economically better viable is to increase the amount of waste (even by means of import from other regions) and to link them (or to keep the link) to municipalities, who have become dependent upon them, as publicly funded economic subjects. Big investments as well as local political interests are therefore often at stake. And the two are interrelated.

Furthermore, incinerators seem to offer a strong (though usually implicit) alternative to the cultivation of a more responsible and prevention-oriented waste management. As they become routine solution, they may discourage people from looking for (and testing) new, ecologically sounder alternatives. Of course, all the above-mentioned problems make incinerators a hot environmental issue for ecological organisations.

But incinerators, when they are being built, can also become the subject of NIMBY campaigns of local residents – hardly anybody really wants them in neighbourhood. Because the incinerators are located in populated urban areas, they are debated also in terms of other pollutants (caused, e.g., by the transportation of waste), or in terms of other side effects.

The scope of the problems incinerators generate varies from very local ones, to rather global threats. The case of PM incinerator nicely shows the interplay and mutual competition of all the above-mentioned motifs.

First protests (before and after 1989)

The story of this incinerator originates, in fact, in the communist past of the country.²⁹ The problem of household waste management in the capital city of Czechoslovakia was well known and debated since 1970s. After some time, the critical situation led to a seemingly

²⁸ According to the Plan of Waste Management, the capacity of the Czech household waste incinerators is used only by 52%.

²⁹ In this respect, the case of the PM incinerator reminds the case of the nuclear power plant Temelin or the case of the Plzen highway bypass.

simplest solution: the decision to build a huge incinerator that would process more than half of all the municipal waste of the city agglomeration. The city committee of the Communist Party put the decision through in spite of protests and disagreements of the public and local municipalities. The decision was presented as the only possibility.

The project of the incinerator did not respect environmental principles. Elaborated in 1987, it included only a very basic method of cleaning, although the main hygienist of the district requested a more advanced filtering, the so-called “second level of cleaning”. Only an appeal of local municipalities of nearby villages (parts of Prague’s suburban districts) against the construction permit resulted in the court decision that better filtering methods must be included in the construction project. Several other objections, however, were refused. The construction started in September 1988 according to the original project (before the final decision on the appeal was made) and continued in this way even after the court decision required changes. In other words, the required second level of cleaning was ignored.³⁰ As a rule under the communist regime in Czechoslovakia, the incinerator was a state enterprise.

Soon after 1989 the ecological section of the broad anti-communist political movement Civic Forum reopened the issue. It was claimed that the general waste strategy in Praha should be revised and that the construction of the incinerator should not proceed without appropriate filtering. Some people say that it was well possible to change or even stop the project at that moment, since only 1/10 of the facility had been completed. In 1991, the Ministry of Environment revised the project and urged the developer to include a better filtering and cleaning technology.

Building the incinerator and the construction permit procedure (1993-1999)

At the end of the same year, the prosecutor found administrative errors in the construction permit issued before 1989 by the municipality and asked for cancellation of both the permit and the land-use decision. This happened in 1993. The original, “old” part of the construction thus formally became an illegal construction. This status actually lasted until the testing start of the incinerator in 1997. In the meantime, however, the work on the construction site went on. In 1992 the municipality of Praha decided to continue the construction and elaborated and adopted a project for a “second level of cleaning” facility, i.e., a “new” addition to the original project. Two local municipalities and three private persons brought a suit against the permission of this “new” part.³¹ This permission had the form of an approval of a modification of the existing construction. After the cancellation of the construction permit and land-use decision for the “old” part in 1993, the challenged permission for the “new” part turned to be untenable because of the procedural flaw. Therefore, also the permission for this part of the construction was cancelled, in 1996. From this moment on, the incinerator as a whole (i.e., both its parts) was illegal construction.

It did not take long to start a new administrative procedure to obtain a new construction permit for the construction as a single project. The procedure had special parameters. The case was treated on the basis of the construction law paragraph on “removal of illegal construction”. Whatever the first impression may be, precisely this paragraph gave the best

³⁰ The correct impression that the communist regime arrogantly pushed through what its representatives wanted should not make us blind toward the fact, that even under communism there existed administrative procedures with the possibility of appeal and that there were individual and collective actors who used this possibility.

³¹ One of these municipalities even hired a specialist in environmental impact assessment who elaborated a report on environment in the area, kept regular meetings with citizens, gathered information, coordinated the anti-incinerator activities etc.

conditions for a positive decision on the incinerator: according to it, we have been told, an illegal construction which was in the public interest could not really be removed, but only retroactively authorised. This also meant that the whole procedure did not start anew from the very beginning. The supporters of the incinerator could not wish better conditions: if the procedure had started anew (and only then), EIA would have to be initiated. If nothing else, this would bring a delay.³²

Finally, in 1997 the construction permit was given, retroactively, when the construction was practically complete. Authorities of two small city-parts (local villages)³³ and private persons appealed against the decision, but unsuccessfully. They were not accepted as formal participants of the procedure. The permit was confirmed. Immediately after the final decision was made, the incinerator started working in a test-mode (the end of 1997). The local authorities and individuals started a legal process against the decision, but again, without any success (1999).

During all the years, the construction slowly went on.³⁴ However, there was a two-year break in 1994-1996. This break was not caused primarily by the controversy of the construction permit, but by difficulties with financing and unclear consequences of privatisation.³⁵

In 1998, before and around the testing start of the incinerator, there were some controversies within the management and the board of Prague Services. The director of the company was accused of financial and managerial malpractice and was replaced. Some conflicts of interests were revealed. The reconstructed management improved media policy, took more care of the problem of dioxins and of a public image of the incinerator.

Children of the Earth and the campaign against dioxins (1996-2000)

The NGO Děti Země (Children of Earth - COE) entered the scene in the mid 1990, at a time when debates on the interrupted incinerator construction culminated.³⁶ COE turned out to be a key actor in the controversy.

According to an interview with a former COE activist, in the beginning, COE's aim (perhaps not quite explicit) was to stop the incinerator entirely. The activists, or at least some of them, were (and, as we saw in the story of the Plan of waste management, still strongly are) against

³² Actually, a member of local authority and of the Green Party asked precisely at that time, by means of a formal letter, for EIA procedure on the incinerator. The Ministry of Environment refused the request by saying that the construction and land-use procedures started before EIA became part of the legal system.

³³ Only two of several villages potentially affected by the incinerator remained in opposition. The reason reportedly was that representatives of the other villages got "convinced" during study trips to Switzerland and its incineration facilities that were organised for them ("all service included") by Prague services. The person behind these trips was a Czech-Swiss entrepreneur who helped to revive the construction of the PM incinerator in 1996 and who became both member of board of Prague services and one of sub-contractors. Journalists revealed that members of board together with their families often participated in these trips.

³⁴ The arguments behind the continuation of the project even without the construction permit were, above all, the following: (1) economic arguments (a lot of money had already been invested); (2) legal arguments (at that time there was no legal limit on the production of dioxins in the Czech Republic).

³⁵ There were several waves of privatisation in the Czech Republic after 1989, during which a large part of economic subjects were privatised. Within the privatisation process, the incinerator became one of the sections of the company Prague services. The city of Prague keeps 65% share in this company. The condition for this share of the city, together with a large state subsidy, was that the PM incinerator would be completed.

³⁶ A working meeting for decision makers and experts was organised, among others, by the Committee for Environment at the Prague municipality in 1996.

incineration. It even seemed better for them to landfill the waste than to incinerate it.³⁷ But already at that time it was not quite a realistic strategy to fight against the incinerator as such. At first, the construction procedure was already running and it was therefore impossible for COE to enter the procedure as its participant. Later on, the incinerator was even completed and in operation. Thus, COE asked mainly for improvements and safer technology. They focused upon the need to reduce the emission of dioxins. Nonetheless, the requirement of the “third level of cleaning”, i.e., of very expensive filters, could be understood (and actually was understood, at least by one of our interviewees) as a means of economic liquidation of the incinerator, as a way toward its closure.³⁸

Current leaders of activists say, nonetheless, they never wanted closure of the incinerator. Rather, they intended to act as “constructive critics” of insufficient ecological and health-related parameters and of improper administrative practices. Yet, the management of the incinerator sees COE (and environmental NGOs in general) differently, even today: simply as enemies of the incinerator and of incineration as such, which makes them incompetent and unacceptable partners for any dialogue.³⁹ And indeed, although most people acknowledged, after the incinerator was put in operation, that it did not make sense anymore to try to stop the facility entirely, general anti-incineration attitude of the activists was obvious from time to time.⁴⁰

COE organised a couple of seminars and meetings, an exhibition, a leaflet campaign, and demonstrations. They collaborated with local initiatives and helped to develop some of them. Also, they initiated a counter-expertise and undertook a public opinion survey.⁴¹ The leader of

³⁷ The activists had several reasons for this hierarchy (land filling better than incineration). First, they emphasised the hazardous nature of dioxins. It was really alarming that legal documents of the time completely ignored these highly poisonous substances. And they preferred land filling because of its potential as a provisional solution: it was better, the activists thought, to store the waste at a controllable site, hoping that the future would bring a better solution. Land filling was considered better than uncontrollable spread of dioxins and production of hazardous waste by the very process of incineration. Further, the activists saw the landfill lobby as relatively harmless in comparison to the lobby group of those interested in incineration. Entrepreneurs engaged in land filling were regarded as regional and neither very powerful nor sophisticated actors. But incineration was associated with much bigger amounts of money, international financial flows and powerful political forces. There was a reasonable suspicion that Western European firms would sell to the Czech Republic, for very high prices, out-dated technology, already unusable in the EU.

³⁸ The third level of cleaning was extremely expensive, it would cost almost half of all the money spent on the project (Brož 1995).

³⁹ Such as, e.g., in a written response of the director of Prague Services to COE (May 1998): “One cannot expect that the company P.S. would collaborate with any subject whose attitudes are a priori part of a campaign against the incinerator. On the other hand, we have nothing at all against cooperation with experts who are capable of an objective and independent standpoint.” The same position was taken by the director of the incinerator during the research interview in 2003.

⁴⁰ After all, the case of the Plan of Waste Management is telling in this respect. As we saw, the activists managed to shape the Plan of Waste Management in a way that excludes state support for incineration. “It is naïve to believe that incinerators and recycling can co-exist,” writes Ivo Kropáček (2002) from the Hnutí DUHA/Friends of the Earth Czech republic in the document that was, later on, incorporated into the final ministerial version of the Plan. It is also symptomatic that, although the PM incinerator currently fulfils the basic pollution-related parameters and improved its public accountability policy, the former head of the anti-incinerator campaign of COE spontaneously considers the campaign in terms of loss and failure. Given the general anti-incineration attitude of environmentalist NGOs, the very – relatively successful – existence of the PM incinerator may sometimes have a flavour of a failure.

⁴¹ The counter-expertise was to critically evaluate an expert document on dioxins written by demand of the management of the incinerator. The survey covered inhabitants of a small city Benátky nad Jizerou: it concluded,

the COE campaign led an extensive correspondence with authorities, political bodies and representatives of the incinerator. It was COE who made the case publicly visible by means of active media policy (1998 – see below). COE introduced public accountability rhetoric into the case, stressing the right of the public for information. And, very importantly, it was COE thanks to whom the controversy over the incinerator has been translated into a (general) campaign against dioxins. In accordance with this powerful strategic translation, once the problem of dioxins produced by the incinerator was somehow solved, the controversy practically expired, although many other “smaller” problems could have been addressed.

Indeed, if measured in terms of the closely related anti-dioxin campaign, the participation of COE in the controversy over the PM incinerator was rather successful. The anti-dioxin campaign (and especially two anti-dioxin petitions in 1996 and 1998) contributed to the inclusion of dioxins and of the limit for dioxin emissions to the Czech legislation even before it became necessary due to the EU admission process.⁴² This was a crucial progress in the case, since it had been practically impossible to develop an effective pressure on the incinerator dioxin-related policy before this happened. With the help of this new legislation, the opponents of the incinerator could force its management to tackle the problem more seriously. The management, on the other hand, does not acknowledge any influence from the activists; it sees the progress as part of a natural development and of their own respect toward safety parameters. Anyway, in late 1999 the PM incinerator tested and introduced a new technology as an alternative to the “third level” of cleaning. This technology is much cheaper than dioxin filters and although it is not as much effective, it still gives rather satisfactory results. It is thanks to this innovation that the PM incinerator currently is the only household waste incinerator in the country that reportedly meets the legally required limit of 0,1 ng/m³.⁴³

This new technology and fulfilment of the norm were not fully accepted by all. COE objected, for instance, that the incinerator met the limit only with difficulty, without any reserve. Also, there were doubts about the sufficiency of measuring the dioxin emissions only twice a year, by means of carefully planned measuring interventions.⁴⁴ Some are afraid that the incinerator

on the basis of four hundred interviews, that 70% of local people did not know that fly ash from the Praha-Malešice incinerator was being dumped in the local hazardous waste disposal site.

⁴² Decree On Emission Limits 117/1997 (in force since 1. 6. 1997) included dioxins in the list of pollutants (par. 4 and Annex 1) and it established the obligation of communal waste incinerators to measure dioxin emissions once a year (par. 15(1)g and 15(2)d). However, it did not set the limit for dioxin emissions, neither as a general limit (Annex 3) nor specific limit (Annex 2, part 5.1.1). Amendment of this decree (in force since 1. 5. 2000) introduced measuring dioxin emissions twice a year (changes to par. 15(2)d) and introduced the limit for dioxins of 0,1 ng/m³ specific for communal waste incinerators and toxic waste incinerators (changes to Annex 2, part 5.1.1) in force since 1.5. 2003.

⁴³ The new Law on the Protection of Air (86/2002) is fully harmonised with EU directives, namely Council Directive 89/369/EHS on the prevention of air pollution from new communal waste incinerators, Council Directive 94/67/EC on hazardous waste incineration and Council Directive 2000/76/ES on waste incineration. The Law is in force since 1.6. 2002 but postpones the force of some parts until 1.1. 2003. Above all, the obligation to comply with emission limits is postponed for waste incinerators to 28. 12. 2004. The PM incinerator therefore meets the limit “in advance”.

⁴⁴ In 1999, at a meeting with the Civic commission for the control of the incinerator (see below) the management of the incinerator was offered, by an academic specialised in dioxins, participation in an international research project within which a new technology for continuous measuring of dioxins was to be tested. Although there were no costs for the incinerator, the director refused. According to the specialist, the management was afraid of publicising testing results. But other interpretations are feasible as well. Above all, since the project administrators looked for an incinerator of an “old type” to participate in the project (lack of modern dioxin filters was necessary for the experiments to be done), it is possible that such label was simply unacceptable for the just completed incinerator.

manipulates the results by manipulating the structure of the incinerated waste and by special dosing of the chemicals.⁴⁵ Yet, the activists generally acknowledge that today the PM incinerator does not represent a dioxin threat.

In 2001 (after COE practically left the case) a group of influential activists from COE⁴⁶ left the association and established a new one called *Arnika*. They took over the anti-dioxin campaign of COE and have already achieved another success: they organised a petition Future without toxins that was signed by almost 9 thousands of people, including 70 local or regional deputies. The petition had two main aims: (1) creation of a unified register of toxic pollutants; (2) ratification of the Stockholm treaty on most dangerous toxic substances. Both aims have been reached. What is interesting for us is the fact that the Toxic substances and waste programme of *Arnika* includes controversies over several waste incinerators, but the PM incinerator is currently not among them.

Medialization of the case (1998-1999)

While the petition against dioxins was quite successful, other activities related directly to the incinerator plant failed to attract sufficient public interest. Actually, the whole work was done by a handful of people with diverging interests. Yet the case, at least during 1998-1999 looked like a big and developed campaign. This impression was created mainly through the media.

Not that the case of PM incinerator was absent in the media before 1998, but in that year COE started a very active media campaign. They organised press conferences and issued their own press news. It helped them that (before 1998) the director of the Prague services had problematic relationship with the media and was in conflict with a journalist from a most important daily Czech newspaper (most of the critical articles on the incinerator appeared in precisely this newspaper). In the press news and newspaper articles, COE criticised authorities and the management for not telling the whole truth about dioxins, for not providing correct information about emissions, and for not respecting the internationally recognised principles of waste management. They also criticised the administrative processes for various failures and stressed the right to information.

In late 1999 the situation changed. While the supporters and representatives of the incinerator were becoming more active and skilful in terms of media interventions⁴⁷, COE pulled out. Why this retreat from the media? The representatives of the incinerator, after a series of media exchanges and mutual accusations, suggested a ceasefire meeting at which they proposed to COE⁴⁸ a media moratorium not to further culminate the controversy, not to “over-politicise” it. Objective and constructive debates to the point were needed, they said. The argument was not irrelevant: the struggle in the media indeed resembled more and more a kind of sharp and principal controversy (yes, or no), while in reality the incinerator was already in operation,

⁴⁵ Experts from both sides we interviewed, however, say that such a manipulation would not make much economic sense. It would not have really big effects and it would not save much money for the incinerator.

⁴⁶ The head of the dioxin/incinerator campaign and the head of COE were among them.

⁴⁷ They published, e.g., a full-page advertisement in the newspapers. They organised a leaflet information campaign. They introduced a “green line”, a free telephone information service for citizen (according to the opposition it did not work properly).

⁴⁸ It actually was a meeting of the incinerator management and of the Civic commission for the control of the incinerator, of which COE were the most active part. The media campaign related to the Commission was fully in hands of COE. The incinerator management did not differentiate between the two anyway, and COE sometimes contributed to this confusion (see later).

improving its technical parameters as well as public image. Little issues of everyday living with the (already built) incinerator were more and more at stake. The NGO accepted and stopped the media campaign.

Now they see this as a crucial critical point in the development of the case, a strategic mistake: they lost all the power because of that and no “objective and constructive debates”, promised by the management of the incinerator, occurred. Once Children of the Earth left the media, they ceased to exist as a respectable political actor. “We resigned from the media campaign and therefore we lost the case,” the head of the campaign said in an interview. However, one may well imagine an opposite logic behind the course of events, similar to what happened in the case of highway bypass in Plzen. That is, as the battle over the incinerator was being lost and, at the same time, transformed into a more general case of dioxins and of *other* incinerators, COE agreed with the retreat from the media. In short, their resignation from the media could equally well be seen a symptom rather than the cause of a battle lost.

The Civic commission for the control of the incinerator (1998-2000)

In 1998, after the PM incinerator acquired the permission for unlimited operation, a small group of people decided to establish a new civil association “Citizen commission for the control of the Malešice incinerator plant”. It was the initiative of COE. Practically all the existing opponents of the incinerator gathered in this committee. A former Prague municipality deputy and academic ecologist, was invited to help with contacts to local politicians. An expert on dioxins from the Institute of applied chemistry, member of a ministerial “dioxin commission” of the Ministry of Environment, was asked to participate and play the role of a mediator between the commission and the incinerator management. Representatives of local authorities of the two rebellious villages participated as well as a small citizen’s association from Praha-Malešice.⁴⁹ A former American environmental activist living in Prague was listed among the members. The commission was headed and coordinated by the leader of the COE campaign.⁵⁰ Its work was supported by the Foundation for Development of Civil Society and some other foreign/international foundations.

Though the main initiative remained in hands of the COE association, it seemed important that, formally taken, now it was not an environmentalist NGO who acted, but rather a citizens’ commission. Ecologists and “greens” began obtaining a problematic image for many people roughly at that time. For instance, in 1999 the head of the COE campaign against the incinerator asked the new director of Prague services not to confuse activities of the two subjects. The director replied that this was not an easy task if, among other things, both shared a single spokesperson. Interestingly, COE themselves have not always been consistent in this. For instance, at the end of 1999 an impact assessment study of the PM incinerator was published, supported by the Foundation for Civil Society and authored by the Commission. But press news issued by COE some time before spoke about a study being prepared by COE. Similar “identity confusions”, of course, were happening at the other side as well. Some adversaries of the incinerator complained that the management of the incinerator often spoke a double language: at some occasions they presented themselves as an independent company

⁴⁹ This association actually counted hardly five people formally necessary for the association to ever be established. Only two women were really active members.

⁵⁰ Other NGOs did not take part in the PM case, with the exception of a rather isolated demonstration of Greenpeace who, at one day, chained up to the entrance gate of the incinerator preventing trucks with waste coming in.

that had nothing directly to do with the local authority of the city; at other occasion, if it suited them, they stressed the decisive share of the municipality and its direct control over the company.

The leader of the Commission was environmentalist and member of COE with natural science background. Among many things, he emphasised the right of citizens for information and the diffused and invisible threat of dioxins, graspable by expert knowledge.⁵¹ Although the few local people involved in the Commission accepted this framing, they emphasised more visible and clearly local aspects as well – e.g., the visual presence of the ugly building, the noise of transport, fear of an uncertain danger for those living in the immediate surroundings of the incinerator. However, these arguments and views were marginal to the others, sometimes even ridiculous and irrational.⁵² Local citizens therefore did not actively participate in formulating the goals and the strategy of the Commission. They helped to achieve the non-local goals articulated and promoted by the others, which they nonetheless considered reasonable, because related to their personal worries. For instance, they delivered leaflets on dioxins (with references to the Soveso disaster and chemical weapons) to local inhabitants mailboxes. On the other hand, they hesitated to mobilize their neighbours more directly and actively.⁵³

After the incinerator solved the problem of dioxins and also due to waning energies, COE left the case (which made some other actors, especially local citizens, feeling betrayed). Actually, the Commission did not formally stop its activity. There was no closing meeting, no closing statement. The Commission simply ceased to exist – only retrospectively it was possible to say that one of its meetings was the last one. There are, of course, many possible explanations of the end of the Commission. The involvement in the case required a lot of voluntary time and energy. The incinerator management did not take the Commission seriously enough.⁵⁴ But, above all, the PM incinerator improved its technology and public image and its key opponents were turning their attention elsewhere. The case of PM incinerator therefore practically ceased to exist, although not everybody was happy about it. It is interesting that

⁵¹ Dioxins were definitely not the only risk COE/Commission addressed. Inquiries, correspondence, media interventions and information campaign dealt also with other pollutants, with the issue of by-products of incineration classified as hazardous waste, and with the broader issue of more ecological waste management for the city of Prague. But these were mostly a “second order” issues; the flagship and the main focus always was the anti-dioxin campaign.

⁵² Local people often associated the smoke coming out of the chimney with dioxins (especially its occasional dark colour). For experts (and for the management of the incinerator), this was an example of misled lay knowledge, a popular myth, a sign of incompetence.

⁵³ These two women distance themselves from a more open activism – i.e., from activities such as going from door to door and addressing people face-to-face, trying to convince them. Something like this would be “below their standard”, they said in an interview. They also complained about local people’s passivity and explained it by a persisting fear of raising voice, of telling anything against authorities. The same two persons were perhaps most cautious about possible consequences of being interviewed. They felt stigmatised as troublemakers because of their initiatives, unjustly associated with the left (and, consequently, with the communist regime – “How bizarre, my husband is entrepreneur,” one of them said).

⁵⁴ According to the environmentalists, the Commission sent minutes of the first joint meeting to the director of the incinerator for approval and he never replied. This meant the final failure of the Commission’s attempts to communicate and, actually, do something. (This meeting, which turned to be not only the first but also the last one, was the same meeting where the management suggested to COE a moratorium for media exchanges and where the dioxin specialist unsuccessfully offered the incinerator participation in the international project on continuous monitoring of dioxins.) But given the rich previous correspondence between activists and the incinerator management, one could ask why the Commission did not simply try to urge a reply. How could one missing letter *mean* the end of the case?

despite all these good reasons, most of the former opponents of the incinerator take this ending of the case, explicitly or implicitly, as a failure.

Concluding remarks: How to better understand the case

The leading motif of the case seems to be the powerful translation⁵⁵ of the complex problem of the household waste incinerator into the specific problem of dioxins. The incinerator became an instance or a symbol of an invisible, hardly detectable toxic substance, which very slowly accumulates in the broader environment and, as such, it very probably leads to health damage. Although this reframing was not quite exclusive, it was powerful enough to make a double (at least) work: first, it framed the issue as a “big”, principal and non-local controversy; second, in relation to this, it did not provide much space for active participation of local citizens, of the lay public.

What these general characteristics meant for the development of the case? Above all, the struggle over the incinerator was taking place on the level of far-reaching consequences of highest urgency, serious hazards, and yes-or-no arguments. But also of technical details, expert views and administrative or legal intricacies. Less urgent, “smaller” and more local issues related to the incinerator and its operation (such as noise and visual impressions, other pollutants, details of waste management strategy, a user-friendly interface of publicised data, various minor issues of corporate social responsibility of the company owning the incinerator etc.) were marginalized by this perspective. On the other hand, the relationship between two main sides of the controversy got sharpened very quickly. They became antagonistic. Both sides saw the other as an enemy unable and unwilling to really communicate, as an untrustworthy actor.⁵⁶ The initial unwillingness of representatives of the incinerator to openly talk about risks and people’s concerns contributed to this as well as the active media campaign of COE – it seems the campaign did not mobilise much of the public, but rather increased the lack of trust among the main actors.

Such a development is not unusual. But it becomes a “blind alley” when the controversy changes from a principal, open conflict into non-dramatic, everyday quarrels and negotiations that simply cannot have a clear victor. Which is precisely what happened in 1999-2000. As we already noted, the incinerator managed, at that time, to meet the European limit for dioxin emissions. It had to – because of legislation. And it was forced to – by the campaign of environmentalists. It was clear that this success was not unproblematic. Many controversial points remained. But these had been shadowed and played down by the issue (not-any-more-issue) of dioxins. As under-elaborated points they could now only hardly be picked up and suddenly made key issues of the controversy. Once the issue was not emissions 10 or 20 times higher than the limit (but rather emissions just about the limit), argumentation on this central issues became for the activists even more demanding, difficult, unrewarding and “unprofitable”.

The fact that the communication between the principal actors of the controversy was half-blocked and full of accusations was really counterproductive in such a situation. Let us not forget that the troubled communication did not concern only COE and the management of the incinerator and it could not be easily undone: when COE attempted to ease the situation by becoming part of a broader, non-ecological coalition of experts, local politicians and citizens

⁵⁵ We take this notion in the sense of the “sociology of translation” (Callon 1986).

⁵⁶ As noted at a similar occasion by Berglund (2001) it is quite characteristic for environmentalist groups that the effect of such systematic suspicion and denigration is to divide the world into either enemies or allies.

(i.e., the Commission for the control of the incinerator), by “de-centring” itself a little bit, the other side immediately complained that the Commission was just another label, a disguise, for COE’s activities. COE were “re-centred” and, from the point of view of the incinerator management, the Commission became similarly unreliable partner for discussions as its initiator. On the other hand, the company Prague Services also practiced “identity games”, sometimes presenting itself as a private company, while at other times stressing the majority share of the Prague municipality. By means of such shifts the distrust of COE to the company might have easily and quickly been extended to the city authorities. In a morally contestable context, they became indistinguishable. Or rather, from the activists’ point of view, they produced morally contestable contexts by becoming in/distinguishable. All this was not only a matter of verbal self-definitions. Numerous personal and institutional changes both among activists and among supporters of the incinerator were related to these blurred and shifting identities.

Instead of taking these moves and partial connections as opportunities for loosening and unblocking the controversy (which could have been the case), they were taken, from both sides, as indications of falsity, manipulation, and deceit. Both sides knew all too well “who the others are”. What a difficult game!

But even worse for the activists: the incinerator did not improve only in terms of anti-dioxin technology, as it became the only household incinerator in the country that met the legal limit,⁵⁷ it got better also in terms of public relations and public accountability. Its management was forced (to large part by the activists) to learn something about what it means to keep the rules of the game, to provide information and to be at least somewhat under control. It managed to appropriate public accountability discourses and formal mechanisms. For example, a web site was established with online data on emissions. An information digital panel was installed at the entrance to the incinerator.⁵⁸ The incinerator organises excursions and visit-days for the public (quite well attended). And it became associated member of European Association of Waste Incinerators, as the only one in the post-communist part of Europe. Its management creates impression of good cooperation with authorities and municipalities. This can be seen as the result of positive pressure of the activists. But it can also be seen as a sign and affirmation of victory. That is, once the incinerator established itself as a stable, strong and irreversible entity, it could allow more openness towards the public. Once it was confident that its position could hardly be seriously challenged, it could afford public accountability... But no matter how we interpret this shift, it is clear that a space for open and principal yes-or-no conflict got even more restricted by means of it.

Because of *all* these circumstances, the incinerator necessarily became a non-issue for COE as the key actor. Indeed, there necessarily has to be some economy in the overall strategy and project management of environmentalist NGOs. While making choices and decisions, media image of the entire NGO (and activists as such) are at stake. It is dangerous to be associated with “lost” or not-enough-dramatic cases. It is too time-consuming to continue the fight in the situation described above. Consider: almost all work of COE, framed by the struggle against dioxins, was done by one or two people. And these individuals simply could not remain bounded to the PM incinerator case when other incinerators produced much more dioxins, contrary to what the law prescribed.

⁵⁷ The symbolic force of this property being *the only* well behaving incinerator in the country cannot be overestimated. It is very difficult to attack the only good guy among so many bad guys.

⁵⁸ In 1996, a representative of the developer says: we will not install an information panel at the incinerator site.

But although we fully understand the logic of the “silent” withdrawal of COE from the case, we should not overlook the consequences it had for others. Let us take, above all, local citizens who were represented by a very few people among the opponents of the incinerator. After COE left the case, these people felt without influence, without competence and simply without the possibility to do something, although reasons for public involvement remained (e.g., in terms of public control, improvement of the information openness policy, public initiatives aimed at better waste management strategy in the city district). They had the impression that they failed. They lost vision, workable aims, competencies as well as substantial influence on the development. Today, they openly speak about futility and uselessness of civic involvement in local public issues. Let us remind that these people never felt like autonomous political actors. They have never been respectable political actors.⁵⁹ They were just helping and serving “real activists”, for whom they had full respect. And after COE left the case, there suddenly seemed to be no public.

To sum up, COE were the key actor in the controversy. They made and shaped the case. The controversy would be different without their intervention. Of course, there were other important actors as well. Above all, the management of the incinerator, the company running the incinerator. How it comes then that our critical analysis focused mainly on the role of the activists? The reason is that they were most interesting. The behaviour of the incinerator management was to be expected - it is not really surprising that the company did not want to communicate with the activists or the public, that they resisted claims for more expensive technology and that they protected their economic interests. On the other hand the activists often claim that they identify, formulate and defend the public interest. Which is, after all, also a normative expectation about their role among a number of people (and a reason why they sometimes receive funds and political support). In this case, however, we could observe how ambiguous their role in relationship to the general public(s) often is. How much tension it contains, how complex contradictions have to be faced.

What tensions? What contradictions? To put it perhaps a bit bluntly, COE “imposed” their framing of the issue to their allies, above all local people, regardless of how this framing (with all its consequences) shaped them as rather passive, non-numerous and non-autonomous political actors. The obvious “not-in-my-backyard” (NIMBY) motif was played down as inappropriate, although precisely a kind of NIMBY framing can be considered a precondition for any local political mobilization. Local people “were made” uninterested even in the relatively accessible modification of NIMBY (i.e., “not *this* in my backyard”), which would perhaps imply a broader civic engagement in a less-dramatic but important shaping of particular qualities of the incinerator.⁶⁰ Instead, the few local people (and many more people from elsewhere) “were made” interested in a rather distant and essential issue of dioxins – in which the PM incinerator was just one of the instances (less and less urgent). An overall “no” to incineration as such, as a source of toxic substances, was implicit in this framing. All this was in a way a successful strategy. Not only several thousand people signed the anti-dioxin petition but also a principal refusal of incineration has been embodied in official government

⁵⁹ In the interview, they complained that local authorities did not take them seriously without simultaneously recognising that in reality (in terms of real public mobilisation) they often hardly represented anybody else than themselves or the Commission.

⁶⁰ The omission of NIMBY is paradoxical, because the entire case actually “ends up” by a very clear articulation (although not yet made explicit) of NIMBY: due to the technical character of alternative cleaning technology, the incinerator of the city of Praha meets the emission limit only at the cost of a very high level of toxic by-product of incinerator, fly ash, hazardous waste, which is being transported elsewhere to threaten other people by other means.

documents.⁶¹ The relative weakness of this strategy, however, becomes clear when one looks at what happened after COE had left the case. No successors, no flourishing and informed civic involvement, no interest in activities aimed at continuing civic control and integration of the incinerator as a safe and accountable facility into the everyday life of the community. In fact, the incinerator almost ceased to exist as a public issue. The few local activists feel that their effort went in vain.

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Law 86/2002 On the protection of Air

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Law 185/2001 On Waste Management Act (in force since 1. 1. 2002)

Law 477/2001 On Packages

Law 76/2002 On Integrated Prevention

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<http://www.ecn.cz/malesice/> - the web pages of Children of Earth (an environmental NGO) on the incineration plant Praha-Malešice

<http://www.env.cz/env.nsf/odpady?OpenFrameSet> - The Waste Management Section of the web pages of the Ministry of Environment

<http://www.ecn.cz/dioxin/index.stm> - Dioxins, a special section of the WWW pages of Children of Earth

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<http://www.ecn.cz/dioxin/libspal/> - the web page of Children of Earth on the incineration plant in Liberec (English version available at <http://www.ecn.cz/dioxin/libspal/eng/lincintr.htm>)

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<http://bezjedu.arnika.org/> - the web site of the campaign Future without Toxins of the association Arnika

<http://www.hnutiduha.cz/aktivity/odpady/odpady.htm> - the special section of waste of Hnutí Duha (an environmental NGO)

<http://www.reccr.cz/projektys/poh/poh.html> - SEA of the Plan of waste management (Regional Environmental Centre)

<http://www.vuv.cz/ceho/ceho.html> - the web pages of the T.G. Masaryk Water Research Institute, Centre for Waste Management

<http://www.enviweb.cz/?sec=odpady&banner=skladka> - the waste section of Enviweb, a complex web-portal on environment, intended primarily for experts and for professional public (English interface available)

<http://doprava.odpady.cz/> - Waste and Transport, a thematic web site of the Transport Faculty of the Pardubice University

<http://www.env.cz/www/zamest.nsf/defc72941c223d62c12564b30064fdcc/2c7cb0f9ea5981ffc1256b3c0048ada9?OpenDocument> - Plan of Household Management (all the documents related to the history and current state of preparation of this key policy document in the field)

List of interviews

Director of Praha Malešice Incinerator

Director of Air Protection Section within the Department of Environment (Prague City Council)

Director of the Department for Air Protection (Ministry of Environment) and her deputy director

Ecologist and a former member of Prague municipal council (Charles University), also a member of the Citizen Commission for the Control of the Incinerator (CCCI)

Scientist on dioxins from the Institute of Chemical Processes (Academy of Sciences), also a member of CCCI

Expert on environmental assessment employed by a village to manage activities against the PM Incinerator, also a member of CCCI

Members of the Malešice Civic Association and citizens of Malešice city part, also members of CCCI

Environmental activist and Head of the Toxin and Waste Programme of the environmental association Arnika, also a member of CCCI

Environmental activist and Head of the environmental association Arnika, also a member of CCCI

Former environmental activist (Children of the Earth)

Environmental activist, former head of the waste campaign of the Hnutí DUHA/Friends of the Earth Czech republic, author of the “green mirror” part of the Plan of waste management

Politics of GMO in the Czech Republic: A case study in public accountability

Tereza Stöckelová

The politics of GMO in the Czech Republic

The development related to GMO in the Czech Republic can be divided into three periods. From 1970s to 1996 there was a period of growing laboratory research, no legislation or state regulation and hardly any attention of the public. Second one from 1996 to 2000 was the time of incoming foreign biotech enterprises as well as discourses, of first field trials and of pilot legislation and regulation. The third period started in 2000. It is characteristic by more systematic EU-like legislation and regulation, further development of biotech industry (co-operation with local research laboratories, continuing field trials), but still a relatively low interest of the general public.

The Czech GMO legislation introduces the EU regulatory model for all regimes of use of GMO; it establishes the Ministry of Environment as a key responsible authority, and sets up the Czech Commission for Genetically Modified Organisms and Products as its advisory body. Statements of the Commission are currently quite authoritative. The Commission is dominated by pro-biotech biologists who defend strictly expert handling of the issue.

There are two strong actors in the public arena. The scientists' civil association Biotrin represents the pro-GMO position. It is closely personally linked to the Czech Commission for Genetically Modified Organisms, and often cooperates with the Ministry of Environment. Greenpeace represents the opposing side. Except for Greenpeace there is no strong critical voice. The media coverage is rather occasional. We could hardly speak about a public debate on GMO in the country.

The legislation defines relatively extensive obligations and rights related to public participation; mainly informing the public and the possibility for NGOs to become participants in administrative procedures related to authorisation of GMO. In practise, however, it ends up by a rather educational-style of both informing and hearings in the frame of administrative procedure. In spite of it Greenpeace applied several times to become participant, and invested a substantial amount of energy into these institutionalised interactions. Just in this moment they realise that they cannot influence much through formal participation and seem to be ready for change in strategy.

The EU and expert knowledge are the two major devices that inhibit and shortcut the public debate about biotechnologies in the country. They both play a role of a given, of something external to the political debate, which delimits only a narrow space for political decisions. However, as apolitical givens or objective facts, they often strategically support specific actions or decisions. They do not stay outside the political; rather they keep/push the political outside the public sphere. Only very recently there appear signs that the apolitical references to the EU and expertise are being shaken.

The basic story

The development related to GMO in the Czech Republic up to now can be divided into three periods.¹ The first one dates back from 1970s to 1996. It is a time of growing laboratory research, no legislation or state regulation and hardly any attention of the public. The second one can be delimited from 1996 to 2000. It is a period of incoming foreign biotech enterprises (e. g. Monsanto), and critical discourses (Greenpeace), of first field trials and of pilot

¹ The paper is divided into two parts. The first is rather descriptive and gives a basic story of GMO in the Czech Republic. It introduces the most important legislation, institutions, events and stakeholders. In the second part it suggests some points and interpretations of the empirical data with special regard to public accountability, and it also presents some pieces of empirical findings in more detail.

legislation and regulation. The third period started in 2000. It is characterised by more systematic EU-like legislation and regulation, further development of biotech industry (co-operation with local research laboratories, continuing field trials), but still a relatively low interest of the general public. Let me now give a more detailed account of the story.

Biotechnological research was only gradually reaching laboratories of the Czechoslovak Academy of Sciences and of the country's universities during 1970s and 1980s. It was not an advanced-level research, but it successfully followed global trends.² In 1989 the Czech Committee for Plant Transgenesis (CCPT) was established, a voluntary association of scientists in the area of transgenic plants. In the first period of its existence until 1996, the CCPT was monitoring laboratory experiments with transgenic plants, but without any legal competence. This period seems to be quite similar to the respective early stages in western societies, when biotechnology was conceived as 'a science/enterprise as usual' and a model of self-control and self-regulation within the scientific community was conceived as sufficient (Galloux, Prat, and Stevers 1998; Grabner et al. 2001).

Let us now focus on the five years between 1996 and 2000. A few relevant interconnected events took place. First, the Parliament passed the Act No. 92/1996 on varieties, seeds and seedlings of cultivated plants. It was the first law in the Czech legislation ever mentioning GMO. According to this law, registration of a new variety involving GMO had to be approved by the ME. In fact, biotechnological firms did not rush in registering of new GM varieties. First they needed to carry out field trials - which were, however, not regulated by the law. In spite of that, the firms voluntarily informed the ME, asked for its approval and met its requirements.³ The ME referred itself to the EU legislation.

Second, CCPT became an advisory body of the ME. The ministry issued its approval to field trials on the basis of Committee's statements. However, it was not until 1999 that CCPT was given the official status and the Minister of Environment designated its members. According to Zuzana Doubková, the main reason for the step was to give the Committee a control competency. Without the official status of the Committee, commercial firms were not willing to subject themselves to controls.⁴ In fact the regulatory practice of those years appeared to be as if the Czech legislation on the use of GMO already existed. It is quite comprehensible if we take into account the European context and anticipated Czech GMO legislation. It can be understood as a result of long-term strategies of building positive identities and relations of involved actors. Biotechnology industry invested in building an identity of reliable and accountable enterprise towards Czech - or even European - public administration, general public, or consumers. The regulatory body tried to avoid possible public distrust in the GM technology and its use, as experienced in the EU. An effort to learn a lesson from the EU development and to prevent negative public acceptance is explicitly declared.

Third, 1996 was the year of the first field trials with GM plants in the Czech Republic - at least as far as is known. Tens of trials took place between 1996-2000, grown plants being for example *Roundup Ready sugar beet* (1997, Monsanto), *maize resistant to herbicide Liberty* (1997, AgrEvo), *maize X0768MT Elita Bt* (1999, Pioneer Saaten), *Roundup Ready wheat* (1999, Monsanto), *flax* (1999, Institute of Plant Molecular Biology of Academy of Sciences of CR (AS CR) and Agritec) or *potatoes* (2000, Institute of Experimental Biology of AS CR and Sativa Kerkov). Even from this short list, one can observe a tendency towards more

² Interview with Fatima Cvrčková, biologist, Faculty of Natural Sciences, Charles University.

³ Interview with Zuzana Doubková, civil servant (ME).

⁴ Interview with Zuzana Doubková, civil servant (ME).

active participation of local research laboratories and enterprises in the development of agricultural biotechnologies.

Fourth, in the year 1996 Greenpeace Czech Republic began to take interest in the issue. According to Karel Jech, an employee of the association between 1996-98, they started to observe the case and to collaborate with their Austrian and German Greenpeace colleagues in this area.⁵ During the years, Greenpeace launched various activities. They were organising public demonstrations and petitions, publishing articles in the mass media, or producing their own printed material, running a web page,⁶ commenting on the prepared legislation, or carrying out polls among local foodstuff producers on their GMO policy. The position of Greenpeace can be characterised as a principal refusal of GM technology, in agriculture at least. This standpoint is reflected also in their vocabulary. For example, they speak about genetic 'manipulation' instead of 'modification', which is a term used in the law. At least until very recently, their strategy both towards the general public and towards public administration has been to present and stress scientifically defined risks of the new technology. Economic, political or ethical discourses are rather marginal. However, they can hardly find any local support for this scientifically based dispute since there is no Czech scientist willing to oppose, at least publicly, GMO. Critical arguments have to be imported. An example may be the recently published translation of the book 'GM before the court', which consists of scientists' supportive evidences to justify the destruction of an experimental field with *Bt-corn* in Britain in 1998. Finally, it is remarkable that aside from Greenpeace, there is no other civil association dealing with nature protection or consumer rights protection that pays focused and systematic attention to the issue of GM organisms or foods.

The counterpart of Greenpeace in the area of GMO appeared in 1997. With direct reference to the Greenpeace action in Hamburg in 1996 and to 'the atmosphere of public fear and manipulation', the civil association Biotrin was established. It was founded by a group of scientists, primarily biologists who were in close relation to biotechnological research. Each of them was affiliated with either some university or the Academy of Sciences (e.g. Biotechnological Institute of Charles University, or Institute of Plant Molecular Biology). Interestingly, four of them were also members of the CCPT. During the years Biotrin launched quite professional and intensive (public) projects involving running a web page,⁷ organising lectures, seminars or press conferences, participating in activities of several international bodies, co-operation with the ME or the Ministry of Agriculture and co-producing the film 'Genes of controversy' translated into 9 languages. The association claims to represent the only rational approach to the problem. They regularly label their opponents as irrational, ignorant, pseudo-religious and fundamentalist and accuse them of manipulating the public.

Now, let us move in full to the last period of GMO story that started with finalising and passing the new Czech law on the use of GM organisms and products. The working group at ME was preparing a draft of the law since 1996, but the final version ready for parliamentary voting appeared only in 2000. CCPT and Biotrin - as mentioned, partly personally interconnected - participated in the process of drafting and finalising the law. Some point out that this was a rather schizophrenic situation.⁸ Jaroslav Drobník, a member of both the CCPT

⁵ Interview with Karel Jech, former Greenpeace employee, member of Society for Sustainable Living.

⁶ <http://gmo.greenpeace.cz>; <http://gmo.greenpeace.cz/gen-network>

⁷ <http://www.biotrin.cz> (English version available).

⁸ Interview with Karel Jech, former Greenpeace employee, member of Society for Sustainable Living.

and Biotrin, expressed publicly his aversion to the EU legislation. He published a few articles in newspapers and on the web, stating that the EU policy is overcautious and irrational. However, the cooperation on preparation of the law ended up in a long-term partnership between the ME and Biotrin.

The law was finally passed as the Act No. 153/2000 on the use of genetically modified organisms and products in the spring 2000 and it is in force since January 1, 2001. It was based on the principles defined in the EU legislation from 1990 and it tried to anticipate the amendments prepared by the European Commission in 1999 and 2000.⁹ The law is restricted to the living GMO only. It conceives them as a separate category demanding specific regulatory practice and conditions of use; but it does not mention at all the precautionary principle. It distinguishes three regimes of use – contained use, introduction into the environment and placing on the market - and it defines mandatory registration and specific conditions of use for the three regimes respectively. The decision authorising particular private or legal persons to use a given GMO is in the competence of the ME, which has to consider the standpoints of Ministry of Agriculture and the Ministry of Health.

There were two major disputes in connection to the law before it was passed in the Parliament. The first one concerned its scope. Greenpeace wanted it to cover not only living GMO, but also processed, biologically non-living products from GMO. However, this was not enforced. Another, separate law regulates the issue of foodstuff produced from GMO (see below). The second controversy developed around participation of the public in administrative procedures of registration. Representatives from the conservative Civic Democratic Party in particular tried to remove this possibility from the law. It remained finally included.

The Act No. 153/2000 also sets up the Czech Commission of Genetically Modified Organisms and Products (CCGMOP). It replaced the CCPT and became an advisory body of the ME. Primarily, it assesses applications for registration of GMO and their users. In practise its statements are the most relevant documents for the final decision of the ME. Further, the Commission carries out inspections of the workplaces and sites of introduction of the GMO, and inspections of documents kept by the users, or it proposes methods for testing of GMO. The Commission consists of 16 members who are designated by the Minister of Environment after consultations with the Ministry of Agriculture, the Ministry of Health, and other relevant administrative authorities (like the Czech Environmental Inspection, the customs authorities, or the Czech Agricultural and Foodstuff Inspection) and with the Academy of Sciences and civil associations. At present, the Commission involves 6 civil servants from relevant offices, 7 representatives of research institutes and universities (three of them members of Biotrin), 2 members of environmental NGOs (not Greenpeace) and 1 representative of organic agriculture (not a farmer). Partial continuity with the former CCPT can be observed.

In 2001, the first year the Act No. 153/2000 was in effect, 44 administrative procedures started. Majority of them applied to contained use (universities, research institutes) and the final decisions were positive in most cases.¹⁰ There were also several approvals given for the introduction into the environment (field trials). The applications for *Roundup Ready wheat* (Monsanto) and for field trials for 'registration of varieties' of *Bt-corn* and *oil rape resistant to herbicide Liberty* (Aventis) were refused. In the case of oil rape, the reason was a negative standpoint of the Ministry of Agriculture taking into account economic interests of Czech farmers. Trials for registration of variety demand larger areas, and only a suspicion that the

⁹ 90/219/EEC, 90/220/EEC.

¹⁰ This paragraph draws upon materials published on the web page of ME, <http://www.env.cz>.

Czech non-GM rape got mixed with its GM variant would be sufficient to cause an export embargo of the EU countries. *Roundup Ready soy* (Monsanto) was approved for placing on the market. Authorisation was given for import and processing, not for growing. In 2003 *Bt-corn* (Monsanto) was approved for placing on the market with legal validity since January 2004. It is quite a controversial case, which a passage in the second part of the text will discuss in a more detail.

Another relevant law was passed in 2000, the Act No. 306/2000 on the foodstuff and tobacco products. It introduces a category of 'novel food' that includes, among others, both food containing GMO and food produced from GMO (i.e. not containing DNA capable of further replication). It thus goes beyond the scope of the Act No. 153/2000 restricted to living GMO. There are two GMO relevant documents based on the law on foodstuffs. Both of them work with the concept of substantial equivalence. While food containing GMO (i.e. containing DNA capable of replication) is never substantially equivalent to the existing one, food produced from GMO can be certified substantially equivalent. The equivalence has to be proved in composition, nutritional values, metabolism, intended use and content of harmful substances.¹¹ The first document is a methodical material of the Ministry of Health *Criteria for approving of novel foods*. It establishes assessment procedures for novel foods, referring to the Regulation (EC) 258/97. It allows for a simplified procedure in case of substantially equivalent food. The second relevant document is the Decree 24/2001 of the Ministry of Agriculture on the system of labelling foodstuffs and tobacco products. It requires mandatory labelling of food containing GMO by 'genetically modified' or 'containing genetically modified organism', and substantially non-equivalent food produced from GMO by 'produced from genetically modified...' Substantially equivalent food does not have to be labelled.

The decree is in force since January 1, 2002. But even a rather systematic scanning of usually sold foodstuff carried out by Greenpeace has not yet registered any labelled product. If anything at all, one encounters a negative declaration: GMO free. The inquiry of Greenpeace among foodstuff producers on the Czech market is also worth mentioning.¹² The majority of them claim that they do not use GM material. None of them explicitly states its usage. On the other hand, the cases when producers do not know, or do not admit to know that their food contains GMO are not marginal. They may even have a certification that the raw material they buy and process is GMO free. But the opposite has been proved in tests (Večerková, 2000).

This brings us to the important issue of control and execution. According to Karel Jech, this is the weakest point of the contemporary GMO regulatory system.¹³ There is a symptomatic error in the existing law. The one who gives wrong information in the registration application can be punished by a fine of up to 10m Kč (roughly 30 000 Euro). However, the user who does not ask for authorisation cannot be punished at all. And it is not only a theoretical possibility. In the year 2002, more than a year after the law came in force, there were still quite a few respectable research laboratories which had not asked for authorisation for contained use, no matter how easily their obligation can be identified from comparison with grant research projects published on the internet. This evident weakness of the law should be corrected in the new law waiting to be passed in the Parliament. Another example is the fact

¹¹ The new EU legislation omits the principle of substantial equivalence, as it has been very controversial (see e.g. European Commission 2001b, pp. 6-7).

¹² <http://www.greenpeace.cz/action/geneng/tabulka.htm>

¹³ Interview with Karel Jech, former Greenpeace employee, member of Society for Sustainable Living, member of CCGMOP.

that, according to Jech, neither Czech Environmental Inspection, nor Czech Agricultural and Foodstuff Inspection had any systematic plan of controls for the year 2002. Doubková mentioned in the interview that reference laboratories do not have clear and normative methodology of sampling and testing of GM products.¹⁴

The latest news relate to the legislation. In 2003 ME put a new law on the use of GMO to the vote in the Parliament. It should have eliminated weaknesses of the existing one (related mainly to sanctions) and appropriate in full the EU authorisation procedure (to come in force after the country's accession to the EU). And it also changes arrangements for the public participation - which will be discussed later in a more detail. In January 2004 the bill has, with less media attention than the previous one, passed through voting procedure in both chambers of the Parliament and is now waiting to be signed by the president.

To conclude, let me characterise the contemporary situation into which the present history of GMO in the Czech Republic has taken us. First, there exists rather systematic EU-like legislation that is settling down and exploring ways of its application and forming its institutional base. Second, there is a number of organisms approved for contained use and a few plants for relieve into the environment (experimental trials). *Round up ready soy* (Monsanto) has been approved for importing and processing, *Bt-corn* (Monsanto) for commercial growing. Third, we can find representatives of polarised standpoints on the issue of GMO, mainly Biotrin (pro) and Greenpeace (anti). But there does not exist much direct debate between these stakeholders. Fourth, with the exception of 1999-2000, when media paid relatively close attention to the issue of GM organisms or foods on the occasion of passing the new legislation, there is no wider public debate about the issue.

Public accountability

The following text formulates some arguments and ideas, and presents more empirical details related to public accountability. As we pointed out in the national profile, there is no concept of public accountability familiar in the Czech language, or in the Czech public space. The analysis is therefore inspired mainly by the concept of public accountability as it can be found in Anglophone sociological literature and public discourse, and it is partly an exploration, started in the national profile, of what this concept means, or could mean in the Czech context.

EU politics: the case of the Czech GMO legislation

The role of the EU is very significant in the policy of GMO, as well as in other areas of policy-making and politics in the Czech Republic. Two perspectives on the role of the EU can be applied. The first one follows *the EU as a given fact and a categorical imperative*. As such, it stimulates a rather quick and systematic legislative process and policy reforms. This positive influence has, however, its problematic sides. One can observe a tendency to reduce politics to an expert task of transposition of the European legislation; the political and wider public debate is neutralised. Furthermore, attention is focused on a formal correspondence between the Czech and European legislation and much less on its enactment in practice. These problematic aspects of the EU influence on local politics are especially visible, and in a way paradoxical in case of GMO. For it is one of the prominent areas where the EU aims at greater accountability, openness and participation of citizens in policy-making, and where the policy practice takes often place beyond the legislation, and often precedes it. The second

¹⁴ Interview with Zuzana Doubková, civil servant (ME), secretary of CCGMOP.

perspective follows the EU as a heterogeneous fact and a strategic imperative. It is not mutually exclusive with the first one. On the contrary, the two need and back up each other. The second perspective focuses on the ways how various local actors support their arguments and activities by *mobilizing pieces of heterogeneous and often contradictory EU reality* - e.g. proclamations of the European Commission or attitudes of European consumers - *as a given facts*. The given fact of the EU reality is always strategically mediated. We do not leave the political. The EU is, however, used as a device to shortcut open and public debates. Let us look now at the development of the Czech GMO legislation in these perspectives.

The law on the use of GMO had been being prepared between 1996 and 1999, and it was passed in the Parliament only in 2000. An influence of the EU on the passing of the law, however slow, was crucial according to all engaged actors. An incentive from the EU was double: on the very passing of the law, and on its passing in the 'European' version.

The preparation of the law was guaranteed by the ME. The Ministry collaborated closely with members of the NGO Biotrin, which represents the strongest voice in support of biotechnologies in the Czech Republic. And also, it is a strong, and in fact the only critic of the EU legislation related to GMO. Biotrin claims it irrational and subjected to political interests. The EU policy, it says, indirectly supports emotional fears of citizens and the precautionary principle is vague, being misused for disavowing scientific facts and as an import barrier (cf. Drobník 2002b). Interestingly, according to František Krahulec, a rather critical scientist, the chief of Biotrin had tried to propose an American version of the regulation in the mid-nineties. Krahulec was asked to assess the proposal. The state authorities, however, quickly refused the proposal as politically unrealistic.¹⁵ Biotrin, it seems, understood this refusal quite well, and changed their strategy. It remained critical as for the EU legislation, but accepted the political and economic necessity to follow it. Intransigent criticism would prevent them from being influential in the current development. To illustrate their position, let me quote from a comment on the proposal of a new EU legislation (European Commission 2001b) on their web site.

How to assess the proposal from the perspective of Czech legislation? We could say that our state authorities did not commit any sin in terms of refusing the risks related to BSE and supporting public resistance towards GMO as an anti-import barrier; thus, there is no need for them to pass purely irrational laws as a penance for that. In addition, we could say that we are yet not an EU member state and it is demeaning to accept subserviently an utter nonsense. There is, however, a hitch in economy. We want to export to the EU, we want foreign tourists to spend their money on the Czech cuisine, we want to cooperate with firms in the EU - there is no alternative to the claim that acceptance of these rules is a factual nonsense, but a political and economic necessity. (<http://www.biotrin.cz>)

On the other side of the controversy, we could point to an effort of Greenpeace to extend the scope of the law 153/200 on the use of GMO beyond the border of *living* GMO, which was also effectively refuted mainly with reference to the European legislation. We can see, therefore, that on the one hand the European context had a crucial influence on the handling of the issue of GMO in a systematic way; on the other, the very same context inhibited local public debate about the issue, as it eliminated all (other) alternatives. The European argument was used to neutralise critics and objections. And it helped to create 'schizophrenic' situation as the one described above and related to Biotrin.

¹⁵ Interview with František Krahulec, the head of the Institute of Botany, Academy of Sciences of the CR.

However, why did Biotrin want to stay involved in the preparation of the legislation, even if it accepted that it had to face the European regulatory model as given?¹⁶ Because they knew that even in that case -in fact by the very means of accepting it - they could still influence a lot. The 'given' of the European model drives/keeps the debate out of the public space. And here, for example within the frame of CCGMOP which has a special relation with Biotrin, is where actors can explore and test how much and strictly given the 'given' is. Let us follow the controversy on the paragraph of the law that anchors a possibility of NGOs to take part in GMO authorization procedures.

This paragraph was included in the proposal of the Law No. 153/2000. During the parliamentary debate it was fiercely discussed; for example the Committee for European Integration (sic!) proposed to leave it out. The Minister of Environment defended the paragraph by this argument:

The obligation of the respective state authority to tackle their objections and arguments (of NGOs - ts), to respond to them in some way, this is what I hold as quite logical and legitimate, and the legal norm will not, I am sorry, correspond to what the EU demands from us without this. (Kužvart, the 2nd reading of the law in the Parliament, stenographic record)

The possibility of participation remained finally in the law. This, however, does not mean much by itself. We will see later what happens in practice, as it is crucially dependent on the personal composition of CCGMOP. Reluctance of the members of the Commission and other responsible persons at the ME can revert the public participation into a purely formal exercise. And indeed, Drobník told me openly that he considers the participation of NGOs in the administrative procedure to be nonsense. Biotrin cannot affect substantially the formal shape of the Czech EU-harmonised legislation, but can indeed influence what it means in practise.

And it goes even further with the new GMO law just waiting to be signed by the president. This law changes the public participation possibilities. With reference to the Directive 2001/18/ES and to the Aarhus Treaty, an institute of public hearing is introduced to the law (Důvodová zpráva 2002). *All* citizens - not only NGOs, as was the case so far - should have the right to submit their comments to applications for authorisation, which would be discussed at public hearing. The citizens would not have, however, the status of participants in respective administrative procedures (with the right to legal appeal, for example). In the proposal of the law prepared by the ME, the possibility for NGOs to become participants in the administrative procedure was maintained, and the new public hearing procedure was added to it. But during the Parliamentary debates, the former possibility of participation in administrative procedure was left out. And indeed, Jaroslav Drobník did not conceal at all in the interview with me that he hoped the old paragraph would be finally deleted in the Parliament. A reference to the EU legislation, which does not include exactly this arrangement of participations, will be a useful and sound argument. Finally, we can see that references to the EU can be used as a support for very different, even contradictory claims and actions.

¹⁶ We can find following statements on the web pages of Biotrin. "Collaboration with the Ministry of the Environment and Ministry of Agriculture is one of continuous activities of the Association. It ended primarily in passing of the Law on the use of GMO in 2000 and of respective decrees." "Biotrin went on elaborating of expert materials for the legislation related to the use of GMO (updating of the law 153/2000)" <http://biotrin.cz>.

Representation of the public: Biotrin, Greenpeace, and the Ministry of Environment

There are, in fact, quite few actors publicly engaged in the case of GMO in the country. There is a single person in Greenpeace taking care of the genetic campaign. There is Biotrin that associates a group of scientists, but the only (publicly) active and visible among them is Jaroslav Drobník. There are several people in the ME working on the topic, who however seldom show up. Finally, there are one or two journalists who continuously follow the topic; and one or two scientists who publish articles from time to time.

For example, Greenpeace tried to mobilise organic farmers (via their association), but without any substantial success. How to explain this situation, quite different from what happens in most of the western European countries? In the research interviews we can arrive at accounts of negative nature only: there are more urgent problems for organic farmers, consumers, citizens, inhabitants of villages near experimental fields, publicly active scientists, or journalists than that of GMO. As a result, there are just three actors visibly engaged in the case: public administration (the ME and its advisory body CCGMOP), the scientists' civil association Biotrin, and Greenpeace. This scarcity of actors brings the issue of representation to the foreground.

Regardless of the personal overlaps and interconnections, one can take these actors as performers of three distinct approaches towards the general public, as performers of three distinct logics. What is interesting about them? One common feature arises from studying various empirical data. They all depoliticise ordinary citizens, the general public. What characteristics, however relative, build up a political actor? Let us think of three constitutive qualities. Cognitive competency, autonomy, and presence in the public sphere. Simplifying a bit, it could be suggested that each of the stakeholders' approaches attacks one of these. Biotrin negates the possibility of cognitive competency of the public. Greenpeace subverts citizens' autonomy. And the public administration forces citizens out into the private sphere. Let me describe these practices in more detail.

First, Biotrin. The public performance of Biotrin can be summed up by the word education. 'Biotrin is a non-profit organisation formed by the academic community for dissemination of information on modern biotechnology,' states the self-definition on the Biotrin's home page. The association claims to represent the only rational approach to the problem. They regularly label their opponents as irrational, ignorant, pseudo-religious, fundamentalist; and manipulating the public. For Biotrin, the general public consists of laypersons that cannot achieve any substantial knowledge, but can be, and have to be educated by scientists in order to form the right opinions. The public never has resources to assess the technology itself, but it has to be educated in order to accept expert assessments. It is assumed that there is a one-way flow of information and experience, from scientists to the others (the public or journalists). For example, in 2001, Biotrin prepared and handed over to journalists a 'dictionary' of key concepts related to biotechnology. Or, it 'reviews' monthly newspaper articles on its web pages, since 'sensational information is easily published in press, but corrective truth of scientists never appears' as one of its members put it in an interview.

This educational approach of Biotrin to the public corresponds very well with their negative attitude to formalised public participation in administrative procedures. Interestingly, Drobník contrasts the case of biotechnologies with cases of landfills or highway bypass.¹⁷

Administrative procedure related to GMO is a highly expert issue. It is not like a question whether you want to have a smelly waste dump behind your cottage, which is not an

¹⁷ Interview with Jaroslav Drobník, founder and head of Biotrin.

expert issue but a question of interests. GMO are, however, highly expert issue. It is as if we had a NGO participating in a drug registration procedure - as drugs influence the health of the whole population. If the question is where the bypass or a dumping site should be placed, ok, it is their legitimate agenda but not these expert issues like GMO.

Second, public administration. The Ministry of Environment and the Czech Commission of Genetically Modified Organisms and Products execute the logic of delegation of power. The public consists of voters who delegated mandate to politicians, and, secondarily, to other professionals who are competent to protect consumers and the environment against objective risks of GMO. It is their responsibility. The public should let them act and become involved in a limited and constructive way only. The regulation does, however, need not only to protect from objective risks but also satisfy subjective preferences and idiosyncrasies (of consumers/market subjects with the right to choose). This is a source of the political legitimacy of labelling, which might be irrational from the point of view of contemporary science. This double view is nicely expressed in the text of the chairman of CCGMOP.

Results of many trials have shown that transgenic plants and connected new technologies in agriculture are less harmful for the environment and for human health than classical technologies of agricultural production. In spite of this, according to the Act on GMO... the products of transgenic plants will be labelled on the food market. It has to be understood as a respect for the wish of the people who do not want to eat the food prepared from transgenic plants. It is as legitimate as e.g. the wish of those who do not eat meat. (Ondřej, *undated*)

A part of European public is - under pressure from dis-informed and dis-informing ecological activists (which has its political and economic background) - oriented against transgenic varieties and food produced from these. It is a temporary state of affairs - with the time going, transgenic plants will themselves defend their advantages. In this time it is however right to create a safety feeling for people who are afraid of transgenic plants, so that they do not need to enter in contact with these plants in case they do not want it. The law will be a guarantee of labelling of transgenic plants and their products as well as prevention of all possible harmful influences on the environment, biodiversity, human and animal health in case that transgenic plants would show these in a greater degree than their "ordinary" alternatives. (Ondřej, Doubková, Drobník, *undated*)

The Ministry of Environment, or other relevant administrative bodies do not mastermind any systematic persuasive campaign toward the general public. They carry out seminars for concerned "expert public". And they simply publish what the law prescribes. It seems that they do not care so much (as Biotrin does) about citizens' positive acceptance of the GMO. They try to avoid scandals, conflicts and public discontent. But also, they try to avoid public debate about the issue and keep citizens in the private (market) sphere.

Finally, Greenpeace. It engages in the practice of activation. It performs active citizens and consumers. On its web page 'gen-network', Greenpeace organises citizens' petitions to the Minister of Environment, or instructs consumers to demand GMO free policy from supermarkets. However, this politics of active citizenry entails an internal tension. They often use the rhetoric of the right to choose. But, a few lines later, they perform consumers/citizens defending the GM free world. Example. 'Consumer has the right to know whether he buys natural, or genetically modified food in order to decide himself what food he will eat,' says the leader of the genetic campaign of Greenpeace in the major Czech newspaper, commenting on the just published consumer's guide (*Genetická jídla...* 2000). What is the title of the guide, however? 'Do you know what you eat, or *how to avoid* genetically manipulated food' (emphasis ts). Or, during the negotiations with supermarkets Greenpeace re/presents the public that does *not* want GM food.

And there is yet another tension in the practice of Greenpeace. They present their objections as based on expert, or scientific arguments. But they often do not fulfil the basic standards of knowledgeable debate. For example, on the occasion of the publication of the Czech version of 'GM before the court' Greenpeace states:

This case enters the history and pushes the public debate about genetically manipulated food from the level of 'science versus emotions' to a more sound level, when it turns out that scientists have serious doubts and ask questions that we cannot answer at this point.

However, at the end of the Word-formatted version of the published translation on their web pages they omit cited literature (which is included in PDF version). It is a symptomatic failing. Greenpeace does not provide the public with relevant (negative) argumentation to form a starting point for the debate. Rather, it spreads ready-made negative attitudes towards agricultural biotechnology.

None of the discussed practices, it seems, approach citizens as capable to enter into the public dialogue and to express autonomous knowledgeable attitudes - as capable to enrich the debate. The public is either marginalized as essentially irrational, or forced out, with its subjective preferences, to the private (market) sphere, or used for upholding rather pre-defined attitudes. If we take reasonability, engagement in public sphere and autonomy as constitutive characteristics of a political actor, citizens are deprived of their political identity. And simultaneously, the political of the issue and of the stakeholders' positions is kept invisible.

It is nothing really surprising. The activities analysed here are in fact practices of representation of the public, or of the public interest. The scientists' association uses the framework of intellectual elitism. Public administration refers to representative democracy, Greenpeace to the idea of civil society. Representation is never innocent; it also performs what is represented. Public interest is being represented and re/defined simultaneously. However, as argued theoretically and empirically e.g. by Callon, Lascoumes, and Barthe (2001) these representational practices can be less or more open, less or more dialogical. It seems that they are rather less open and less dialogical in the Czech GMO case. It is true even for a civil society actor, Greenpeace, that should be, at least according to Callon, Lascoumes, and Barthe (2001), the most probable provider of more flexible and dialogical representation of the public.

Different accountability frameworks: Public, scientific, and EU accountabilities

There are many elements related to the concept of public accountability present in the discourses and practices of policy/politics of GMO in the country. We can find legally defined obligations to inform and consult the public; Greenpeace participate in administrative procedures; articles appear in the media. However, the issue of public accountability is not, in the connection to GMO, tackled as a problem *per se*. The problem with GMO is that they might be risky, unhealthy, and dangerous for the environment; but not - not also - that GMO policy is publicly unaccountable, which seems to be an influential framing of the controversy in Western Europe. If anything, the demand for a different style of policy-making is rather marginal. Even though we can observe some changes in the style, engaged actors do not define it as part of the problem.

There is perhaps one exception in this respect, which is the issue of labelling. It is quite an ambiguous issue. All the actors agree - be it enthusiastically or unwillingly - that GM food should be labelled but do not agree what labelling in fact means. Everyone talks about the right to choose. For Greenpeace this right relates to decision on both subjective and objective risks. For them these issues are not strictly separable. Consumers 'vote' about the risky *nature*

of GMO. And also, but much less articulated as the political discourse of Greenpeace is rather underdeveloped, they 'vote' on political vision of our society. On the other hand, the public administration and scientists also support the labelling but put it in the realm of subjective preferences only. Consumers' rights are not a device of civic vigilance in this complicated "risk society" but a welcomed consumerist caprice in the advanced capitalist society. This short outline points to the fact that what labelling means depends on how it is/will be interpreted, used, enacted, practised. It has a *potential* to open a substantial debate about the risky nature of GMO and challenge established sites of decision-making; but not automatically.

The rather weak emphasis on public accountability does not mean, however, that accountability is not an important issue in this case. On the contrary, all engaged actors aspire to be accountable, defend their accountability and point to a lack of accountability of opponents. But *public* accountability appears to be just one, and a rather minor accountability framework. Analysing materials and interviews we arrive more often at two other frameworks, which could be called scientific accountability and EU accountability. Evidently, they correspond to two strongest 'givens' in the case, which are scientific facts and the EU regulatory model.

The most precise formulation of scientific accountability is given by the representatives of Biotrin when they define their own identity, and when they try to deprive Greenpeace and (lay) citizens of legitimacy as actors who should have its relevant voice in the case. They are ready to debate and argue - but on the expert level, with sound opponents, within a circle of colleagues. Expert seminars and reviewed scientific journals are arenas for these discussions. Apolitical status of expertise is being performed as an implicit assumption. This framework is very significant in the current regulatory practice, as it is nearly totally dominated by CCGMOP experts.

Interestingly, Greenpeace as a radical opponent of GMO has never tried to subvert this framework of legitimacy. They rather attempted to join the game. They insisted on expert and scientific nature of their critical arguments. During the last three years they invested a substantial amount of energy in their participation in administrative procedures, which pushed them to accept rules of the (expert) game. Only recently, after realising that this is probably not a successful strategy (and after the change in leader of the genetic campaign) they experiment with a new approach. They published a press release at the end of January 2003 claiming that Greenpeace will no longer cooperate with CCGMOP, and pointed to its biased composition and to connections between its scientific members and biotechnology industry. This step involves double contradictory potential. On the one hand, it is the first attempt to subvert the sovereignty of scientific accountability of the Commission by revealing political or economic contexts of expertise. On the other hand, if the step will appear to be only an attempt to revert concrete decisions or replace concrete people, it might on the contrary support the idea of scientific accountability by referring to possible unbiased expertise.

Let us now turn to the second influential accountability framework. We have already read extensively about the ambiguous role of the EU earlier in the text. No surprise the other significant framework is related to the EU. Actions, decisions, or legislative innovations are being legitimised by reference to claims of the European Commission, or the situation in the EU countries. The key responsibility does not aim at the public, or citizens, but to the EU; or more precisely, it aims at the Czech public, but indirectly *via* (the political black box of) the EU. As a result, the Czech GMO policy is re/presented as a legal-expert task of adoption of the EU legislation and regulatory model. Its critics put it most exactly:

I am of course aware of the fact that we have to follow the EU legislation, that we have no alternative; and therefore this law and also other related laws have to reflect respective EU regulations and directives. They should however not go beyond the frame of this legislation in any case. (Zahradil, the 2nd reading of the law on use of GMO in the Parliament, stenographic record)

Biotrin and elected politicians seem to be the main representatives of the scientific and EU accountability respectively. I want to emphasise, however, that these vocabularies are used strategically and eclectically by all the involved actors. For example, we can read the following argument in the press release of Greenpeace related to the direct action on the experimental field with Bt-corn.

Genetically manipulated Bt-corn might be approved in the EU, but it is grown only rarely in practice, and it is not approved even for field experiments in the neighbouring Austria. (Piknová, Haverkamp, Vašků 2002)

And Jaroslav Drobník from Biotrin, the strongest critic of the EU GMO policy counter-attacks in this way:

The Czech Republic follows the rules of the EU. The variety is authorised in the EU and the risks of pollen transfer for the given locality, the distance from nearest corn fields [...] were assessed according to these documents:

Opinion of the Scientific Committee on Plants concerning the adventitious presence of GM seeds in conventional seeds (SCP/GMO/SEED/CONT/0002-FINAL), European Commission, DG for Agriculture

[...]

The opinion of Greenpeace, i.e. total exclusion of growing of GMO and field trials differ from opinions of European Commission that I dare to demonstrate on following two assertions (and he quote commissars Busquin and Byrne, ts). (Drobník 2002b)

The last quotations show nicely not only a representation battle over what is in fact happening in Europe, in the EU, in the EU countries; but also mixing of the EU and scientific accountability frameworks.

The practice of public accountability: The public seminar of the ME and the case of Bt-corn authorisation

Let us look now in more detail at two quite typical ‘public participation’ events related to GMOs. First, the seminar ‘GMO research in the CR’ as one which did not run out of control of organisers, the ME and CCGMOP, and demonstrates therefore the state authorities’ idea of how the public participation, or public accountability should look like. Second, there is a case of authorisation of *Bt-corn* that, on the contrary, got a bit wild and shows a partial tension between different notions of public accountability.

The seminar ‘GMO research in the CR’ took place in October 9, 2002 and was organised by CCGMOP, Biotrin, and Institute of Agricultural and Food Information. There were five presentations, all of them in an educational tone, and basically pro-GMO. Four of the speakers were members of CCGMOP. There had been a statement on the invitation that ‘Questions and discussions will follow each topic.’ But they did not. In spite of large attendance, there was hardly any debate except of a ‘standard’ critical question of a Greenpeace representative related to legal responsibility for contamination, which was followed by a ‘standard’ evasive response; and except of a voice of one organic farmer who used various critical arguments, ranging from ethics to international politics, but who was repeatedly silenced by ironical replies of other discussants with tacit support of the audience.

When he asked why nobody from the anti-GMO side was invited to give a speech, he got an answer that critics had already got space - at a similar seminar that had taken place two years ago.

Each participant brought from the seminar a written material that ends up by this paragraph:

It is a high time to encourage people to get rid of fears from GM cultural plants, and to accept them as a natural part of change of life enabled by scientific progress, similarly to the use of mobile phones or computers. (Geneticky modifikované organismy 2002)

For a comparison, let us now look at the case of authorisation of Bt-corn. We can analyse how the regulatory scheme defined in the law works in practice and what are the possibilities and motives to go beyond the scheme.

According to the Law No. 153/2000 all field experiments, as well as commercial use of GMO, have to get authorisation from the ME. An applicant prepares a rather detailed documentation that should provide for example risk assessment, or emergency response plan. A statement of CCGMOP is crucial for the decision of the ME. As described earlier, the Commission dominated by (pro-GM) experts provides quite narrow and expert-defined standpoint. The view of the public should enter the debate through possible participation of NGOs in the administrative procedure.

The administrative procedure related to field experiments with *Bt-corn* of Monsanto took place in the spring 2002. Greenpeace became a participant in the procedure, and submitted comments and objections. These have to be, according to the law, discussed at a hearing. It is not a public hearing, but transcription of it has to be published by the ME. Let us reconstruct and interpret what happened at the hearing from the transcription and from descriptions given by interviewees. First, there was only one representative of Greenpeace, but two persons from Monsanto, five persons from CCGMOP (two of them members of Biotrin, and one of them an expert consultant of Agritec, a Czech biotech firm experimenting with GM flax); moreover, one of the guests was a scientist from the Institute of Entomology AS CR, the laboratory co-operating on the field experiments with Monsanto. The only voice supporting Greenpeace came from Karel Jech, an NGO representative in CCGMOP. Second, the comments of Greenpeace were not published on the web of the ME, nor reproduced in the transcription. Thus, the transcription had a form of a brief correction of erroneous - but for the external reader unknown - arguments of Greenpeace. Last, but not least, the transcription was drawn up by two civil servants from the ME and one member of CCGMOP. And it was the chairman of CCGMOP who approved it. However, according to the law CCGMOP should not be in any prominent position in the administrative procedure. It is 'only' an advisory body of the ME, providing the Ministry with a standpoint. This arrangement gives an impression of an unconcealed power-play. And this is also how the representative of Greenpeace experienced it.

Let me now try to evaluate this participatory procedure in the perspective of some of the criteria for assessment of 'dialogical procedures' suggested by Callon, Lascoumes and Barthe (2001). The criteria of *intensity* and *openness* describe an extent to which a procedure allows confrontation of various standpoints and vocabularies, and encourages cooperation between experts and engaged citizens. From this point of view the hearing does not qualify for high ranking. The scale of arguments admitted to the debate was quite limited. Only formal or marginal objections of Greenpeace were accepted. Further, the majority of CCGMOP, as well as the representatives of the ME tried to perform a clearly hierarchical relation between experts and the others. For example, the transcript reads:

On this occasion, the chairman of the Commission pointed out the fact that in professional circles the only data considered relevant are those having been published in generally available and if possible reviewed journals. (p. 6)

Professor Drobník mentioned substantial methodical failures of the publication (which supports the arguments of Greenpeace - ts), pointed recently out by some tens of authors; as a result of that the publication was refuted. (p. 6)

Biotrin describes the hearing in the following way on their web pages. Noticeable is the strictly hierarchical relation inscribed in the vocabulary used.

Employees of the Czech Greenpeace office (ing. Píknová) were present at the hearing as participants in the administrative procedure. They had all the documentation at their disposal and they were well acquainted with the fact that the goal of the experiments is to find out objectively the impact of Bt-corn on the insect community. *They presented their comments, which the experts responded.* It can be verified in the report from the hearing (<http://www.env.cz>) that the present employee of Greenpeace did not object at all to the *explanations and responses* to their comments. (<http://www.biotrin.cz>; emphasis ts)

The next criterion we could apply is the *quality* of the debate. It refers to seriousness with which one's own position is reasoned and arguments of the others debated. As indicated above, the approach of the majority of CCGMOP to Greenpeace is a priori negative. Such an attitude is reflected in a patronising tone, characteristic for the transcript.

In summary, Doc. Ondřej¹⁸ agreed with Greenpeace that some data should be added to the application. On the other hand, he said, it is evident that Greenpeace does not always have up-to-date information (p. 10).¹⁹

Finally, *transparency* and *traceability* of the hearing - which reflect the usefulness of records and their accessibility - are also not good, at least from the point of view of a third party. The hearing is not open for 'passive' participation of broader audience and the published documentation is deficient. There was no press release either from the ME, or from Greenpeace that the event had taken place.

Positions and roles of respective participants in the procedure are evidently incommensurable. Greenpeace submits comments, and experts explain and correct them. It is the experts from the Commission who have the last word as for the validity of argument and knowledge. The wording of the Law No. 153/2000 was nonetheless complied with. The legal right for the public participation was performed; and, simultaneously, narrow expert handling of the issue was defended.

This is, however, not an end of the story. Admittedly, Greenpeace did not comment publicly on the hearing, nor did they appeal against the final positive decision of the ME. But they proceeded by other means. They organised a direct action on the experimental fields with the seeded Bt-corn in June. They staked the field out by a black strip and put plastic sacks on the plants. The key motto of the action was 'Monsanto - genetic contamination on your field too'. It was oriented mainly at local people and from this point of view it was not really successful. According to Greenpeace, hardly any local inhabitants came to the announced meeting and activists spent some time debating exclusively with the employees of Monsanto. The whole event was casually reported in media.

¹⁸ He is a chairman of CCGMOP. And the abbreviation 'Doc.' stands for 'associated professor'. The rhetoric of academic titles is an important part of the discourse.

¹⁹ As for Greenpeace I cannot formulate any point, as I do not their original comments at my disposal. And I do not take into consideration statements of concerned stakeholders expressed in different arenas since I try to assess the performances related to this particular procedure.

The question at the moments is not, however, related to the success or failure of the action, but rather to the meaning of the participatory procedure in the light of this later development. Participatory procedures entered the Czech legislation, and are defended with direct reference to the EU. We can thus look at the discourse of the European Commission related to public participation, and compare the Czech reality against it. Public participation in policy-making in the areas of environment, or health policy brings a double value according to the Commission. First, it strengthens democratic legitimacy of decision-making. The issue is debated and decided more publicly. 'The public' is represented not only by officials, elected politicians, or experts but also by NGOs and active citizens. Second, participation brings cognitive enrichment of the debate, as it mobilises citizens with their local knowledge, and practical everyday experience. Strengthened legitimacy and quality of decisions are important factors of wider acceptance of measures, technologies, or innovations in the society (e.g. European Commission 2001a). Of course, this is an official discourse of the Commission, and practical effects of participatory procedures can be very different in whatever European country. But it is still interesting to observe that from the point of view of the official doctrine, the described procedure was quite non-functional. It could not bring any new knowledge as the role of non-expert participants was to be corrected and educated. It did not initiate any reasonable interaction between the opposing sides. The procedure did not end up by shared acceptance of the decision. It only led Greenpeace to change the strategy of their genetic campaign.

An interesting point of the case is how the participation of Greenpeace was later rhetorically used against them. After the direct action of Greenpeace on the field we could read this commentary which denies the legitimacy of the action with direct reference to Greenpeace participation in the administrative procedure.

The Ministry issued an approval for registration. Greenpeace as a participant in the administrative procedure could appeal against it, which would prolong the procedure and the corn could not be seeded in a suitable agronomical period. There was therefore an easy legal possibility to prevent the seeding of the corn. No objection was, however, submitted. (Drobník 2002)

Few months later, in the winter 2003, an administrative procedure took place dealing with the authorisation for *placing on the market* of the Bt-corn (Monsanto). Greenpeace applied again to become a participant, and things went on very similarly as in the previous case of release into environment. After a hearing at the ME that was supposed to debate the critical comments, Greenpeace decided to break the 'deal' with CCGMOP. They announced an end of communication, pointed to an unbalanced composition of the Commission, and connections between its members and the applicant firm. A meeting with the (new) Minister of Environment took place. The minister asked them to suggest some changes in the composition of the Commission. They are ready to submit some names, but according to the new coordinator of the campaign, they are not going to spend much energy in administrative procedures any more. She is personally heading to 'British-like' campaign focused on the public and consumers.

It is all a very raw development, and it is a question what will actually happen (also because of the change of the position of the campaign coordinator). But there definitely seems to be emerging a shift in the Greenpeace politics. After two years during which they tried to make use of formal procedures to express their dissent and to influence the development, they are coming to conclusion that it is not an effective way.

Conclusion

The basic observation about GMO in the Czech Republic is that it is not a big (public) case. In this respect, it contrasts with the other studied Czech cases and also with the GMO situation in many other European countries. This paper discussed various indications that could help to understand the local situation. To conclude let us summarize the most important points related to public accountability which emerge in this specific case.

Two strongest universal silencers of the Czech public debate function quite effectively in this case which are references to the EU and to expertise/scientific facts. The legislation and regulatory practice of these days is sheltered by these two framework references that the opponents - be it Greenpeace that criticises it as too liberal or Biotrin that has it for too restrictive in many respects - do not publicly try to challenge. The main result of the situation as for public accountability is that relevant discussions and negotiations about GMO are in fact pushed/kept out of the public space. However, rather than no accountability, different frameworks of accountability stand here in opposition to the public one. These are scientific and EU accountability with different rules of the game and notions of for example what is valid knowledge and binding value.

Formal mechanisms of public accountability are part of the regulatory scheme. They came in the package of the EU legislation. The general definition of public participation procedure provides a wide space for interpretations. In all authorisation procedures so far it turned to a rather formal, power-asymmetrical, non-dialogic exercise, which in fact reflects the persuasion of those from the ME who run the procedure that public participation in the case of GMO is illegitimate and unreasonable. In spite of that Greenpeace concentrated primarily on formal participation mechanisms and invested a substantial amount of energy in their participation.

Media do not usually refer about GMO as a controversial issue that would concern “us”. Either they write about progress of biotechnologies, or about “their” controversies (in Europe, or between EU and US). Only a fraction of articles reframes issues as a locally relevant conflict. We can thus observe a triangle of low-intensity media debate/controversy, a lack of interest of the general public and no mobilization of possibly directly concerned actors like (organic) farmers. The three points have been reinforcing each other so far.

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<http://www.spotrebitele.cz> (Consumers' Association)

<http://www.umbr.cas.cz> (Institute of Plant Molecular Biology AS CR; English version only)

<http://www.umbr.cz/ktr> (Committee for Plant Transgenesis; English version available)

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Act No. 92/1996 Coll., on varieties, seeds and seedlings of cultivated plants

Act No. 79/1997 Coll., on medicinal substances

Act No. 153/2000 Coll., on the use of genetically modified organisms and products

Act No. 306/2000 Coll., on the foodstuffs and tobacco products

Decree 372/2000 Coll. of the Ministry of Environment, laying down the technical procedures that may result in a genetically modified organism and the technical procedures that are not considered to result in a genetically modified organism

Decree 373/2000 Coll. of the Ministry of Environment, laying down standards for a contained room and protective measures for respective categories of risk by contained use of GMO

Decree 374/2000 Coll. of the Ministry of Environment, on detailed conditions for the use of genetically modified organisms and products

Decree 24/2001 Coll. of the Ministry of Agriculture, changing the Decree 324/1997 Coll., on the system of labelling of foodstuff and tobacco products

List of interviews

Fatima Cvrčková, biologist, Faculty of Natural sciences, Charles University (9.4.2002)

Zdeněk Opatrný, the head of Department of Plant Physiology, Faculty of Natural sciences of Charles University, member of Biotrin, former member of CCPT (18.4.2002)

Lukáš Fischer, biologist, postdoctoral student on Faculty of Natural sciences, Charles University (18.4.2002)

Karel Jech, Greenpeace employee in 1996-98, member of Society for sustainable living, member of CCGMOP (26.4.2002)

Zuzana Doubková, civil servant, the Ministry of Environment, secretary of CCGMOP (2.5.2002)

Jaroslav Drobník, founder and head of Biotrin (16.10.2002)

Zuzana Píknová, coordinator of genetic campaign of Greenpeace (23.10.2002)

František Krahulec, botanist, the head of Institute of Botany, Academy of Sciences of the CR (4.11.2002)

Josef Tuček, journalist, Mf Dnes (27.11.2002)

Magdalena Klimovičová, new coordinator of genetic campaign of Greenpeace (19.3.2003)

Concluding comparative remarks

The aim of this short text is to point out and briefly discuss some comparatively relevant points related to the three Czech case studies.¹ It is not to be taken as a systematic comparison or analytical conclusion. At this moment, we simply focus upon similarities and differences and eventually try to understand them (make sense of them) against the background of the specific national context.

As such, this paper can also be read as a kind of integrative summary of the three national case study reports. The case studies on waste, transport and GMO are put together and commented and discussed as a whole.²

Density of framing

Let us begin with one general feature. We presume that it is important to study how different actors of a controversy frame and re-frame what is at stake. As time goes and the controversy develops, several possible frames become articulated and used. Some of them become stronger and more influential than the others. Some are rendered irrelevant while others are shared by almost all actors. This has real and important consequences for the entire case: for who is taken as stakeholder and who is excluded (both formally and informally); what sources and allies are available; whose voice is given priority; what kind of contexts is taken into account, or ignored; what scenarios become possible or impossible... That is, for instance, why something that had started as a local rebellion against a planned incinerator “ended” (at certain point in time) as a rather successful campaign against dioxins – at least, for one environmental NGO. But the “same” development may mean for some other people (local activists) that the rebellion ran out of gas and failed. During the trajectory of re-framings, the case may become de-politicised or more politicised; turned into an expert or technical or moral or legal issue; redefined as a local/global question; redefined as question of protection of well-being of people, of nature, or of democracy itself.

All these frames are not exclusive. Some of the frames complement each other and many of them may co-exist rather well, although – in theory – they are in contradiction. There often are re-framings, however, that compete and exclude each other. Some say, for instance, that GMO or a highway by-pass is a technical issue that should be under control of experts; others object that it should be under much broader public control, since it primarily is a public issue. The two sides of the controversy try to undermine each other’s position, each other’s frame. Actors propose and develop framing favourable to them and suppress, or weaken those that seem to be favourable to their opponents.

The number of re-framings of a case is an interesting indicator. Among others, it refers to the richness of actors and their alliances, and of other resources mobilised.

In the case of Plzeň bypass the range of definitions of what was at stake was very broad. For example, environmentalists invoked the struggle between small villages and a powerful big town (solving its problems at others’ expense); or the struggle between politicians and ordinary citizens. Supporters of the other variant spoke about protection of (human) health,

¹ This section of the research report has been derived from an internal working paper by Konopásek, Stöckelová, Vajdová and Zamykalová “Czech national cross-case comparisons”, May 2003, Praha.

² An introductory synoptic (and necessarily selective) overview of the three cases organised alongside a time-line (1988-2002) is offered in the table at the end of this section.

which was in opposition to protection of the (nonhuman) nature; or about controversy between two groups of landowners. The EIA procedure also played an important role in this respect: it defined a broad range of expert knowledge that had to be taken into account – the bypass was made a matter of hydrology, traffic security, construction, engineering, ecology, geology, city development, health protection, toxicology, etc.

The GMO case, on the contrary, seems to be framed in a rather simple and homogeneous way (up to this moment, at least). Greenpeace have not found so far any strong alternative strategic frame that would mobilise additional actors, possible allies (farmers, journalists, general public). They did not succeed in making the issue of GMO resonate with any other strong controversy or a sensitive issue in the Czech public space. On the expert level, the case seems to be articulated in a similarly straightforward way. Proponents of GMO successfully maintain a monopoly of molecular biologists over the issue. This is reflected, e.g., in the composition of the advisory body of the Ministry of Environment (ME), containing no population biologists or ecologists.

In the case of incinerator the environmental NGO framed the controversy above all as part of the general struggle against dioxins and played down more “local” motives of resistance (noise, visibility, other pollutants, general household waste management strategy for the city). They did succeed with the anti-dioxin campaign. They even managed to channel local people’s resistance against the incinerator to promote the dioxin campaign. On the other hand this might have prevented local inhabitants, or wider public of the capital to get more strongly and actively involved. Perhaps more importantly, once the battle concerning the dioxin legislation was over and once the incinerator roughly met the limits, the incinerator itself became a “non-issue” for the NGO and remaining opponents of the incinerator lost vision, workable aims, competencies as well as substantial influence on the development.

De/politicisation

The following two features of the Czech political culture seem relevant for analysing public accountability:

- (1) The status of expertise remains widely unchallenged. Scientific knowledge is usually taken as something given, non-political, and thus capable of impartial arbitration.
- (2) The process of EU accession by the Czech Republic does not include much democratic deliberation and public debate (although, paradoxically, integration of the country into European structures generally means reinforcement of democracy and formal recognition of the principles of public participation and control). This is so, at least to some extent, because the process is so technical and complicated and because references to the EU have the potential to neutralise controversies. In other words, by virtue of references to European requirements and standards, things appear to be given.

The two features have one thing in common: they both seem to have depoliticising effects. By saying “but this has been recommended by a European directive” or “but this has been recommended by a team of independent experts” loudly enough, the subject matter seems to be placed outside the realm of political negotiations and due process. The three case studies and their comparisons shed some more light on the topic and offer a more differentiated view of this phenomenon.

Explicit references to the EU standards and norms appear, above all, in relation to the creation or modification of nation-wide legislation (GMO) or general policy directives (e.g., on waste).

On such a general level, the EU framework really seems to be given and hardly anybody openly questions it. Both the GMO legislation and the Plan of Waste Management have not become big and open political issues. Yet, it *was* possible to challenge these documents by political means, though not so directly. The references to the EU framework therefore do not block politics entirely. The space for political action remains, but sometimes at the cost of inconsistency between formally acknowledged principles and actually developed practices or decisions made.

The use of a very technical, expert-like language in the Plan of Waste Management seems to be related to the fact that the public debate remained limited to specialists and did not include general public. Activists who were the driving force of the case were proud of being competent experts in the field, better than, e.g., some people from the Ministry.

GMO was introduced into the Czech mass media in terms of science popularisation and as part of “science news” from abroad. This contributed to the fact that the political dimension of the case was played down, while an exclusive authority of experts over this issue was established.

But again, things are not so easy, as can be seen in the case of the Plzen highway bypass. Here, the depoliticising efforts by means of expert reframing of the issue were particularly strong. Practically all actors were stressing that experts, and only experts, should decide. Experts themselves were stressing their independence and neutrality, while – as so usual among scientists – being accused by their opponents of being politically motivated or biased. This criticism only promoted further demand for still another expertise and for still more fervent search for “pure science”. The resulting accumulation of conflicting expertise did not contribute, of course, to its good standing. On the contrary, the situation could soon be described as a kind of inflation of expertise, which was losing its strength. In consequence (and also as a consequence of growing time pressure), a call for “purely political” decision-making appeared, to by-pass the expert stalemate, to leave the quarrelling experts to themselves. At the end, as most people now see it, the controversy was indeed decided “politically”, i.e., in a way that was in sharp opposition to an expertise-driven decision. But as such, the decision was a rather weak and problematic political act. Politicians themselves (!) arbitrarily decided. They pushed their will through, regardless of anything else. In sum, the wish to decide by means of “pure expertise” – i.e., by means of *expertisation* of the case – did not result in a depoliticisation of the case at all (as one might suppose). On the contrary, it resulted (by means of a vicious circle) in a complete and sharp *politicisation* of the case, namely in a decision made in the spirit of “pure politics”. Such “pure politics”, however, seem to be similarly weak and fragile (because too arbitrary and not legitimate) as “pure expertise”.

De/medialization

The GMO case has been only little visible in the media. There has been no targeted campaign. There have been one or two journalists who regularly followed GMO developments – but they did so mainly in terms of referring on scientific achievements. It seems that the main reason simply is that GMO is currently not a public issue.

The transport and waste cases were, on the contrary, characteristic by visible and significant media campaigns. Actually, these cases were to a large extent media cases. Both media campaigns were driven, or rather initiated, by a single actor, namely by the NGO Children of the Earth. In the case of incinerator it was this NGO who virtually “made” the case through the media; in the case of bypass Children of the Earth were the strongest actor among a coalition of several actors and their contribution to the media coverage of the case was

decisive. An important element of the campaigns was the engagement of a particular journalist who followed the case. The importance of the ability to medialize the case can be illustrated by having a brief look at the moments when the cases ceased to be visible in the media. Retreats of the NGO from the media corresponded with its retreat from the cases (and, actually, with “loosing the battle”), be it the case of incinerator or of the Plzeň by-pass. A very interesting dynamic can be observed in both cases. In the beginning the opponents of the environmentalist NGO (developers, municipality) underestimated the importance of active media policy and of good relationships with journalists. They probably did not even know how to deal effectively with the media. Children of the Earth had the upper hand. Only later, as time went, the project developers and their allies were “pushed to learn” (often directly from their opponents) how to communicate with the media and took more active role in this area. In both cases they finally “won”. Their media work in the later stages of the cases was important element of this success.

This trajectory is valid in a broader sense, which makes it even more interesting. In the beginning of all the three cases (although in a lesser degree in the case of GMO), the opponents of environmentalist NGOs were not only rather bad at media policy and strategy, but also in terms of legislative competence and administrative correctness, and they took various public accountability mechanisms and procedures rather as enemies and threats. Contrary to that, NGOs seemed to be always a step ahead in this respect. Such procedures “belonged” to them and they seemed to be “giving lessons” of contemporary principles of democratic governance to the others. After some time, however, the opposing actors really “took” the lessons. Indeed, they explicitly acknowledge that the engagement in the controversy made them more competent and correct in administrative and legal procedures. They flexibly took over rhetorical figures and strategic moves from their opponents. And they started confidently using different public accountability procedures as their own resources and allies. For instance, the incinerator management started organising public excursions, established its web site with publicly available and regularly updated information about the monitored emissions (which it had been refusing for long time in the beginning), and so on.

De/localization

There is a significant difference as for the relation between (environmental) NGOs and experts and/or expertise in the three cases. In the case of Plzeň bypass, quite a firm alliance worked between engaged NGOs and some of the experts. Many scientists supported the environmentalists’ variant by their expert statements, both within formal assessment procedures (sometimes even by demand of NGOs and civil associations themselves) and in the public media. It was not however simply because the NGOs managed to convince and attract them. In fact, scientific opinions had been diverging from the very beginning, even before the main NGOs entered the scene. Thus, Children of the Earth actually *joined* one of the opposing expert camps.

Also in the case of the Praha-Malešice incinerator, the NGO (Children of the Earth again) developed a close collaboration with one or two scientists (from the Institute of applied chemistry). Later on, these experts became members of the Civic commission for the control of the incinerator. In a way, they played a role of mediators between environmentalists and the management of the incinerator.

We observe, however, a very different situation in the GMO case. There is no support for the genetic campaign of Greenpeace from local (Czech) academic/expert circles. Even though there are a few scientists with quite critical or “cautious” attitudes toward GMO, they have no

contacts with Greenpeace and remain publicly invisible. Until now, Greenpeace have not tried to contact these experts, although they did significantly invest in being involved in formal authorisation procedures in which the scientific competence plays a major role.

On the other hand, experts who “control” the case of GMO do not consider appropriate civil engagement in such kind of controversy. While the proponents of biotechnologies would accept public involvement in cases such as Plzen by-pass or waste management, they think it is absurd to let lay people in the decision-making on GMO. The image of Greenpeace may be at play here. Greenpeace is known for its direct actions, which are perceived as radically political. Czech scientists are, on the contrary, particularly conceited on their apolitical appearance. But it has to be noted that, paradoxically, Greenpeace have acted relatively “peacefully” in this particular case. They followed (and participated in) formal procedures and, for most time, they accepted the rules and even the spirit of (expert) discourse as delimited by the official documents.

How to explain the above difference between the GMO case and the other two cases then? We have to take into account more or less local dimensions of individual cases. The problems of bypass and of the incinerator are rather well embedded in those social and discursive contexts that articulate these problems for certain groups of citizens as (specifically) “our” problems. This helps to politicise them. And it prevents experts or bureaucrats to take full control over them. Contrary to that, genetic modifications seem distant, non-visible, everywhere-and-at-the-same-time-nowhere. They do not seem to relate to some specific places. They cross borders and are said to represent a global threat (or opportunity). Even more, they are non-local in still one more sense: they came to the Czech Republic from abroad, from foreign contexts, and have not yet been appropriated by most local social actors. Thus, quite understandably, the only “owners” and “masters” of GMO are experts who created them and have very specific and exclusive knowledge of/access to it. GMOs are expertised as a case and the public is excluded. Nobody in our national context has yet been able to translate (or better to *retranslate*) GMO into the language of local events and contexts. Nobody has convincingly shown GMO as something to be necessarily *somewhere* and by *somebody* cultivated, *somewhere* and by *somebody* produced, *somewhere* and by *somebody* purchased, *somewhere* and by *somebody* eaten. As something that has the power to differentiate between “us” and “them” as a matter of everyday life.

The scale of public mobilization

Although representatives of Children of the Earth admit that they underestimated the problem of public mobilization in the case of Plzen bypass, it is this case within which the public was mobilised most of all. The GMO case is on the other end of the scale: wider public mobilisation has been negligible (although there have been attempts of Biotrin to inform the public via media, to tell people the “truth” about GMO).

In Plzen, both sides of the controversy managed to mobilise the public. There were several petitions supporting both variants. Two EIA procedures (1993 and 1998) contributed to civil involvement as well as media campaign of Children of the Earth. This NGO coordinated a purchase of small strips of land near the construction, in which also people from outside the region participated and formed a land trust – by means of this act, activists and local people’s associations could participate (as local land owners) in the administrative proceeding.

In the case of Praha-Malešice incinerator, there was relatively little actual public mobilisation on the part of incinerator opponents (the only exception being, on a more general level, the successful petition of the Children of the Earth against dioxins signed by 14 thousand people)

and no public mobilisation in support of the incinerator. Local citizens were represented by a very few people (up to five) among the active fighters against the incinerator. After Children of the Earth left the case, these local people felt without any influence, without competence and simply without the possibility to do anything, although some reasons for public involvement remained (e.g., in terms of public control, improvement of the information openness policy, public initiatives aimed at better waste management strategy in the city district).

Children of the Earth became involved in both cases in mid-1990s (Plzen in 1994, Praha-Malešice in 1995). But its role developed differently. Although Children of the Earth had the role of a central actor in the Plzen bypass case (the media clearly saw them that way), they still could be considered as but one among several actively engaged actors. In fact, they were “invited”, as experts in ecological campaigns and in the use of administrative law, to participate in 1994 by one of the local civic associations. The waste case was different. Children of the Earth entered the case of Praha-Malešice incinerator as part of their anti-dioxin campaign. Again, they soon became the key actor and provided the main framing of the case, quite convincing for all the opponents of the incinerator. The frame was focused against the struggle against dioxins and, playing down possible NIMBY motives, it left rather aside other aspects that could be of interest to local inhabitants, such as increased traffic (around 250 trucks per day), ugly environment, etc. Therefore, one of the potential reasons for unsuccessful mobilisation of the public in this case was that the process of *local* decision-making and construction was handled and framed almost exclusively as a (instance of) *global* issue of dioxin threat.

But there are other reasons for the above-mentioned difference as well. For instance, it is important to understand that the construction of the incinerator started earlier than the construction of the controversial part of the bypass. At the moment when the NGO entered the case of the incinerator, administrative procedure had already been over. And although there were some attempts to re-open it, they all failed. Further, we should note that the incinerator managed to successfully disconnect itself from the dioxin problem: the incinerator was put in operation at the end of 1998 and already since 2000 it fulfils the European dioxin norms (as the only household incinerator in the country). “Catastrophic” predictions of the opponents of the incinerator did not take place.

Formal participative procedures

EIA (Environmental impact assessment) is European-wide standard mechanism, which combines expert assessment with public participation in decision-making. It had some role in two of our cases. There was an attempt, in 1996, to initiate EIA in the case of Praha-Malešice incinerator, but it failed. It was too late. The construction was already almost complete. EIA was used twice (1993 and 1998) in the case of Plzen bypass. But even in this case, it actually was rather late (decision had already been taken and approved by the government), and yet the procedure was initiated. EIA was “pushed through” by one of the sides of the conflict as a non-standard tool, i.e., not required by the law. In 1993 the EIA procedure was suggested with the hope that it would revert already made decisions. It had crucial consequences for the development of the case: it reopened the choice for several further years and, at the end, the other variant was chosen. The EIA of 1998 was the result of a judicial decision and, in fact, of an appeal by NGO and local municipalities. But it was not that “strong” as the former EIA: its recommendations were not followed and no reasons given.

Becoming participants in formal administrative procedures was one of the main strategies of environmental activists and concerned local communities. But it was not always successful. Whereas concerned villages and landowners (together with public authorities and project developers) are the so-called „un-neglectable“ participants, NGOs have to “fight” for their participation. The Czech legislation is not very clear on this issue, which means that the respective decision is often left to discretion of a public servant. In the case of bypass construction the attitudes of public servants toward the participation of environmental NGOs in the procedure were often openly negative. That is also why Children of the Earth established the land-trust (by means of buying a narrow strip of the land across the planned road), by means of which they acquired the status of “un-neglectable” participant.

As has already been indicated, the same attitude towards NGOs can be observed in the case of GMO. Some MPs have been attempting to limit the space for public participation in respective administrative procedures. Yet, Greenpeace did finally manage to participate in the administrative proceeding on field experiments with Bt-corn of Monsanto and submitted its comments and objections. Majority of them was rejected as irrelevant or not correct from the scientific point of view. Greenpeace did not appeal against the subsequent (positive) decision, reportedly also because of lack of time (to submit an appeal is a very time-consuming and exhaustive job to be made within a strict time limit). Instead, they organised a rather unsuccessful direct action at the Monsanto experiment field. In response to this, the pro-GMO civil association Biotrin tried to de-legitimise this action by arguing that Greenpeace had participated in the proceeding and had the opportunity to appeal. Biotrin indicated that such a direct action is inappropriate for former participant in a formal procedure. Involvement in formal participative procedures seems to discipline and moderate political behaviour of actors in other arenas (even less formal) as well. It implies becoming part of one particular “game” and respecting its rules – e.g., hierarchy of decisions, appeals and court actions, timing, etc.

In all the cases the activists lost the administrative battle. Majority of their appeals and suits against decisions of public authorities were unsuccessful. In the cases of transport and waste, activists left the controversy untimely (which marked the beginning of the end of the case), even though there were possibilities to continue with “small” things: practicalities of operation of incinerator or details of the bypass construction. Such a retreat may be understood given the limited personal and “energetic” resources of NGOs. In all the cases, much of the initiative was related to just a single main responsible person, representing the whole NGO. The cases in need of intervention are so many. There necessarily has to be some economy in the overall strategy and project management of NGOs. While making choices and decisions, media image of the entire NGO (and environmentalist NGOs as such) are at stake. It is disadvantageous to be associated with “lost” or not-enough-dramatic cases.

A comparative time-table of the three cases

Year	Pilsen Bypass	Prague Incinerator	Czech GMO
1988	Northern bypass variant approved by Government	Building permit issued by the Prague district office Appeal by City Council (substantial, admitted – 2 nd level of cleaning ordered)	Since 1980s laboratory GMO experiments take place
1989	THE END OF COMMUNIST REGIME		
1990	Ecological section of Pilsen Civic Forum discusses the Northern variant	Ecological section of Prague Civic Forum discusses the incinerator	
1991	Petition of concerned municipalities Southern K bypass variant approved by the Government	Prague city prosecutor appeals against the permit because of error (admitted)	Committee for Plant Transgenesis founded by a group of scientists
1992	EIA/SEA LAW IN FORCE		
1993	1st EIA	One part of the building permit cancelled because of an administrative error Appeal by two Prague city parts against the permit because of error (admitted)	
1994	Southern S bypass variant approved by the Government Constitutional complaint by municipalities (dismissed)		
1995	Children of the Earth enter the case Constitutional complaint by MPs (dismissed)	Children of the Earth enter the case	
1996	Lawsuit by municipalities and Children of the Earth against territorial decision (won) Group of citizens and Children of the Earth form a land trust	Petition against dioxins organized by Children of the Earth Second part of building permit cancelled because of error Failed attempt to request EIA (turned down by ME) Big financial investment by Prague City Council to complete the incinerator	1 st Czech law mentioning GMOs (law on seeds) Committee for Plant Transgenesis becomes advisory body of ME 1 st field trials (Monsanto) Greenpeace launch genetic campaign an NGO Biotrin established to support biotechnologies
1997	Supreme Court rules new EIA is needed Highway is completely finished except for the Pilsen bypass	New building permit issued Appeal by two Prague city parts against the permit (failed) Court suit by two Prague city parts against the permit (not admitted)	1997-2000 drafting of GMO legislation Field trials continue
1998	EU ACCESSION NEGOTIATIONS STARTED IN 3/1998		
1998	2nd EIA SEA on Development of Transport Networks Until 2010	Incinerator in regular operation Citizen Commission for the Control of the Incinerator established	
2000	Lawsuit by municipalities and Children of the Earth against territorial decision (dismissed)	3 rd level of cleaning introduced Citizen Commission disintegrates	
2001	Special law passed in the Chamber of Deputies adopting modified the southern S variant		GMO law in force Tens of authorization applications submitted (Greenpeace participating in 3)
2002	Bypass construction is being completed	SEA on Waste Management Plan	