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ZANIČLJIV ODNOS DO JAVNOSTI NA PRIMERU IZDAJE OKOLJEVARSTVENEGA DOVOLJENJA LAFARGE CEMENTU

Povzetek V postopku izdaje okoljevarstvenega dovoljenja Lafarge Cementu se je jasno pokazal skrajno zaničljiv odnos do javnosti od državnih organov, v tem primeru Agencije RS za okolje in Ministrstva za okolje in prostor. Velik del javnosti je bil iz postopka izločen že z napačno določitvijo vplivnega območja Lafarge Cementa in z neprimerno določitvijo statusa naprave v Lafarge Cementu. Tako sta v postopku sodelovala le dva stranska udeleženca: Uroš Macerl, kmet, ki živi in dela v neposredni bližini Lafarge Cementa, in Občina Trbovlje. Status stranskega udeleženca v postopku je poskušala pridobiti tudi Občina Zagorje ob Savi, saj Lafarge Cement s svojimi izpusti vpliva tudi na njeno območje, vendar zaman. Agencija RS za okolje je zavrnila njeno vlogo, Ministrstvo za okolje in prostor pa pritožbo. Stranski udeleženec Macerl je v postopku ves čas aktivno sodeloval, v nasprotju z njim pa je bila Občina Trbovlje v celotnem postopku povsem neaktivna. Ta neaktivnost trboveljske občine seveda ni bila v javnem interesu, vodila pa jo je bolj ali manj prikrita preračunljivost (koruptivno prakso med Občino Trbovlje in Lafarge Cementom je letos v svojem mnenju potrdila tudi protikorupcijska komisija). Celoten postopek izdaje okoljevarstvenega dovoljenja se je vodil skrajno privilegirano za Lafarge Cement in izključno v njegovo korist, za stranskega udeleženca pa je postopek tekel že kar ponižujoče. Agencija RS za okolje in Ministrstvo za okolje in prostor sta na eni strani povsem nekritično sprejela sedemnajst dopolnitev vloge Lafarge Cementa, na drugi strani pa sta gladko zavrnila vse pripombe oziroma dokazne predloge, ki jih je dal stranski udeleženec Macerl (skupaj jih je bilo več kot šestdeset) – njegovi dokazni predlogi so bili (razen v enem primeru) zavrnjeni brez kakršne koli utemeljitve.

Ključne besede Lafarge Cement, okoljevarstveno dovoljenje, onesnaževanje, zaničevanje, javnost

1 Uvod

Prezmem Cementarne Trbovlje, ki ga je izvedla multinacionalka Lafarge konec leta 2002, in pozneje delovanje cementarne, ki se je po prevzemu preimenovala v Lafarge Cement, je žalostna zgodba o brezobzirnosti do okolja in ljudi, ki v njem živijo. In sicer o brezobzirnosti ne le kapitala, temveč tudi slovenskih strokovnih, upravnih, političnih in oblastniških struktur. Kajti vseskozi se moramo zavedati preprostega dejstva, da francoski Lafarge Cement v Sloveniji počne točno to, kar mu slovenska država dovoljuje – nič več in nič manj! Boj Eko kroga za znosnejše, s tem mislimo predvsem manj bolno življenje v Zasavju, je pravzaprav boj proti zahrbtnosti lastne države, proti njenim oblastniškim in političnim strukturam ter njihovim preračunljivim spletkam, ki jih prikrito izvajajo v navezi s kapitalom (v tem primeru tujim). V šestih letih boja se je nabralo veliko dokazov, ki vse to potrjujejo, ne nazadnje je tudi protikorupcijska komisija v svojem mnenju z dne 22. aprila 2010 opozorila na koruptivno prakso med Občino Trbovlje in Lafarge Cementom.

V zasavskem boju državni aparat in Lafarge Cement dobivata bitko za bitko, najbolj pa izgublja zasavska javnost, ki ni le žrtvovana, temveč tudi povsem zaničevana. Zelo jasno se je skrajno zaničljiv odnos do zasavske javnosti pokazal ravno v postopku izdaje okoljevarstvenega dovoljenja Lafarge Cementu.

2 Postopek izdaje okoljevarstvenega dovoljenja Lafarge Cementu kot primer zaničevanja zasavske javnosti

Lafarge Cement je vlogo za izdajo okoljevarstvenega dovoljenja na Agencijo RS za okolje (ARSO) podal 30. oktobra 2006. Pozneje, 12. julija 2007, je k prvotni vlogi, ki se je nanašala le na proizvodnjo cementa, dodal še vlogo za sežig nevarnih odpadkov v cementarniški peči.

Status stranskega udeleženca v postopku izdaje okoljevarstvenega dovoljenja za Lafarge Cement sta imela Uroš Macerl, kmet iz Ravenske vasi, in Občina Trbovlje. Macerl je v postopku ves čas aktivno sodeloval, Občina Trbovlje pa je bila v celotnem postopku povsem neaktivna. Ta neaktivnost seveda ni bila v javnem interesu, vodil pa jo je preračunljivi razlog, da bi Lafarge Cement okoljevarstveno dovoljenje čim prej dobil. Kupčije z Lafarge Cementom, ki je sponzor nekaterih dejavnosti v občini, so predstavnike občine pripeljale tako daleč, da so bili pripravljeni verjeti še tako prozornim in preprosto preverljivim lažem; na primer tudi tej, da na vplivnem območju Lafarge Cementa ni stalnih prebivališč ljudi (predstavniki občine Trbovlje so tako zatajili del prebivalstva). Zaradi prikritih špekulacij je Občina Trbovlje delovala v škodo okolja in ljudi, ki v njem živijo.

2.1 Vpliv javnosti sta močno omejila že nepravilna določitev vplivnega območja Lafarge Cementa in neprimerna določitev statusa same naprave

ARSO je po kar dveh poteh, in sicer z zgrešeno odločitvijo o pravilnosti določitve vplivnega območja in s pomanjkljivo kvalifikacijo naprave, iz postopka neupravičeno izločila javnost, na katere bivalno okolje in zdravje izdano okoljevarstveno dovoljenje nedvomno vpliva. S tem sta bila kršena tako Zakon o varstvu okolja kot Aarhuška konvencija.

Dobesedno v posmeh znanosti in še posebej prebivalcem Zasavja je bilo določeno vplivno območje za Lafarge Cement. Namesto predpisanih Lagrangevih modelov za določanje vplivnega območja (Uredba o emisiji snovi v zrak iz nepremičnih virov onesnaževanja, Ur. l. RS, št. 31/2007) je izvajalec Elektroinštitut Milan Vidmar uporabil model SCREEN 3. S tem je bilo Lafarge Cementu določeno neverjetno majhno vplivno območje, le v radiu 500 metrov okrog dimnika. Z določitvijo tako majhnega vplivnega območja je bila med drugim močno omejena aktivna udeležba javnosti, saj lahko kot stranski udeleženci v postopku sodelujejo le lastniki nepremičnin na vplivnem območju. Poleg vsakodnevnih izkušenj pri opazovanju izpustov iz Lafarge Cementa nam upravičen dvom o verodostojnosti določitve vplivnega območja dokazujejo tudi študija Delež velikih nepremičnih virov emisij pri obremenjevanju zraka v Zasavju in njihov vpliv na kakovost zraka v Zasavju s svojimi modeli širjenja onesnaženja (IE Energis), projekt Zdravje za Zasavje Zavoda za zdravstveno varstvo Ljubljana in poročilo ARSO Opredelitev virov delcev PM10 v Sloveniji.

Na tej podlagi – ker na vplivnem območju nima v lasti nepremičnin – v postopku ni bilo dovoljeno sodelovati sosednji Občini Zagorje ob Savi. Glede na to, da Lafarge Cement stoji tik ob njeni meji in ima s svojimi izpusti nedvomno vpliv na njeno območje, je Občina Zagorje ob Savi na ARSO dala vlogo za dodelitev statusa stranke v postopku izdaje okoljevarstvenega dovoljenja Lafarge Cementu. ARSO

je odgovorila s sklepom, da se Občini Zagorje ob Savi ne prizna status stranke v postopku, ker občina nima v lasti nobene nepremičnine na vplivnem območju Lafarge Cementa. Občina se je pritožila na Ministrstvo za okolje in prostor (MOP), ki pa je pritožbo z odločbo zavrnilo. Občini je tako ostala le še možnost tožbe na Upravnem sodišču Slovenije, ki pa je ni izkoristila.

Če bi se v postopek vključila Občina Zagorje ob Savi, ki bi zavzela aktivno vlogo (in ne statusa nemega opazovalca, kot je na primer Občina Trbovlje), bi bilo zagotovljeno ravnovesje orožij med strankami, nasproti bi si stala kapital in lokalna skupnost, ki mora skrbeti tudi za interese svojih prebivalcev (kar izhaja tudi iz določbe drugega odstavka 70. člena ZVO-1). Lokalna skupnost je močnejši subjekt kot njen prebivalec in v postopku bi bil gotovo zagotovljen za obe stranki enakovreden položaj, kar bi vplivalo tudi na spoštovanje položaja stranskega udeleženca Macerla. Njemu pa bi bilo dokazovanje dostopnejše, saj bi finančni del lažje pokrila lokalna skupnost, v tem primeru Občina Zagorje ob Savi.

Med postopkom je bil Lafarge Cementu neprimerno določen tudi status naprave. Možnosti sta bili dve: da se napravi določi status obstoječe naprave ali da se jo opredeli kot novo napravo. Zaradi vseh dograjevanj in neobstoja uporabnih dovoljenj bi bila pravilnejša določitev statusa nove naprave in tudi Ministrstvo za okolje in prostor je v svojem mnenju takšen status enkrat že potrdilo. Vendar bi v tem primeru celoten postopek potekal drugače in z večjim vplivom prizadete javnosti. Zato se je ARSO raje odločila (in tudi MOP je spremenil svoje mnenje) napravi dodeliti status obstoječe naprave.

2.2 ARSO je Lafarge Cementu nekritično dovolila številne dopolnitve vloge

O veliki pristranskosti v korist Lafarge Cementa potrjuje dejstvo, da je smel Lafarge Cement med postopkom kar sedemnajstkrat dopolniti svojo vlogo. Ker nobene od teh dopolnitev ni zahteval stranski udeleženec v postopku Uroš Macerl (torej ni šlo za neke kaprice), je jasno, da je bila prvotno oddana vloga izjemno slaba, nepopolna in bi jo morala Agencija RS za okolje zavrniti. Namesto tega je agencija uslužno zahtevala in nekritično sprejemala nove in nove dopolnitve.

V letu in pol ter med postopkom sedemnajstkrat dopolnjen zahtevek, posledica česar ugoditev zahtevku v celoti, pomeni hudo kršitev načela zakonitosti (6. člen Zakona o splošnem upravnem postopku, ZUP) in varstva pravic strank ter varstva javnih koristi (7. člen ZUP). Organ mora v upravni zadevi odločati po zakonu in podzakonskih predpisih. Sedemnajstkrat dopolnjen zahtevek pomeni, da zahtevek, kot je bil osnovno vložen, nikakor ni izpolnjeval zakonskih in drugih pogojev, da se mu ugotovi in se izda okoljevarstveno dovoljenje. S postopanjem, ko ARSO ni odločala na podlagi zahtevka, ampak je torej odločala na podlagi njegovih dopolnitev, je tudi onemogočila stranskemu udeležencu Macerlu, da zavaruje in uveljavi svoje pravice. Temeljno pravilo vseh postopkov in upravnega postopka je, da mora biti vloga razumljiva in mora obsegati vse, kar je treba, da se lahko obravnava (prvi odstavek 66. člena ZUP).

Zahtevek Lafarge Cementa tej zahtevi postopkovnega zakona nikakor ni zadostil, ARSO pa ni postopala po ZUP in Lafarge Cementa ni pozvala k dopolnitvi zahtevka, če je menil, da vloga ni razumljiva ali je nepopolna. ARSO je z nerazumnim, tudi arbitrarnim in škodljivim postopanjem, ko je dopuščala sedemnajst dopolnitev zahtevka, na eni strani privilegirala položaj Lafarge Cementa, po drugi strani pa je bil do stranskega udeleženca Macerla postopek nepregleden; utemeljitev zahtevka se je dopolnjevala in dopolnjevala, s tem pa je bil stranski udeleženec še dodatno postavljen v izrazito podrejen položaj, ko je lahko le odgovarjal na nenehne dopolnitve. Postopek, v katerem sta se znašla močan kapital z velikimi dobički (multinacionalka) na eni strani in pritožnik kot fizična oseba, lastnik manjše kmetije, ki mora iz dohodka s kmetije preživeti še dva mladoletna otroka, na drugi strani, je

bil z načinom postopanja, ko je upravni organ omogočal dopolnjevanje vloge, po drugi strani pa zavračal vse dokazne predloge nasprotnega udeleženca, le formalnost – in to s kršitvami obremenjena formalnost. Takšno vodenje postopka je bilo vsekakor tudi v nasprotju z javno koristjo.

2.3 ARSO je stranskemu udeležencu zavrnila vse dokazne predloge

Na drugi strani je bil odnos ARSO do stranskega udeleženca v postopku Uroša Macerla skrajno ignorantski, celo ponižujoč. Macerl je s pomočjo ugledne odvetniške družbe Čeferin med postopkom podal 66 argumentiranih pripomb (10 glede kršitve postopka in 56 vsebinskih). ARSO in MOP nobeni od pripomb nista ugodila, še huje, pripombe (razen ene) so bile zavrnjene brez kakršne koli obrazložitve. Kar seveda ni le nedopustno po ZUP, ampak je tudi ponižujoče do stranskega udeleženca v postopku. Stranskemu udeležencu z vsemi svojimi dokaznimi predlogi ni uspelo zasejati niti najmanjšega dvoma glede dokumentacije, ki jo je v postopku predložil Lafarge Cement, čeprav gre za regijo, za katero je splošno znano, da se ljudje tja ne priseljujejo in da tam nočejo živeti prav zaradi onesnaženega zraka. V takšnih okoliščinah ARSO in MOP kljub predloženi študiji glede zdravja prebivalcev niti za hip nista podvomila o učinkih in posledicah okoljevarstvenega dovoljenja, ki bo že po definiciji (68. člen ZVO-1) lahko povzročilo onesnaženje večjega obsega. Gladko so bili zavrnjeni vsi dokazni predlogi stranskega udeleženca, do večine njih se ARSO in MOP nista niti opredelila.

Zavrnjena je bila celo tako razumna zahteva stranskega udeleženca Macerla, kot je ta, da se v postopek vključita sodna izvedenca hidrometeorološke in zdravstvene stroke. Tudi zahtevo, da bi si v primeru strokovnega oglada Lafarge Cementa ogledali še kmetijo stranskega udeleženca in vpliv, ki jo ima cementarna nanjo, je ARSO zavrnila.

Če je organ prve stopnje (ARSO) spregledal in ignoriral obsežne dejanske navedbe in dokazne predloge, je organ druge stopnje (MOP) v nasprotju z izrecnim zakonskim določilom ignoriral obsežne pritožbene navedbe, oba pa sta s svojim nedopustnim ravnanjem onemogočila stranskemu udeležencu uveljaviti procesne pravice v tem postopku in posledično možnost dokazovanja svojih argumentov zoper zahtevo za izdajo okoljevarstvenega dovoljenja.

2.4 Lafarge Cement, ARSO in MOP so zatajili del javnosti (prebivalstva)

Najbolj zaničljiv odnos do javnosti (javnost je dobesedno enačena z nič) se zagotovo kaže v ugotovitvi, ki je zapisana v okoljevarstvenem dovoljenju za Lafarge Cement, in pravi, da je naprava na območju brez stanovanj. Gre za napačno ugotovljeno dejansko stanje, na katerega je stranski udeleženec Macerl med postopkom večkrat opozoril tako ARSO kot MOP. A zaman! V neposredni bližini Lafarge Cementa, celo znotraj 500-metrskega pasu okrog dimnika, je namreč več stanovanjskih enot z urejenimi in naseljenimi bivalnimi prostori (na naslovih Ob železnici 14, 15, 17, 19 in Kolodvorska 9, vse v Trbovljah). Tudi matična Občina Trbovlje je ob tej pripombi ostala nema – in tako zatajila del svojega prebivalstva. Seveda tudi stranski udeleženec v postopku Uroš Macerl stanuje v bližini naprave.

3 Sklep

V postopku izdaje okoljevarstvenega dovoljenja Lafarge Cementu je šlo za kršitve tako okoljske kot upravne zakonodaje. Nekatere kršitve določb ZUP so bile tako hude, da je šlo tudi že za kršitev pravice stranskega udeleženca do osebnega dostojanstva in varnosti po 34. členu Ustave RS ter za kršitev pravice zasebnosti in osebnostnih pravic po 35. členu Ustave RS. Ravnanje obeh organov, tako ARSO kot MOP, je bilo za stranskega udeleženca Macerla ponižujoče, čeprav ne gre za represivni postopek. Macerl je želel svoje pravne in osebne koristi, zaradi česar mu je bil status stranskega udeleženca tudi priznan, zavarovati tudi s pomočjo ugledne odvetniške družbe, dal je številne strokovne pripombe, izhajajoč iz okoljevarstvenih predpisov, in pravne pripombe v zvezi s postopkom. Glede na to, kako pa je bil obravnavan, je rezultat postopka lahko doživel le kot ponižanje. Ves postopek je namreč mogoče razumeti kot sporočilo upravnega organa in države, da je nepomemben državljan, ki si je celo drznil z lastno glavo in sposobnostmi nastopiti proti kapitalu in državi.

Z ravnanjem obeh, organa prve (ARSO) in druge stopnje (MOP), je bilo poseženo v osebno dostojanstvo, čast in ugled Uroša Macerla kot stranskega udeleženca v postopku. Pravica do osebnega dostojanstva posamezniku namreč zagotavlja priznanje njegove vrednosti, ki mu gre kot človeku in iz katere izvira njegova sposobnost samostojnega odločanja, iz te človekove lastnosti pa izvira tudi jamstvo osebnostnih pravic (tako odločba Ustavnega sodišča RS št. U-I-226/95).

V zvezi s 34. členom Ustave RS pa je bila stranskemu udeležencu Macerlu z izdajo okoljevarstvenega dovoljenja Lafarge Cementu kršena ustavna pravica do varnosti, med katere spada tudi pravica do zdravja, ki mu jo zagotavlja zdravo življenjsko okolje. Država mora državljanom, tudi stranskemu udeležencu Macerlu in njegovi družini zagotoviti okolje, v katerem se počutijo varni pred onesnaženjem in ki ne ogroža njihovega zdravja ali celo življenja.

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CONTEMPTUOUS ATTITUDE TOWARDS THE PUBLIC IN ISSUING AN ENVIRONMENTAL-PROTECTION PERMIT TO LAFARGE CEMENT

Abstract In the procedure for issuing an environmental-protection permit to Lafarge Cement, we witnessed a highly contemptuous attitude from the state authorities i.e. Environmental Agency of the Republic of Slovenia and the Ministry of the Environment and Spatial Planning, towards the public. By an incorrect designation of the zone of influence of Lafarge Cement and an inappropriate determination of the status of the installation at Lafarge Cement, a large part of the public was excluded from the procedure. Hence, only two secondary participants took part in the procedure: Uroš Macerl, a farmer who lives and works in the immediate vicinity of Lafarge Cement, and the Trbovlje Municipality. The Zagorje ob Savi Municipality also attempted to obtain the status of a secondary participant in the procedure, since the emissions of Lafarge Cement also affect its area; however, it was not successful. The Environmental Agency of the Republic of Slovenia refused its application, while the Ministry of the Environment and Spatial Planning dismissed its appeal. Mr Macerl took an active part throughout the procedure, while the Trbovlje Municipality remained inactive. This inertness of the Trbovlje Municipality was clearly not in the public interest but was to a greater or lesser extent driven by disguised self-interest (corrupt practice between the Trbovlje Municipality and Lafarge Cement has this year been confirmed by the anti-corruption commission in its opinion). The entire procedure of issuing an environmental-protection permit was extremely biased and conducted for the sole benefit of Lafarge Cement, while being rather humiliating for the secondary participant. The Slovenian Environmental Agency and the Ministry of the Environment and Spatial Planning uncritically accepted all 17 supplements to the application submitted by Lafarge Cement, but refused all comments and motions for admission of evidence which were submitted by Mr Macerl (altogether more than 60) without stating the grounds (except in one case) for their refusal.

Keywords Lafarge Cement, environmental-protection permit, pollution, contempt, the public

1 Introduction

The takeover of Cementarna Trbovlje Cement Factory by a multinational company, Lafarge, at the end of 2002 and, subsequently, the operation of the cement factory which, after the takeover, was renamed Lafarge Cement, is a sad story of disregard for the environment and inhabitants of the area, meaning a disregard not only by capital but also by Slovenian professional, administrative, political and authority structures. We must constantly bear in mind the simple fact that Lafarge Cement does in Slovenia precisely what the Slovenian state allows it to do – no more and no less. The efforts of Eko krog towards a tolerable and healthier life in the Zasavje region is a fight against perfidy in our own country, a fight against its authority and political structures and the manipulative games played

together with capital (foreign capital in this case). In six years of dispute, much substantiating evidence has accumulated and, finally, the anti-corruption commission, in its opinion of 22 April 2010, drew attention to the corrupt practice between the Trbovlje Municipality and Lafarge Cement.

The Zasavje region has thus been a witness to a fight in which the state apparatus and Lafarge Cement are winning battle after battle against the Zasavje public, which is not only sacrificed but also completely disrespected. In the very procedure of issuing an environmental-protection permit to Lafarge Cement, the contemptuous attitude towards the Zasavje public was clearly manifested.

2 Procedure of issuing an environmental-protection permit to Lafarge Cement as an example of a contemptuous attitude towards the Zasavje public

Lafarge Cement submitted the application for an environmental-protection permit to the Environmental Agency of the Republic of Slovenia (hereinafter: Environmental Agency) on 30 October 2006. On 12 July 2007, the first application relating to cement production was supplemented by an application for hazardous-waste incineration in a cement kiln.

The status of secondary participants to the procedure for issuing an environmental-protection permit was accorded to Uroš Macerl, a farmer from Ravenska vas, and the Trbovlje Municipality. Mr Macerl took an active part throughout the procedure, while the Trbovlje Municipality remained inactive. This inert approach was clearly not in the public interest and was driven by disguised self-interest to facilitate the issuing of an environmental-protection permit to Lafarge Cement. Arrangements with Lafarge Cement, sponsoring certain activities in the municipality, went so far that the representatives of the municipality were willing to accept transparent and trivial lies, easily verified as such e.g. that within the zone of influence of Lafarge Cement, there were no permanent dwellings (representatives of the Trbovlje Municipality hence betrayed part of the population). On account of hidden speculations, the Trbovlje Municipality acted to the detriment of the environment and its residents.

2.1 Public influence was severely limited by incorrect designation of the zone of influence of Lafarge Cement and inappropriate determination of the status of the installation

The Environmental Agency excluded the public in two ways – with a mistaken decision on the correctness of the designation of the zone of influence and incomplete qualification of the installation – its reasons were not justified since the issued environmental-protection permit undoubtedly affects the living environment and health of the public. In doing so, the Environmental Protection Act and the Aarhus Convention were violated.

The designation of the zone of influence of Lafarge Cement was a mockery of science and especially of the inhabitants of Zasavje. Instead of the prescribed Lagrange methods for defining the zone of influence (Decree on the emission of substances into the atmosphere from stationary sources of pollution, Ur. l. RS (*Official Gazette of the Republic of Slovenia*), No. 31/2007), the contractor, Elektroinštitut Milan Vidmar, used the SCREEN 3 model. In this way, Lafarge Cement was accorded an incredibly small zone of influence, with a radius of 500 metres around the chimney. By defining such a small zone of influence, active participation of the public was severely limited, since the status of secondary participant in the procedure was granted only to property owners within the designated zone of influence. Besides daily observation of the emissions produced by Lafarge Cement, a justified distrust in the credibility of the zone of influence designation can be proved by models of the spread

of pollution from a study *A Contribution of Large Emission Stationary Sources to the Air Pollution in the Zasavje Region and their Impact on the Quality of Air in Zasavje* (IE Energis), the project *Health for the Zasavje Region* launched by the Ljubljana Institute of Public Health, and the report of the Environmental Agency entitled *Identification of PM10 Sources in Slovenia*.

Consequently, the Zagorje ob Savi Municipality was not allowed to take part in the procedure – as it is not a property owner in the designated zone of influence. Given that Lafarge Cement is located adjacent to the border of its area and the plant's emissions undoubtedly have an impact on it, the Zagorje ob Savi Municipality submitted an application to the Environmental Agency to obtain the status of party to the procedure for issuing an environmental-protection permit to Lafarge Cement. The Environmental Agency replied by issuing a decision denying the Zagorje ob Savi Municipality the status of a party to the procedure on the grounds that the latter was not a property owner in the zone of influence of Lafarge Cement. The municipality appealed to the Ministry of the Environment and Spatial Planning (hereinafter: MESP), which dismissed the appeal by a decision. The only possibility left for the municipality was to lodge an action before the Administrative Court of the Republic of Slovenia, but it did not choose to do so.

If the Zagorje ob Savi Municipality had been included in the procedure as an active participant (not only as a "silent observer" as the Trbovlje Municipality was), a balance of arguments would have been assured between the parties: capital opposing the local community, which must protect the interest of its residents (pursuant to the second paragraph of Article 70 of the Environmental Protection Act – ZVO-1). A local community is a more powerful entity than its residents and, in the procedure, both parties would have been on an equal footing, which would have also resulted in greater respect towards Mr Macerl. Thus, the presentation of evidence would have been easier for Mr Macerl, since the financial part would have been more easily covered by the local community i.e. the Zagorje ob Savi Municipality.

During the procedure, the status of the installation of Lafarge Cement was also incorrectly determined. There were two options: the installation would obtain the status of an existing facility or the status of a new facility. Taking into consideration all upgrades and the absence of operating permits, a more correct decision for the installation would have been to grant the status of new installation, which was previously confirmed by MESP in its opinion. In this case, the entire procedure would, however, have been conducted otherwise and with greater influence from the affected public. Consequently, the Environmental Agency (and also MESP, which changed its opinion) granted the status of existing installation.

2.2 The Environmental Agency uncritically allowed supplements to the application

A substantial partiality to the benefit of Lafarge Cement is confirmed by the fact that, during the procedure, Lafarge Cement was allowed to as many as 17 supplements to its application. Since none of these supplements was required by the secondary participant to the procedure, Mr Macerl (it was not a caprice), it is clear that the first application by Lafarge Cement was extremely poor and incomplete, and the Environmental Agency should have refused it. Instead, the Environmental Agency required and uncritically accepted new supplements.

Within a period of one and a half years, the application was supplemented 17 times by Lafarge Cement, which resulted in full compliance with the application and also meant a serious violation of the principle of legality (Article 6 of the General Administrative Procedure Act – ZUP) and of the protection of the rights of parties and the protection of public benefits (Article 7 of ZUP). The

authority must decide upon administrative matters pursuant to the law and implementing regulations. An application supplemented 17 times must mean that the originally submitted application was in no way in compliance with legal and other conditions for obtaining and issuing the environmental-protection permit. Such conduct – in which the Environmental Agency failed to decide pursuant to the application but decided on the basis of its supplements – prevented Mr Macerl from protecting and enforcing his rights. A basic rule of all procedures, including this administrative procedure, is that the application must be intelligible and must embody everything needed for its consideration (Article 66, paragraph 1, ZUP). The application of Lafarge Cement was not in compliance with the requirement of the procedural law; the Environmental Agency failed to act pursuant to the General Administrative Procedure Act and also failed to request supplements to the application if it considered that the application was not understandable or incomplete. This irrational and harmful and arbitrary behaviour by the Environmental Agency allowed, by allowing the application to be supplemented 17 times, Lafarge Cement to enjoy a privileged position, whereas, with respect to Mr Macerl, the procedure was not transparent; the substantiation of the application was constantly supplemented, which put the secondary participant in an extremely subordinate position, as he could only respond to the continuous supplements. The procedure in which two parties were in confrontation, namely the representatives of major capital with significant resources (a multinational company) on the one hand, and a natural person and owner of a small farm, with the farm's small income committed to raising two minors, on the other hand, was only a formality i.e. burdened by violations, due to the conduct of an administrative authority that allowed the application to be supplemented while rejecting all evidence motions from the opposing participant. Conduct of this kind in this procedure was undoubtedly contrary to the public interest.

2.3 The Environmental Agency dismissed all evidence motions

The attitude of the Environmental Agency towards the secondary participant, Mr Macerl, was extremely ignorant and even humiliating. With the assistance of the reputable law firm Čeferin, Mr Macerl submitted 66 substantiated comments (10 relating to the violation of procedure and 56 to the content). The Environmental Agency and MESP did not uphold any comment; moreover, all comments (but one) were dismissed without a statement of grounds. This is inadmissible pursuant to the General Administrative Procedure Act and was also humiliating for the secondary participant. The evidence motions submitted by Mr Macerl were not enough to leave the smallest doubt regarding the documentation submitted by Lafarge Cement during the procedure; this in a region which is generally known as an area in which people are reluctant to live due to air pollution. In these circumstances, and despite the studies submitted concerning the health of the residents, the Environmental Agency and MESP did not perceive doubt about the effects and consequences of the environmental-protection permit, which by definition (Article 68 of the Environmental Protection Act) could include large-scale environmental pollution. All evidence motions submitted by the secondary participant were summarily refused, and on the majority, the Environmental Agency and MESP did not even take a position.

Even the reasonable demand of Mr Macerl that court experts for hydrometeorology and health care be included in the procedure was refused. The Environmental Agency also dismissed the demand that, in case of an expert visit to Lafarge Cement, a visit would also be paid to the farm of the secondary participant to inspect the effects of the cement factory.

The first-instance authority (the Environmental Agency) overlooked and ignored actual comprehensive indications and evidence motions, while the second-instance authority (MESP), in

contravention of the explicit legal provision, ignored comprehensive allegations in the application. Such ill treatment by both authorities prevented the secondary participant from claiming his procedural rights in this procedure and, consequently, proving his arguments against the application for issuing an environmental-protection permit.

2.4 Lafarge Cement, Environmental Agency and MESP betrayed part of the public (population)

A highly contemptuous attitude towards the public (the public here being literally considered non-existent) is clearly manifested in the conclusion stated in the environmental-protection permit for Lafarge Cement, which claims that the installation is located in an area with no dwellings. This incorrectly established situation was several times brought to the attention of the Environmental Agency as well as of MESP by Mr Macerl, but to no avail. In the immediate vicinity of Lafarge Cement, even within a radius of 500-metres around the chimney, there are several residential units with well-maintained and settled dwellings (addresses: Ob železnici 14, Ob železnici 15, Ob železnici 17, Ob železnici 19 in Kolodvorska 9, all in Trbovlje). Even the municipality concerned i.e. the Trbovlje Municipality did not respond to this comment and thereby betrayed part of its population. The secondary participant to the procedure, Mr Macerl, also lives in the vicinity of the installation.

3 Conclusion

The procedure for issuing an environmental-protection permit to Lafarge Cement violated environmental and administrative legislation. A number of violations of the provisions of the Environmental Protection Act were so serious that they even resulted in violation of the rights of the secondary participant to personal dignity and safety, pursuant to Article 34 of the Constitution of the Republic of Slovenia, as well as his rights to privacy and personal rights, pursuant to Article 35 of the Constitution of the Republic of Slovenia. The conduct of both authorities, the Environmental Agency and the MESP, was humiliating for Mr Macerl, despite the fact that this was not a repressive procedure. Mr Macerl wanted only to protect his legal and personal rights – for which reason he also obtained the status of secondary participant – through a reputable law firm. He submitted a number of technical comments based on environmental regulations, as well as legal comments concerning the procedure. Considering the treatment he received, the outcome of the procedure was a humiliation for him. The entire procedure should be understood as a message from the administrative authority and the state that a citizen, who dared to think for himself and to stand against capital and the state, was insignificant.

The conduct of both the first-instance authority (the Environmental Agency) and the second-instance authority (MESP) undermined the personal dignity, reputation and honour of Mr Macerl as the secondary participant to the procedure. The right to personal dignity of an individual ensures recognition of his value as a human being, from which he derives his ability in decision-making; the guarantee of personal rights derives from this human characteristic (Decision by the Constitutional Court U-I-226/95).

Pursuant to Article 34 of the Constitution of the Republic of Slovenia, and by issuing an environmental-protection permit to Lafarge Cement, the constitutional right of Mr Macerl to safety and the right to health, which is ensured by a healthy living environment, were violated. The state must ensure for its citizens, including Mr Macerl and his family, an environment in which they feel safe from pollution and an environment that does not jeopardise their health or life.