Survey report

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European Network of Environmental Law Organizations

Public participation in administrative procedures having relevance to environmental protection

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1. Context

The EIA family of legal institutions focus on an integrated examination of projects with high level environmental impacts in a multi-stakeholder, deliberative administrative process. Such procedures are usually resource intensive and time consuming, therefore cannot be generally used for all kinds of projects that have significant environmental effects. Small and medium size enterprises could not afford for such a procedure, while their effects might add up to significant environmental burdens that deserve the attention of the environmental legislation and authorities (the SME problem).

With this research, we intend to highlight the importance and value of public participation in the authorisation of different projects likely having environmental impacts, which do not undergo a strategic environmental assessment (SEA), an environmental impact assessment (EIA) or an appropriate assessment (AA).

This paper is based on a survey amongst public interest environmental lawyers from 5 EU countries (Austria, Bulgaria, Croatia, Estonia and Hungary) and aimed at collecting first-hand information on the possibilities and quality of public participation in certain procedures with significant environmental aspects, such as water use, waste management or forestry, which we might call sectoral environmental law and related fields to environmental law. According to the practical experiences of the lawyers within the Justice and Environment network, the social-environmental consequences of such projects might show certain similarity with SEA, EIA and AA. Furthermore, a procedure might be “EIA like” especially when it has a multidisciplinary approach (e.g. several authorities and experts with several background take part in it) and allows for meaningful public participation (both in respect to the concerned local communities, municipalities and environmental NGOs) and involves a more or less systematic evaluation of the social-environmental effects of a planned SME project.

The outcome of this research will be published targeting primarily the national-level decision makers in environmental and other relevant administrative bodies or ministries, but also EU institutions, consultants and other relevant stakeholders. This study is a pilot approach of a significant problem, revealing the most important elements, later we hope will have a chance to analyse more in-depth in more EU countries.

General features of public participation in permitting procedures other than EIA, SEA or AA but having at least certain EIA like elements

First of all, our country researchers gave a general evaluation of public participation in the related fields. They underlined that in effect none of the other procedures are closely resembling to SEA, EIA and AA. The systematic, iterative-deliberative procedure of the EIA group of legal institutions is quite unique in our administrative laws. However, some elements of the three pillars of public participation according to the system of the Aarhus Convention can be found outside the EIA type procedures in the related branches of law. Even if so, these elements do not form a system, where the elements mutually reinforce each other and a stronger environmental democracy and a higher level of legitimacy of the administrative decisions emerge. There are some shortcomings, missing elements that result in weaker effectiveness of public participation: narrower circle of participants, with restrictive legal interpretation, ineffective possibilities of legal remedies and alike.

The **Croatian** colleagues, note that some elements of these related fields of law might resemble to the EIA group. Access to public administrative data and information is more general in our laws than environmental law and EIA, furthermore the members and associations might have a say in the procedure of drafting certain strategic decisions such as waste management planning, a management plan for small coastal trawlers in fishing law, or forestry district plans. The actual effect, however, exerted on these decisions by the public opinion, suggestions, protests etc. is hard to see, primarily because of the missing third pillar of public participation, namely access to justice.

As concerns individual cases, approval of the construction project procedures (location and building permits) have a more limited reach of public participation. It might be ensured only for the owners of neighbouring properties, where the neighbour position might interpreted in a restrictive manner, excluding those, whose property are just a little bit further (e.g. there is a road in between the two real estates). While documents such as a building permit or a feasibility study are of great importance in evaluating the acceptability of interventions in environmental protection terms, the general public is not allowed to participate.

Also, the public is not allowed to participate in the granting of concessions over the public good, and very often the documents from the proceedings are not publicly available, as business secrets. (CRO)

The **Estonian** colleagues point out that normally, projects that are likely to have a significant environmental impact undergo an EIA/SEA and, if need be, an AA incorporated into the EIA/SEA, or a separate AA in exceptional cases. In some cases, though, an EIA is not initiated despite the obligation, because a very thorough preliminary assessment is carried out, which even includes proposals for mitigation measures. A third example are cases, in which an EIA is not initiated and instead an expert assessment is used. (EST)

In **Bulgaria**, the failure to carry out the relevant assessments is a horizontal problem. The most gaps are in relation to SEA and AA. In many cases, the relevant plans and programs or projects within the meaning of Art. 6, paragraph 3 of Directive 92/43/EEC in Natura 2000 areas, are not even subject to screening and very often when they are subject to screening, no decision is issued to carry out the full assessments.

Other procedures that have relevance in environmental protection in the national legal system are the procedures for preparing management plans for protected areas under the Protected Areas Act, which contain requirements for an assessment similar to the environmental assessment and the procedures for preparing and approving forestry plans and programs. In these procedures, environmental information is taken into account according to regulatory requirements, as well as public participation is guaranteed. (BUL)

In **Austria**, recognised environmental organisations have standing in the approval procedure for IPPC facilities, as well as in procedures under water law if EU law is affected. In forestry law, the Supreme Administrative Court has also recognised party status in some cases. Otherwise, however, the requirements of the Aarhus Convention have not been fully implemented. For example, there is no sufficient possibility for public participation in procedures under the Mineral Resources Act or when approving high-voltage lines. (AUT)

In **Hungary**, in environmental administrative proceedings, individuals whose legal interests are directly affected by the act would be considered with legal standing to challenge it. Environmental associations which meet the relevant criteria, can also participate as interested party. In this regard it must be highlighted that administrative proceedings in which the environmental authority does not participate (e.g. permitting procedures of the water management authority or the forest authority) are not regarded as 'environmental administrative proceedings' and in such cases environmental NGOs do not have legal standing and cannot bring an action to the court. Furthermore, environmental NGOs are considered to have direct interest if they act in the geographic area affected by the challenged act and on issues related to their field of activity as registered.

2. Availability of the most relevant procedural rules (competent authority, administrative time-limit), information provided on the individual procedures for the public

In democratic countries it is not a question that the public has a general access to the legal provisions of any procedures, including key environmental ones and other environmentally relevant ones, too. However, it is another question, how far the members and local (grassroots) organisations are able to interpret and apply these rules. Further issue might be how far the members and associations get access to information about the onset of individual decision-making procedures relevant for their homes or fields of activity. Unfortunately, serious doubts have emerged in this respect (Croatia).

A key issue is the good communication (ideally: integration in substance, full harmony, continuity etc.) between the most basic environmental legal decisions (SEA, EIA and AA) and the rest of the relevant permits. It is expectable that the basic environmental (EIA type) decisions represent a gate keeper position, which has two grades: a) a simple procedural one, i.e. the sectoral environmental permits or the consent by the authorities of the neighbouring legal fields shall not be issued without a basic environmental permit (Austria). We note here that certain procedural details count a lot: SEA, EIA and AA decisions should reach a full legal force by the time of the secondary decisions. The sectoral, construction etc. procedures might start before this, but the final decision should wait for the basic environmental decisions. B) Furthermore, it is (or would be) a determining, substantive feature of these compound (tiered) procedures that the sectoral environmental or neighbouring field procedures fully consider the content of the SEA, EIA and AA decisions. Our experience is, though, that in many instances these key environmental decisions are partly or wholly overlooked in the consecutive procedures concerning the same project (Estonia).

In **Croatia** access to information is not without exemption. The procedures are public except in some cases when the procedures are bypassed because of ''other interests'', i.e. the social-economic importance of the project. Information on the permitting procedures generally can be found on the websites of public bodies and in some newspapers. Even if so, the majority of citizens might find it difficult to obtain such information, not everyone is able to make effective search on the Internet either, therefore they rely on associations that help citizens in explaining the relevance of the cases and the procedure. Naturally, this is time consuming, so longer deadlines would be necessary for the public for having access to information, while there are cases when the deadlines are rather shorter than the legally prescribed ones. In addition when they were public, but very difficult to search on the Internet.

In sum, procedural rules and information on individual cases are public by legislation but information on the projects are not effectively distributed. (CRO)

In **Estonia** even in the EIA procedures the preliminary assessments and expert assessments are not public according to the Environmental Impact Assessment and Environmental Management System Act. The legal situation is similar in some other cases with environmental relevance, e.g. forest notifications, reconstruction of drainage systems, while we had no information in general about fishing permits, the organisation of mowing and fertilising agricultural land and grassland, reconstruction and maintenance of drainage systems. Most probably, environmental considerations and public participation possibilities are missing there, too, in the mirror of practical experiences with similar administrative cases. In procedures of water management plans or management plans for land improvement systems, the authorities have responded negatively to NGO requests to assess environmental impacts (including impacts on Natura areas). The orders for controlling species (the great cormorant) were issued without assessing impacts. Similar experiences were collected in the proceedings of forest areas of heightened public interest (*kõrgendatud avaliku huviga alad; KAH-alad*) and

other forest management plans by the State Forest Management Centre (RMK). In the areas of heightened public interest, however, the public participation is organised according to the State Forest Management Centre's guidances.

Other sources from Estonia underline that in contrast the general EIA procedural rules themselves are fully public. Based on them, relevant information is provided to the public in several cases, but it might happen that not all affected persons are informed in due time. However, the country researchers draw attention to the lack of access to certain parts even of the EIA (e.g. the preliminary assessment) and in respect to other environmental permitting procedures (e.g. fishing permits). They add, too, that while the overall the rules of EIA are public, sometimes it happens that not everyone is noted on time, furthermore in certain aspects of the practical implementation of the EIA laws there are more significant shortcomings. (EST)

In **Bulgaria**, given the vast variety of procedures other than EIA, SEA and AA encompassing all kinds of administrative authorizations in the field of air, noise, water protection and waste management, the researchers focussed on some procedures relevant for water and waste management. They noted that according to the Environmental Protection Act (EPA) which transposes the EIA Directive, the projects that undergo EIA are listed in Annex 1 (for mandatory EIA) and Annex 2 (which go through a screening procedure to assess the need to carry out a full EIA). The SEA Directive is transposed into the Bulgarian legislation in the EPA and the SEA Ordinance. The SEA is mandatory for plans and programs (PP) in the fields of agriculture, forestry, fisheries, transport, energy, waste management, water resources management and industry, including mining of underground resources, electronic communications, tourism, urban planning and land use, when these PP outline the framework for the future development of investment proposals under Annexes No. 1 and 2 of EPA. The PPs for which the carrying out of an SEA is mandatory and for which the need for a SEA is assessed (screening), are determined by the SEA Ordinance. The Habitats Directive and the AA are transposed into the Bulgarian legislation by the Biodiversity Protection Act (Art.31-34a) and the AA Ordinance.

Other laws that provide rules for access to justice aim at protecting the sustainable use of natural resources, in particular land-use regimes and changing the land-use of agricultural land, forests and the Black Sea coast, exploitation of mineral resources, and the land-use designation in the General Spatial Plan: the Agricultural Land Conservation Act, the Forestry Act, the Black Sea Coast Spatial Development Act, the Underground Resources Act and the Territorial Development Act.

The members and associations of the public are aware of the most relevant procedural rules. These procedures are public and all information on the project and the procedure is provided to the public in individual cases, too. (BUL)

The **Austrian** research group, similarly to the Bulgarian colleagues, has systematically analyzed two kinds of non-EIA authorization procedures highly relevant for environmental protection, namely water and waste management ones. The procedural rules are known in details, in general, naturally.

a. Water Act

The purpose of the Act is to ensure integrated water management in the public interest and for the protection of the health of the population. The Water Act transposes Directive 2000/60/EC establishing a framework for Community action in the field of water policy and has the role of a framework law in the sector of water management.

The issuance of administrative acts for water use (permits) – permits for water abstraction and permits for the use of a water body are regulated in Chapter Four of the Water Act. There are cases when a permit is not required, as well as the special regimes of extraction of mineral waters, which are exclusive state property through concessions under the Concessions Act. The permit or the decision for refusal of the competent authority is subject to appeal before the respective administrative court by order of the Administrative Procedure Code.

To initiate a procedure for issuing a permit the applicants must submit an application which contains also the number of the EIA decision of the Minister of Environment and Water or of the director of the relevant regional environmental and water inspectorate or the screening decision that it is not necessary to carry out an EIA, or a AA decision when it is required under the Environmental Protection Act and the Biodiversity Act.

b. Waste Management Act

Permits for carrying out waste recovery and/or disposal activities, including preliminary treatment before recovery or disposal, are issued by the director of the regional environmental and water inspection, on whose territory the activities are carried out; and by the Minister of Environment and Water or by an official authorized by him, when the activities are carried out on the territory of more than one regional inspection on environment and water.

As for the water use permits when applying for waste management permit, the applicant should present the EIA decision or the screening decision that it is not necessary to carry out an EIA, or an AA decision according to the Biodiversity Act.

The issued permit and other decisions concerning the site for waste treatment may be appealed before the respective administrative court pursuant to the Administrative Procedure Code. The appeal does not suspend the execution of the appealed act.

A unique regulation of the Austrian law deserves our attention, too. This is not directly addressing environmental concerns, but closely relates to them.

There are so-called spatial impact assessments (“Raumverträglichkeitsprüfungen”) in some states in Austria and for certain plans or projects. The subject of a spatial impact assessment is the survey and presentation of assessable spatially significant effects of certain projects (projects and plans). This is for example mandatory for projects that are expected to have a significant impact on the spatial structure (e.g. waste treatment plants and Seveso facilities in Salzburg). Spatially significant impacts are, in particular, impacts on settlement and transport development, on the economy, the labour market or the environment.

The origin of this examination is not Union law; rather, the individual spatial planning laws (“Raumordnungsgesetze”) of the states are the legal basis. However, these do not assume a uniform understanding of the term. The standards presented are correspondingly inhomogeneous. In Salzburg, for example, the tasks of regional planning include carrying out spatial impact assessments, which fall under the supra-local spatial planning. The use of land for stationary plants subject to licensing for the treatment of hazardous or predominantly non-hazardous waste pursuant to the Waste Management Act 2002 is only permissible from the point of view of the supra-local spatial planning of the state if the regional government has determined the spatial compatibility of the project by means of a notice (“Bescheid”). The project applicant shall include with its application all documentation necessary to evaluate the spatial compatibility of the project. The spatial compatibility of the facility is not given if the project conflicts with development programs or, without supra-local interests in the construction of the facility prevailing, with stipulations in the spatial development concepts. Comparably, the use of land for establishments falling within the scope of the Seveso Directive is only permissible from the point of view of the supra-local spatial planning of the state if the regional government has, upon application, established the spatial compatibility of the project by means of a notice. The project applicant shall include with its application all documentation necessary to evaluate the hazard potential and associated impact area. There are no specific time-limits for the described process. However, if the administrative authority fails to decide on an application within six months (or a shorter or longer period of time provided for by the respective law) after receipt of the application for a decision on the merits, an appeal by default may be filed.

In Carinthia, for example, the regional government may, at the instigation of the project applicant and in cooperation with the latter, arrange for a spatial impact assessment to be carried out in the case of a planned project which is expected to have a significant impact on the spatial structure beyond the territory of a municipality, in order to provide a basis for decision-making, if the operator provides the technical documents required for the basic assessment of the spatially significant impact of the project. Within the framework of the spatial impact assessment, the assessable spatially significant effects of the implementation of the project, in particular on settlement and transport development, the regional economy, the labour market and the environment, are to be surveyed and summarized. On the basis of the presentation, the compatibility of the planned project with the objectives and principles of spatial planning, the supra-local development programs and other known projects and

planning intentions shall be assessed. If necessary, reasonable modifications of the project or alternatives to the project may also be presented from the point of view of spatial planning policy. (AUT)

3. Possibility ensured for the members of the public or for NGOs to participate in such procedures (to submit their opinion and whether the authority takes those opinions into account when making decision)

As concerns the second pillar of the public participation system, effective participation is not always allowed in the non-EIA (SEA, AA) cases with significant environmental features. We cannot draw a clear-cut pattern, but can go so far that administrative authorities that are handling issues closer to environmental protection (sectoral environmental issues, forestry, land protection, water management and alike) tend to be more willing to include the members and associations of the public and accept public opinions. Others, like general construction authorities (especially the specific ones, such as road construction, railway construction or airport supervision authorities) are more reluctant to do so. We also have witnessed inconsequential practices when in some cases the authorities ensure for public participation, while in others not – one can presuppose that the politically, economically more important cases fall into the second category.

The **Croatian** researchers observed that members and associations of the public can participate in the environmentally relevant non-EIA (SEA, AA) cases and submit their opinion, but their opinion is, in the great majority of cases, ignored/rejected. Even, according to certain laws, they are invited to public consultations, but here again the practice is that the opinions of citizens and professionals are often not taken into account. Exceptionally in a couple of cases, for example, in the case of the Law on Maritime Property and Sea Ports, due to enormous pressure from the public and the profession, and the upcoming elections, certain parts of the public participation provisions were substantially changed. Even in one of these cases more than 900 objections were issued and all of them were rejected during the consultation process. (CRO)

In **Estonia** an important shortcoming was reported: the public or NGOs can't participate in the preliminary or expert assessment procedures in such cases. The picture of public participation in non-EIA environmentally relevant cases is mixed. For instance, the results of the forest notification proceedings or of the construction permits for land improvement systems – together with the communication – is uploaded to the respective register, but there is no public proceeding and the only way to participate is by challenging the permit in administrative or court review. In more sensitive cases, even the decision is not made public. In a bird protection case, the order to destroy great cormorants' eggs was sent only to selected parties. The positions submitted by others were not considered.

In other cases, the public can participate in the procedure, such as drafting of water management plans, management plans for land improvement systems and protection rules. In these cases, the public is allowed submit their positions, and partially these are taken into account, however naturally, the public comments do not always meet consent from the other parties in the case and from the authorities, either.

The reconstruction and maintenance of drainage systems is a problematic issue of its own, because for this activity that potentially has an environmental impact, no permits or coordination is normally required and there is no proceeding (neither an open proceeding with public consultation) whatsoever. Such activities are simply performed by the landowners, even if their environmental effects are questionable, at best. These issues gain the Environmental Board's attention only in case the drainage ditches are linked to salmon rivers. The Agricultural and Food Board (who otherwise issues construction and reconstruction permits for drainage systems) never deals with them. To our knowledge, mowing (which affects farmland birds' nesting and the quality of their habitats etc.) is a similar permit-free activity and its conditions arise from the contracts of the support schemes. If you don't take monetary support, you don't have to follow the rules.

In the case of the management plans of state forest areas of heightened public interest, the public participation is organised by the State Forest Management Centre, although not based on laws but only on internal guidelines of the Centre. Responses to proposals are often formal. There is no public participation in other long-term forest management plans of the State Forest Management Centre, although these should be strategic planning documents. (EST)

In **Bulgaria** the different sectoral environmental laws refer to the Administrative Procedure Code to provide the procedure for challenging administrative acts under the specific authorisation. Such explicit provisions could be found for instance in the Water Act for the permit or the decision on refusal of the authority competent for water use-related permissions; and in the Waste Management Act for the issued permit to companies for waste recovery activities, or for amending and/or supplementing it.

The members of the public or NGOs have the possibility to submit their opinion to the competent authority and the latter is obliged to consider the opinions. The authority, naturally, is not obliged to fully agree with these comments, but if it does not accept them, it should present arguments in the reasoning part of its decision. The lack of arguments for not accepting proposals of the public and NGOs when issuing the final acts, is a significant violation of the administrative procedural rules in Bulgaria and is always sanctioned by the courts, which annul the relevant acts for this reason, as illegal. (BUL)

4. Legal standing for the members of the public or NGOs in such procedures (including the right to challenge the final decision in the form of an administrative appeal or a judicial review

Standing is the fullest procedural legal position, clients having full standing are called 'the lord of the case' – they decide on starting the case (unless it is ex officio), they submit to the authority the bulk of the evidences (facts, statements, expert opinions, witnesses etc.), they give opinion on all motions of the procedure and, naturally, they are in the position to use all kinds of legal remedies available for the given type of cases.

While the Aarhus Convention ensures slightly narrower scope of rights in its Article 6, and only for a list of activities, the Convention and the accompanying European and domestic laws, also the related court practices are often referred to in claims for full standing in environmental administrative cases. We have to add that the Convention in several aspects ensures wider and more effective participation than the historical standing, inter alia in respect to definitions determining the scope of participation, capacity building, pre-procedural access to information and the scope and quality of access to justice. This way, indeed, it is a well-based reference point for enhancing environmental democracy and filling in the old legal institution of standing with new contents.

In **Croatia** a certain level of interest is required for standing in most of the cases (such as having a project in the area). The final decision is challengeable by the clients in the case, but it often has no practical effect because of lack of suspending effect, so the project has already started by the time the second instance or court decision is brought. In addition to the general administrative procedural law, different sectoral environmental laws refer to the Administrative Procedure Code to provide the procedure for challenging administrative acts under their specific authorisation. Such explicit provisions could be found in the Biodiversity Act, the Water Act and in the Waste Management Act (in connection with permits issued to companies for waste recovery activities, or for amending and/or supplementing it).

In the recent case-law of the Supreme Administrative Court (SAC) the court did not grant standing to ENGOs of private interest to challenge administrative decisions based on Art. 6 of the Aarhus Convention. In a lawsuit concerning an appeal of the decision of the Energy and Water Regulatory Commission (EWRC) to extend the duration of the licence for electric power generation sought to establish a practice of allowing ENGOs in litigations on the Energy Act so that they could appeal the acts of the EWRC. In that case, the SAC denied the right of appeal to ENGOs. Other problems with procedures outside the scope of Art. 6 of the Aarhus Convention is granting of standing in other procedures for environmental permits – challenging water permits for instance. (CRO)

In **Estonia** the final decision to issue a permit based on a preliminary assessment or an expert assessment is challengeable and affected individuals and environmental NGOs can challenge

these in court, provided that they qualify as an environmental NGO or they are personally affected by the decision (e.g. that the decision directly affects their land because it concerns a neighbouring plot – whereas the term 'neighbouring' itself might be a subject of a further procedural legal dispute). However, the earlier decisions such as the decision to initiate a preliminary/expert assessment itself are not normally challengeable in court.

In such cases as forest notifications, as well as construction permits and orders to manage the numbers of a species generally there are standing for NGOs ensured by law. BirdLife Estonia has tested these in court. It is not entirely clear, though, whether one can challenge the State Forest Management Centre's forest management plans – legal remedies in respect to strategic decisions raise a serial of constitutional and procedural legal questions. Tallinn District Court has ruled that it should be possible, because it is an administrative action. Court proceedings are initiated in the case of forest notifications that are issued by the Environmental Board. It is unclear whether the protection rules can be challenged. (EST)

According to the Constitution of Bulgaria, any administrative act can be appealed by the affected persons, except those expressly prohibited by law. In the field of environmental acts, there are no acts with prohibition for appeal, respectively, in relation to such acts, access to justice in Bulgaria is guaranteed. In addition to judicial control, environmental acts are also subject to administrative control, when the authority that issued the act has an administrative authority superior to it. Administrative control does not cancel the possibility of judicial control, unless the act has already been cancelled in administrative control. (BUL)

In **Austria**, depending on the substantive law and the respective implementation of the Aarhus Convention, recognised NGOs have legal standing, can submit comment and might have the right to appeal. This depends on the different spatial planning laws as legal background and is different within the laws of the regions,too:

a. In Salzburg, for example, the application for the spatial compatibility of a Seveso facilities and the documents required for assessing the effects of a major accident shall be made available for general inspection for eight weeks during office hours open to the public, as well as on the Internet, in the department of the Office of the regional government responsible for matters of regional planning. The publication shall be announced:

▪ in the Salzburger Landes-Zeitung;

▪ by posting on the official notice boards of the district administrative authorities and municipalities affected by the scope of the installation.

The circulation and announcement period begins with the announcement in the Salzburger Landes-Zeitung. Within the circulation period, written comments on spatial compatibility may be submitted by persons who credibly demonstrate a justified interest. The announcement shall refer to the possibility of submitting such comments. These comments shall be taken into account in the decision on spatial compatibility. The project applicant, the municipalities

affected by the area of impact of the operation, the provincial environmental ombudsman's office and all persons with a justified interest who have submitted a statement within the notice period shall have the status of parties. The municipalities affected by the impact of the operation, the provincial environmental ombudsman's office and the persons with a justified interest who have submitted a statement within the notice period are entitled to appeal against the decision issued in this procedure to the regional administrative court and to appeal against the decision of the regional administrative court to the administrative court (this is the already mentioned rule of exhaustion that might mean a serious hindrance of public participation – NGOs, local communities and other member of the public have not enough resources to be present in all the cases possibly having an outcome that will influence their environment, health and wealth). In the notice on spatial compatibility, the impact area of the Seveso facility shall be determined. The municipality shall mark the defined impact area in the zoning plan. Within the designated impact area, no dedications may be made and no permits, approvals, etc. may be issued based on provincial legislation if their realization may lead to a significant increase in the risk or consequences of a serious accident, in particular with regard to the number of persons affected.

b. In Carinthia, for example, no such participation is provided for the spatial impact assessment.

c. In general, it remains a huge problem, that that we generally do not have participation and legal protection in (most of) these procedures. Since no Union law is affected, we cannot do anything here even in the long term. (AUT)

In **Hungary**, regarding to the legal standing of environmental associations in environmental administrative and judicial proceedings, the Supreme Court stated that such associations may act as clients in environmental administrative procedures, where the main decision-making body is the environmental authority or where that authority proceeds as an expert authority. The practical ramification of this statement is that e.g. the proceedings of the water management authority or the forest authority are not regarded as environmental administrative proceedings, unless the environmental authority appointed by the relevant Gov.Decree is participating as an expert authority providing its opinion on environmental questions specified by law.

5. The main barriers to effective public participation in permitting procedures other than EIA, SEA or AA (e.g. legal framework, administrative capacity)

The starting point for effective public participation in environmental sectoral administrative cases and in cases at administrative bodies with not directly environmental, but closely related portfolio is the attitude of the officials. If they appreciate the help from the members and organisations of the public, they will be supportive and will implement the relevant procedural

rules in effect. Otherwise, if they just wish to get rid of the 'not necessary' participants, even the best public participation schemes will just be mere formalities. Furthermore, where the environmental and related authorities are seriously understaffed and suffer the lack of resources, they might not prioritize the most meticulous implementation of all public participation laws.

Court activism – as we see in many instances in the world's major environmental problems – might be of help in such stalemate situations. However, access to court remedies is hindered by a line of legal and practical factors: unfriendly time limits, restrictions based on the persons of would-be plaintiffs or based on their participation in the instances of the administrative procedures, inter alia. The participants themselves suffer from lack of resource either: environmental cases demand high level professional and legal preparedness, and these can seldom be fully afforded by them.

Even taking all of these into consideration, our country researchers still attach hopes to the Aarhus Convention that represent system approach and a multi-faceted progressive support for environmental democracy.

The **Croatian** colleagues blame the old legacy of shortage in democracy: even decades later it might influence those who exercise administrative (political, economic) power – they are still reluctant to share information and enter into meaningful correspondence with the members and organisations of the public not even in cases which influence their environment. Our contributor is an advocacy organization and holds that there are still many major barriers to effective public participation in such procedures. Legal framework is there but public participation procedures are understood from the relevant authorities as a hassle – and not the meaningful contribution. There are many limiting factors when the authorities conduct such procedures just to "check the box", such as short consultation time, the publication online in hidden corners of official pages, no responses on the comments. Time factor plays a decisive role, too: by the time a document reaches some kind of public participation process it is already in a high phase of completion and rarely anything changes after the public participation procedure.

Another barrier at the level of legal remedies is that the courts do not consider themselves as experts in the complicated environmental professional issues – they fall back on only to establish the legality of the procedure and the close enough following of the legal orders of the environmental laws. Environmental laws are expert based ones, so it is an unsurmountable barrier at the time being. Altogether, legal remedies are slow and ineffective – courts especially lack the specific professional background to understand and appreciate the essence of the environmental conflicts.

The interest of citizens to participate in decision-making processes when it comes to the environment is growing, while the one for their meaningful involvement remains the same -

the procedures are reduced to a formality - citizens are given the possibility of expressing an opinion, but those opinions are overlooked almost as a rule.

Moreover, public participation is fundamental not only for environmental protection but also for the fight against corruption – an other legacy from the historical times. Transparency and public involvement in decision-making are therefore vital for rule of law in the countries in the region. (CRO)

In **Estonia** the main barrier to any, let alone effective public participation in these procedures is that they are hidden from the public and no public consultations are carried out. Therefore, the public can't participate in the proceedings before they are over. As the Environmental Board is rather understaffed, it favours automatization and simplification to optimise the use of administrative staff.

In some procedures it is the lack of statutory public proceedings in the design of the decision-making process – forest notifications, forest management plans, construction permits of drainage projects etc.. Administrative capacity is a bottleneck, as well – to our knowledge, the Environmental Board, the Agricultural and Food Board etc. complain about a lack of resources already now. That is why there are plenty of procedures in which in our view an EIA/SEA/AA should apply, but the authorities attempt to interpret the norms as if the obligation to assess should not apply. This fact underlines the importance of non-EIA type, cheaper and quicker sectoral environmental legal laws and procedures, together with the closely related other fields of administrative law.

Lack of time to get properly informed about all ramifications and professional facts about the planned development and the evaluation of the environmental impact Regulations are vague on how exactly public opinion (often countering opinions) should be considered in EIA process, thus often EIA expert does not justify why the opinion received from the public is not taken into account. (EST)

According to the **Bulgarian** researchers, the legal framework could be improved to allow for more effective public participation, however, the administrative capacity of the competent authorities even under the current legal rules is always of a concern, because these administrations are understaffed, with relatively low salaries and tendency to leave the job after a few years. Another problem is the limited capacity of the public, including that of the NGOs to participate effectively in the procedures. However, in those cases where the laws are closely followed and the procedures of public consultations are duly performed, there are no problems and obstacles for the participation of the public and NGOs. (BUL)

The **Austrian** colleagues added that insufficient implementation of the Aarhus Convention and of EU law (e.g. also the IPPC directive) are the greatest obstacles for effective public participation.

Furthermore, in most cases no public participation is provided for in the spatial planning laws of the states and the public is not even informed about the above described procedure. The possibility of challenging decisions by the state government before an independent court, as is the case with Seveso plants in Salzburg, is rather the exception than the main rule. (AUT)

The **Hungarian** respondents highlighted that the relevant legal framework does not provide for public participation in the procedures which are not considered as environmental administrative procedures. The notion of 'administrative environmental procedure' (see above) means also a barrier in exercising participatory rights where the environmental administration is not involved.

6. Conclusions

In our 5 country survey we have found clear-cut differences between environmental and other authorities in tolerating, encouraging, supporting public participation. This highlight the need for planned and systematic capacity building for the officials in environmental authorities and especially in other authorities working in the cases relevant for environmental protection. So far, capacity building programs are mostly targeting only the members and organisations of the public, based on Article 3 of the Aarhus Convention. Awareness raising, highlighting the most important features of the environmental cases, legal and professional support are the most important elements of such capacity building activities. Whenever the capacities for public participation in the members and associations of the concerned communities are heightened, in harmony with the capacities of the officials in the relevant administrative bodies for accepting and using effectively the comments and suggestions from the public, the time will arrive for further social, professional and political actions for amending the regulation of environmental assessments, as well as making the practice of implementing it more effectively. How it can be achieved in details is, of course, a suitable matter for another study.

Environmental cases are expert based ones, therefore we see one of the most important solutions of amending the effectiveness of the legal practice thereof in a better regulation and implementation of the rules directing their work. Unfortunately, at the time being the legal position of the experts is vague in many aspects (who is going to select, pay and control the experts, what kind of responsibilities they bear for biased, forfeiture, faulty or simply of poor quality expert work and documentation etc.). Furthermore, internal (related to their chambers and bylaws) and external responsibilities of the experts working in various fields relevant to environmental protection is not yet consequentially regulated and implemented. Disciplinary procedures, as well as preventive measures within the professional organisations of the experts can range to the possibility of excluding incompetent or notoriously biased environmental experts. In addition to them, sanctions of administrative law and even criminal law might be necessary in the most serious cases.

Attitudes, preparedness and honest motivation of the participants in the environmental cases are key effectiveness factors, indeed. These factors make environmental law work in line with the will of the legislators. But our research has also raised the question: is the will of legislators clear and consequential?

In the first part of this research program our answer was basically yes. EIA, SEA and AA represent the needed holistic, modern legal tools of environmental protection and sustainable development in general. Those sectoral environmental laws and laws of the related fields are, not like the EIA types of laws, the leading principles of environmental law are kept in the forefront in certain cases, while in other cases not. It is a speciality of environmental law (and neighbouring fields of law) that almost all substantial laws contain some procedural elements:

who can apply for a permit, what documents shall be attached to it, who shall be invited into the procedure and who shall be let participate if they wish so; what kind of evidences and expert works are needed in the given sort of cases and what other evidences shall be taken into consideration (such as basis data, monitoring data, data about the neighbouring real estates etc.), what kind of conditions could be raised in the decisions and so forth. This sporadic nature of the procedural rules in this field raises the urgent task of harmonisation of procedural aspects of the sectoral environmental laws and that of the related fields of administrative law, too.

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