OKOLJE IN ČLOVEKOVE PRAVICE

REPUBLIKA SLOVENIJA

VARUH ČLOVEKOVIH PRAVIC

Zbornik strokovnih prispevkov 2. konference
Okolje in človekove pravice: Sodelovanje javnosti
v okoljskih zadevah – teorija in praksa
Brdo pri Kranju, 19. maj 2010

Collection of Written Contributions
2nd Conference on the Environment and Human Rights:
Public Participation in Environmental Matters in Theory and Practice
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I. Introduction

I. INTRODUCTION

The second conference on the Environment and Human Rights: Public Participation in Environmental Matters in Theory and Practice, which was organised by the Human Rights Ombudsman of the Republic of Slovenia, took place at Brdo Conference Centre on 19th May 2010.

The purpose of the meeting of reputable Slovenian and international experts and representatives of the national authorities responsible for the environmental issues and the civil society was to identify possible differences among the regulation set-up in the Aarhus Convention, national environmental regulations, and everyday practice. They tried to find solutions to eliminate differences in Slovenia as well as abroad with opening words, lectures, discussions and workshops.

The participants were initially addressed by Dr. Danilo Türk, the President of the Republic of Slovenia, Dr. Zdenka Čebašek Travnik, the Human Rights Ombudsman, Dr Janez Potočnik (the video of the address), the European Commissioner for the Environment, and Dr Roko Žarnić, the Minister for the Environment and Spatial Planning.

The children from the Deaf and Hard of Hearing Association from Ljubljana made an exhibition for this opportunity which, accompanied by the Human Rights Ombudsman, Dr Zdenka Čebašek Travnik, was visited by the President of the Republic of Slovenia, Dr Danilo Türk.

The publication presents the initial addresses of the conference, the contributions from the conference, and concluding observations of the conference. We believe that the publication shall represent a welcome source of information and a document of current issues regarding the provision of the right of access to information, to public participation in decision-making processes, and to legal protection in environmental issues.

I. UVOD

V Kongresnem centru na Brdu pri Kranju je 19. 5. 2010 potekala druga konferenca Okolje in človekove pravice: Sodelovanje javnosti v okoljskih zadevah – teorija in praksa, ki jo je pripravil Varuh človekovih pravic Republike Slovenije.

Namen srečanja uglednih slovenskih in mednarodnih strokovnjakov in strokovnjakinj ter predstavnikov državnih organov, odgovornih za okoljska vprašanja, in civilne družbe je bil ugotoviti morebitna razhajanja med ureditvijo, ki jo zagotavlja Aarhuška konvencija, in nacionalnimi okoljskimi predpisi ter praktičnimi izkušnjami iz vsakdanjega življenja. Z uvodnimi besedami, predavanji, razpravami in delom v delavnicah so skušali najti rešitve za odpravo razhajanj tako v Sloveniji kot v tujini.

Udeležence so uvodoma nagovorili dr. Danilo Türk, predsednik Republike Slovenije, dr. Zdenka Čebašek Travnik, varuhinja človekovih pravic, dr. Janez Potočnik, komisar za okolje Evropske komisije (videoposnetek nagovora), in dr. Roko Žarnić, minister za okolje in prostor.

Otroci iz Zavoda za gluhe in naglušne Ljubljana so za to priložnost v preddverju konferenčne dvorane postavili razstavo, ki si jo je v spremstvu varuhinje človekovih pravic dr. Zdenke Čebašek Travnik ogledal tudi predsednik Republike Slovenije dr. Danilo Türk in se z otroki tudi pogovoril.

V publikaciji objavljamo uvodne nagovore ob začetku konference, na konferenci predstavljene prispevke in sklepne ugotovitve konference. Prepričani smo, da bo publikacija dobrodošel vir informacij in dokument aktualnih vprašanj zagotavljanja pravice do dostopa do informacij, do udeležbe javnosti pri odločanju in do pravnega varstva v okoljskih zadevah.

II. Program konference
II. Programme of the Conference

Programme 2nd Conference on the Environment and Human Rights: Public Participation in Environmental Matters in Theory and Practice Brdo pri Kranju, 19 May 2010

8.00 – 9.00	Registration of participants
9.00 – 9.30	Opening addresses
	Dr Danilo Türk, President of the Republic of Slovenia
	Dr Zdenka Čebašek - Travnik, Human Rights Ombudsman
	Dr Janez Potočnik, European Commissioner for the Environment
	Dr Roko Žarnić, Minister for the Environment and Spatial Planning
PART ONE	**Facilitator: Kornelija Marzel, MSc**
9.30 – 11.00	The Application of the Aarhus Convention in institutions of the European Union – the Experience of the European Human Rights Ombudsman: **Vukašin Lončarević**, Legal Officer, European Human Rights Ombudsman
	Developments in the Regulation of Public Participation in Hungary and the Role of the New Environmental Ombusman: **Sándor Fülöp**, Parliamentary Ombudsman for Future Generations, Hungary
	The LUA of Styria and its Contribution to Public Participation in Environmental Matters: **Ute Pöllinger, MSc**, Environmental advocate of the Federal region Styria, Austria
	Debate
11.00 – 11.10	**BREAK**
PART TWO	**Facilitator: Kornelija Marzel, MSc**
11.10 – 13.00	Public Participation Under the Aarhus Convention: **Dr Jerzy Jendrośka**, Managing Partner and Professor Adjunct, Opole University and Aarhus Convention Compliance Committee
	Realising the Importance of a Healthy Living Environment – The Practice of the Human Rights Ombudsman of the Republic of Slovenia: **Korelija Marzel, MSc**, Deputy Human Rights Ombudsman
	Access to Environmental Information Under the Access to Public Information Act in Theory and Practice: **Kristina Kotnik Šumah**, Depuy Information Commissioner
	Access to Environmental Information, Public Participation in the Process of Issuing Environmental Protection Approvals and Permits: **Adrijana Viler - Kovačič, MSc**, Advisor to the Director General of the Environmental Agency of the Republic of Slovenia
	Negative Attitude Towards the Public in the Case of Issuing an Environmental Protection Permit to Lafarge Cement: **Boštjan Pihler**, Eko Krog
	Debate
13.00 – 14.30	Lunch
PART THREE	**Facilitator: Martina Ocepek**
14.30 – 16.00	Including the Public in Environmental Decision-Making and Access to Environmental Information: **Brigita Čanč, Živa Bobič Červek**, Head of te Division for Environmental Protection and Nature Conservation at the Municipality of Maribor
	Organised Civil Society Resistance as an Obstacle to the Development of “Dirty” Industry and the Only Guarantee for the Implementation of the Aarhus Convention: **Boris Šušar**, Action Group Celje
	The Aarhus Convention in the Republic of Slovenia: **Dr Samo Kopač**, acting director of the Environmental Directorate, Ministry of the Environment and Spatial Planning
	The Experience of the Coalition for Triglav National Park Regarding Communication Between Civil Sociey and the Slovenian National Authorities: **Matjaž Jeran, MSc**, Coalition for Triglav National park
	Public Participation in the Process of Placing Transmission Lines in Physical Space: **Aleš Kregar, MSc**, Division for Transmission Networks, Elektro – Slovenija
	Debate
16.00 – 16.15	**BREAK.** Formation of working groups for workshops
WORKSHOPS	
16.15 – 17.00	Workshop 1: Free Access to Environmental Information: **Karel Lipič**, President of the Association of Ecological MovemAnts of Slovenia – ZEG
	Workshop 2: Public Participation in the Process of Issuing Environmental Protection Approvals and Permits: **Adrijana Viler - Kovačič, MSc**, Advisor to the Director General of the Environmental Agency of the Republic of Slovenia
	Workshop 3: Public Participation in Environmental Matters in Local Communities: **Ivan Plevnik, MSc**, Regional Development Agency for Koroška
CONCLUSIONS	
17.15 – 18.00	To be presented by the leaders of individual workshops

Program 2. konference okolje in človekove pravice: Sodelovanje javnosti v okoljskih zadevah - teorija in praksa Brdo pri Kranju, 19. maj 2010

8.00 – 9.00	Registracija udeležencev
9.00 – 9.30	Uvodni nagovori
	Dr. Danilo Türk, predsednik Republike Slovenije
	Dr. Zdenka Čebašek Travnik, varuhinja človekovih pravic
	Dr. Janez Potočnik, komisar za okolje Evropske komisije
	Dr. Roko Žarnić, minister za okolje in prostor
PRVI SKLOP	**Moderatorka: mag. Kornelija Marzel**
09.30 – 11.00	Uporaba Aarhuške konvencije s strani institucij Evropske unije - izkušnje evropskega varuha človekovih pravic: **Vukašin Lončarević**, pravni strokovni sodelavec, Evropski varuh človekovih pravic
	Razvoj pravne ureditve sodelovanja javnosti na Madžarskem in vloga novega okoljskega ombudsmana: **Sándor Fülöp**, parlamentarni ombudsman za prihodnje generacije, Madžarska
	Deželni okoljski zagovornik in njegov prispevek k sodelovanju javnosti v okoljskih zadevah: **mag. Ute Pöllinger**, okoljska zagovornica zvezne dežele Štajerske, Avstrija
	Razprava
11.00-11.10	**ODMOR**
DRUGI SKLOP	**Moderatorka: mag. Kornelija Marzel**
11.10 – 13.00	Sodelovanje javnosti v skladu z Aarhuško konvencijo: **dr. Jerzy Jendrośka**, upravni družbenik in izredni profesor, Univerza Opole in Odbor za izpolnjevanje Aarhuške konvencije
	Zavedanje o pomenu zdravega življenjskega okolja - praksa Varuha človekovih pravic RS: **mag. Kornelija Marzel**, namestnica varuhinje človekovih pravic
	Dostop do okoljskih informacij po Zakonu o dostopu do informacij javnega značaja v teoriji in praksi: **Kristina Kotnik Šumah**, namestnica informacijske pooblaščenke
	Dostop do okoljskih podatkov, sodelovanje javnosti v postopkih izdaje okoljevarstvenih soglasij in dovoljenj: **mag. Adrijana Viler Kovačič**, svetovalka generalnega direktorja Agencije Republike Slovenije za okolje
	Zaničljiv odnos do javnosti na primeru izdaje okoljevarstvenega dovoljenja Lafarge cementu: **Boštjan Pihler**, Eko Krog
	Razprava
13.00 – 14.30	Kosilo
TRETJI SKLOP	**Moderatorka: Martina Ocepek**
14.30 – 16.00	Vključevanje javnosti v okoljsko odločanje in dostop do okoljskih podatkov: **Brigita Čanč, Živa Bobič Červek**, Urad za komunalo, promet, okolje in prostor, Sektor za varstvo okolja in ohranjanje narave Mestne občine Maribor
	Organiziran upor civilne družbe kot omejitveni dejavnik razvoja “umazane” industrije in edini garant za implementacijo Aarhuške konvencije: **Boris Šuštar**, Civilna iniciativa Celje
	Aarhuška konvencija v Republiki Sloveniji: **dr. Samo Kopač**, v. d. generalnega direktorja Direktorata za okolje, Ministrstvo za okolje in prostor
	Izkušnje Koalicije za Triglavski narodni park pri komuniciranju civilne družbe z državnimi organi v Sloveniji: **mag. Matjaž Jeran**, Koalicija za TNP
	Sodelovanje javnosti pri umeščanju prenosnih daljnovodov v prostor: **mag. Aleš Kregar**, sektor za prenosno omrežje, Elektro - Slovenija
	Razprava
16.00 – 16.15	**ODMOR.** Oblikovanje skupin za delavnice
DELAVNICE	
16.15 – 17.00	Delavnica 1: Prosti dostop do okoljskih informacij: **Karel Lipič**, predsednik Zveze ekoloških gibanj Slovenije - ZEG
	Delavnica 2: Sodelovanje javnosti v postopkih izdaje okoljevarstvenih soglasij in dovoljenj: **mag. Adrijana Viler Kovačič**, svetovalka generalnega direktorja Agencije Republike Slovenije za okolje
	Delavnica 3: Sodelovanje javnosti v okoljskih zadevah v lokalni skupnosti: **mag. Ivan Plevnik**, Regionalna razvojna agencija za Koroško
ZAKLJUČNE UGOTOVITVE	
17.15 – 18.00	Zaključne ugotovitve moderatorjev in vodij delavnic poda varuhinja človekovih pravic

III. Uvodni nagovori
III. Introductory Speeches

Dr Danilo Türk,
President of the Republic of Slovenia

Thank you for your invitation.

Thank you for giving me the opportunity to say a few words at the beginning of this important and interesting conference.

Please allow me, in my short address, to consider the right to a healthy living environment as a human right. This is also the core of today's discussion. I am convinced that you will effectively elucidate various aspects of this human right and various practical consequences of the fact that the right to a healthy living environment is one of the fundamental human rights. This right is determined in Article 72 of our Constitution, but similar regulation has been broadly adopted not only in Europe, but also in the wider world.

I remember well the time approximately thirty years ago when these topics were only discussed, when activists in the field of human rights had various opinions with regard to whether the right to a healthy living environment should be included amongst the fundamental human rights. In those times, approximately thirty years ago, many were of the opinion that human rights should be considered in a somewhat more limited manner, with a narrower definition, mainly in order to ensure their authority, so that their scope would not be too broad, since with the expansion of human rights to new fields and new topics – as many believed at that time – the front line regarding efforts to develop human rights would weaken.

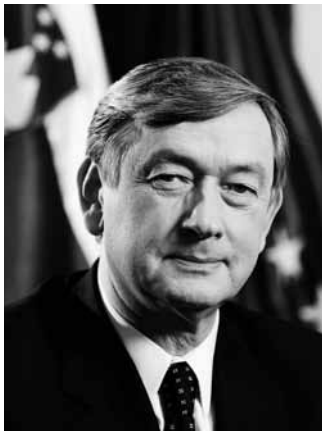
But something else became apparent – namely that the expansion of the front with regard to human rights is urgent since the existence of man is threatened by many phenomena and needs to be defended, protected in new ways. This argument had a central significance with regard to the prevalence of the claim that the right to a healthy living environment has the status of a human right and, in the end, also with regard to its regulation on the legal level.

The questions which follow therefrom are becoming very interesting and are very diverse. Today I do not wish to discuss merely the legal aspects, the legal-technical aspects of the circumstance that the right to a healthy living environment is one of the fundamental human rights. I find it interesting to review some other aspects with regard to this fact. Primarily, there are two such aspects, the responsibility which follows from the right to a healthy living environment, or, stated differently, the expectations connected thereto. And secondly, its mobilizing power.

When a certain value is included among our human rights, it is inevitably accorded very high expectations. Such expectations are most expressly emotional and socially powerful in the event of severe violations of human rights, in this case, the right to a healthy living environment. There are no dramatic violations in Slovenia of the kind that may be observed elsewhere around the world. Nothing has happened in Slovenia that might be compared to the drama in Bhopal, India, or the ongoing oil well spill in the Gulf of Mexico.

We nevertheless face other problems which cause high expectations and create great responsibilities. Let us consider those areas in Slovenia which are degraded due to past detrimental industries, industries which are mainly abandoned, industries which were connected to the exploitation and processing of such elements as lead, zinc, and mercury. There are still areas which demand additional restructuring and it is important to understand that the right to a healthy living environment requires that these areas be restructured, as

Dr. Danilo Türk,
predsednik Republike Slovenije



Hvala lepa za povabilo.

Hvala lepa, da ste mi dali priložnost, da spregovorim nekaj besed ob začetku te pomembne in zanimive konference.

Dovolite mi, da se v tem svojem kratkem nagovoru ozrem na pravico do zdravega življenjskega okolja kot eno od človekovih pravic. To je tudi jedro današnje razprave. Prepričan sem, da boste na tej konferenci dobro osvetlili različne vidike te človekove pravice in različne praktične posledice dejstva, da je pravica do zdravega življenjskega okolja ena temeljnih človekovih pravic. V naši ustavi je zapisana v 72. členu ustave, vendar je podobna ureditev danes širše sprejeta, ne samo v Evropi, ampak tudi širše v svetu.

Dobro se spominjam časov pred kakšnimi tridesetimi leti, ko se je o teh rečeh še razpravljalo, ko smo aktivisti na področju človekovih pravic imeli različna mnenja o tem, ali je treba pravico do zdravega življenjskega okolja vključiti med temeljne človekove pravice. V tistih časih, pred kakšnimi tremi desetletji so mnogi mislili, da je treba človekove pravice jemati nekoliko bolj skrčeno, v ožji definiciji, ravno zaradi tega, da se zagotovi njihova avtoriteta, da se ta obseg ne širi preveč, kajti s širitvijo človekovih pravic na nova področja, na nove teme – tako so verjeli mnogi v tistem času – se bo oslabila fronta prizadevanj za človekove pravice.

Izkazalo pa se je nekaj drugega – namreč, da je širitev fronte človekovih pravic nujna, kajti človekova eksistenca je ogrožena z mnogimi pojavi in jo je treba braniti, zavarovati na nove načine. Ta argument je imel osrednji pomen pri prevladi trditve in na koncu tudi pri ureditvi na pravni ravni, da ima pravica do zdravega življenjskega okolja status ene od človekovih pravic.

Vprašanja, ki sledijo od tu, pa postajajo zelo zanimiva in so zelo raznovrstna. Danes ne želim razpravljati o čisto pravnih vidikih, pravno-tehničnih vidikih okoliščine, da je pravica do zdravega življenjskega okolja med temeljnimi človekovimi pravicami. Zanimivo se mi zdi pogledati v nekatere druge vidike tega dejstva. Na prvem mestu sta tukaj taka dva vidika, kot je odgovornost, ki jo prinaša s sabo pravica do zdravega življenjskega okolja, oziroma če povem nekoliko drugače – pričakovanja, ki so povezana z njo. In drugič, njena mobilizacijska moč.

Ko se neka vrednota zapiše med človekove pravice, nujno postane deležna zelo visokih pričakovanj. Ta pričakovanja so najbolj izrazito emotivna, izrazito družbeno močna v primeru grobih kršitev človekove pravice, v tem primeru pravice do zdravega življenjskega okolja. V Sloveniji nimamo zelo dramatičnih kršitev, kakršne lahko opažamo drugod po svetu. V Sloveniji se ni zgodilo nič takega, kar bi lahko primerjali z dramo v indijskem Bhopalu ali z razlitjem nafte v vrtini v Mehiškem zalivu.

Pri nas imamo druge probleme, ki pa ravno tako povzročajo velika pričakovanja in ustvarjajo velike odgovornosti. Pomislimo samo na tista območja v Sloveniji, ki so degradirana zaradi preteklih škodljivih industrij, industrij, ki so v glavnem opuščene, industrij, ki so bile povezane z eksploatacijo in predelavo takih elementov, kot so svinec, cink in živo srebro.

this is a great responsibility and the expectations of the people are exceptionally strong. These expectations are not demonstrated every moment, but they are always very strong. The other aspect with regard to the right to a healthy living environment which I believe is worthy of special attention, especially with regard to the fact that this conference will discuss the Aarhus Convention, which is part of a wider endeavour to enforce this right, is its mobilizing power. This mobilizing power is something extraordinary, it is something that we have to understand well and include in policy regarding ensuring a healthy living environment.

Approximately a month ago we witnessed an extraordinarily interesting demonstration of this great mobilizing power in Slovenia. The campaign »Let's Clean Slovenia in a Day« took place. This campaign evolved from a mere civil-society initiative. It evolved from an initiative of young people, people who prior to that had not been organized into some specially developed ecological movement. The people created this movement with this action. In the end, they managed to mobilize approximately 270,000 people for this cleaning campaign that encompassed all parts of Slovenia, and if we consider that the total population of Slovenia is two million people, 270,000 of which were completely engaged in this campaign for a day, then we can see how great the mobilizing power regarding care for our environment is.

But the question is what to do henceforth. What shall further activities be like? What lessons should our social community as a whole learn from this experience, and mostly, how can the state authorities, the government, and other actors ensure that the positive energy and mobilization effect achieved by this campaign be preserved and activated also in the future in order to have a healthier environment and make Article 72 of the Constitution implemented more effectively. This is a big question.

I am pleased that the Minister of the Environment, Prof. Dr. Roko Žarnić, is here with us today, and I know that the Government is considering, and not only considering, but already preparing a strategy which will ensure the continuation of this important mobilization campaign. The Government deserves all support in this and I believe that everyone in this hall is sincerely interested in learning better what this strategy will look like, what it will be, what its content will be, and what kind of success it will have.

It is namely not an issue of every year mobilizing anew the entire population to clean and eliminate illegal landfills. The issue is that this mobilization ensures appropriate ongoing activities, and the implementation, the realization, of provisions that already exist. And this will be a test not only of our general social responsibility, but also of the capability of the Government to turn this responsibility into an appropriate and efficient strategy. A very interesting question, a question which undoubtedly will garner broad attention on the part of the public, and support if the action is successful, and criticism if it comes to a standstill.

And finally, I would like to particularly stress my appreciation to the Human Rights Ombudsman, Dr. Zdenka Čebašek Travnik, for this initiative, for the fact that with her extensive work and during a time when we have on our agenda many acute problems, including those which are linked to the functioning of our judicial system and others which concern the most basic corpus of human rights, citizen rights, and political rights, she has had the energy and capability to also organize a conference which covers a certain wider field, which certainly belongs to the corpus of human rights, but which demands the use of capabilities, information, knowledge, and talents which far exceed the traditional instruments in the field of human rights protection.

It is extremely important that such a wider front be established. It is extremely important that together we all understand that the issue concerns human rights. And it is extremely important that the Human Rights Ombudsman ensures that we understand this better in society. That is why I would like to conclude this opening address by thanking our Human Rights Ombudsman. I would like to thank all you who have come to take part in this conference. I wish you great success in your work and much positive impact in the future.

Thank you very much.

Še vedno imamo območja, ki zahtevajo dodatno sanacijo, in pomembno je, da razumemo, da pravica do zdravega življenjskega okolja zahteva, da ta območja saniramo, kajti to je velika odgovornost in pričakovanja ljudi so izjemno močna. Ta pričakovanja niso izražena vsak hip, so pa vselej izjemno močna.

Drugi vidik pravice do zdravega življenjskega okolja, ki se mi zdi vreden posebnega poudarka in posebej glede na to, da bo ta konferenca razpravljala o Aarhuški konvenciji, ki je del širokega prizadevanja za uveljavitev pravice, je njena mobilizacijska moč. Ta mobilizacijska moč je nekaj izjemnega, je nekaj, kar moramo dobro razumeti in vgraditi v politiko skrbi za življenjsko okolje.

V Sloveniji smo imeli pred kakšnim mesecem dni izjemno zanimivo demonstracijo te velike mobilizacijske moči. Tu je potekala akcija Očistimo Slovenijo v enem dnevu. Ta akcija je nastala iz povsem civilnodružbene pobude. Nastala je iz pobude mladih ljudi, ljudi, ki pred tem niso bili organizirani v kakšno posebno razvito ekološko gibanje. Ljudje so to gibanje ustvarili s to akcijo. Na koncu jim je uspelo mobilizirati okrog 270.000 ljudi za čistilno akcijo, ki je zajela vse dele Slovenije, in če pomislimo, da je celotno prebivalstvo Slovenije dva milijona ljudi, od tega jih je bilo 270.000 en dan v celoti angažiranih pri taki akciji, potem lahko vidimo, kako velika mobilizacijska moč je v skrbi za naše okolje.

Vprašanje pa je, kaj storiti poslej. Kakšne naj bodo nadaljnje aktivnosti? Kakšne nauke naj naša družbena skupnost kot celota povzame iz te izkušnje in predvsem, kako naj državni organi, vlada in drugi dejavniki poskrbijo za to, da se bosta pozitivna energija in mobilizacijski učinek, ki je bil dosežen s to akcijo, ohranila in da bosta delovala še naprej, zato da bo naše okolje bolj zdravo in 72. člen ustave bolje uresničen. To je veliko vprašanje.

Veseli me, da je danes z nami minister za okolje prof. Roko Žarnić, in vem, da vlada razmišlja in ne samo razmišlja, da že pripravlja strategijo, ki bo zagotovila nadaljevanje te pomembne mobilizacijske akcije. Vlada pri tem zasluži vso podporo in verjamem, da smo vsi v tej dvorani močno zainteresirani, da bi izvedeli več, kako bo ta strategija videti, kakšna bo, kakšna bo njena vsebina in kakšen bo njen uspeh.

Ne gre namreč za to, da bi pri čiščenju in odpravljanju protipravnih odlagališč vsako leto na novo mobilizirali celotno prebivalstvo. Gre za to, da taka mobilizacija zagotovi ustrezno nadaljevalno aktivnost, implementacijo, izvajanje predpisov, ki že obstajajo. In ravno tu bo na preizkusu ne samo naša splošna družbena odgovornost, ampak tudi sposobnost vlade, da to odgovornost prelije v ustrezno in učinkovito strategijo. Zanimivo vprašanje, vprašanje, ki bo prav gotovo deležno širokega zanimanja javnosti, podpore, če bo ukrepanje uspešno, in kritike, če bodo zastoji.

In končno, rad bi posebej poudaril zahvalo varuhinji človekovih pravic dr. Zdenki Čebašek Travnik za to iniciativo, za to, da pri svojem obsežnem delu in v času, ko imamo na našem dnevnem redu mnoge akutne probleme, vključno s tistimi, ki so povezani z delovanjem našega pravosodnega sistema, in tistimi, ki se tičejo popolnoma osnovnega korpusa človekovih pravic, državljanskih in političnih, ima energijo in sposobnost, da organizira tudi konferenco, ki zajema neko širše področje, ki spada vsekakor v korpus človekovih pravic, ki pa zahteva uporabo sposobnosti, informacij, znanj, talentov, ki daleč presegajo tradicionalne instrumente na področju varstva človekovih pravic.

Izjemno pomembno je, da se taka širša fronta vzpostavi. Izjemno pomembno je, da vsi skupaj razumemo, da nam gre pri tem za človekove pravice. In izjemno pomembno je, da varuhinja človekovih pravic poskrbi za to, da v družbi, da pri nas to bolje razumemo. Zato bi rad ta svoj pozdravni nagovor zaključil z zahvalo naši varuhinji človekovih pravic. Zahvalil bi se vsem vam, ki ste prišli in ki se udeležujete te konference. Rad bi vam zaželel veliko uspeha pri vašem delu in veliko dobrih učinkov v prihodnosti.

Hvala lepa.

Dr Zdenka Čebašek-Travnik,
Human Rights Ombudsman

Dear Mr President, respected ministers, fellow ombudsmen and representatives of foreign ombudsmen's institutions, respected guests, ambassadors, mayors, heads of administrative units, directors in the field of state administration and non-government organisations, representatives of civil society, dear children:

All of you who have come to Brdo pri Kranju today as guests of the Human Rights Ombudsman of the Republic of Slovenia have come to search for new solutions in the field of public participation in environmental matters. This conference is part of our efforts to implement human rights in the environmental field. The office of the Human Rights Ombudsman in Slovenia is celebrating its 15th anniversary this year, and today's conference is the best way to celebrate it together.

Human rights as we understand them in Slovenia include all aspects of life in which individuals come into contact with the state, the local community or holders of public authorisations. The Human Rights Ombudsman of the Republic of Slovenia is a constitutionally and legally defined institution charged with the protection of human rights and fundamental freedoms with respect to state authorities, local government authorities and holders of public authorisations. It issues criticisms, opinions and proposals on violations or established deficiencies, and it reports on them in its regular annual and special reports to the National Assembly of the Republic of Slovenia. It is not however an appeals body that can rescind, amend or adopt decisions in place of the competent authorities. The Human Rights Ombudsman as the person who heads this institution requires a two-thirds majority of all deputies to be elected; no other function in the country has such a high requirement for election. Being elected by such a majority gives each ombudsman a great deal of moral power and authority, as his or her duty is primarily to discover violations, work to eliminate them and propose the necessary measures to the responsible authorities.

I began my term as ombudsman with priorities which I defined as three groups of people: children, the elderly and disabled people, and three areas: violence, poverty and environmental protection. After more than half my term my priorities remain the same, and in fact they constantly receive new emphases. Why are the office of the Human Rights Ombudsman of the Republic of Slovenia and the ombudswoman herself personally involved in the problems of environmental protection? They often ask me how human rights are violated in this field.

I would like to begin by showing the connection between human rights and environmental protection. Pursuant to the first and second paragraphs of Article 72 of the Constitution of the Republic of Slovenia, every citizen has the legal right to a healthy living environment. The state is responsible for a healthy living environment, and it is given an active role in connection with environmental protection and maintaining a natural equilibrium. The state is therefore required by law to regulate the content and scope of the right to a healthy living environment, as well as the conditions and amount of reimbursement for damages caused by persons to the living environment. The omission of normative regulation would therefore be unconstitutional.

Dr. Zdenka Čebašek-Travnik, varuhinja človekovih pravic

Spoštovani gospod predsednik republike, spoštovani ministri, kolegi ombudsmani in predstavniki ombudsmanskih institucij iz tujine, visoki gostje, veleposlaniki, župani, načelniki upravnih enot, direktorji s področja državne uprave in nevladnih organizacij, predstavniki civilne družbe, dragi otroci.

Vsi, ki ste se danes zbrali tukaj na Brdu pri Kranju, ste gostje Varuha človekovih pravic Republike Slovenije, da bi skupaj iskali najboljše rešitve na področju sodelovanja javnosti v okoljskih zadevah. Konferenca spada med naša prizadevanja za uresničevanje človekovih pravic na področju okolja. Varuh človekovih pravic letos praznuje 15-letnico delovanja in današnja konferenca je najlepši način, da jo skupaj proslavimo.

Človekove pravice, kot jih razumemo in obravnavamo v Sloveniji, zajemajo vsa področja življenja, na katerih posameznik prihaja v stik z državo, lokalno skupnostjo ali nosilci javnih pooblastil. Varuh človekovih pravic RS je z ustavo in zakonom določena institucija za varovanje človekovih pravic in temeljnih svoboščin v razmerju do državnih organov, organov lokalne samouprave in nosilcev javnih pooblastil. O kršitvah ali ugotovljenih pomanjkljivostih lahko izreka kritike, mnenja, predloge, o njih poroča s svojimi rednimi letnimi in posebnimi poročili Državnemu zboru RS. Ni pa pritožbeni organ, ki bi lahko odpravljal, spreminjal ali sprejemal odločitve namesto pristojnih organov. Varuh človekovih pravic kot oseba, ki vodi to institucijo, potrebuje za izvolitev glasove dveh tretjin vseh poslancev; nobena druga funkcija v državi nima tako visoko postavljene zahteve za izvolitev. Tako visoko zahtevano soglasje za izvolitev daje vsakemu varuhu veliko moralno moč in avtoriteto, saj je njegova oziroma njena naloga predvsem v tem, da morebitne kršitve odkriva, se do njih opredeli in odgovornim predlaga potrebne ukrepe.

Svoj mandat varuhinje sem začela s prioritetami, ki sem jih opredelila kot tri skupine ljudi: otroci, starejši ljudje in invalidi oziroma hendikepirani in tri področja: nasilje, revščina in varovanje okolja. Po več kot polovici mandata prioritete ostajajo enake, še več – dobivajo vedno nove poudarke. Zakaj se Varuh človekovih pravic RS in varuhinja osebno ukvarjata s problematiko varovanja okolja? Kje so tukaj kršene človekove pravice, me večkrat sprašujejo.

Najprej bi želela nakazati povezavo med človekovimi pravicami in varovanjem okolja. Na podlagi prvega in drugega odstavka 72. člena Ustave RS ima skladno z zakonom vsakdo pravico do zdravega življenjskega okolja. Država skrbi za zdravo življenjsko okolje, dana ji je aktivna vloga v zvezi z varstvom okolja in ohranjanjem naravnega ravnovesja. Država mora torej z zakonom urediti vsebino in obseg pravice do zdravega življenjskega okolja, a tudi pogoje in obseg za poravnavo škode, ki jo določena oseba povzroči v življenjskem okolju. Opustitev normativnega urejanja bi bila neustavna.

Environmental pollution can represent an infringement on a person's private and family life. The state is obliged to protect its citizens against such infringements by monitoring the permission, establishment, implementation and safety of activities, particularly activities that can be dangerous to the environment and human health.

We must ask ourselves do individuals have effective legal means at their disposal to exercise their right to a healthy living environment? How for example would they be able to prove that a large company is causing excessive environmental stress and directly threatening human life or health? How could they prove that it represents an infringement of their right to a healthy living environment, one of the infringements that is explicitly forbidden by the Environment Protection Act?

The Ministry of the Environment and Spatial Planning is late in issuing integrated pollution protection and control (IPPC) permits for the existing plants (the deadline was 31 October 2007). The parties subject to IPPC legislation, who for reasons residing at the Ministry of the Environment and Spatial Planning has not been issued permits, or their roles have not yet been determined, are therefore working without these permits "with state consent". Our legal regulations allow them to do this. It is or should therefore be in the public interest for the operators of IPPC plants to receive IPPC permits as soon as possible, of course on the condition that they satisfy the conditions, but not at the expense of the environment or health.

Here it is also worth mentioning our legal regulations in the field of emissions monitoring, where the selection of the person authorised to perform the measurements is left to the plant operators. Has the state established effective supervision of the quality of the monitoring? Does the state even want such supervision? Are we going to wait until air pollution warning lights are installed all over the country?

As the ombudsman I am continually confronted with the realisation that Slovenia is not a country that carefully provides for the protection of the environment, and the opportunities for public participation seem particularly problematic. Let's think again about how the state provides access to environmental data, how it regulates inspection procedures, how to initiate procedures for obtaining various permits. How do we deal with the problems of groundwater pollution or removal of heavy metals from the living environment? How is the public informed about these difficulties and successes?

Today's international conference is dedicated primarily to this aspect of environmental protection. We will hear about experiences from abroad, look at the current situation in Slovenia, try to clear up some confusion and at the end of the conference draw some conclusions. However, the conference will not end there, as we are also planning to publish proceedings which in addition to the papers presented at the conference will also include the conclusions and recommendations adopted by the conference participants. These conclusions will also be a part of the Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2010 and materials that the Government of the Republic of Slovenia will have to evaluate and the National Assembly will have to discuss, in Nature has always been and will remain my great love, the sound of the forest and the water my favourite music, and the dark sky with its billions of stars my favourite painting. I will continue to work for that.

Thank you.

Onesnaževanje okolja lahko pomeni poseg v posameznikovo zasebno in družinsko življenje. Država mora svoje državljane pred takimi posegi zaščititi z izvajanjem nadzora nad dovoljevanjem, vzpostavljanjem, izvajanjem in varnostjo dejavnosti, zlasti še, če gre za dejavnosti, ki so lahko nevarne za okolje in človekovo zdravje.

Sprašujemo se, ali ima posameznik na voljo učinkovita pravna sredstva za uresničevanje pravice do zdravega življenjskega okolja. Kako mu bo na primer uspelo dokazati, da velika gospodarska družba s svojim ravnanjem povzroča čezmerno obremenitev okolja in neposredno ogroža življenje ali zdravje ljudi? Da gre torej za poseg v pravico do zdravega življenjskega okolja, za enega od izrecno prepovedanih posegov po Zakonu o varstvu okolja.

Ministrstvo za okolje in prostor (MOP) je v zamudi z izdajo integralnih okoljskih dovoljenj (IPPC) za obstoječe naprave (rok: 31. 10. 2007). Zavezanci za IPPC, ki jim zaradi razlogov, ki so na strani MOP, dovoljenja še niso bila izdana oziroma o njihovih vlogah še ni bilo odločeno, torej »s privolitvijo države« obratujejo brez teh dovoljenj. To jim dopušča naša zakonska ureditev. V javnem interesu je oziroma bi moralo biti, da se upravljavcem IPPC naprav čim prej izda IPPC-dovoljenja, seveda ob izpolnjevanju pogojev, vendar ne na račun okolja in zdravja.

Ob tem kaže opozoriti tudi na zakonsko ureditev na področju monitoringov izpustov, po kateri je izbira pooblaščenca, ki izvaja meritve, prepuščena upravljavcu. Ali je tako od države lahko vzpostavljen učinkovit nadzor nad kakovostjo monitoringov? Ali država sploh želi imeti takšen nadzor? Ali bomo kdaj dočakali, da bodo po vsej državi nameščeni semaforji zračnega onesnaževanja?

Kot varuhinja vedno znova ugotavljam, da Slovenija ni država, ki zgledno skrbi za varovanje okolja, še posebej problematične se zdijo možnosti za sodelovanje javnosti. Premislimo še enkrat o tem, kako je država zagotovila dostop do okoljskih podatkov, kako je uredila inšpekcijske postopke, kako vstopanje v postopke za pridobivanje raznih dovoljenj. Kako se loteva problematike onesnaževanja podtalnice ali odstranitve težkih kovin v bivalnem okolju? Kako s temi težavami in uspehi seznanja javnost?

Današnja mednarodna konferenca je namenjena predvsem temu segmentu varovanja okolja. Prisluhnili bomo izkušnjam iz tujine, pregledali razmere v Sloveniji, poskušali rešiti nekatere nejasnosti in ob koncu konference pripravili sklepe. Konferenca pa svojega poslanstva ne bo končala s tem, saj pripravljamo tudi publikacijo, ki bo poleg na konferenci predstavljenih referatov vsebovala tudi sklepe in priporočila, ki jih bomo sprejeli udeleženci konference. Ti sklepi bodo hkrati del Letnega poročila Varuha človekovih pravic RS za leto 2010 in gradivo, ki ga bo morala oceniti tudi Vlada RS in o njem razpravljati Državni zbor.
Narava je bila in ostaja moja velika ljubezen, glas gozda in šum voda moje najljubša glasba, temno nebo z milijardami zvezd pa najlepša slika. Za vse to si bom prizadevala še naprej.

Hvala lepa.

Dr Janez Potočnik,
European Commissioner for the Environment

Ladies and Gentlemen,

Firstly may I congratulate you on the second Slovenian conference on the topic of the environment and human rights.

The link between the environment and human rights is relatively new, with the United Nations for instance only officially recognising it in the 1960s. More than a decade later, in 1972 as part of the Conference on the Human Environment, they hit on the idea that the right to a healthy environment was a fundamental part of the right to life and to personal dignity.

The concept of human rights has since then expanded considerably, and today it also includes the right to a healthy environment. For all of us it is important to know what kind of air we are breathing, what kind of water we are drinking, and what kind of food we are eating. But the question arises here, whether we can be truly certain of the quality of these assets. Being informed about whether something is good for our health and having access to assets that are good for our health, is our right!

Awareness of these rights must be based on a good, balanced education and being well informed. Recently the media besieged us from all sides with information about the volcanic ash from Iceland. In fact every day we should be watchful of the fact that there are many more such instances – hazardous to the environment and health – and I only need mention toxic waste, air pollution, overfishing and so on. This information only rarely gets comparable space in the media, even though the public should be familiarised with such issues.

National authorities that possess precise information on the state of burning environmental topics, should ensure that this information reaches European people. Otherwise, citizens must have the possibility of using legal means to get hold of this information. The only way that policy-making can be conducted with the active and high-quality participation of the public, is on the basis of knowledge and enhanced power.

In the European Union we are somehow privileged, since we have already set up a very ambitious environmental legislation body, which many other countries might envy. In 1985 we adopted a law that requires environmental impact assessments for all major motorway or airport projects, plus consultation with the public. In 1990 we adopted rules on the accessibility of public information to the general public; in 2001 the rules on assessment and public consultation regarding plans and programmes, and in 2003 the rules on public participation in environmental matters and on resorting to legal remedies in the case of industrial permits and project assessments. In 2005 the European Union acceded to the Aarhus Convention, which supports and promotes all environmental rights.

Nevertheless, inequalities and injustices remain. Most often it is precisely the socially and economically weaker groups that are more exposed to serious environmental problems. This leads us to seek alternative solutions for the fight against poverty, which plays a major role both in environmental and all other human rights, such as the right to a healthy environment, the right to a healthy life and to food.

Dr. Janez Potočnik,
komisar za okolje Evropske komisije

Gospe in gospodje,

na začetku naj vam čestitam ob 2. slovenski konferenci na temo okolja in človekovih pravic.

Povezava med okoljem in človekovimi pravicami je razmeroma nova, saj so jo na primer Združeni narodi uradno priznali šele v šestdesetih letih. Več kot desetletje za tem pa je leta 1972 v sklopu Konference o človekovem okolju nastala ideja, da je pravica do zdravega okolja temeljni del pravice do življenja in do osebnega dostojanstva.

Koncept človekovih pravic se je od takrat precej razširil in danes vključuje tudi pravice do zdravega okolja. Za vse nas je pomembno, da vemo, kakšen je zrak, ki ga dihamo, kakšna je voda, ki jo pijemo, in kakšno hrano uživamo. Vendar se pri tem postavlja vprašanje, ali smo lahko zares prepričani o kakovosti teh dobrin. Biti obveščen o tem, ali je nekaj dobro za naše zdravje in imeti dostop do takih dobrin, ki so dobre za naše zdravje, je naša pravica!

Zavedanje o teh pravicah mora temeljiti na dobri, uravnoteženi izobrazbi in obveščenosti. Nedavno so nas mediji z vseh strani oblegali z informacijami v zvezi z vulkanskim pepelom z Islandije. Pravzaprav pa bi morali biti vsak dan pozorni na dejstvo, da je takšnih – okolju in zdravju nevarnih dogodkov – še veliko več, naj omenim le strupene odpadke, onesnaževanje zraka, čezmerno lovljenje rib in podobno. Te informacije pa le redko dosežejo primerljive razsežnosti v medijih, čeprav bi morala biti javnost seznanjena tudi s tovrstno problematiko. Državni organi, ki imajo natančne informacije o stanju perečih okoljskih tem, bi morali zagotoviti, da te informacije dosežejo tudi Evropejce. V nasprotnem primeru morajo imeti državljani možnost uporabiti pravna sredstva, da bi te informacij lahko dobili. Edini način, da oblikovanje politik lahko poteka z dejavnim in kakovostnim sodelovanjem javnosti, je na podlagi znanja in krepitve moči.

V Evropski uniji smo nekako privilegirani, saj smo že vzpostavili zelo ambiciozno okoljsko zakonodajno telo, ki nam ga lahko zavidajo marsikatere druge države. Leta 1985 smo sprejeli zakon, ki zahteva presojo vplivov na okolje za vse večje avtocestne ali letališke projekte in posvetovanje z javnostjo. Leta 1990 smo sprejeli pravila dostopnosti javnih informacij širši javnosti, v letu 2001 pravila presoje in javnega posvetovanja glede načrtov in programov in leta 2003 pravila o sodelovanju javnosti v okoljskih zadevah in o poseganju po pravnih orodjih v primeru industrijskih dovoljenj in presoje projektov. V letu 2005 pa je Evropska unija pristopila k Aarhuški konvenciji, ki podpira in spodbuja vse okoljske pravice.

Ne glede na vse to še vedno obstajajo neenakosti in krivice. Največkrat so prav družbeno in ekonomsko šibkejše skupine bolj izpostavljene resnim okoljevarstvenim problemom. To nas vodi k iskanju alternativnih rešitev za boj proti revščini, ki igra veliko vlogo tako pri okoljskih kot vseh drugih človekovih pravicah, kot so pravica do zdravega okolja, do zdravega življenja in do hrane.

As European Environment Commissioner I am proud to have “inherited” responsibility for such an important part of European legislation, and my desire is for these rules to be implemented also in the national legislation of Member States. The coming together of experts in this field with the objective of debating the involvement of the public is a good way to support these goals and the development of environmental rights in the future.

Ultimately, a harmonious relationship with nature is the main prerequisite for a high-quality and healthy life.

I wish you every success in your conference.

Kot evropski komisar za okolje sem ponosen, da sem »podedoval« odgovornost za tako pomemben del evropske zakonodaje in si želim, da bi se ta pravila izvajala tudi v nacionalnih zakonodajah držav članic. Združevanje strokovnjakov s tega področja z namenom razprave o vključevanju javnosti je dober način podpore tem ciljem in razvoju okoljskih pravic v prihodnje.

A kljub vsemu – predvsem harmoničen odnos do narave je pogoj za kakovostno in zdravo življenje.

Želim vam čim bolj uspešno konferenco.

Dr Roko Žarnić,
Minister of the Environment and Spatial Planning

It is my great honour to speak at a conference which discusses the theory and practice of public cooperation in environmental matters. In the Ministry of the Environment and Spatial Planning we meet with these topics every day. The evaluation and recommendation of the conference will enable us to judge more easily whether this encounter is successful or not. After the ratification of the Aarhus Convention in 2004, several steps have been taken in Slovenia which have certainly improved the situation with regard to the previous period. However it is, without doubt, the opinion of many people that a number of things can still be done in this area. The question is: what do we have to do? what can we do? and then how do we make it happen.

I do not wish to be in the position of making decisions on plans which are ultimately not realized for one reason or another. Such inefficiency has a negative effect on all stake-holders involved in the management of public matters and encourages people to become dissatisfied with the authority itself. And this may trigger a familiar downward spiral into distrust which endangers the stability and effectiveness of the operation of an individual community.

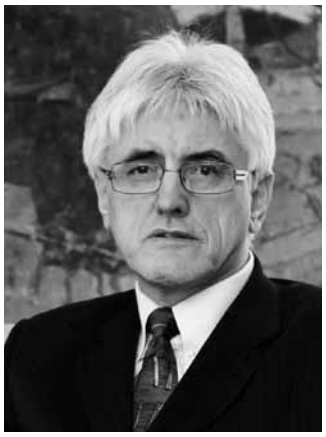
The idea of public cooperation in public matters expresses the fundamental aim regarding the functioning of every just authority – that it functions in the public interest, in the interests of people and community. It is the one idea against which it is actually almost impossible to form an efficient objection. However hard we may try to find a valid counter-argument – the proposition: “why wouldn’t public cooperation be beneficial or right” – is for the most part weak and unconvincing, maybe even biased. But at the same time we have to be very careful when weighing the arguments.

We all wish for good, just and unbiased decisions. Unbiased in a manner that nobody would pay a disproportional price because of this decision, or rather, that the decision will not incur disproportional costs.

When we talk specifically about public cooperation in concrete administrative procedures, the Ministry encounters various stakeholders, particularly non-governmental organizations and investors, but in the decision-making procedures it should, routinely, consider conflicting demands. Behind such demands lie the very real and legitimate interests of capital and nature.

That is why it seems to me very important to point out the accessibility and transparency of data we have at our disposal. In this area too we have made considerable progress, sometimes rather hesitatingly, but nevertheless in the right direction. The environmental indicators which you may have a look at on the web page of the Environmental Agency which functions as a body affiliated to the Ministry of the Environment and Spatial Planning, are an example of data regarding almost all fields of the environment and nature protection policy which are accessible to everybody. Now we should start working to make them consistently up-to-date. It is absolutely certain that late information is worse than normal up-to-date information as we may act in a better and more efficient manner if the data is available at the right time.

Dr. Roko Žarnić,
minister za okolje in prostor



V veliko čast mi je spregovoriti na konferenci, kjer je govora o teoriji in praksi sodelovanja javnosti v okoljskih zadevah. S temi vsebinami se na Ministrstvu za okolje in prostor srečujemo vsakodnevno. Ocena in priporočila konference nam bodo omogočila lažjo presojo, ali je to srečevanje uspešno ali ne. V Sloveniji smo po ratifikaciji Aarhuške konvencije leta 2004 naredili več korakov, ki so gotovo izboljšali stanje glede na predhodno obdobje. Da je na tem področju mogoče postoriti še marsikaj, je gotovo mnenje, ki ga delimo mnogi. Vprašanje je, kaj moramo narediti in kaj zmoremo dejansko potem tudi spraviti v življenje.

Ne želim si odločitev, ki jih potem zaradi takšnih ali drugačnih razlogov ne speljemo. Tovrstna neučinkovitost ima slabe učinke na vse deležnike v upravljanju javnih zadev in spodbuja nezadovoljstvo ljudi z oblastjo samo. To pa lahko sproži znamenito spiralo nezaupanja, ki ogroža stabilnost in uspešnost delovanja posamezne skupnosti.

Ideja sodelovanja javnosti v javnih zadevah kaže temeljni namen delovanja vsake pravične oblasti – da deluje v javnem interesu, v interesu ljudi in skupnosti. Gre za eno izmed idej, zoper katero je pravzaprav skoraj nemogoče ustvariti učinkovit ugovor. Naj se še tako potrudimo, je morebiten protiargument – zakaj sodelovanje javnosti ne bi bilo dobro ali prav – večinoma šibek in neprepričljiv, morebiti celo pristranski. A hkrati moramo biti zelo previdni pri tehtanju argumentov.

Vsi si želimo dobre, pravične in nepristranske odločitve. Nepristranske tako, da nihče zaradi te odločitve ne bo plačal nesorazmerne cene oziroma da odločitev ne bo povzročila nesorazmernih stroškov.

Namreč, ko govorimo o sodelovanju javnosti v konkretnih upravnih postopkih, se ministrstvo srečuje z različnimi deležniki, predvsem z nevladnimi organizacijami in investitorji, v postopkih odločanja pa mora tehtati in presojati praviloma o nasprotujočih si zahtevah. Za temi zahtevami so zelo realni in legitimni interesi kapitala in narave.

Zato se mi zdi zelo pomembno poudariti dostopnost in transparentnost podatkov, s katerimi razpolagamo. Tudi na tem področju smo naredili kar nekaj korakov naprej, včasih res rahlo opotekajočih se, pa vendarle v pravi smeri. Kazalniki stanja okolja, ki si jih lahko ogledate na spletni strani Agencije za okolje, ki deluje kot organ Ministrstva za okolje in prostor, so tak primer vsem dostopnih podatkov o skoraj vseh področjih politike varstva okolja in narave. Zdaj moramo začeti delati na tem, da bodo dosledno ažurni. Popolnoma jasno je, da je pozna informacija slabša od ažurne, saj lahko bolje in učinkoviteje ukrepamo, če so podatki na razpolago ob pravem času.

At the same time we should not be afraid of judicial proceedings in current disputes or potential disputes about important questions regarding the scope and the quality of public cooperation. For the work of administrative bodies the case-law is also very important – and also with this, the principle of the appropriateness of time applies.

As an engineer I also know that for the functioning of complex systems, in addition to the accessibility of information at the right place, at the right time and with the rules of cooperation known in advance, the competence of participating parties is important. That is why, in the future, we will dedicate more attention to ensure that conditions exist for the inclusion of the most competent participants in the decision-making process as possible. And with this I do not have in mind only the public but also investors and bureaucrats.

To sum up, regarding the efficiency of public cooperation in environmental matters, three issues are of key importance:
– timely and accessible information on environment and procedures,
– clear rules regarding cooperation in procedures, and
– competent stakeholders.

Na drugi strani pa nas ne sme biti strah sodnih postopkov v sporih, ki potekajo ali bodo potekali zaradi pomembnih vprašanj obsega in kakovosti sodelovanja javnosti. Za delo upravnih organov je zelo pomembna tudi sodna praksa – no, tudi pri njej velja načelo pravočasnosti.

Kot inženir tudi vem, da je za delovanje kompleksnih sistemov, poleg dostopnosti informacij na pravem mestu in ob pravem času ter ob vnaprej znanih pravilih sodelovanja, pomembna tudi kompetenca sodelujočih. Zato bomo v prihodnosti namenili več pozornosti zagotavljanju pogojev za oblikovanje čim bolj kompetentnih sodelujočih v procesih odločanja. In pri tem ne merim samo na javnost, marveč tudi na investitorje in uradništvo.

Če povzamem, za učinkovitost sodelovanja javnosti v okoljskih zadevah so ključne tri stvari:
– pravočasne in dostopne informacije o okolju in postopkih,
– jasna pravila sodelovanja v postopkih in
– kompetentni deležniki.

Z leve proti desni/from left to right: Martina Ocepek, Živa Bobič Červek, Kristina Kotnik Šumah, dr. Jerzy Jendroška (zadaj/behind), mag. Adriana Viler Kovačič, Milenko Ziherl, Boštjan Pihler (zadaj/behind), mag. Kornelija Marzel, Vukašin Lončarević (zadaj/behind), dr. Zdenka Čebašek-Travnik, mag. Aleš Kregar (zadaj/behind), dr. Roko Žarnić, mag. Ute Pöllinger, Sándor Fülöp (zadaj/behind), Brigita Čanč, mag. Ivan Plevnik, mag. Matjaž Jeran

IV. Predstavitev avtorjev in njihovi prispevki
IV. Presentation of Authors and articles

Vukašin Lončarević

Legal Officer, European Ombudsman
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Vukašin Lončarević has been working as a Legal Officer for the European Ombudsman since 2008. He studied Law at the University of Maribor and College of Europe (Bruges). Prior to his service for the European Ombudsman, he worked as a Legal Researcher for the Development Office of the College of Europe and as a Lawyer-Linguist at the Court of Justice.

Sándor Fülöp

Parliamentary ombudsman for future generations, Hungary
(fulop@obh.hu)

He was elected to become Hungary's first Parliamentary Commissioner for Future Generations on 26 May 2008. Mr Fülöp holds a degree in law from the Eötvös Loránd University of Sciences (1982) and a degree in psychology (1987). Between 1984 and 1991 he has worked as a public prosecutor at the Metropolitan and the National Chief Prosecutor's Office. Following a short period of private legal practice at the international law firm Ruttner and Partners (1993-1994) Mr Fülöp acted, until his election as Commissioner, as the director of Hungary's principal non-profit environmental law firm: the Environmental Management and Law Association (EMLA). During his career at EMLA he has also held a number of international positions. He participated in the drafting of the 1998 UN ECE Convention on Access to Information, Access to Decision-making and Access to Justice in Environmental Matters (the Aarhus Convention). Between 2002 and 2008 he was a member of the Compliance Committee of the Aarhus Convention. Mr Fülöp has been a university lecturer on environmental law since 1997.

Ute Pöllinger, MSc

Environmental Advocate of the Federal State Styria, Austria
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She was born in the South of Styria. She studied jurisprudence and biology at the universities of Graz and Innsbruck. After completion of her studies she has the chance to work for the state government of the federal state of Styria. She worked in several administrative districts of Styria and primarily dealt with environmental right. In 2005 she was appointed "Umweltanwältin des Landes Steiermark".

Dr Jerzy Jendrośka

Opole University and Aarhus Convention Compliance Committee, Poland
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Dr. Jerzy Jendrośka, Chair of European and Public International Law at Opole University, Poland and Managing Partner at Jendrośka Jerzmański Bar & Partners, Environmental Lawyers. He has hold a number of official positions, including as a member of the National EIA Commission (since 1994), a permanent legal expert of the Parliamentary Environment Commission (since 1996), as a Vice -chair of the governmental GMO Commission (2002 - 2006) and as a Member of the Committee „Man and the Environment" of Polish Academy of Sciences (2003-2007). Since 1995 Mr. Jendroska has represented the Government of Poland in various international processes, including serving as a Vice-chair of the UNECE Aarhus Convention negotiations (1996-1998) and of the UNECE SEA Protocol

Vukašin Lončarević

Pravni strokovni sodelavec, Evropski varuh človekovih pravic
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Vukašin Lončarević je pravni strokovni sodelavec evropskega varuha človekovih pravic od leta 2008. Študiral je pravo na Univerzi v Mariboru in na kolidžu College of Europe v Bruggeu v Belgiji. Preden je postal pravni strokovni sodelavec evropskega varuha človekovih pravic je delal kot pravni raziskovalec v razvojni službi kolidža College of Europe in kot pravnik – lingvist na Sodišču Evropske unije.

Sándor Fülöp

Parlamentarni ombudsman za prihodnje generacije, Madžarska
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26. maja 2008 je bil izvoljen za prvega madžarskega parlamentarnega komisarja za prihodnje generacije. Diplomiral je iz prava na Znanstveni univerzi Eötvös Loránd (1982) in iz psihologije (1987). Od leta 1984 do 1991 je delal kot javni tožilec v mestnem in državnem uradu glavnega tožilca. Po kratkem obdobju zasebne pravne prakse v mednarodni odvetniški pisarni Ruttner and Partners (1993–1994) je bil Sándor Fülöp do izvolitve za komisarja direktor glavne madžarske neprofitne okoljske odvetniške pisarne, Zveze za okoljsko upravljanje in pravo (Environmental Management and Law Association, v nadaljevanju EMLA). V času službovanja pri EMLA je imel tudi več mednarodnih funkcij. Sodeloval je pri pripravi Konvencije o dostopu do informacij, udeležbi javnosti pri odločanju in dostopu do pravnega varstva v okoljskih zadevah Ekonomske komisije OZN za Evropo (Aarhuška konvencija) iz leta 1998. Od leta 2002 do 2008 je bil član Odbora za izvajanje Aarhuške konvencije. Od leta 1997 je univerzitetni profesor za okoljsko pravo.

Mag. Ute Pöllinger

Okoljska zagovornica dežele Štajerske, Avstrija
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Rodila se je na Južnem Štajerskem in študirala pravoznanstvo ter biologijo na univerzah v Gradcu in Innsbrucku. Po končanem študiju je imela priložnost delati za državno vlado zvezne dežele Štajerske. Službovala je v več upravnih okrožjih Štajerske in se ukvarjala zlasti z okoljskimi pravicami. Leta 2005 je bila imenovana za »okoljsko zagovornico dežele Štajerske (Umweltanwältin des Landes Steiermark)«.

Dr. Jerzy Jendrośka

Univerza Opole in Odbor za izvajanje Aarhuške konvencije, Poljska
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Dr. Jerzy Jendrośka, profesor evropskega in mednarodnega javnega prava na Univerzi Opole, Poljska, in upravni družbenik v družbi okoljskih odvetnikov Jendrośka Jerzmański Bar & Partners. Zaseda številne uradne položaje, med drugim je član državne komisije VPO (od leta 1994), stalni pravni strokovnjak v parlamentarni okoljski komisiji (od leta 1996), bil je podpredsednik vladne komisije GSO (2002–2006) in član odbora »Človek in okolje« poljske Akademije znanosti (2003–2007). Od leta 1995 je dr. Jendroska predstavnik poljske vlade v različnih mednarodnih postopkih, med drugim je opravljal nalogo podpredsednika med pogajanji UNECE o Aarhuški konvenciji (1996–1998) in pogajanji ENECE o protokolu EEA (2000–2002) ter bil član (2000–2006) in predsednik Urada Aar-

negotiations (2000-2002) as well as a member (2000-2006) and the Chair (2002-2003) of the Aarhus Convention Bureau. Currently he serves as an arbitrator at the Permanent Court of Arbitrage in the Hague (since 2002), a member of the Compliance Committee of the Aarhus Convention (since 2006) and a member of the Implementation Committee.

Kornelija Marzel, MSc

Deputy Ombudsman, Human Rights Ombudsman of the Republic of Slovenia
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She was born in Slovenj Gradec. She graduated from the Faculty of Law in Ljubljana in 1989, passed the national judicial examination, and in 1999 obtained the title of Master of Science at the Faculty of Social Sciences. From 2007 onwards she has been the Deputy Human Rights Ombudsman, prior to that she was the Head of the Administrative Unit Slovenj Gradec. She has dealt with the area regarding the quality of work in administration (standardization), and at present she also deals with education and training for work in the public sector. She is an examiner for the national judicial examinations.

Kristina Kotnik Šumah

Deputy of Information Commissioner
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Graduated from the Faculty of Law of the University of Ljubljana, where she has continued to pursue postgraduate studies of law, specialising in administrative law. In 2008, she passed the national bar examination. From 2002 to May 2006, she was employed with the Government Office for European Affairs of the Republic of Slovenia, where she was engaged in the fields of labour and administrative law, and public procurement law. Since May 2006, she has been employed with the Information Commissioner. She has held the position of Deputy Information Commissioner since October 2008. (gp.ip@ip-rs.si)

Adrijana Viler Kovačič, MSc

Ministry of the Environment and Spatial Planning, Agency of the Republic of Slovenia for the Environment
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As a law graduate, the author has been involved professionally for some time with the issue of environmental protection. At the Slovenian Agency for the Environment, until recently she was an adviser to the director-general for implementing environmental legislation, where she performed highly demanding duties in the administrative and legal area of environmental protection. She drafted systemic improvements and collaborated in implementing regulations and in resolving legal issues in issuing administrative decisions. A large part of her work has been devoted to the issue of information of a public nature and public participation in the procedures for issuing environmental consent and permits. The author is also active in professional circles as a speaker at various consultations, seminars and meetings, where she clearly demonstrates her desire to transfer the knowledge she has acquired. She has published two independent manuals, Environmental Protection and Administrative Procedures, and Waste Management, as well as a large number of articles.

huške konvencije (2002–2003). Trenutno je razsodnik pri Stalnem arbitražnem sodišču v Haagu (od leta 2002), član Odbora za izvajanje Aarhuške konvencije (od leta 2006) in član odbora UNECE za izvajanje Konvencije Espoo (od leta 2004).

Mag. Kornelija Marzel

Namestnica varuhinje človekovih pravic Republike Slovenije
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Rodila se je v Slovenj Gradcu. Leta 1989 je diplomirala na Pravni fakulteti v Ljubljani, opravila je pravniški državni izpit, leta 1999 je na Fakulteti za družbene vede v Ljubljani pridobila naziv magistrica znanosti. Od leta 2007 je namestnica varuhinje človekovih pravic, pred tem je bila načelnica Upravne enote Slovenj Gradec. Ukvarjala se je s področjem kakovosti dela v upravi (standardizacijo), zdaj pa se ukvarja še s področjem usposabljanja in izobraževanja za delo v javnem sektorju. Je izpraševalka na pravniških državnih izpitih.

Kristina Kotnik Šumah

Namestnica informacijske pooblaščenke
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Diplomirala je na Pravni fakulteti v Ljubljani, kjer nadaljuje podiplomski študij magistrskega prava, smer upravno pravo. Leta 2008 je opravila državni pravniški izpit. V času od 2002 do maja 2006 je bila zaposlena v Službi Vlade RS za evropske zadeve, kjer se je ukvarjala s področjem delovnega in upravnega prava ter prava javnih naročil. Od maja 2006 je zaposlena pri Informacijskem pooblaščencu. Funkcijo namestnice pooblaščenke opravlja od oktobra 2008.

Mag. Adrijana Viler Kovačič

Ministrstvo za okolje in prostor, Agencija RS za okolje
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Kot diplomirana pravnica se profesionalno že dlje časa ukvarja s problematiko varstva okolja. Na Agenciji RS za okolje je bila do nedavnega svetovalka generalnega direktorja za izvajanje okoljske zakonodaje, kjer je opravljala najzahtevnejše naloge z upravnopravnega področja varstva okolja. Pripravljala je sistemske izboljšave, sodelovala pri implementaciji predpisov ter pri reševanju pravnih problemov pri izdajanju upravnih odločb. Velik del svojega dela je posvetila problematiki informacij javnega značaja ter sodelovanju javnosti v postopkih izdajanja okoljevarstvenih soglasij in dovoljenj. V strokovni javnosti se avtorica pojavlja tudi kot predavateljica na raznih posvetih, seminarjih, srečanjih, kjer je vidna želja po prenosu znanja, ki si ga je pridobila. Objavila je dva samostojna priročnika Varstvo okolja in upravni postopki ter Ravnanje z odpadki ter veliko člankov.

Boštjan Pihler
Eko krog
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He is a university graduate of forestry who is employed at the Slovenian Forest Service. For his graduate thesis, he received the Prešeren Award. For some years, he worked as a journalist at the weekly Mladina, dealing with environmental issues. Boštjan Pihler is a founding member and one of the main activists in Eko krog – the Society for Nature Conservation and Environmental Protection.

Brigita Čanč
City of Maribor, Department of Municipal Services, Traffic, Environment and Spatial Planning, Environmental Protection and Nature Conservation Section
(brigita.canc@maribor.si)

She was born in 1956. Graduated in civil engineering from the Faculty of Civil Engineering in Maribor, and later completed a specialisation in the area of environmental protection at the Jožef Štefan Institute in Ljubljana. Since 1990 she has been employed in the City of Maribor administration in the area of environmental protection. As part of her duties she has been in charge of expert and administrative tasks in all areas of environmental protection and nature conservation within the jurisdiction of the local community. She has also collaborated on numerous international and European projects. Since 2008 she has headed the Environmental Protection and Nature Conservation Section at the Department of Municipal Services, Traffic, Environment and Spatial Planning.

Živa Bobič Červek
City of Maribor, Department of Municipal Services, Traffic, Environment and Spatial Planning, Environmental Protection and Nature Conservation Section
(ziva.bobic@maribor.si)

She was born in 1979. Graduated in geography with specialisation in environmental protection from the Faculty of Arts of the University of Ljubljana. Ever since her student days she has been acquiring work experience on the web portal of the Delo newspaper. Since 2006 she has been employed by the City of Maribor as an adviser for external air protection projects and for the environmental protection IT system. Her work also involves designing and organising the website of the municipal Environmental Protection and Nature Conservation Section (www.maribor.si/okolje). Currently she is also collaborating on the design and implementation of European projects that relate.

Boris Šuštar
Coordinator of Civil Initiatives of Celje
(boris.sustar@gmail.com)

He became intensively involved in environmental protection work in 1997, when he worked in the political party Zeleni Slovenije (Greens of Slovenia). He headed the project of protesting against the obsolete technology for incineration of municipal waste in Kidričevo, where the plan was to build an incineration plant. Alongside his colleagues, he organised a round table in Kidričevo, presenting the possible consequences of pollution. Subsequently, the residents of Kidričevo rejected this project at referendum. In 2000, he worked on preparations for the European Conference of European Greens in Ljubljana. In 2007, he took part in a campaign against the building of a crematorium, a highly controversial plant in a densely built-up area, against locating a coating plant immediately by a residential area and against locating an oversized transport and logistics centre near Ljubečna. He has also been involved in organising and integrating Civil Initiatives Celje and is their co-ordinator.

Boštjan Pihler
Eko krog
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Je univ. dipl. inž. gozdarstva, zaposlen na Zavodu za gozdove Slovenije. Za diplomsko delo je prejel Prešernovo nagrado. Nekaj let je deloval tudi kot novinar tednika Mladina, kjer je praviloma obdeloval ekološke teme. Je ustanovni član in eden osrednjih aktivistov društva Eko krog, društvo za naravovarstvo in okoljevarstvo.

Brigita Čanč
Mestna občina Maribor, Urad za komunalo, promet, okolje in prostor, Sektor za varstvo okolja in ohranjanje narave
(brigita.canc@maribor.si)

Rodila se je leta 1956. Študij gradbeništva je končala na Fakulteti za gradbeništvo Univerze v Mariboru in pozneje opravila specializacijo s področja varovanja okolja na Inštitutu Jožef Stefan v Ljubljani. Od leta 1990 je zaposlena v upravi Občine Maribor, in sicer na področju varstva okolja. V okviru te službe je odgovorna za strokovne in upravne naloge na vseh področjih varstva okolja in ohranjanja narave, ki so v pristojnosti lokalne skupnosti. Sodelovala je tudi v mnogih mednarodnih in evropskih projektih. Od leta 2008 vodi Sektor za varstvo okolja in ohranjanje narave v Uradu za komunalo, promet, okolje in prostor.

Živa Bobič Červek
Mestna občina Maribor, Urad za komunalo, promet, okolje in prostor, Sektor za varstvo okolja in ohranjanje narave
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Rodila se je leta 1979. Študij geografije je končala z usmeritvijo varstvo okolja na Filozofski fakulteti Univerze v Ljubljani. Vse od časa študija si je pridobivala izkušnje z delom na spletnem portalu časopisa Delo. Od leta 2006 je zaposlena na Mestni občini Maribor kot svetovalka za projekte varovanja zunanjega zraka in informacijski sistem varstva okolja. Med drugim je njeno delo tudi zasnova in urejanje spletne strani občinskega Sektorja za varstvo okolja in ohranjanja narave (www.maribor.si/okolje). Trenutno sodeluje pri pripravi in izvedbi evropskih projektov, ki se vsebinsko nanašajo na kakovost zraka.

Boris Šuštar
Koordinator civilnih iniciativ v Celju
(boris.sustar@gmail.com)

Z delom na področju varovanja okolja se je začel intenzivno ukvarjati leta 1997, ko je sodeloval v stranki Zeleni Slovenije. Logistično je vodil projekt nasprotovanja zastareli tehnologiji sežiganja komunalnih odpadkov v Kidričevem, kjer so želeli zgraditi sežigalnico.
S sodelavci je pripravil okroglo mizo v Kidričevem, kjer so ljudem predstavili možne posledice onesnaževanja. Kasneje so prebivalci na referendumu ta projekt odklonili. Leta 2000 je sodeloval pri pripravi Evropske konference Zelenih Evrope v Ljubljani. Leta 2007 je sodeloval pri lobiranju proti izgradnji krematorija - skrajno spornega objekta v strnjenem naselju, proti umestitvi asfaltne baze neposredno poleg naselja ter megalomanskega transportno logističnega centra poleg naselja Ljubečna. Pomagal je pri organiziranju in povezovanju Civilnih iniciativ v Celju in je njen koordinator.

Matjaž Jeran, MSc
Mountain Wilderness Slovenije - Society for protecting unspoiled mountain
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He is MSc in operational research and BSc in mathematics. Since his younger days the author has been a camper, mountaineer, photographer, skier, diver and more. Since the spring of 2004 he has edited the society's website, and since March 2008 he has been the secretary-general of the society.

Aleš Kregar, MSc
Elektro – Slovenija, d. o. o., Ljubljana
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Aleš Kregar MSc graduated in 1984 from the Faculty of Electrical Engineering, gaining his master's degree in 2009 at the Economics Faculty of Ljubljana University. He is a member of the Chamber of Engineers of Slovenia, and of the Slovenian and International Council on Large Electric Systems (CIGRE). He has written or co-written several papers for Slovenian and international meetings of CIGRE in the field of environmental issues in electricity transmission systems, and co-authored a paper at the conference Social Responsibility and Challenges of the Times 2010. He collaborated on the drafting of the national energy programme and Scenarios of Development for Slovenia up to 2035. He works in the field of placing transmission lines in the physical environment, and this includes coordinating the interests of various stakeholders.

Mag. Matjaž Jeran
Društvo za ohranjanje neokrnjene gorske narave
(www.mountainwilderness.si, matjaz.jeran@amis.net)

Je mag. operacijskih raziskav in univ. dipl. matematik. Od mladih let je tabornik, planinec, fotograf, smučar, potapljač idr. Od spomladi 2004 ureja spletišče društva, od marca 2008 je generalni sekretar društva.

Mag. Aleš Kregar
Elektro – Slovenija, d. o. o., Ljubljana
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Mag. Aleš Kregar je leta 1984 diplomiral na Fakulteti za elektrotehniko in magistriral leta 2009 na Ekonomski fakulteti Univerze v Ljubljani. Je član Inženirske zbornice Slovenije, slovenskega in Mednarodnega sveta za velike elektroenergetske sisteme (CIGRE). Je avtor ali soavtor več člankov na slovenskih in mednarodnih zasedanjih CIGRE s področja okoljske problematike elektroenergetskih sistemov in soavtor referata na konferenci Družbena odgovornost in izzivi časa 2010. Sodeloval je pri pripravi nacionalnega energetskega programa in Scenarijev razvoja Slovenije do leta 2035. Dela na področju umeščanja prenosnih daljnovodov v prostor, vključno z usklajevanjem interesov različnih deležnikov.

Vukašin Lončarević*
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The Application of the Aarhus Convention by the European Union's Institutions - the Experience of the European Ombudsman

Abstract
The present contribution highlights the Ombudsman's experience in cases related to the application of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters at the European Union level. By highlighting examples of relevant inquiries, queries of national ombudsmen, and the Ombudsman's proactive work, this contribution makes a proposition that the European Ombudsman is a viable alternative to EU courts in terms of 'access to justice' at EU level. Furthermore, even though his mandate is limited to the institutions and bodies of the European Union, it is submitted that the Ombudsman's involvement can also produce tangible benefits at national level.

Keywords: European Ombudsman, Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, Regulation 1049/2001, Regulation 1367/2006, Infringement proceedings (Article 258 TFEU)

Introduction

Article 228 of the Treaty on the Functioning of the European Union empowers the European Ombudsman to receive complaints from any citizen of the Union or any natural or legal person residing or having its registered office in a Member State concerning instances of maladministration in the administrative activities of the Union institutions, bodies, offices or agencies.[1] In response to an invitation of the European Parliament to propose a definition, the Ombudsman, in his Annual Report for the year 1997 offered the following: *Maladministration occurs when a public body fails to act in accordance with a principle or a rule binding upon it.* The European Parliament and the European Commission have both accepted this definition, which the Ombudsman now applies in his inquiries.

In the present contribution, I will attempt to provide a brief and informative outlook on how the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention) has featured in some of the Ombudsman's inquiries. Most of the Ombudsman's inquiries involving EU environmental law concern the Commission's infringement proceedings against Member States pursuant to Article 258 TFEU (infringement proceedings) or access to documents exchanged between the Commission and the Member State concerned in the framework of such proceedings. However, the Commission is not the only institution at Union level likely

* The opinions expressed in this draft as well as any mistakes are those of the author and do not engage the European Ombudsman. I would like to thank Katrin Müller van Issem and Raluca Trasca for their opinion and comments on an earlier version of the draft.

[1] For the sake of succinctness, the institutions, bodies, offices and agencies of the European Union will be referred to as "Union institutions and bodies" in the remainder of this text.

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Pravni strokovni sodelavec, Evropski varuh človekovih pravic

Uporaba Aarhuške konvencije v institucijah evropske unije – izkušnje evropskega varuha človekovih pravic

Povzetek
V pričujočem prispevku avtor predstavi izkušnje varuha človekovih pravic v zadevah, ki se nanašajo na uporabo Konvencije o dostopu do informacij, udeležbi javnosti pri odločanju in dostopu do pravnega varstva v okoljskih zadevah na ravni Evropske unije. S predstavitvijo primerov ustreznih preiskav, poizvedb nacionalnih varuhov človekovih pravic in proaktivnega dela varuha je v tem prispevku predstavljen predlog, da je glede dostopa do pravnega varstva na ravni Evropske unije evropski varuh za človekove pravice sprejemljiva alternativa sodiščem Evropske unije. Nadalje, čeprav je mandat varuha omejen na institucije in organe Evropske unije, avtor predstavi mnenje, da lahko vključitev varuha človekovih pravic prinese oprijemljive koristi tudi na nacionalni ravni.

Ključne besede: Evropski varuh človekovih pravic, Aarhuška konvencija o dostopu do informacij, udeležbi javnosti pri odločanju in dostopu do pravnega varstva v okoljskih zadevah, Uredba 1049/2001, Uredba 1367/2006, postopek za ugotavljanje kršitev (258. člen Pogodbe o delovanju Evropske unije).

Uvod

Na podlagi 228. člena Pogodbe o delovanju Evropske unije je evropski varuh človekovih pravic pooblaščen, da sprejema pritožbe državljanov Unije, ali fizičnih ali pravnih oseb s prebivališčem ali statutarnim sedežem v eni od držav članic, o nepravilnostih pri delovanju institucij, organov, uradov ali agencij Unije.[1] V odgovoru na povabilo Evropskega parlamenta, da ponudi predlog, s katerim bi opredelili nepravilnost pri delovanju, je varuh v Letnem poročilu za leto 1997 ponudil naslednje: *Do nepravilnosti pride, če javni organ ne deluje v skladu z načelom ali pravilom, ki je zanj zavezujoč.* Tako Evropski parlament kot tudi Evropska komisija sta sprejela to opredelitev, ki jo varuh sedaj uporablja v svojih preiskavah.

V pričujočem prispevku bom poskušal podati kratek in informativen pogled na to, kako se je izkazala uporaba Konvencije o dostopu do informacij, udeležbi javnosti pri odločanju in dostopu do pravnega varstva v okoljskih zadevah (Aarhuška konvencija) v nekaterih preiskavah o pritožbah, ki jih je opravil varuh človekovih pravic. Večina preiskav varuha človekovih pravic s področja okoljskega prava Evropske unije se nanaša na postopek za ugotavljanje kršitev, ki ga Komisija sproži zoper državo članico v skladu z 258. členom Pogodbe o delovanju Evropske unije (postopek za ugotavljanje kršitev), ali na dostop do dokumentov, ki sta si jih v okviru tega postopka izmenjali Komisija in zadevna država članica. Vendar pa Komisija ni edina institucija na ravni Unije, ki se lahko znajde v položaju, ko

* Mnenja, izražena v tem prispevku, ter morebitne napake so mnenja in napake avtorja in ne obvezujejo evropskega varuha človekovih pravic. Zahvaljujem se Katrin Müller van Issem in Raluci Trasca za njuni mnenji in pripombe glede prejšnje različice prispevka.

[1] Zaradi zgoščenosti sloga se bo v preostalem delu besedila besedna zveza »ustanove in organi Unije« nanašala na »ustanove, organi, uradi in agencije Evropske unije«.

to be called upon to apply the convention, as some of the cases concerning the European Investment Bank (EIB) demonstrate.

The Ombudsman's mandate is limited to investigating the activities of Union institutions and bodies. Therefore, the administrative activities of national, regional or local authorities of the EU Member States are outside of his mandate. Nonetheless, as this contribution will show, the Ombudsman may find himself in a position, in which he is able to make a positive contribution to the correct implementation of the Aarhus Convention at national level, either by ensuring that the Commission properly deals with infringement complaints submitted by natural or legal persons, or by collaborating with a national ombudsman.

Aarhus Convention in European Union Law

The (former) European Community acceded to the Aarhus Convention in February 2005[2]. The convention has been transposed into Union law at two levels, i.e., at the Member State level and the Union level.

At the European Union level, Regulation 1367/2006[3] incorporates the three pillars of the Aarhus Convention into a single legal act. Note should be taken of the fact that, as regards access to environmental information, Regulation 1049/2001[4] on access to documents of the Council, the Commission and the Parliament applies. Regulation 1367/2006 widens the scope of Regulation 1049/2001, since it extends its obligation to make environmental information available to all Community institutions and bodies. The rules and exceptions for access to documents of Regulation 1049/2001 are thus interpreted in parallel with the provision of the Regulation 1367/2006. However, it is useful to note that Regulation 1049/2001 is currently undergoing a legislative review process. The Commission has put forward proposals that would align the 'new' Regulation 1049/2001 more closely with the Regulation 1367/2006.[5]

Regulation 1367/2006 also establishes the possibility to request an internal review of administrative acts or administrative omissions by Community institutions and bodies, which would entitle environmental NGOs, complying with a set of criteria, to bring their case to the Court of Justice of the European Union. In this context, it might be relevant to note that the requirements for *locus standi* in the former Article 230 of the EC Treaty have often proved an insurmountable obstacle for applicants to the courts of the EU. However, once the internal administrative review procedure mentioned in Article 10 of Regulation 1367/2006 has been complied with, the applicants are entitled to challenge the decision closing such a procedure.[6] An examination on the issue of *locus standi* of environmental organisations before Union courts and their access to justice is currently pending with the Aarhus Convention Compliance Committee.[7] However, an environmental NGO, which has made use of the internal review procedure, is not bound to turn to the Union courts.[8] Whilst, in comparison to the Union courts, the decisions of the European Ombudsman are not binding, more often than not, his arguments and findings are persuasive in bringing about a change in individual cases, as well as in the service culture of Union institutions and bodies. Moreover, it is worth adding that the European Ombudsman does not apply

2 Council Decision 2005/370/EC on the conclusion, on behalf of the European Community, of the Convention on access to information, public participation in decision-making and access to justice in environmental matters, OJ [2005] L 124, p. 1.

3 Regulation (EC) No 1367/2006 of the European Parliament and of the Council on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies, OJ [2006] L 264, p.13

4 Regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents, OJ [2001] L 145, p. 43.

5 The proposal is accessible at: http://ec.europa.eu/prelex/detail_dossier_real.cfm?CL=en&DosId=196983

6 See also Case T-37/04 *Região autónoma dos Açores*, paragraph 93. ECR [2008] p. II-103.

7 See Case ACCC/2008/32 at http://www.unece.org/env/pp/compliance/Compliance%20Committee/32TableEC.htm

8 For instance, after completing the internal review procedure, the complainant in case 696/2008/(WP)OV (inquiry pending), decided to turn to the European Ombudsman.

mora uporabiti Aarhuško konvencijo, kot bodo pokazali nekateri primeri, ki se nanašajo na Evropsko investicijsko banko (EIB).

Mandat varuha človekovih pravic je omejen na preiskovanje aktivnosti institucij in organov Unije. Zato upravne aktivnosti nacionalnih, regionalnih ali lokalnih organov države članice Evropske unije niso v njegovi pristojnosti. Vendar pa se lahko, kar bo pokazal ta prispevek, varuh za človekove pravice znajde v položaju, ko lahko pozitivno prispeva k pravilnemu izvajanju Aarhuške konvencije na nacionalni ravni, bodisi tako, da zagotovi, da Komisija pravilno obravnava pritožbe o kršitvi, ki so jih vložile fizične ali pravne osebe, ali pa tako, da sodeluje z nacionalnim varuhom za človekove pravice.

Aarhuška konvencija in pravo Evropske unije

Evropska skupnost (nekdanja) je pristopila k Aarhuški konvenciji februarja leta 2005.[2] Konvencija je bila prenesena v pravo Unije na dveh ravneh, to je na ravni države članice in na ravni Unije.

Na ravni Evropske unije združuje Uredba 1367/2006[3] tri stebre Aarhuške konvencije v en sam pravni predpis. Upoštevati velja dejstvo, da se glede dostopa do okoljskih informacij uporablja Uredba 1049/2001[4] o dostopu javnosti do dokumentov Evropskega parlamenta, Sveta in Komisije. Uredba 1367/2006 razširja obseg Uredbe 1049/2001, saj širi obveznost dostopa do okoljskih informacij na vse institucije in organe Skupnosti. Pravila in izjeme glede dostopa do dokumentov, ki izhajajo iz Uredbe 1049/2001, se tako razlagajo vzporedno z določbo Uredbe 1367/2006. Vendar pa je treba omeniti, da je Uredba 1049/2001 trenutno v postopku zakonodajnega pregleda. Komisija je podala predloge, s katerimi bi »novo« Uredbo 1049/2001 približali Uredbi 1367/2006.[5]

Uredba 1367/2006 uvaja tudi možnost zahteve, da institucije in organi Skupnosti opravijo notranjo revizijo upravnih aktov ali upravnih opustitev. To bi okoljskim nevladnim organizacijam, ki izpolnjujejo niz pogojev omogočilo, da svoj primer predložijo Sodišču Evropske unije. S tem v zvezi lahko omenimo, da so se zahteve glede pravnega interesa (*locus standi)*, določene v nekdanjem 230. členu Pogodbe o ustanovitvi Evropske skupnosti, pogosto izkazale kot nepremostljiva ovira za pritožnike, ki so vložili tožbo na sodišča Evropske unije. Vendar pa ima pritožnik, ko je opravljen postopek notranje revizije upravnih aktov, omenjen v 10. členu Uredbe 1367/2006, pravico, da izpodbija sklep, s katerim se je takšen postopek zaključil.[6] Trenutno poteka v okviru Odbora za izvajanje Aarhuške konvencije preiskava na temo pravnega interesa (*locus standi*) okoljskih organizacij pred sodišči Evropske unije in njihovega dostopa do pravnega varstva.[7] A se okoljska nevladna organizacija, ki je izkoristila možnost in zahtevala postopek notranje revizije upravnih aktov, ni dolžna obrniti na sodišča Unije.[8] Medtem ko so, v primerjavi s sodišči Unije, odločitve evropskega varuha človekovih pravic pravno nezavezujoče, so njegovi argumenti in ugotovitve, pogosteje kot ne, zadosti prepričljivo sredstvo, ki vodijo do spremembe stališč v posameznih zadevah, kot tudi v storitveni kulturi institucij in organov Unije. Poleg tega velja dodati, da evropski varuh za človekove pravice ne preverja izpolnjevanja zahtev, ki bi bile podobne oz. bi ustrezale *zadostnemu interesu* ali *kršitvi pravic* iz 9.(2) člena Aarhuške konvencije. Ta opažanja in dejstvo, da se preiskava, ki jo opravi evropski varuh človekovih pravic, praviloma zaključi

[2] Sklep sveta 2005/370/ES o sklenitvi Konvencije o dostopu do informacij, udeležbi javnosti pri odločanju in dostopu do pravnega varstva v okoljskih zadevah, v imenu Evropske skupnosti, Uradni list [2005] L 124, str. 1.

[3] Uredba (ES) št. 1367/2006 Evropskega parlamenta in Sveta o uporabi določb Aarhuške konvencije o dostopu do informacij, udeležbi javnosti pri odločanju in dostopu do pravnega varstva v okoljskih zadevah v institucijah in organih Skupnosti, Uradni list [2006] L 264, str. 13.

[4] Uredba Evropskega parlamenta in Sveta (ES) št. 1049/2001 o dostopu javnosti do dokumentov Evropskega parlamenta, Sveta in Komisije , Uradni list [2001] L 145, str. 43.

[5] Predlog je dostopen na: http://ec.europa.eu/prelex/detail_dossier_real.cfm?CL=en&DosId=196983

[6] Glej tudi zadevo T-37/04 *Região autónoma dos Açores*, odstavek 93. Zbirka odločb [2008] str. II-103.

[7] Glej tudi zadevo ACCC/2008/32 na http://www.unece.org/env/pp/compliance/Compliance%20Committee/32TableEC.htm

[8] Na primer, po zaključku postopka notranje revizije upravnih aktov, se je pritožnik v zadevi 696/2008/(WP)OV (preiskava v teku), odločil, da se obrne na evropskega varuha človekovih pravic.

a test similar to *sufficient interest* or *an impairment of right*, referred to in Article 9(2) of the Aarhus Convention. These considerations as well as the fact that an inquiry by the European Ombudsman is usually concluded within a year, lend weight to the argument that the European Ombudsman can be a viable alternative as a means of access to justice in environmental matters at Union level.

As regards the national level, the Aarhus Convention applies to the Member States (who might themselves have ratified the convention independently) notably, by means of Directives 2003/4/EC (access to information)[9] and 2003/35/EC (public participation);[10] both directives contain also provisions on access to justice.

Examples of cases dealt with by the European Ombudsman concerning Regulation 1367/2006

Many of the cases touching upon Regulation 1367/2006 examined by the European Ombudsman concerned access to information, in particular information related to infringement proceedings concerning violations of EU environmental law. In its judgment in Case T-191/99 *Petrie*[11], the General Court ruled that the Commission could refuse access to documents exchanged during infringement proceedings between itself and the Member States on the grounds of protecting the interest of investigations mentioned in Article 4(2) of Regulation 1049/2001. Whereas Article 6(1) of Regulation 1367/2006 provides that an overriding public interest in disclosure of environmental information can be presumed to be fulfilled with respect to certain types of exceptions, it explicitly excludes investigations into possible infringements of Community law. However, while Member States have the right to expect that the Commission will observe the confidentiality of the investigations, it nonetheless appears reasonable to assume that the Commission would not object to the Member States releasing the relevant documents themselves. As a matter of fact, it appears that, as a general rule, Finland makes all such documents publicly available.

The above approach is perhaps better illustrated by some of the Ombudsman's recent cases. In case 443/2008/JMA, which concerned, *inter alia*, access to Commission documents sent to the Spanish authorities in the framework of an infringement procedure relating to water discharges flowing into the Pontevedra Estuary. In light of the case-law and provisions of Regulation 1367/2006, the Ombudsman took the view that the Commission was entitled to refuse access to the requested documents. However, since obtaining access to the requested documents was not possible from the Commission's side, the Ombudsman advised the complainant that he could consider obtaining access from the Spanish authorities in accordance with their national rules. Similarly, in a recent case concerning access to infringement proceeding documents, where the complainant relied on Regulation 1367/2006, the Ombudsman opened an inquiry and proactively wrote to the Member States concerned in order to verify whether they would agree to release the relevant documents.[12]

Of course, the European Commission is not the only institution obliged to apply Regulation 1367/2006. Given its mission, the EIB is often likely to finance projects, which pertain to the environment. Its role, in essence, is to raise significant volumes of funds on the capital markets, which it then lends on favourable terms to EU Member States and partner countries so as to further EU policy objectives. In case 948/2006/BU,[13] an NGO applied to the EIB for access to a finance contract concerning a railway modernisation project in Slovakia. The

[9] Directive 2003/4/EC of the European Parliament and of the Council on public access to environmental information and repealing Council Directive 90/313/EEC, OJ [2003] L 41, p. 26.

[10] Directive 2003/35/EC of the European Parliament and of the Council providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC, OJ [2003] L 156, p. 17.

[11] See Case T-191/99 *Petrie and others v Commission*, ECR [2001] p. II-3677.

[12] Case 1861/2009/JF, the inquiry is still pending.

[13] http://www.ombudsman.europa.eu/cases/decision.faces/en/3131/html.bookmark

v enem letu, dajejo težo argumentu, da je kot sredstvo za dostop do pravnega varstva v okoljskih zadevah na ravni Unije evropski varuh človekovih pravic lahko sprejemljiva in uspešna alternativa.

Na nacionalni ravni velja Aarhuška konvencija za države članice (ki so morebiti tudi same neodvisno ratificirale konvencijo) predvsem preko Direktiv 2003/4/ES (dostop do informacij)[9] in 2003/35/ES (udeležba javnosti)[10]; obe direktivi vsebujeta tudi določbe o dostopu do pravnega varstva.

Primeri zadev, ki jih je v zvezi z Uredbo 1367/2006 obravnaval evropski varuh za človekove pravice

Številne zadeve, ki se dotikajo Uredbe 1367/2006 in jih je preiskal evropski varuh za človekove pravice, so se nanašale na dostop do informacij, posebej še informacij, povezanih s postopkom za ugotavljanje kršitev v zvezi s kršitvami okoljskega prava Evropske unije. V sodbi v zadevi T-191/99 *Petrie*[11] je Splošno sodišče odločilo, da bi Komisija lahko zavrnila dostop do dokumentov, ki jih je v postopku za ugotavljanje kršitev izmenjala z državami članicami na podlagi zaščite interesa preiskave, omenjene v 4(2). členu Uredbe 1049/2001. Čeprav 6(1). člen Uredbe 1367/2006 vsebuje domnevo, da je pri razkritju okoljskih informacij prevladujoči javni interes izpolnjen za določene vrste izjem, pa izrecno izključuje preiskave o možnih kršitvah prava Skupnosti. Medtem ko imajo države članice pravico, da pričakujejo, da bo Komisija upoštevala zaupnost preiskav, se vendar zdi smiselno domnevati, da Komisija ne bi nasprotovala, če bi države članice same objavile zadevne dokumente. Pravzaprav naj bi Finska takšne dokumente praviloma javno objavila.

Gornji pristop lahko najbolje ponazorimo z nekaterimi nedavnimi zadevami, ki jih je obravnaval varuh človekovih pravic. V zadevi 443/2008/JMA, ki se je med drugim nanašala na dostop do dokumentov, ki jih je Komisija poslala španskim organom v okviru postopka ugotavljanja kršitev v zvezi z izpusti v vode, ki se stekajo v rečno ustje Pontevedra Estuary. V luči sodne prakse in določb Uredbe 1367/2006 je varuh zavzel stališče, da je Komisija upravičeno zavrnila dostop do zahtevanih dokumentov. Ker pa od Komisije ni bilo mogoče dobiti dostopa do zahtevanih dokumentov, je varuh za človekove pravice pritožniku svetoval, naj preuči možnost, da v skladu z nacionalnimi predpisi pridobi dostop do dokumentov od španskih organov. Podobno se je v nedavni zadevi, ki se je nanašala na dostop do dokumentov iz postopka za ugotavljanje kršitev, ko se je pritožnik opiral na Uredbo 1367/2006, varuh za človekove odzval proaktivno in ob začetku preiskave pisal zadevnim državam članicam, da bi preveril, ali bi se strinjale z objavo ustreznih dokumentov.[12]

Evropska komisija ni edina institucija, ki je vezana na uporabo Uredbe 1367/200. Evropska investicijska banka v skladu s svojim poslanstvom pogosto financira projekte, ki se nanašajo na okolje. Glede na njeno poslanstvo, t.j., da zbere pomembno količino sredstev na kapitalskih trgih, ki jih nato pod ugodnimi pogoji posodi državam članicam Evropske unije in partnerskim državam, ter da podpre in razvija cilje politike Evropske unije. V zadevi 948/2006/BU[13] je nevladna organizacija zaprosila Evropsko investicijsko banko, da bi pridobila dostop do pogodbe o financiranju projekta modernizacije železniške proge na Slovaškem. Evropska investicijska banka je zahtevek zavrnila in se pri tem oprla na svoja notranja pravila o dostopu javnosti do dokumentov. Naknadno je sprejela nova pravila, ki

[9] Direktiva 2003/4/ES Evropskega parlamenta in Sveta o dostopu javnosti do informacij o okolju in o razveljavitvi Direktive Sveta 90/313/EGS, Uradni list [2003] L 41, str. 26.

[10] Direktiva 2003/35/ES Evropskega parlamenta in Sveta o sodelovanju javnosti pri sestavi nekaterih načrtov in programov v zvezi z okoljem in o spremembi direktiv Sveta 85/337/EGS in 96/61/, Uradni list OJ [2003] L 156, str. 17.

[11] Glej zadevo T-191/99 *Petrie in drugi proti Komisiji*, Zbirka odločb [2001] str. II-3677.

[12] Zadeva 1861/2009/JF, preiskava je še vedno v teku.

[13] http://www.ombudsman.europa.eu/cases/decision.faces/en/3131/html.bookmark

EIB rejected the application by relying on an exception in its internal rules on public access to documents and subsequently adopted new rules, which explicitly provided that finance contracts could not be disclosed (totally or partially).[14] The complainant argued *inter alia* that the refusal to disclose the information was contrary to the Aarhus Convention. Regulation 1367/2006 was not applicable at the time of the complainant's request. The Ombudsman considered that the EIB was entitled to reject access on the basis of the rules applicable at the time of the request. However, the Ombudsman suggested that in the future, the EIB could consider contacting the national authorities so as to ascertain the possibility of total or partial disclosure of the finance contracts to which citizens request access.

Looking beyond the strictly inquiry-related dimension, the European Ombudsman and the EIB also signed a Memorandum of Understanding (MoU). The main points of the MoU provide that the EIB should inform the public about the policies, standards and procedures applicable to the environmental, social and developmental aspects of its policies and that the EIB implements an effective internal complaints mechanism. In turn, the operation of the EIB complaints mechanism would provide the starting point for the Ombudsman's review on how the EIB discharged its obligations to parties concerned. It might be useful to add that the EIB has recently adopted a revised Transparency Policy, affirming its commitment to comply with Regulations 1049/2001 and 1367/2006, and accepting that complaints against it may be brought also to the Aarhus Convention Compliance Committee.[15]

Cases concerning Directives 2003/4/EC and 2003/35/EC

As mentioned earlier, the Aarhus Convention has been transposed into Directives 2003/4/EC and 2003/35/EC, which the Member States should implement. If a citizen or an environmental NGO take the view that a directive has not been correctly transposed or applied, they can submit an infringement complaint to the European Commission. The scope of the Ombudsman's review in these cases depends on whether issues of procedure (such as registering of complaints) or substance (Commission's decision as to the (non-) existence of a violation of Union law), where the Ombudsman's review is limited to an examination of whether the Commission has provided a reasonable explanation as to how it had exercised its discretion.[16] In terms of procedure, a result of the Ombudsman's efforts to ensure the observation of good administrative practices in the handling of infringement complaints is the Commission's Communication on relations with the infringement complainants (2002 Communication).[17] With the 2002 Communication, the Commission committed itself to handling infringement complaints in accordance with a set of procedural rules. In case 1628/2008/TS,[18] a Lithuanian environmental NGO complained to the Commission about Lithuania's failure to comply with Directives 2003/35/EC and 2003/4/EC. The complainant alleged that the Commission failed to register its correspondence as an infringement complaint. After the Ombudsman opened his inquiry into complaint 1628/2008/TS, the Commission, in accordance with the 2002 Communication, registered the complainant's correspondence as an infringement complaint with a view to investigating whether Lithuania had properly transposed the directives and informed the NGO of the steps taken in its investigation.

[14] In this context, it might be useful to note that Regulation 1367/2006 suggests that confidentiality agreements concluded by Union institutions and bodies in a banking capacity to fall within the exception of protecting commercial interests provided for in Regulation 1049/2001. The Aarhus Convention Compliance Committee, in case ACCC/C/2007/21 concerning the EIB, came to a similar finding with regard to public participation. It found that a decision of a financial institution to provide a loan or other financial support could not be legally regarded as a decision to permit an activity in the sense of Article 6 of the Convention. See http://www.unece.org/env/pp/compliance/Compliance%20Committee/21TableEC.htm

[15] The EIB Transparency Policy, February 2010: http://www.eib.org/attachments/strategies/transparency_policy_en.pdf

[16] For a closer analysis of the Ombudsman's approach to examining the Commission's role as the Guardian of the Treaties, the scope and depth of his review as well as the links to the work of national ombudsmen, see The European Ombudsman and the Application of EU Law by the Member States by P. Nikiforos Diamandouros, Review of European Administrative Law, 2008, Vol. I, No 2, p. 5.

[17] Commission's communication to the European Parliament and The European Ombudsman on relations with the complainant in respect of infringements of Community law (COM/2002/0141 final)

[18] http://www.ombudsman.europa.eu/cases/decision.faces/en/4261/html.bookmark

so izrecno določala, da pogodb o financiranju ni mogoče (v celoti ali deloma) razkriti.[14] Pritožnik je med drugim zastopal stališče, da je bila zavrnitev razkritja informacij v nasprotju z Aarhuško konvencijo. Takrat, ko je pritožnik vložil svoj zahtevek, Uredba 1367/2006 ni bila v veljavi. Varuh človekovih pravic je presodil, da je Evropska investicijska banka upravičeno zavrnila dostop do dokumentov na osnovi predpisov, ki so bili veljavni ob vložitvi zahtevka. Vendar pa je varuh predlagal, da bi v prihodnje Evropska investicijska banka lahko preučila možnost, da bi vzpostavila stik z nacionalnimi oblastmi in tako preverila, ali obstaja možnost, da se pogodbe o financiranju, za katere so državljani zahtevali dostop za vpogled v njihovo vsebino, v celoti ali deloma razkrijejo.

Poleg ukvarjanja z zadevami, ki se nanašajo strogo na preiskave, sta evropski varuh človekovih pravic in Evropska investicijska banka celo podpisala memorandum o soglasju. Glavne točke memoranduma o soglasju določajo, da mora Evropska investicijska banka obveščati javnost o politikah, standardih in postopkih, ki se nanašajo na okoljske, družbene in razvojne vidike njenih politik, in da Evropska investicijska banka vzpostavi in učinkovito vodi sistem notranjih pritožb. Hkrati bi delovanje pritožbenega mehanizma Evropske investicijske banke varuhu za človekove pravice zagotovilo izhodiščno točko za pregled tega, kako Evropska investicijska banka napram zadevnim strankam izpolnjuje svoje obveznosti. Dodajmo, da je Evropska investicijska banka nedavno sprejela revidirano Politiko o preglednosti, s katero potrjuje zavezo, da bo ravnala v skladu z Uredbama 1049/2001 in 1367/2006, ter da sprejema dejstvo, da se pritožbe zoper banko lahko vložijo tudi na Odboru za izvajanja Aarhuške konvencije.[15]

Zadeve, ki se nanašajo na Direktivi 2003/4/ES in 2003/35/ES

Kot smo že omenili, je bila Aarhuška konvencija prenesena v Direktivi 2003/4/ES in 2003/35/ES, ki ju morajo države članice izvajati. Če državljan ali okoljska nevladna organizacija zavzame stališče, da direktiva ni bila pravilno prenesena ali se ne uporablja pravilno, lahko vloži pritožbo o kršitvi na Evropsko komisijo. Obseg pregleda, ki ga varuh za človekove pravice opravi v teh zadevah, je odvisen od tega, ali gre za postopkovne razloge (kot je registracija pritožb) ali vsebinske razloge (odločitev Komisije glede (ne)obstoja kršitve prava Unije), pri čemer je revizija, ki jo opravi varuh človekovih pravic, omejena na preiskavo, ali je Komisija zagotovila smiselno obrazložitev tega, kako je Komisija uveljavila svojo diskrecijsko pravico.[16] V zvezi s postopkom je rezultat prizadevanj varuha, da zagotovi upoštevanje dobrih upravnih praks pri obravnavanju pritožb o kršitvah, Sporočilo Komisije o odnosih s pritožniki v zvezi s kršitvami (Sporočilo 2002).[17] S sporočilom iz leta 2002 se je Komisija zavezala, da bo pritožbe o kršitvah obravnavala v skladu z nizom postopkovnih pravil. V zadevi 1628/2008/TS[18] se je litovska okoljska nevladna organizacija pritožila Komisiji, da Litva ne izpolnjuje določb Direktiv 2003/35/EC in 2003/4/EC. Pritožnik je očital, da Komisija ni registrirala njegovih dopisov kot pritožbe o kršitvi. Potem ko je varuh začel preiskavo glede pritožbe 1628/2008/TS, je Komisija v skladu s Sporočilom iz leta 2002 registrirala dopise pritožnika kot pritožbo o kršitvi z namenom preiskati, ali je Litva direktivi pravilno prenesla v notranje pravo in obvestila nevladno organizacijo o korakih, ki jih je opravila v preiskavi.

[14] V tem kontekstu omenimo, da Uredba 1367/2006 predlaga, da bi zaupne pogodbe, sklenjene med ustanovami in organi Unije ter bančno ustanovo, spadale med izjeme zaradi zaščite poslovnih interesov, določenih v Uredbi 1049/2001. Odbor za izvajanje Aarhuške konvencije je v zadevi ACCC/C/2007/21, ki se je nanašala na Evropsko investicijsko banko, prišel do podobnih ugotovitev v zvezi z udeležbo javnosti. Ugotovil je, da se v pravnem smislu odločitev finančne ustanove, da zagotovi posojilo ali drugo obliko finančne podpore, ne šteje za odločitev, ki dopušča aktivnost v smislu 6. člena Konvencije. http://www.unece.org/env/pp/compliance/Compliance%20Committee/32TableEC.htm

[15] Politika o preglednosti Evropske investicijske banke, februar leta 2010: http://www.eib.org/attachments/strategies/transparency_policy_en.pdf

[16] Za podrobnejšo analizo pristopa varuha ob preučevanju vloge Komisije kot skrbnika mednarodnih pogodb, obsega in poglobljeno analizo revizije ter povezave z delom nacionalnih varuhov, glej *Evropski varuh človekovih pravic in uporaba prava Evropske unije v državah članicah(ali original?*, avtorja P. Nikiforos Diamandouros, Review of European Administrative Law, 2008, Vol. I, št. 2, str. 5.

[17] Sporočilo Komisije Evropskemu parlamentu in Evropskemu varuhu človekovih pravic o odnosih s pritožniki v zvezi s kršitvami prava Skupnosti (KOM/2002/0141 končno).

[18] http://www.ombudsman.europa.eu/cases/decision.faces/en/4261/html.bookmark

The query Q5/2008/PB submitted by the Danish Ombudsman is also a good example of how the European Ombudsman, within the limits of his mandate, can contribute an added value to the work of national ombudsmen when they deal with cases concerning Union law in their respective Member States. Queries are questions on the application and interpretation of EU law that members of the European Network of Ombudsmen can ask the European Ombudsman, who either provides a direct answer or forwards the query to a competent EU institution or body (in most cases this is the Commission). The query of the Danish Ombudsman concerned the interpretation of Directive 2003/4/EC with regard to the refusal of a Danish public body to provide a citizen with information on the impact of building development. The public body, as "*a matter of principle*", refused to release an internal memorandum and a report. The Danish Ombudsman, in essence, wished to receive explanations as to whether (i) the relevant information was covered by the definition of "*environmental information*" in Article 2(1) of Directive 2003/4/EC and (ii) access to information could be refused "*as a matter of principle*". The Commission provided a thorough and well-argued opinion, which confirmed that (i) the information asked for was indeed "*environmental information*" and that (ii) a public body could refuse to provide requested information, if appropriate and relevant reasons were given, but that such a refusal could certainly not be *a matter of principle*. The Danish Ombudsman was grateful for the support of the European Ombudsman and informed the latter that he had recommended to the public body concerned to re-visit its position.

Conclusion

The Ombudsman's work has a legal, inquiry-related dimension as well as a political, proactive component, when he endeavours for effective legal frameworks to be put in place to protect the rights of interested third parties (e.g. MoU with EIB or the 2002 Communication). Regulation 1367/2006 is binding on Union institutions and bodies. Therefore, when a complainant alleges that they have failed to abide by it, this constitutes an instance of maladministration that can be examined by the European Ombudsman. In particular, the European Ombudsman can be viewed as an alternative avenue to courts when enforcing the rights in Regulation 1367/2006, and in some cases even as the redress of choice. Moreover, even though his mandate to carry out inquiries is limited to the activities of the Union institutions and bodies, his inquiries into handling of infringement complaints can lead to positive effects for citizens and NGOs at national level. Finally, the Ombudsman always welcomes the opportunity to cooperate with the national ombudsmen and to provide them with contributions that they might consider useful in their respective field of competence.

Poizvedba Q5/2008/PB, ki jo je posredoval danski varuh za človekove pravice, je prav tako dober primer, kako lahko evropski varuh za človekove pravice v okviru svojega mandata prispeva dodano vrednost k delu nacionalnih varuhov, ko ti obravnavajo zadeve, ki se nanašajo na pravo Unije in zadevno državo članico. Poizvedbe so vprašanja o uporabi in tolmačenju prava Evropske unije, ki jih člani Evropske mreže varuhov človekovih pravic lahko zastavijo evropskemu varuhu človekovih pravic, ki bodisi zagotovi neposreden odgovor ali posreduje vprašanje pristojni instituciji ali organu Evropske unije (v večini primerov je to Komisija). Poizvedba danskega varuha človekovih pravic se je nanašala na tolmačenje Direktive 2003/4/ES v zvezi z zavrnitvijo danske osebe javnega prava, da državljanu zagotovi informacije o učinkih gradbenega razvoja. Oseba javnega prava je zavrnila objavo notranjega memoranduma in poročila *iz načelnih razlogov*. Danski varuh za človekove pravice je v bistvu želel prejeti obrazložitev, ali je (i)bila zadevna informacija zajeta v definiciji »*okoljska informacija*« iz 2(1). člena Direktive 2003/4/ES in tako krita na ta način, in ali (ii) je oseba javnega prava lahko zavrnila dostop do informacije iz *načelnih razlogov*. Komisija je pripravila natančno in dobro argumentirano mnenje, v katerem je potrdila, (i) da je bila informacija, za katero je državljan zaprosil, dejansko »*okoljska informacija*« in da (ii) bi organ lahko zavrnil zahtevano informacijo, če bi bili podani pravilni in ustrezni razlogi, da pa takšna zavrnitev nikakor ne bi mogla biti *načelne narave*. Danski varuh je bil hvaležen za podporo evropskega varuha za človekove pravice in je slednjega obvestil, da je osebi javnega prava priporočil, da ponovno premisli o svojem stališču.

Zaključek

Delo varuha človekovih pravic ima pravno dimenzijo, ki se navezuje na preiskave pritožb, vsebuje pa tudi politično in proaktivno sestavino, ko se varuh zavzema, da se sprejmejo učinkoviti pravni okviri za zaščito pravic zainteresiranih tretjih strank (npr. Memorandum o soglasju z EIB ter Sporočilo 2002). Uredba 1367/2006 je za institucije in organe Unije zavezujoča. Ko pritožnik očita, da ti niso ravnali v skladu z direktivo, predstavlja to primer nepravilnosti, ki ga evropski varuh človekovih pravic lahko preišče. Pritožba varuhu človekovih pravic je lahko alternativa sodnim postopkom, ko gre za uveljavljanje pravic iz Uredbe 1367/2006, v nekaterih primerih pa celo preferirana možnost uveljavljanja pravnega varstva. Čeprav je mandat varuha človekovih pravic omejen na preiskovanje upravne dejavnosti institucij in organov Unije, lahko njegove preiskave o obravnavanju pritožb o kršitvah vodijo do pozitivnih učinkov na nacionalni ravni. Prav tako varuh za človekove pravice vselej pripravljen sodelovati z nacionalnimi varuhi za človekove pravice in ponuditi rešitve, ki bi jih ti lahko ocenili kot koristne v okviru njihovega območja pristojnosti.

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Developments in the Regulation of Public Participation in Hungary and the Role of the New Environmental Ombudsman

Keywords: public participation, capacity building, environmental ombudsman, sustainable development and intergenerational equity

1. Introduction

In the following article I would like to assess the developments in the last two decades in Hungary in relation to the laws concerning public participation in environmental decision-making. In addition, I would like to summarise the contribution of the Office of the Hungarian Ombudsman of the Future Generations (hereinafter: JNO) to environmental democracy since its initial phase of operation, starting in the second half of 2008. Finally, I would like to draw a broader analytical picture trying to put both public participation and the operation of JNO into the wider context of sustainable development.

2. Developments in the Hungarian legal practice of public participation in the last two decades – revolution and counter-revolution

After the democratic transition in the early nineties, Hungarian legislation established widespread possibilities for public participation in general and especially in environmental matters. The most outstanding general legislation was Act LXIII on the protection of personal data and on the access to public interest data (hereinafter: Atv.). It was a kind of legal revolution that Atv. has introduced: any data was to qualify as public which is handled by public authorities and does not represent a personal data. As a main rule, public data must be made accessible upon request for anyone within 15 days (while denial must be announced within 8 days) and for a remuneration not exceeding the costs of copying and delivery of the data requested. Exemptions out of state, administrative or third person interests are set out in an exhaustive list. Since 1992 Atv. has been modified a number of times, always for a little worse, but the main features remained in place up to now.

The 1995 Environmental Code (hereinafter: Kvtv.) also contained quite generous public participation provisions: a separate chapter is specifically dedicated to the topic of public participation. Amongst other, in this chapter we can find a general provision of standing for environmental civic organisations (NGOs) in all environmental administrative cases on the territory of their operation. However, the years following the onset of Kvtv. brought up fierce debates on almost all elements of this provision. Public authorities started to interpret the term “environmental civic organisation” in quite a narrow way. In some cases they were willing to accept the standing for an NGO only if it was exclusively environmental, while in other cases it turned out that the authorities do not consider foundations or other specific forms of NGOs as civic organisations, they granted standing only for associations. Furthermore, the scope of an “environmental case” started to shrink quite early: only environmental impact assessment cases counted to be “environmental”.

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Razvoj pravne ureditve sodelovanja javnosti na Madžarskem in vloga novega okoljskega ombudsmana

Ključne besede: sodelovanje javnosti, krepitev zmogljivosti, varuh okolja, trajnostni razvoj in medgeneracijska enakost

1. Uvod

Namen tega članka je oceniti dogajanje na Madžarskem v zvezi z zakoni o udeležbi javnosti pri odločanju o okoljskih zadevah v zadnjih dveh desetletjih. Na kratko bom predstavil tudi prispevek urada madžarskega ombudsmana za prihodnje generacije (v nadaljevanju OPG) k okoljski demokraciji od začetne faze njegovega delovanja, ki se je začela v drugi polovici leta 2008, naprej. Podati pa bom poskušal tudi širšo analitično sliko udeležbe javnosti in delovanja OPG v širšem okviru trajnostnega razvoja.

2. Dogajanje v madžarski pravni praksi na področju udeležbe javnosti v zadnjih dveh desetletjih – revolucija in protirevolucija

Po demokratični tranziciji v zgodnjih devetdesetih letih je madžarska zakonodaja vzpostavila široke možnosti za udeležbo javnosti na splošno in še zlasti v okoljskih zadevah. Od splošne zakonodaje je najbolj izstopal zakon LXIII o varstvu osebnih podatkov in dostopu do podatkov v javnem interesu (v nadaljevanju zakon LXIII). Ta zakon je povzročil nekakšno pravno revolucijo: javni so bili vsi podatki, s katerimi ravnajo javni organi in niso osebni podatki. Glavno pravilo je bilo, da morajo biti javni podatki na zahtevo dostopni vsakomur v 15 dneh (negativni odgovor pa je treba sporočiti v 8 dneh) in za nadomestilo, ki ne presega stroškov fotokopiranja in dostave zahtevanih podatkov. Izjeme zaradi državnih in upravnih interesov ter interesov tretjih oseb so navedene na izčrpnem seznamu. Od leta 1992 naprej je bil zakon LXIII večkrat spremenjen, in sicer vedno na slabše, vendar glavne lastnosti še vedno veljajo.

Okoljski zakonik iz leta 1995 je vseboval tudi precej določb o udeležbi javnosti: temu vprašanju je namenjeno celo poglavje. To poglavje med drugim vsebuje splošno določbo o udeležbi okoljskih organizacij civilne družbe (NVO) v vseh okoljskih upravnih zadevah na ozemlju, na katerem delujejo. V letih po začetku veljavnosti okoljskega zakonika pa so se odvijale burne razprave o skoraj vseh elementih te določbe. Javni organi so začeli precej ozko razumevati izraz »okoljske organizacije civilne družbe«. V nekaterih primerih so bili pripravljeni sprejeti udeležbo NVO samo, če je bila izključno »okoljske«, v drugih primerih pa se je izkazalo, da oblasti ne štejejo fundacij ali drugih posebnih oblik NVO za organizacije civilne družbe, in so udeležbo omogočili samo združenjem. Tudi pomen izraza »okoljska zadeva« se je začel zelo kmalu ožiti: »okoljske« so bile samo presoje vpliva na okolje.

Finally, in 2004 the Hungarian Supreme Court has issued a generally binding statement on the interpretation of the said provisions of the Environmental Code. According to Uniformity Decision No. 1/2004 all cases are to be interpreted as environmental once they are handled by environmental authorities either in a process when these authorities decide the cases on their own or in the cases where they just issue an official opinion upon an other authority's request. However, the Supreme Court added that in all such cases environmental NGOs can use their standing only in respect to the environmental parts of the cases, i.e. the issues which were actually dealt with by the environmental authorities. In some cases this constraint seems to be quite natural, while in other cases this approach reopens the floodgate for arguments that wish to make the participation of the environmental NGOs in the administrative cases a mere formality.

As concerns the legal practice, the most important court decision from the early years of the "Golden Age" is decision No. 28/1994. (V. 20.) AB of the Hungarian Constitutional Court. In this decision, also referred to by the environmental profession as the "basic decision", the Court introduced the *non retrogression principle* in Hungarian environmental law. The decision stipulates that while in cases of other kinds of constitutional rights it might be possible that, due to changes in the financial and other means of the State, the level of protection might fluctuate, in the case of the right to a healthy environment, the State cannot allow itself to decrease the level of protection already reached. This is because environmental degradation in the majority of the cases is irreversible, for instance once a certain loss in biodiversity happened, there is no chance to revive species that have gone extinct. Following and in the light of the basic decision the Hungarian Constitutional Court has quashed a series of new legislation because they lowered the pre-existing level of environmental protection. However, as constitutional legal scholars in Hungary[1] have pointed out in the last decade of the practice of the Constitutional Court references to the Decision No. 28/1994 have tapered down.

The adoption of the Aarhus Convention on public participation in environmental decision-making in 1998 brought fresh air to European environmental law and administrative law in general alike. However, the Hungarian legislator could more or less acceptably rely on the already existing results of the previous years' progressive public participation provisions. Based on that, it was claimed that transposition of the Convention had been completed even before it could have started. This statement overlooked the fact that the Aarhus Convention collected all the important elements of public participation (which are sometimes called the three pillars of the Convention[2]) and organised into a coherent system where the elements mutually reinforce each other. Such a system was never created in Hungarian environmental law. The public participation rules remained scattered in several dozens of separate laws, sometimes contradicting each other. Even if so, we might say that this period after the democratic transition in the country was the Golden Age of environmental democracy. Decision-makers, administrative leaders and business pressure groups, however, soon realized that public participation might greatly influence the outcome of their cases, often into a negative direction from their viewpoints – and the decline has started.

Compared to the previous decade the first years of the 21st century have brought much less legal support to public participation in environmental decision making procedures in Hungary. The most typical example of this new trend was Act CXXVIII. of 2003 on Public Interest and Development of the Expressway Network in the Republic of Hungary. The Act established a special decision-making procedure for the construction of expressways. This procedure aimed to simplify and expedite the environmental permitting of the most important highway constructions.

1 E.g. Attila Gábor Tóth, personal communication.

2 This popular approach might be a little bit misleading. Usually three pillars are mentioned: access to information, participation and access to justice. These elements of the public participation system do not fully exhaust the whole system. Capacity building rules (mainly in Article 3), definitions (Article 2) and general principles (in the Preamble) are also important elements here.

Končno je leta 2004 madžarsko vrhovno sodišče izdalo splošno zavezujočo izjavo o razlagi navedenih določb okoljskega zakonika. V skladu s Sklepom o poenotenju št. 1/2004 so se kot okoljske razlagale vse zadeve, ki so jih obravnavali okoljski organi, če so v postopku sami odločali o zadevi ali če so samo izdali uradno mnenje na zahtevo drugega organa. Vrhovno sodišče pa je dodalo, da so lahko v takih primerih okoljske NVO udeležene samo v okoljskem delu zadeve, in sicer pri vprašanjih, ki so jih dejansko obravnavali okoljski organi. V nekaterih primerih je ta omejitev videti precej naravna, v drugih primerih pa ta pristop sproža poplavo argumentov, s katerimi se želi prikazati udeležbo okoljskih NVO v upravnih zadevah le kot formalnost.

V pravni praksi je najpomembnejša odločitev sodišča v prvih letih »zlate dobe« sklep št. 28/1994. (V. 20.) AB madžarskega ustavnega sodišča. V tem sklepu, ki ga okoljski organi imenujejo tudi »temeljni sklep«, je sodišče v madžarsko okoljsko zakonodajo vpeljalo *načelo nenazadovanja*. Sklep določa, da medtem, ko je v primeru drugih vrst ustavnih pravic morda mogoče, da raven varstva niha zaradi sprememb finančnih in drugih sredstev države, pa si v primeru pravice do zdravega okolja država ne sme dovoliti, da bi že doseženo raven varstva zmanjšala. To je zato, ker je škoda v primeru degradacije okolja v večini primerov nepopravljiva, na primer zato, ker po izgubi dela biotske raznovrstnosti izumrle vrste ni več mogoče oživiti. Na podlagi tega in glede na temeljni sklep je madžarsko ustavno sodišče razveljavilo več novih zakonov, ker so zmanjševali obstoječo raven varstva okolja. Vendar pa so madžarski strokovnjaki ustavnega prava[1] opozorili, da je v zadnjem desetletju prakse ustavnega sodišča sklicevanja na sklep št. 28/1994 vse manj.

Sprejetje Aarhuške konvencije o udeležbi javnosti pri odločanju o okoljskih zadevah leta 1998 je na splošno prineslo nov veter v evropsko okoljsko pravo in tudi upravno pravo. Madžarski zakonodajalec pa se je lahko bolj ali manj sprejemljivo zanašal na že obstoječe rezultate določb iz preteklih let o progresivni udeležbi javnosti. Na podlagi tega je bilo navedeno, da je bil prenos Konvencije zaključen, že preden se je sploh lahko začel. Ta izjava ni upoštevala dejstva, da je Aarhuška konvencija zbrala vse pomembne elemente udeležbe javnosti (ki se navadno imenujejo trije stebri konvencije[2]) in jih organizirala v dosleden sistem, v katerem se ti elementi medsebojno dopolnjujejo. Takšen sistem v madžarski okoljski zakonodaji ni bil nikoli vzpostavljen. Pravila o udeležbi javnosti so ostala razpršena v številnih ločenih zakonih, v nekaterih primerih so si celo nasprotovala. Kljub temu bi lahko rekli, da je bilo to obdobje po demokratični tranziciji v državi zlata doba okoljske demokracije. Nosilci odločanja, upravni voditelji ter poslovne interesne skupine pa so kmalu ugotovili, da bi lahko udeležba javnosti močno vplivala na rezultate v njihovih zadevah, z njihovega stališča pogosto v njihovo škodo, in tako se je začelo nazadovanje.

V primerjavi s predhodnim desetletjem so na Madžarskem prva leta 21. stoletja prinesla veliko manj pravne podpore udeležbi javnosti v postopkih odločanja o okolju. Najbolj tipičen primer tega novega trenda je bil leta 2003 zakon CXXVIII. o javnem interesu in razvoju avtocestne mreže v Republiki Madžarski. Zakon je določil poseben postopek odločanja za gradnjo avtocest. Namen tega postopka je bil poenostaviti in pospešiti izdajo okoljskih dovoljenj za najpomembnejša avtocestna gradbišča.

[1] Npr. Attila Gábor Tóth, osebna komunikacija.

[2] Ta popularni pristop pa bi lahko bil nekoliko zavajajoč. Navadno se navajajo trije stebri: dostop do informacij, udeležba javnosti in dostop do pravnega varstva. Ti elementi sistema udeležbe javnosti pa celotnega sistema ne izčrpajo popolnoma. Pravila o izgradnji zmogljivosti (predvsem v členu 3), pomen izrazov (člen 2) in splošna načela (v uvodnem delu) so prav tako pomembni elementi.

The shortcomings of this legislative development are best summarized by the decision ACCC/C/2004/4 of the Aarhus Convention Compliance Committee[3] that was adopted following the deliberation of a complaint lodged by a Hungarian NGO. According to the decision this included:

– reducing the permitting procedure by cutting out the preliminary environmental assessment (scoping) phase for such decisions therefore limiting public participation in the decision-making as a whole,
– providing an insufficient and non-extendable time of 90 days for the decision-making procedure, and therefore failing to allow sufficient time for public participation,
– establishing that the final decision on the road track is taken by a ministerial decree and therefore limiting the possibility of appealing the decision,
– establishing that a first instance decision of an environmental authority can only be appealed within the same authority and that a second instance decision is immediately executable, thus undermining any future judicial appeal procedure and failing to ensure adequate and effective remedies and, in particular, injunctive relief,
– restricting the involvement of environmental authorities in the overall permitting process, in particular, after the decision on the environmental impact.

While the other arguments of the complainants are also substantial, I would like to highlight the third item, namely the resolution of an individual case with a legislative act (a decree) instead of an administrative decision which could have been duly taken to a court for legal remedy. Apart from decreasing access to legal remedies, in my opinion, this solution should also be seen as unconstitutional because of violating the basic principle of separation of State powers: the legislative branch is intruding into the realm of the executive branch excluding a great deal of professional and administrative considerations from the decision-making procedure in order to give preference to certain political and economic interests. Unfortunately, as it was foreseeable, in the following years this legislative methodology for limiting public participation took more room with regard to other types of investments of great economic interest.

Other examples of legislation with clear signs of intention to diminish public participation are the amendments of the 2004 Administrative Procedures Code (hereinafter: Ket.) concerning standing and access to justice. In 2008 the Hungarian Ministry of Justice prepared a draft that aimed at:

– including an additional condition of standing: people whose interests are concerned could have standing only if this concern were “significant”,
– providing standing for those who lived in the vicinity of the planned activity on the affected geographical area as an exception rather than a general rule,
– limiting NGOs right to appeal administrative decisions only if they participated in the first instance case from its very beginning.

3. The possible roles of the Office of the Hungarian Ombudsman for Future Generations (JNO) in ensuring effective public participation

At that time when the Ket. amendment was made public by the Ministry of Justice JNO was already in operation and could successfully lobby against the above first and the third items from the ministry’s draft law. The third one, while it seems quite innocent at the first glance, would have constricted the participation of NGOs dramatically because in practice it is nearly impossible for them to follow and take part in thousands of first instance administrative procedures just for those small number of cases where they are so much discontent with the decisions that they wish to appeal against them. The Ket. project of

[3] See the detailed description of the case and the decision of the Compliance Committee on the home page of www.unece.org under the title ECE/MP.PP/C.1/2005/2 amongst the „Communications from the public”. I have to add that while the Compliance Committee in this occasion failed to accept an unambiguous decision on the failure to properly implement the Convention, the following Meeting of the Parties in Almaty, 2005 declared that Parties should follow the non-retrogression principle in their legislation concerning public participation in environmental decision-making even if the new pieces of legislation are still within the frames of the Convention.

Njegove pomanjkljivosti pa so najbolje povzete v sklepu ACCC/C/2004/4 Odbora za izvajanje Aarhuške konvencije,[3] sprejetem po obravnavi pritožbe, ki jo je vložila madžarska NVO. Sklep je navajal:
– skrajšanje postopka izdaje dovoljenj tako, da se odpravi uvodna okoljska presoja za take odločitve in s tem omeji udeležba javnosti v postopku odločanja v celoti,
– določitev nezadostnega roka 90 dni, ki ga ni mogoče podaljšati, za postopek odločanja, ki tako ne omogoča dovolj časa za udeležbo javnosti,
– določitev, da se končna odločba o avtocestni trasi sprejme z ministrskim odlokom, s tem pa se omejijo možnosti pritožb na odločitev,
– določitev, da se lahko na odločitev prve stopnje okoljskega organa pritoži samo isti organ in da je odločitev druge stopnje izvršljiva takoj, s tem pa so onemogočene kakršne koli prihodnje sodne pritožbe in niso zagotovljena primerna ter učinkovita pravna sredstva, zlasti pa ne sodna prepoved,
– omejitev udeležbe okoljskih organov v celotnem procesu izdaje dovoljenj, zlasti pa po sklepu o vplivu na okolje.

Pritožniki navajajo številne trdne argumente, sam pa bi poudaril tretjo točko, in sicer reševanje posamezne zadeve z zakonskim aktom (odločbo) namesto upravne odločitve, na katero bi se bilo mogoče pritožiti na sodišču. Menim, da bi lahko to rešitev poleg tega, da zmanjšuje dostop do pravnih sredstev, lahko šteli tudi kot neustavno, ker krši temeljna načela ločevanja državnih vej oblasti: zakonodajna oblast vstopa na področje izvršilne oblasti in izključuje velik del strokovnih in upravnih mnenj iz postopka odločanja, da bi postavila nekatere politične in gospodarske interese v ugodnejši položaj. Kot je bilo mogoče predvideti, se je žal v naslednjih letih ta zakonodajna metodologija za omejevanje udeležbe javnosti razširila tudi na druge vrste vlaganj velikega gospodarskega interesa.

Drugi primeri zakonov, v katerih se jasno vidi namen zmanjševanja udeležbe javnosti, so spremembe zakonika o upravnem postopku iz leta 2004 v zvezi z udeležbo in dostopom do pravnega varstva. Leta 2008 je madžarsko ministrstvo za pravosodje pripravilo osnutek z namenom
– vključiti dodaten pogoj za udeležbo: osebe, katerih interesi so zastopani, so bile lahko udeležene samo, če so bili interesi »pomembni«,
– zagotoviti, da je udeležba vseh tistih, ki živijo v bližini načrtovane dejavnosti na prizadetem zemljepisnem območju, bolj izjema kot pravilo,
– omejiti pravico NVO do pritožb zoper upravne sklepe samo na tiste primere, ko so sodelovale v zadevi prve stopnje od samega začetka.

3. Možne vloge urada madžarskega ombudsmana za prihodnje generacije (OPG) pri zagotavljanju učinkovite udeležbe javnosti

Ko je ministrstvo za pravosodje javnosti predstavilo spremembo zakonika o upravnem postopku, je OPG že deloval in je lahko uspešno lobiral proti zgoraj navedenima prvi in tretji točki iz osnutka zakona ministrstva. Tretja točka, ki je na prvi pogled videti neškodljiva, bi dramatično omejila udeležbo NVO, ker je v praksi skoraj nemogoče, da bi lahko sodelovale v tisočih upravnih postopkov prve stopnje samo zaradi tistih maloštevilnih zadev, v katerih so tako nezadovoljne s sklepi, da se želijo proti njim pritožiti. Projekt zakonika o upravnem postopku je bil za OPG pomemben tudi z metodološkega vidika, saj je pokazal, da čeprav izjava ombudsmana ni zavezujoča za zakonodajne ali upravne organe, lahko odbor parlamenta za okolje, nacionalni okoljski svet in številne okoljske NVO oblikujejo široko koalicijo, ki lahko bistveno vpliva na takšne večje zakonodajne postopke, kakršen je bil sprememba zakonika o upravnem postopku.

[3] Natančnejši opis zadeve in sklepa Odbora za izvajanje je na spletni strani www.unece.org pod naslovom ECE/MP.PP/C.1/2005/2, med »Sporočili javnosti«. Dodati moram, da Odbor za izvajanje v tem primeru sicer ni sprejel nedvoumne odločitve o nepravilnem izvajanju konvencije, na naslednjem srečanju pogodbenic v Almaty leta 2005 pa je bilo rečeno, da bi morale pogodbenice upoštevati načelo nenazadovanja v svojih zakonodajah v zvezi z udeležbo javnosti pri okoljskem odločanju tudi v primerih, ko so novi zakoni še v okviru konvencije.

the JNO was also important from the methodological point of view, because it showed that even if the statement of the ombudsman is not binding to any legislative or administrative bodies, a broad coalition could be formed by the Environment Committee of Parliament, the National Environmental Council and several dozens of environmental NGOs that could significantly influence such major decision-making procedures as Ket. amendment was.

In some later parliamentary advocacy works JNO also strived to at least maintain an already existing level of environmental democracy, amongst others in the case of the amendment of the local environmental permitting governmental decree (Governmental Decree No. 358/2008. (XII. 31.)) where the rights of the neighbours to actively participate in the decision-making procedure was significantly trimmed back. Here our position was formally accepted by the Ministry of Economics but the final version of the published decree did not mirror our agreement, hence we referred the issue to the Constitutional Court with a request to annul the decree. Another legislative act where we fought for enhanced public participation was the new Forestry Act (Act XXXVII of 2009). In this matter we could prevent the exclusion of the local communities from certain permitting procedures – again working in coalition with several nature protection NGOs and the Environmental Committee of Parliament.

JNO receives 300 substantial individual complaints a year as an average. The most effective contribution of our office to raising the level of effectiveness of public participation is a careful analysis of these complaints and consistent responding to the need for legal and professional assistance from NGOs. “Learning by doing” is the best methodology in public participation, too. That means if JNO can significantly raise the willingness of the local communities and (especially the grassroots) NGOs and the success rate of their legal cases grows as well, environmental democracy will gain from our work.

Apart from parliamentary advocacy in public participation matters and consistent responding the citizens’ complaints, JNO runs scientific and networking (outreach) activities, too. Our participation in a large number of NGO-organised conferences and other legal and professional discussions amount to a meaningful capacity building program that enables Hungarian environmental NGOs to take part in the administrative decision-making procedures more effectively. Moreover we started a six-year long research project on generation of and access to environmental information whose results, as we hope, will also represent a substantial contribution to environmental democracy.

4. Intergenerational equity – the concept that was behind establishing JNO

Public participation is instrumental in serving the goals of sustainable development first of all because of the bias for the environment of those who live in the vicinity of certain environmentally significant (polluting) activities. JNO is also responsible for supporting environmental protection and hence intergenerational equity. In the closing part, therefore, I would like to broaden the context of our topic, environmental democracy.

Sustainable development is defined by intergenerational equity. We should ensure that the following generations have at least equal access to natural resources and at least the same quality of healthy environment as we enjoy now. We should not forget that future generations are partly us: the requirements of sustainable development are aimed to protect our own personal future, too, i.e. our resources and our health when we are 10-15 years older than today. It is amazingly short-sighted as we overlook our needs in the immediate future, let alone the needs of our children and grandchildren.

V nekaterih primerih zagovarjanja v parlamentu si je OPG tudi prizadeval, da bi ohranil vsaj obstoječo raven okoljske demokracije, med drugim v primeru spremembe odloka o izdaji lokalnih okoljskih dovoljenj (vladni odlok št. 358/2008 (XII. 31)), pri katerem so bile precej okrnjene pravice sosedov do dejavne udeležbe v postopku odločanja. V tem primeru je ministrstvo za gospodarstvo formalno sprejelo naše stališče, vendar končna različica objavljenega odloka našega dogovora ni upoštevala, zato smo zadevo napotili na ustavno sodišče z zahtevo, naj se odlok razveljavi. Drugi zakonodajni akt, pri katerem smo se borili za večjo udeležbo javnosti, je bil novi zakon o gozdarstvu (Zakon XXXVII iz leta 2009). V tem primeru nam je uspelo preprečiti izključitev lokalnih skupnosti iz nekaterih postopkov izdaje dovoljenj – tudi tokrat v sodelovanju z več naravovarstvenimi NVO in z odborom parlamenta za okolje.

OPG prejme letno v povprečju 300 stvarnih individualnih pritožb. Najučinkovitejši prispevek našega urada za dvigovanje stopnje učinkovitosti javne udeležbe je natančna analiza teh pritožb in dosledno odzivanje na potrebe po pravni ter strokovni pomoči iz NVO. Tudi pri udeležbi javnosti je najboljša metodologija učenje z delom. To pomeni, da v primeru, da lahko OPG bistveno poveča pripravljenost lokalnih skupnosti in (zlasti temeljnih) NVO in da se poveča tudi stopnja uspešnosti njihovih pravnih zadev, naše delo prispeva k okoljski demokraciji.

OPG poleg zagovarjanja javne udeležbe v parlamentu in doslednega odgovarjanja na pritožbe državljanov opravlja tudi znanstvene in mrežne (razširjanje) dejavnosti. Naše sodelovanje na številnih konferencah, ki jih organizirajo NVO, ter v drugih pravnih in strokovnih razpravah je pomemben program izgradnje zmogljivosti, ki madžarskim okoljskim NVO omogoča učinkovitejše sodelovanje v upravnih postopkih odločanja. Poleg tega smo začeli šestletni raziskovalni projekt o ustvarjanju in dostopu do okoljskih informacij ter upamo, da bodo tudi njegovi rezultati predstavljali velik prispevek k okoljski demokraciji.

4. Medgeneracijska pravičnost – koncept, na katerem temelji ustanovitev OPG

Udeležba javnosti je nujna predvsem za cilje trajnostnega razvoja, zlasti zaradi vpliva na okolje tistih, ki živijo v bližini nekaterih okoljsko pomembnih dejavnosti (zaradi onesnaževanja). OPG je odgovoren tudi za podporo varstvu okolja in s tem medgeneracijski pravičnosti. V zaključku bi zato želel razširiti okvir naše teme, okoljske demokracije.

Trajnostni razvoj je opredeljen z medgeneracijsko pravičnostjo. Prihodnjim generacijam bi morali zagotoviti vsaj enak dostop do naravnih virov in vsaj enako kakovost zdravega okolja, kot ju imamo zdaj mi. Ne smemo pozabiti, da smo prihodnje generacije deloma tudi sami: cilj zahtev po trajnostnem razvoju je varstvo tudi naše osebne prihodnosti, in sicer naših virov ter našega zdravja, ko bomo 10–15 let starejši kot danes. Neverjetno kratkovidno je, da zanemarjamo svoje potrebe v bližnji prihodnosti, kaj šele potrebe svojih otrok in vnukov.

Ensuring the minimum level of sustainable development has certain obvious conclusions on our social life. We need to accept – even the most successful private entrepreneurs in the new market economies in Eastern Europe – that certain activities at certain locations are not viable anymore. We have to realize that certain problems are much deeper than we thought: for instance such easily neglected issues as noise in the cities or the electrosmog caused by household devices and relay stations might turn out to be real curses in our life. Talking about sustainable development we also have to rearrange the system of constitutional rights: right to life and to a healthy environment must prevail over economic rights or, say, the right to mobility by car or aeroplane. Finally, in the practice, sustainable development requires states to tackle enormous tasks they might not have fully acknowledged yet: they are directly responsible for certain services for public goods, like protection of fresh water reservoirs, ensuring continuous forestation or the minimum genetic variability at certain places are indispensable for our survival. These are the main lessons JNO has learnt in the last two years from the mass of cases, local, regional and national environmental conflicts.

Sustainable development is handled by several professions working for JNO in several ways. Economists, social scientists are ready to offer their respective solutions. Our lawyers naturally suggest that we should create laws that prevent our societies from abusing the available natural resources and polluting the environment with long-lasting, irreversible effects. These laws should contain institutional and procedural guarantees for the implementation of these requirements, including severe sanctions and consistent enforcement programmes. The procedural rules in connection with public participation are amongst the most important guarantees of sustainable development and intergenerational equity.

Zagotavljanje minimalne ravni trajnostnega razvoja ima za naše družbeno življenje nekaj očitnih zaključkov. Sprejeti moramo – tudi najuspešnejši podjetniki v novih tržnih gospodarstvih Vzhodne Evrope –, da nekatere dejavnosti na določenih lokacijah niso več sprejemljive. Zavedati se moramo, da so nekateri problemi globlji, kakor smo si predstavljali: na primer z lahkoto zanemarjeno vprašanje hrupa v mestih ali elektrosmoga, ki ga povzročajo gospodinjski aparati in relejne postaje, kar bi na primer lahko postalo pravo prekletstvo v našem življenju. Pri obravnavanju trajnostnega razvoja moramo tudi preurediti sistem ustavnih pravic: pravica do življenja in zdravega okolja mora imeti prednost pred gospodarskimi pravicami ali na primer pravico do mobilnosti z avtomobilom ali letalom. Trajnostni razvoj pa v praksi zahteva, da se države spopadejo z ogromnimi nalogami, ki jih mogoče še niso v celoti prepoznale: neposredno so odgovorne za nekatere storitve za javne dobrine, kot je varstvo sladkovodnih virov, zagotavljanje stalnega pogozdovanja ali minimalne genetske raznolikosti na nekaterih mestih, ki so nepogrešljive za naše preživetje. To so glavne lekcije, ki se jih je OPG naučil v zadnjih dveh letih iz mase zadev v lokalnih, regionalnih in nacionalnih okoljskih sporih.

S trajnostnim razvojem se ukvarjajo številni strokovnjaki, ki na različne načine sodelujejo z OPG. Gospodarstveniki in družboslovci so pripravljeni ponuditi svoje rešitve. Naši pravniki seveda predlagajo, da moramo ustvariti zakone, ki bodo našim družbam preprečili zlorabo razpoložljivih naravnih virov in onesnaževanje okolja z dolgotrajnimi, nepopravljivimi posledicami. Taki zakoni bi morali vsebovati institucionalna in proceduralna jamstva za izvajanje teh zahtev, vključno s hudimi kaznimi in doslednimi programi izvajanja. Proceduralna pravila v zvezi z udeležbo javnosti spadajo med najpomembnejša jamstva za trajnostni razvoj in medgeneracijsko pravičnost.

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The LUA of Styria and its Contribution to Public Participation in Environmental Matter

Abstract
In 1988 the state government of the federal state of Styria passed a law with which the organization “Umweltanwalt” was founded. The “Umweltanwalt/LUA” has two main duties: He/she has standing in administrative proceedings affecting the environment and he/she has to care about claimed injuries of essential environmental matters. In connection with this, environmental matter means the protection of nature and environment.
Now you can ask if the LUA means at least an indirect possibility of public participation in environmental matters, e.g. access to information about the environment, opportunities for participation in administrative proceedings in connection with environmental matters or access to legal remedies. This would not be sufficient and therefore the Austrian legislator has passed several laws to fulfill the demands which the Aarhus Convention makes to the possibilities of public participation.
In 1993 Austria´s government has passed a law about the access to information about the environment and the public participation in administrative proceedings in connection with environmental matters was improved, but there are still requirements to improve the access of the public to courts in environmental right.

Keywords: standing, claimed injuries, indirect possibility of public participation, not sufficient

In the late eighties of the 20th century, the federal state of Styria was confronted with some serious environmental problems: The river Mur was strongly soiled by raw sewages of great industrial plants, the woods were endangered by acid rain and the lead concentration in the ground was so enormous, that the consumption of fruits and vegetables harvested next to motorways was not recommended. Because of these problems the civil society was very much interested in the protection of the environment. Citizens have vehemently called in environmental protection regulations for the industry. They also forced the politicians to react.

In 1988 the state government of the federal state of Styria passed a law about institutions for the protection of the environment. With this law also the organization “Umweltanwalt” was founded. Into regard on the legal basis the Umweltanwalt has standing in administrative proceedings, which have their focus in the avoidance of a constant and considerable impairment of man and the environment. In such decision-making procedures, the “Umweltanwalt” also has the access to legal remedies. Beside this, the “Umweltanwalt” has to care about claimed injuries of essential environmental matters and he/she has to take part in legislation processes.

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Povzetek
Leta 1988 je državna vlada zvezne dežele Štajerske sprejela zakon, s katerim je ustanovila organizacijo »Umweltanwalt«. Dve glavni dolžnosti organizacije »Umweltanwalt/LUA« sta: Lahko je stranka v upravnih postopkih, ki posegajo v okolje, in poskrbeti mora za prijave škode v bistvenih okoljskih zadevah. V zvezi s tem okoljska zadeva pomeni varstvo narave in okolja.
Zdaj lahko zastavite vprašanje, ali LUA pomeni vsaj posredno možnost za udeležbo javnosti v okoljskih zadevah, na primer dostop do okoljskih informacij, možnosti za udeležbo v upravnih postopkih v zvezi z okoljskimi zadevami ali dostop do pravnega varstva. Ker to še ne bi zadostovalo, je avstrijski zakonodajalec sprejel več zakonov, da bi izpolnil zahteve, s katerimi Aarhuška konvencija omogoča udeležbo javnosti.
Leta 1993 je avstrijska vlada sprejela zakon o dostopu do okoljskih informacij in udeležba javnosti v upravnih postopkih, ki se nanašajo na okoljske zadeve, se je izboljšala, še vedno pa ostajajo zahteve za izboljšanje dostopa javnosti do pravnega varstva glede okoljskih pravic.

Ključne besede: stranka v postopku, prijava škode, posredna možnost za udeležbo javnosti, nezadosten

Konec osemdesetih let 20. stoletja se je zvezna dežela Štajerska soočala z nekaterimi resnimi okoljskimi problemi: Reka Mura je bila močno onesnažena z neprečiščenimi odplakami velikih industrijskih obratov, gozdove je ogrožal kisli dež, koncentracija svinca v tleh je bila tako velika, da so odsvetovali uživanje sadja in zelenjave, pridelane v bližini avtocest. Zaradi teh problemov se je civilna družba zelo zanimala za varstvo okolja. Državljani so odločno zahtevali predpise s področja varstva okolja za industrijo. Zahtevali so tudi odziv politikov.

Leta 1988 je državna vlada zvezne dežele Štajerske sprejela zakon o ustanovah za varstvo okolja. S tem zakonom je bila ustanovljena tudi organizacija »Umweltanwalt«. Glede na pravno podlago je Umweltanwalt lahko stranka v upravnih postopkih, ki se osredotočajo na izogibanje stalnemu in bistvenemu poslabšanju razmer za človeka in okolje. V takih postopkih odločanja ima »Umweltanwalt« prav tako dostop do pravnega varstva. Poleg tega mora »Umweltanwalt« poskrbeti za prijavo škode v bistvenih okoljskih zadevah in sodelovati v zakonodajnih postopkih.

During the first years the “Umweltanwalt” only was allowed to take part in administrative proceedings which fall in the responsibility of the federal state of Styria, e.g. the conservation of nature, game laws, zoning law etc. After Austria´s entry into the European Union, they had to adapt Austrian law and therefore the “Umweltanwalt” also got standing in administrative proceedings which fall in the responsibility of the republic of Austria (e.g. environmental assessment – EA, waste management etc.)

In 2005 I was appointed “Umweltanwältin”. In this position I am part of the “Amt der Stmk. Landesregierung”, which is the administrative office of the government of the federal state of Styria. My team has seven members, among this two jurists and a biologist. Into regard to the legal basis I am allowed to use the administrative office of the government to fulfill my duties. All employees of the government and all employees in local authorities have to answer my questions and must give me the informations I ask for. By this way I do have access to information in administrative proceedings affecting the environment. As I told above, this ruling is in force only for administrative proceedings which fall in the responsibility of the federal state of Styria. In all other cases and especially by handling claimed injuries of essential environmental matters I have to use the possibilities provided by the “UIG – Umweltinformationsgesetz” (a law about the access to information about the environment).

I have the right to lodge an appeal and to go to the high court in all proceedings I take part.

Decision-making procedures affecting the environment are not only (administrative) proceedings. If they want to pass a new law in environmental issues I have the right to make a statement, but if they do not follow my opinion, I have no chance to force them.
This conference is entitled “Public participation in environmental matters – theory and practice”; therefore the focus should also be on the public and citizens´ participation in environmental decision making procedures, access to information and the right to lodge an appeal.

The legal basis for all considerations in Austria/Styria about the public participation in environmental matters is the Aarhus Convention. It has three important pillars: access to information about the environment, opportunities for participation in decision-making processes and the access to legal remedies. As I told above, the “Umweltanwalt” is part of the state administration and he/she is contact person for the population in environmental matters. So you can ask if the “Umweltanwalt” is part of the public according to the Aarhus Convention and his/her participation in proceedings, his/her possibilities of access to information about the environment and his/her right to lodge an appeal, fulfills the demands which the Aarhus Convention makes to the possibilities of public participation. The answer must be NO: although the “Umweltanwalt” looks after public interests, he doesn’t have any representation function opposite the particular interests of the individual members of the civil society. Furthermore a certain proximity to the state administration cannot be denied. So the establishment of the organization “Umweltanwalt” alone does not fulfill the demands the Aarhus convention makes to the possibilities of access to information about the environment, opportunities for participation in decision-making processes and the access to legal remedies.

To transfer the duties to ensure the access to information about the environment, in Austria a law was passed in 1993 – the “UIG”. It ensures the comprehensive access to all information about the condition of the environmental components, about factors which have an effect on environmental components, corresponding measures including administrative proceedings, and the condition of the human health. In principle, all informations regarding this, which the state administration has, are accessible. If the council denies the information, it has to justify the refusal. Against the negative reply, you have legal remedies. I am also using this possibility of access to information about the environment, because I can lodge an appeal, if I do not get the information I ask for.

In regard to the demands the Aarhus convention makes to the opportunities for participation in decision-making processes in environmental matters Austrian laws were improved, but there are still requirements to improve the access of the public to courts in environmental right.

V prvih letih je »Umweltanwalt« lahko sodeloval le v upravnih postopkih, za katere je pristojna zvezna dežela Štajerska, na primer varstvo narave, zakoni o divjadi, zakon o urejanju prostora itd. Po vstopu Avstrije v Evropsko unijo je bilo treba avstrijsko zakonodajo prilagoditi in tako je »Umweltanwalt« postal stranka tudi v upravnih postopkih, za katere je odgovorna Republika Avstrija (na primer okoljska ocena, ravnanje z odpadki itd.)

Leta 2005 sem bila imenovana za »okoljsko zagovornico (Umweltanwältin)«. Na tem položaju sem del »Amt der Stmk. Landesregierung«, ki je upravni urad vlade zvezne dežele Štajerske. V moji skupini je sedem članov, med njimi sta dva pravnika in biolog. Kar se tiče pravne podlage, lahko za izvajanje svojih dolžnosti uporabljam vladni upravni urad. Vsi vladni uslužbenci in vsi uslužbenci lokalnih organov oblasti morajo odgovarjati na moja vprašanja in mi posredovati informacije, za katere zaprosim. Na tak način imam dostop do informacij v upravnih postopkih, ki posegajo v okolje. Kot sem že omenila, ta odločitev velja le za upravne postopke, ki so v pristojnosti zvezne dežele Štajerske. V vseh drugih primerih in zlasti pri obravnavi prijave škode v bistvenih okoljskih zadevah pa moram uporabiti možnosti, ki jih zagotavlja »UIG – Umweltinformationsgesetz« (zakon o dostopu do okoljskih informacij).

Pravico imam vložiti ugovor in sprožiti vse postopke, v katerih sodelujem, na višjem sodišču.

Postopki odločanja, ki posegajo v okolje, niso samo (upravni) sodni postopki. Če hočejo sprejeti nov zakon o okoljskih vprašanjih, imam pravico dati izjavo, a če mojega mnenja ne upoštevajo, nimam nobene možnosti, da jih k temu prisilim.

Naslov te konference je »Udeležba javnosti v okoljskih zadevah – teorija in praksa«, zato bi se morali osredotočiti tudi na udeležbo javnosti in državljanov v postopkih odločanja o okoljskih zadevah, dostopu do informacij in pravico do vložitve ugovora.
Pravna podlaga za vse obravnave v Avstriji in Štajerski o udeležbi javnosti v okoljskih zadevah je Aarhuška konvencija. Obsega tri pomembne stebre: dostop do okoljskih informacij, možnost za udeležbo v postopkih odločanja in dostop do pravnega varstva. Kot sem že omenila, je »Umweltanwalt« član državne uprave in kontaktna oseba za prebivalstvo v okoljskih zadevah. Zastavite lahko torej vprašanje, ali je »Umweltanwalt« član javnosti v skladu z Aarhuško konvencijo in ali njegova udeležba v postopkih, možnosti za dostop do okoljskih informacij in pravica do vložitve ugovora izpolnjujejo zahteve Aarhuške konvencije o možnostih za udeležbo javnosti, in odgovor mora biti NE: čeprav »Umweltanwalt« skrbi za javne interese, nima nobene predstavniške funkcije nasproti posebnim interesom posameznih članov civilne družbe. Poleg tega ni mogoče zanikati določene povezanosti z državno upravo. Sama ustanovitev organizacije »Umweltanwalt« torej ne izpolnjuje zahtev Aarhuške konvencije glede možnosti za dostop do okoljskih informacij, možnostih za udeležbo v postopkih odločanja in dostopa do pravnega varstva.

Da bi prenesla dolžnosti o zagotavljanju dostopa do okoljskih informacij, je Avstrija leta 1993 sprejela zakon »UIG«. Ta zagotavlja celovit dostop do vseh informacij o stanju delov okolja, o dejavnikih, ki vplivajo na dele okolja, ustreznih ukrepov skupaj z upravnimi postopki in informacij o razmerah na področju zdravja ljudi. Načeloma so dostopne vse informacije s tega področja, ki jih ima državna uprava. Če Svet informacije zavrne, mora navesti razloge za zavrnitev. V primeru negativnega odgovora imate pravico do pravnega varstva. Tudi jaz uporabljam to možnost dostopa do okoljskih informacij, kajti imam pravico do vložitve ugovora, če ne dobim želene informacije.

Avstrijski zakoni so se izboljšali glede zahtev Aarhuške konvencije o možnostih za udeležbo v postopkih odločanja o okoljskih zadevah, še vedno pa ostajajo zahteve po izboljšanju dostopa javnosti do pravnega varstva glede okoljskih pravic.

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Public Participation Under the Aarhus Convention

Abstract
The paper aims to present the main legal issues related to implementation of the public participation provisions of the Aarhus Convention. To this end it briefly presents the structure of the Aarhus Convention and the scope and legal nature of its relevant provisions. This is followed by the presentation of some main horizontal issues concerning the entire public participation pillar i.e requirements for providing "early public participation" and "reasonable time-frames". Finally, the paper presents briefly the main elements of the public participation procedure as required by the Convention, namely: notification, provision of relevant information, possibility for submitting comments, taking due account of comments and informing the public about the decision.
The paper is focused on selected topics, mostly related to issues brought to the attention of the Aarhus Compliance Committee. The discussion is therefore illustrated by, and sometimes even based on, the relevant opinions of the Compliance Committee. The paper, due to the limited space available, does not attempt to provide a comprehensive coverage of all the issues potentially involved.

Keywords: Public participation, Environment, Aarhus Convention, Aarhus Compliance Committee

I. Aarhus Convention - structure of the Convention and its 3 pillars and monitoring compliance mechanism

The Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters Convention was adopted at the Fourth Ministerial 'Environment for Europe' Conference, held in the Danish city of Aarhus in June 1998, where it was signed within the framework of UN Economic Commission for Europe (UNECE). Aarhus Convention represents the first binding international instrument attempting to comprehensively and exclusively address issues of citizens' environmental rights[1]. The Convention rests on three pillars, each of which has its precedent in the 1992 declaration - access to information (Articles 4 and 5), public participation in decision-making (Articles 6-8), and access to justice (Article 9). Besides, the objective in Article 1 and the Preamble, as well as Article 2 (definitions) and Article 3 (General Provisions) provide the background to all three pillars.The provisions of the Convention provide a benchmark against which the entire framework for public participation or particular instances of its operation in practice can be assessed. The Convention offers a compliance procedure to trigger such assessment and a special body (Compliance Committee) that is specifically established for the purpose.[2]

[1] See J. Jendroska and S. Stec, The Aarhus Convention: Towards a New Era in Environmental Democracy, Environmental Liability, Vol 9 Issue 3, June 2001, p. 148.
[2] See for example V. Koester, Review of Compliance under the Aarhus Convention: a rather Unique Compliance Mechanism, Journal for European Environmental & Planning Law, Vol 2 Number 1 (JEEPL 1/2005)

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Sodelovanje javnosti v skladu z Aarhuško konvencijo

Povzetek
Namen referata je predstaviti glavna pravna vprašanja, ki se nanašajo na izvajanje določb Aarhuške konvencije o udeležbi javnosti. V ta namen na kratko predstavi sestavo Aarhuške konvencije, njeno področje uporabe in pravno naravo ustreznih določb. Sledi predstavitev nekaterih glavnih horizontalnih vprašanj, ki zadevajo steber udeležbe celotne javnosti, to je zahtev o zagotavljanju »udeležbe javnosti že na začetku odločanja« in »ustreznih časovnih obdobij«. Na koncu referat na kratko predstavi glavne elemente postopka udeležbe javnosti, kot jih zahteva Konvencija, in sicer obveščanje, zagotavljanje ustreznih informacij, možnost za predložitev pripomb, ustrezno upoštevanje pripomb in obveščanje javnosti o odločitvi.
Referat se osredotoča na izbrane teme, ki se nanašajo predvsem na vprašanja, na katera je bil opozorjen Odbor za izvajanje Aarhuške konvencije. Razprava je zato ponazorjena z ustreznimi mnenji Odbora za izvajanje, ki so včasih celo njen temelj. Zaradi omejenega prostora, ki je na voljo, referat ne skuša izčrpno obravnavati vseh potencialno vključenih vprašanj.

Ključne besede: Udeležba javnosti, okolje, Aarhuška konvencija, Odbor za izvajanje Aarhuške konvencije

I. Aarhuška konvencija – sestava konvencije in njenih treh stebrov ter mehanizem za pregled skladnosti

Konvencija o dostopu do informacij, udeležbi javnosti pri odločanju in dostopu do pravnega varstva v okoljskih zadevah je bila sprejeta na četrti ministrski konferenci »Okolje za Evropo« v Aarhusu na Danskem junija 1998, kjer je bila podpisana v okviru Ekonomske komisije OZN za Evropo (UNECE). Aarhuška konvencija je prvi zavezujoči mednarodni instrument, ki skuša izčrpno in izključno obravnavati vprašanja pravic državljanov v okoljskih zadevah.[1] Konvencija temelji na treh stebrih, od katerih ima vsak svoj precedens v izjavi iz leta 1992 – dostop do informacij (4. in 5. člen), udeležba javnosti pri odločanju (6.–8. člen) in dostop do pravnega varstva (9. člen). Ozadje vseh treh stebrov so prav tako cilj iz 1. člena, preambula in 2. člen (pomen izrazov) ter 3. člen (splošne določbe). Določbe Konvencije zagotavljajo merilo za ocenjevanje celotnega okvira udeležbe javnosti ali posameznih primerov njenega delovanja v praksi. Konvencija omogoča postopek za izpolnjevanje skladnosti, s katerim se sproži ocenjevanje, in poseben organ (Odbor za izvajanje), ustanovljen izrecno za to.[2]

[1] Glej J. Jendroska in S. Stec, Aarhuška konvencija: Towards a New Era in Environmental Democracy, Environmental Liability, Zvezek 9, 3. izdaja, junij 2001, str. 148.
[2] Glej na primer V. Koester, Review of Compliance under the Aarhus Convention: a rather Unique Compliance Mechanism, Journal for European Environmental & Planning Law, Zvezek 2, št. 1 (JEEPL 1/2005).

II. Public participation pillar - legal nature of obligations and scope of activities and decisions covered

The most detailed legal regime of public participation is envisaged in Article 6, concerned with public participation in decision-making on specific activities. The Convention does not define the concept of "decisions of specific activities". Moreover, the scope of application of the provisions of Article 6 is expressed in twofold way. First of all, each Party shall apply the provisions of Article 6 to 'decisions on whether to permit proposed activities listed in Annex I' (Art. 6.1a), but also 'shall, in accordance with its national law' apply these provisions to 'decisions on proposed activities not listed in Annex I which may have a significant effect on the environment' (Art.6.1b).

Article 7 covers public participation concerning plans, programs and policies relating to the environment. It includes two distinct legal regimes. The part concerning plans and programs is quite elaborated and all the respective obligations are expressed by the term "shall". There is no doubt that they have a binding legal nature although the scope of legal obligations is not that clear.

The legal scheme for policies is rather modest. The Conventions requires that "to the extent appropriate, each Party shall endeavour to provide opportunities for public participation in the preparation of policies relating to the environment". Despite using the word "shall" the entire obligation is designed in a rather weak form. Parties are requested only to 'endeavour' and only 'to the extent appropriate'. These expressions are characteristic for the so called 'soft law' obligations.

Article 8 covers public participation during the preparation of executive regulations and/or generally applicable legally binding normative instruments. It is much more elaborated, as compared with the obligation concerning policies, in terms of providing some procedural details. The nature of the basic legal obligation included in the first sentence of Article 8 is however very similar to the obligation concerning policies. It requires that 'each Party shall strive to promote effective public participation' which means that despite using the word 'shall' the entire obligation is designed in a rather weak form.

III. General rules

Requirement for providing early public participation

Article 6.4 stipulates that 'Each Party shall provide for early public participation, when all options are open and effective public participation can take place'. This requirement applies also to plans and programmes because Article 7, when making a cross-reference to Article 6, clearly mentions this provision to be applied. Article 8 includes a similar provision albeit in a rather recommendatory form and using slightly different language ('at an appropriate stage' and 'while options are still open').

In most countries any decision-making related to the environment consist of a number of consecutive decisions having different legal nature. Thus, the key issue in discussing the legal meaning of the obligation to provide 'early public participation' is first of all whether this requirement is related to the entire chain of decision-making or rather to each and every of the decisions constituting consecutive stages of this chain, or maybe to both. The particular issue here is whether this obligation requires that at each stage of decision-making all options should still be open. The Compliance Committee adressed the above questions on several occasions.

II. Steber udeležbe javnosti – pravna narava obveznosti ter obseg dejavnosti in vključenih odločitev

Podroben pravni režim, ki zadeva udeležbo javnosti pri odločanju o posebnih dejavnostih, je predstavljen v 6. členu. Konvencija ne opredeljuje pojma »odločitve o posebnih dejavnostih«. Poleg tega ponazarja obseg uporabe določb iz 6. člena na dvojen način. Najprej vsaka pogodbenica izvaja določbe iz 6. člena pri »odločanju o dovoljenju za predlagane dejavnosti, naštete v Prilogi I« (čl. 6.1a), vendar »v skladu s svojo notranjo zakonodajo« uporablja določbe tega člena tudi »pri odločanju o predlaganih dejavnostih, ki niso naštete v Prilogi I in bi lahko pomembno vplivale na okolje« (čl. 6.1b).

Člen 7 vključuje udeležbo javnosti pri načrtih, programih in politikah v zvezi z okoljem. Vključuje dva ločena pravna režima. Del, ki zadeva načrte in programe, je dokaj podrobno izdelan in vse ustrezne obveznosti so jasno izražene z uporabo besedice »shall« v angleški različici. Nobenega dvoma ni, da so pravno zavezujoče, čeprav področje uporabe pravnih obveznosti ni popolnoma jasno.

Pravni načrt politik je razmeroma skromen. Konvencija določa, da »si pogodbenica primerno prizadeva zagotoviti možnosti za udeležbo javnosti pri pripravi politik, ki se nanašajo na okolje«. Kljub uporabi besedice »shall« v angleški različici, je celotna obveznost izražena precej medlo. Od pogodbenic se zahteva samo, da »si prizadevajo«, in še to le »primerno«. Ti izrazi so značilni za tako imenovane »nezavezujoče« obveznosti.

Člen 8 obsega udeležbo javnosti pri pripravi izvršilnih predpisov in/ali splošno veljavnih pravno obvezujočih normativnih aktov. Člen je v primerjavi z obveznostjo, ki zadeva politike, precej bolj izdelan glede zagotavljanja nekaterih postopkovnih podrobnosti. Narava osnovne pravne obveznosti v prvem stavku 8. člena je zelo podobna obveznosti, ki se nanaša na politike. Ta zahteva, da »si pogodbenica prizadeva spodbuditi učinkovito udeležbo javnosti«, kar pomeni, da je kljub uporabi besedice »shall« v angleški različici celotna obveznost izražena precej neizrazito.

III. Splošna pravila

Zahteva o udeležbi javnosti že na začetku odločanja

Člen 6.4 določa, da »pogodbenica zagotovi udeležbo javnosti že na začetku odločanja, ko so še vse možnosti odprte in lahko javnost učinkovito sodeluje«. Ta zahteva velja tudi za načrte in programe, kajti 7. člen v sklicevanju na 6. člen jasno navaja zahtevo po uporabi te določbe. Člen 8 vključuje podobno določbo, čeprav izraženo bolj kot priporočilo, in za to uporablja nekoliko drugačen jezik (»na ustrezni stopnji« in »ko so možnosti še odprte«).

V večini držav je vsako odločanje, ki se nanaša na okolje, sestavljeno iz številnih zaporednih odločitev, ki imajo različno pravno naravo. Tako je glavno vprašanje v razpravi o pravnem pomenu obveznosti o zagotavljanju »udeležbe javnosti že na začetku odločanja« najprej, ali se ta zahteva nanaša na celotno verigo odločanja ali na vsako posamezno odločitev, ki predstavlja zaporedno stopnjo te verige, ali mogoče na oboje. Tukaj se postavlja vprašanje, ali ta zahteva določa, da morajo biti na vsaki stopnji odločanja odprte še vse možnosti. Odbor za izvajanje je zgoraj navedena vprašanja obravnaval ob številnih priložnostih.

In case ACC/C/16/Lithuania the Committee made a general opinion on the issue stating that 'The requirement for "early public participation when all options are open" should be seen first of all within a concept of tiered decision-making whereby at each stage of decision-making certain options are discussed and selected with the participation of the public and each consecutive stage of decision-making addresses only the issues within the option already selected at the preceding stage.'[3]

Furthermore, in the same case the Committee made it clear that '...taking into account the particular needs of a given country and the subject matter of the decision-making, each Party has a certain discretion as to which range of options is to be discussed at each stage of the decision-making. Such stages may involve various consecutive strategic decisions under article 7 of the Convention (policies, plans and programs) and various individual decisions under article 6 of the Convention authorizing the basic parameters and location of a specific activity, its technical design, and finally its technological details...'[4].

The key issue when examining compliance with the obligation to provide 'early public participation' is then to check if public participation was provided at the previous stages. In the Lithuanian case the Committe noted that 'Lithuanian law envisages public participation in decision-making on plans and programmes. With this in mind and considering the structure of the consecutive decision-making and the legal effect of the different decisions in Lithuania, the fact that certain decisions took place when certain options were already decided upon (e.g. landfill or waste incinerator) and when only two possible locations were discussed does not seem to exceed the above limits of discretion'[5].

Requirement for providing reasonable time-frames

Article 6. 3 of the Convention requires that the 'public participation procedures shall include reasonable time-frames for the different phases, allowing sufficient time for informing the public in accordance with paragraph 2 above and for the public to prepare and participate effectively during the environmental decision-making'. This requirement applies also to palns and programmes beacuse Article 7 when making a cross-reference to Article 6 clearly mentions this provision to be aplied. Article 8 includes a similar provision albeit in a rather recomendatory form i using slightly different langauge ('sufficient' insted of 'reasonable' time-frames).

As noted by the Compliance Committee in its Report to the Meeting of the Parties of the Aarhus Convention held in Riga in 2008: 'there are considerable differences in time frames provided in national legal frameworks for the public to get acquainted with the documentation and to submit comments. The requirement to provide 'reasonable time frames' in article 6, paragraph 3, implies that the public should have sufficient time to get acquainted with the documentation and to submit comments taking into account, inter alia, the nature, complexity and size of the proposed activity. Thus a time frame which may be reasonable for a small simple project with only local impact may well not be reasonable in case of a major complex project. [6].

While the above interpretation of the Compliance Committee seems to be suggesting that the time-frames should be differentatied depending on the characteristics of the procedure in question - it does not however make it clear whether such differentiation should be categorical or on a ad hoc basis. In most EU countries the time-frames are fixed and the only diferentiation (if any) is usually between the large projects with bigger impact (usually Anex I project according to EIA Directive) and smaller projects with local impact (usually Anex I project according to EIA Directive). In relation to plans and programmes usally the time-frames are much longer.

3 ECE/MP.PP/2008/5/Add.6, para 71
4 ibidem
5 ibidem para 72
6 General report para 60

V primeru ACC/C/16/Litva je Odbor izrazil splošno mnenje glede tega vprašanja v izjavi »Zahtevo po 'udeležbi javnosti že na začetku odločanja, ko so vse možnosti še odprte,' je treba naprej obravnavati po načelu stopenjskega odločanja, pri katerem bi bila na vsaki stopnji odločanja javnost udeležena pri obravnavi in izbiri določenih možnosti ter bi se na vsaki zaporedni stopnji odločanja obravnavala le vprašanja znotraj možnosti, ki je bila že izbrana na predhodni stopnji.«[3]

Odbor je v istem primeru poleg tega pojasnil, da »... ob upoštevanju posebnih potreb določene države in predmeta odločanja pogodbenica lahko sama presoja o naboru možnosti, ki jih bo obravnavala na posamezni stopnji odločanja. Take stopnje lahko vključujejo različne zaporedne strateške odločitve v skladu s 7. členom Konvencije (politike, načrte in programe) in različne posamične odločitve v skladu s 6. členom Konvencije, ki dovoljujejo osnovne parametre in kraj določene dejavnosti, njene tehnične značilnosti in tehnološke podrobnosti ...«.[4]

Ključno vprašanje pri pregledu skladnosti z obveznostjo o zagotavljanju »udeležbe javnosti že na začetku odločanja« je torej preveriti, ali je bila udeležba javnosti zagotovljena na predhodnih stopnjah. V primeru Litve je Odbor ugotovil, da »litovska zakonodaja predvideva udeležbo javnosti pri odločanju o načrtih in programih. Ob upoštevanju tega in sestave zaporednega odločanja ter pravnega učinka različnih odločitev v Litvi se zdi, da dejstvo, da so bile nekatere odločitve sprejete, potem ko so bile določene možnosti že izbrane (npr. odlagališče ali sežigalnice odpadkov), in je razprava potekala le o dveh možnih lokacijah, ne presega zgoraj navedenih omejitev pristojnosti.«[5]

Zahteva o zagotavljanju ustreznih časovnih obdobij

Člen 6.3 Konvencije določa, da je treba zagotoviti »ustrezno časovno obdobje za posamezne faze pri udeležbi javnosti, da je tako na voljo dovolj časa za obveščanje javnosti v skladu z drugim odstavkom tega člena ter da se javnost lahko pripravi in učinkovito sodeluje pri okoljskem odločanju«. Ta zahteva velja tudi za načrte in programe, kajti 7. člen v sklicevanju na 6. člen jasno navaja zahtevo po uporabi te določbe. Člen 8 vključuje podobno določbo, čeprav izraženo bolj kot priporočilo in z uporabo malce drugačnega jezika (»dovolj dolga«, namesto »ustrezna« časovna obdobja).

Odbor za izvajanje je v svojem poročilu na sestanku pogodbenic Aarhuške konvencije v Rigi leta 2008 ugotovil: »V časovnih obdobjih, ki so v državnih zakonskih okvirih predvideni za seznanitev javnosti z dokumentacijo in predložitev pripomb, obstajajo precejšnje razlike. Zahteva o zagotovitvi 'ustreznega časovnega obdobja' v tretjem odstavku 6. člena pomeni, da mora imeti javnost na voljo dovolj časa, da se seznani z dokumentacijo in predloži pripombe, pri čemer se upoštevajo med drugim narava, zahtevnost in obseg predlagane dejavnosti. Časovno obdobje, ki je sicer lahko ustrezno za majhen, preprost projekt, ki ima le lokalni vpliv, morda ni primerno za večji, zahtevnejši projekt.[6]

Čeprav se zdi, da Odbor za izvajanje v zgornji razlagi predlaga, da bi bilo treba časovna obdobja razlikovati glede na lastnosti zadevnega postopka – ne pojasni, ali naj bi bilo tako razlikovanje kategorično ali na ad hoc podlagi. V večini držav EU so časovna obdobja določena, do (morebitnih) razlik po navadi prihaja med velikimi projekti z velikim vplivom (običajno projekt iz Priloge I po direktivi o PVO) in manjšimi projekti z lokalnim vplivom (navadno projekt iz Priloge I po direktivi o PVO). Časovna obdobja, ki se nanašajo na načrte in programe, so navadno precej daljša.

[3] EKE/MP.PP/2008/5/Add.6, 71. odstavek.
[4] Ibidem.
[5] Ibidem. 72. odstavek
[6] Splošno poročilo, 60. odstavek.

Bearing in mind that the time-frames are usually fixed alredy in the legislation, a number of factors have decisie role in making them 'reasonable' or 'not reasonable'. The first and most obvious such factor is the number of days fixed for public participation.

In case ACCC/C/16 Lithuania concerning decision-making on establishment of a landfill in Kazokiskes, the Committee stated that the '"ime frame of only 10 working days, set out in the Lithuanian EIA Law, for getting acquainted with the documentation, including EIA report, and for preparing to participate in the decision-making process concerning a major landfill, does not meet the requirement of reasonable time frames in article 6, paragraph 3." While the time span of 10 days seems to be at the lower level of the spectrum (in fact below the limit of being 'reasonable' in the view of the Committee) quite another approach was revealed on the occasion of another case. In case ACCC/22/ France the Committee was convinced that the provision of 'a period of approximately six weeks for the public to inspect the documents and prepare itself for the public inquiry' in order to 'to exercise its rights under article 6, paragraph 6" and provision of "45 days for public participation and for the public to submit comments, information, analyses or opinions relevant to the proposed activity' under Article 6 paragraph 7 'in this case meet the requirements of these provisions in connection with article 6, paragraph 3, of the Convention'.

The difference between the two above examples is not only in the number of days envisaged for public participation but also in the fact that in the above quoted French approach to setting the time-frames is not only sufficient time span but also a clear indication of the period of inspecting the documents and period for commenting[7]. The Convention does not clearly require such a differentiation but it seems to be very appropriate. In many countries however, the time-frame set for the commenting includes the time-frame for inspecting the relevant documentation.

Another important issue is the approach to setting the initial day from which the time-frame (whether fixed or set individually) is to be calculated. In many countries it is deemed to start immediately following the public notice. Here the problem arises in situation in which the law requires several diferent means of making a public notice. For example in Poland, where this is the case, usually a notice on a notice board in the office of public authorities as well as a notice on their webpage, are both being put earlier than announcements in the vicinity of the location of the project in question and in the press. In this situation the courts require that the time-frames correspond to different dates of the notice.[8] Usually the initial date of the time-frame (which for projects is fixed at 21-days) is set to allow about a week to make sure the notice is published in all the methods required by the law. This practice may compensate partially the fixed (and rather short indeed in case of more complicated projects) the 21-days time frame envisaged by Polish law for both inspecting the documents and submitting comments.

Yet another issue is the very timing of the public participation. There are certain periods in public life which are traditionally considered as holidays and not much is expected to happen. In most of EU countries this is August and Christmas time (the period between 22 December and 6 January is often considered as Christmas Holiday Season despite the fact that officially many offices work during that time). One can expect that making a public notice on 22 December setting the 3 weeks time-frame for public participation with an immediate starting date would probably be not considered reasonable regardless of how complicated the project is because it would not allow the public to prepare and participate effectively.

[7] Without entering into discussion about the other features of the French legal framework of public participation which is criticized by French NGOs and academics

[8] IV SA/Wa 442/06

Če upoštevamo, da so časovna obdobja po navadi že zakonsko določena, številni dejavniki odločilno vplivajo na to, ali so ta obdobja »ustrezna« ali »neustrezna«. Prvi in najočitnejši dejavnik je število dni, določenih za udeležbo javnosti.

V primeru ACCC/C/16 Litva, ki zadeva odločanje o uvedbi odlagališča v kraju Kazokiskes, je Odbor poudaril, da »časovno obdobje samo desetih delovnih dni, ki ga litovski zakon o VPO določa za seznanitev z dokumentacijo, vključno s poročilom VPO, in za pripravo na udeležbo v postopku odločanja o velikem odlagališču, ne izpolnjuje zahteve o ustreznem časovnem obdobju iz tretjega odstavka 6. člena«.

Medtem ko se zdi, da je obdobje desetih dni v spodnjem delu spektra (po mnenju Odbora pod mejo »ustreznega«), je drug primer razkril popolnoma drugačen pristop. V primeru ACCC/22 Francija je bil Odbor prepričan, da je določba o »zagotavljanju obdobja približno šestih tednov, v katerem bi javnost pregledala dokumente in se pripravila na javno anketo«, da bi »uveljavila svoje pravice iz šestega odstavka 6. člena«, ter določba o »45 dneh za udeležbo javnosti in predložitev pripomb, informacij, analiz ali mnenj, ki se nanašajo na predlagano dejavnost« v skladu s sedmim odstavkom 6. člena »v tem primeru izpolnjujeta zahteve v teh določbah v zvezi s tretjim odstavkom 6. člena Konvencije«.

Zgornja dva primera se ne razlikujeta samo v številu dni, predvidenih za udeležbo javnosti, ampak tudi v dejstvu, da zgoraj navedeni francoski pristop k določanju časovnih obdobij ne omogoča samo zadostnega časa, ampak tudi jasno označuje obdobje za pregled dokumentov in obdobje za pripombe[7]. Čeprav Konvencija takega razlikovanja ne zahteva izrecno, se zdi zelo primerno. V mnogih državah pa časovno obdobje, ki je namenjeno pripombam, vključuje tudi obdobje za pregled ustrezne dokumentacije.

Drugo pomembno vprašanje je pristop k določitvi prvega dne, od katerega se izračuna časovno obdobje (ne glede na to, ali je to določeno stalno ali posamično). V mnogih državah se šteje, da se to obdobje začne takoj po javni objavi. Do težav prihaja v primerih, kjer zakon zahteva več različnih načinov javne objave. Na primer na Poljskem, kjer je tak primer, sta obvestilo na oglasni deski uradov državnih organov in obvestilo na njihovi spletni strani navadno objavljena pred objavami v bližini kraja zadevnega projekta in v tisku. V tem primeru sodišča zahtevajo, da časovna obdobja ustrezajo različnim datumom objave.[8] Navadno se prvi dan časovnega obdobja (ki za projekte stalno določa 21 dni) določi tako, da omogoča približno teden dni za objavo po vseh načinih, ki jih zahteva zakon. Taka praksa lahko delno nadomesti stalno določeno (in pri bolj zapletenih projektih dejansko precej kratko) 21-dnevno obdobje, ki ga predvideva poljski zakon za pregled dokumentov in tudi za predložitev pripomb.

Drugo vprašanje je izbira pravega trenutka za udeležbo javnosti. Določena obdobja v javnem življenju so tradicionalno prazniki, ko se ne pričakujejo posebni dogodki. V večini držav EU sta to avgust in božični čas (obdobje med 22. decembrom in 6. januarjem je pogosto čas božičnih praznikov kljub dejstvu, da uradno mnogi uradi v tem času delajo). Človek lahko pričakuje, da javna objava 22. decembra, ki za udeležbo javnosti določa tritedensko časovno obdobje s takojšnjim začetkom, verjetno ne bi bila smiselna, ne glede na zapletenost projekta, saj javnosti ne bi omogočila priprave in učinkovitega sodelovanja.

[7] Ne da bi posegali v razpravo o drugih značilnostih francoske pravne podlage za udeležbo javnosti, ki jo kritizirajo francoski NVO in akademiki.

[8] IV SA/Wa 442/06.

IV. Public participation procedure

Notification

Article 6.2 of the Convention requires that the public concerned shall be informed about proposed activity and procedure and that this information shall be done either by public notice or individually as appropriate, early in an environmental decision-making procedure, and in an adequate, timely and effective manner:

Public notice of a proposed activity should generally accomplish two objectives. First, it should provide complete and comprehensible information about the activity and the process for submitting comments. Notice should enable non-experts to understand how the project might affect them, and how they may communicate their views or objections to the agency.

Second, notice should be published in a manner that reaches the widest possible audience. Public participation in decisionmaking is a meaningless exercise unless the public is made aware of a proposed activity and the relevant procedure at a time when they can still affect its outcome.
The notice should provide a clear explanation of how the public can find out more about the proposed activity and how they can communicate their views to the competent authority.
The notice should identify the relevant documents and place where they will be open for public inspection and also should indicate where, when, and how the public may submit comments on the proposed activity, and should list the names and addresses of the persons within the agency who are responsible for the procedure. Equipped with this information, members of the public will be able to submit their views to the appropriate individuals in the agency within the time period specified.

Article 6.2 of the Aarhus Convention requires that this information shall be done in “an adequate, timely and effective manner” And such clear obligations may be of utmost importance in practical implementation of the Convention.

To illustrate the possible problem one can have a look at a practical example in Poland. The law requires the public to be informed, inter alia by “provision of information in a customary manner at the seat of the authority which is competent in the matter” and by “bill-posting in the vicinity of the proposed project” and also by placing of the information on the www homepage of the authority competent for making the decision.

This will work perfectly in case of a project located in big cities or urban areas in well-off regions. In case however of a project located well outside human settlements, in a poor region where most people have no access to Internet, and with the seat of competent authority being in a town located 15 km from the respective area the situation may look differently. The key issue would be how to interpret the phrase “vicinity of the project”. If the “vicinity of the project’ were interpreted literally - the legal obligation would be met by bill-posting in the middle of countryside. In such case, even if the information was put “timely” , in practice no one from the local public would have a chance to ever learn about the project and thus - to participate in decision-making. And this will all be in line with the requirements of both the EIA Directive and Polish provisions transposing it, which both do not require clearly that the public is informed about the proposed activity in “adequate” and ‘effective” manner? But the Aarhus convention does - and this makes a difference. In order to meet such requirement the notice would have to be put in places where the public concerned would be able to see it. Such a clear legal requirement involve some degree of active consideration on the part of authorities which should carefully consider which means of notifying the public would be ‘adequate’ and “effective”. In different situation such means can be different but always subject to judicial control.

IV. Postopek javne udeležbe

Objava

Člen 6.2 Konvencije določa, da je treba vključeno javnost na začetku postopka okoljskega odločanja obvestiti o predlagani dejavnosti in postopku z javno objavo ali vsakogar posebej, če je to primerno, na ustrezen, pravočasen in učinkovit način.

V glavnem mora javna objava predlagane dejavnosti izpolniti dva cilja. Prvič, zagotoviti mora popolno in razumljivo informacijo o dejavnosti in postopku za predložitev pripomb. Obvestilo naj bi nestrokovnjakom omogočilo razumeti, kakšen učinek bi lahko imel projekt nanje in kako lahko agenciji sporočijo svoja stališča ali ugovore.

Drugič, obvestilo mora biti objavljeno tako, da doseže najširšo možno javnost. Javna udeležba pri odločanju je nesmiselna, če javnost ni seznanjena s predlagano dejavnostjo in ustreznim postopkom, takrat ko še lahko vpliva na izid odločanja.
Obvestilo mora dati jasno razlago o tem, kako lahko javnost izve več o predlagani dejavnosti in kako lahko svoja stališča sporoči pristojnemu organu.

V obvestilu morajo biti opredeljeni ustrezni dokumenti in kraj, kjer bodo ti dostopni javnosti zaradi vpogleda, navedeno mora biti tudi, kje, kdaj in kako lahko javnost vloži svoje pripombe o predlagani dejavnosti, ter seznam imen in naslovov oseb v agenciji, pristojnih za postopek. Opremljeni s temi informacijami bodo člani javnosti lahko predložili svoja stališča ustreznim posameznikom v agenciji v roku, ki je za to določen.

Člen 6.2 Aarhuške konvencije določa, da mora biti ta informacija objavljena »na ustrezen, pravočasen in učinkovit način«. Take jasne obveznosti so lahko zelo pomembne pri praktičnem izvajanju Konvencije.

Da bi ponazorili možne težave, si lahko ogledamo praktični primer na Poljskem. Zakon zahteva obveščanje javnosti med drugim z »zagotavljanjem informacij na ustaljen način na sedežu organa, ki je pristojen za zadevo«, »razobešanjem obvestil v bližini predlaganega projekta« in z objavo informacije na svetovnem spletu na domači strani organa, pristojnega za sprejetje odločitve.

Tak način se odlično obnese pri projektih, ki potekajo v velikih mestih ali urbanih okoljih na premožnejših območjih. Kjer pa projekt poteka zunaj naselij, na revnejših območjih, kjer večina ljudi nima dostopa do medmrežja, in je sedež pristojnega organa v mestu, oddaljenem več kot 15 kilometrov od zadevnega območja, je položaj lahko drugačen. Ključno vprašanje je, kako opredeliti zvezo »bližina projekta«. Če bi »bližino projekta« razumeli dobesedno, bi bila zakonska obveznost izpolnjena, če bi obvestilo razobesili sredi podeželja. V takem primeru in čeprav je bila informacija objavljena »pravočasno«, v praksi noben član lokalne javnosti ne bi imel niti možnosti izvedeti o projektu in tako tudi ne sodelovati pri odločanju. Bo torej vse v skladu z zahtevami direktive VPO in tudi s poljskimi določbami, ki jo uvajajo, kajti nobena od njih jasno ne zahteva obveščanja javnosti o predlagani dejavnosti na »ustrezen« in »učinkovit« način? Ampak Aarhuška konvencija to zahteva – in v tem je razlika. Da bi bila taka zahteva izpolnjena, mora biti obvestilo objavljeno na mestih, kjer jo lahko vključena javnost vidi. Taka jasna pravna zahteva vključuje določeno stopnjo aktivnega premisleka s strani organov, ki morajo skrbno pretehtati, kateri način obveščanja javnosti bi bil »ustrezen« in »učinkovit«. V različnih okoliščinah se ti načini lahko razlikujejo, vendar so vedno predmet sodnega nadzora.

Bearing this in mind lack of the above requirements clearly mentioned in a national legislation may well be treated as significant deficiency in implementing the Aarhus Convention.

Notification should be designed to reach a wide public audience. Unless potentially interested persons are made aware of a proposed project, they will be unable to express their views on it, and public participation in the decisionmaking will be effectively defeated

Making available relevant information

Article 6.6 of the Convention. requires "the competent public authorities to give the public concerned access for examination (...) free of charge and as soon as it becomes available, to all information relevant to the decision-making (...) that is available at the time of the public participation procedure". This provision is meant to provide a certain exemption from general rules of access to information in Article 4 of the Convention. It requires that certain information useful for the public to participate effectively should be made available to it without applying certain limitations envisaged in Article 4: this includes in particular time limits (Article 4.2) and possibility to charge for supplying information (Article 4.8). It allows only to apply exemptions envisaged in Article 4.3 and 4.4 ("without prejudice to the right of Parties to refuse to disclose certain information in accordance with article 4, paragraphs 3 and 4").

In Article 6.2 there is an obligation to actively inform the public about commencement of the procedure and details of envisaged procedure, in particular to inform the public where it can inspect the relevant information (Article 6.2.d) iv), while Article 6.6 supplements this provision with clear obligation to actually make available (upon request where so required) such "relevant information" and provides a minimum list that such information should contain in Articles 6.6 letters a)-f).

Submission of comments

The Convention requires in article 6, paragraph 7, that "public participation procedures shall allow the public to submit … any comments, information, analyses or opinions"

Acceptance of written submissions may be supplemented by opportunities for oral communication with the agency (such as public meetings with agency personnel), because some individuals may find it difficult toexpress their views in writing.

The Committee noted that 'Whereas, Lithuanian legislation limits the right to submit comments to the *public concerned*, and these comments are required to be "motivated proposals", i.e. containing reasoned argumentation. In this respect, Lithuanian law fails to guarantee the full scope of the rights envisaged by the Convention' (ACCC/C/16/Lithuania - ECE/MP.PP/2008/5/Add.6, para 80)

Due account is taken of the outcome of public participation

Article 6.8 requires that 'in the decision due acount is taken of the outcome of the public participation' This provision is also applicable to plans and programmes because Article 7 makes in this respect a clear and direct reference to Article 6.8. Finally, the obligation is also present in Article 8 albeit it uses a slightly different formulation.

The legal meaning of the obligation 'to take due account' is subject to different interpretations and should be seen from different angles. The most important question is whether it is meant to give the public a decisive role in the decision-making?

Ob upoštevanju tega dejstva zgornje zahteve, ki niso izrecno navedene v nacionalni zakonodaji, lahko štejejo za hujšo pomanjkljivost pri izvajanju Aarhuške konvencije.

Obvestilo mora biti pripravljeno tako, da doseže široko javnost. Če potencialno zainteresirane osebe niso seznanjene s predlaganim projektom, ne bodo mogle izraziti svojih stališč o projektu in udeležba javnosti pri odločanju bo dejansko onemogočena.

Dostop do ustreznih informacij

Člen 6.6 Konvencije zahteva, da »pristojni organi javne oblasti vključeni javnosti omogočijo dostop do vseh informacij, pomembnih za odločanje (…), da jih lahko preveri (…), brezplačno in takoj, ko so na razpolago med postopkom za udeležbo javnosti«. Namen te določbe je zagotoviti določene izjeme od splošnih pravil glede dostopa do informacij iz 4. člena Konvencije. Ta zahteva, da morajo biti nekatere informacije, ki so koristne pri učinkovitem sodelovanju javnosti, javnosti na voljo brez določenih omejitev, predvidenih v 4. členu. Sem so vključene zlasti časovne omejitve (člen 4.2) in možnost zaračunavanja posredovanja informacij (člen 4.8). Dopušča samo izjeme, predvidene v členih 4.3 in 4.4 (»brez poseganja v pravico pogodbenic, da zavrnejo razkritje določenih informacij v skladu s tretjim in četrtim odstavkom 4. člena«).

V členu 6.2 je navedena obveznost o aktivnem obveščanju javnosti o začetku postopka in podrobnostih predlaganega postopka, zlasti o obveščanju javnosti o tem, kje se ustrezne informacije hranijo (člen 6.2.d) iv)), medtem ko člen 6.6. dopolnjuje to določbo z jasno zahtevo po tem, da morajo biti take »ustrezne« informacije dejansko na razpolago (na podlagi zahtevka, kjer se ta zahteva), in v členu 6.6, odstavki a)–f) navaja kratek seznam informacij, ki morajo biti vanje vključene.

Predložitev pripomb

V sedmem odstavku 6. člena Konvencija zahteva, da »morajo postopki za udeležbo javnosti omogočiti, da predloži … vse pripombe, informacije, analize ali mnenja«.

Sprejetje pisnih vlog se lahko dopolni z možnostmi za ustno komunikacijo z agencijo (kot so javna srečanja z osebjem agencije), kajti nekateri posamezniki težko izrazijo svoja stališča v pisni obliki.

Odbor je ugotovil, »da litovska zakonodaja omejuje pravico *vključene javnosti* do predložitve pripomb in da morajo biti te pripombe 'utemeljeni predlogi', tj. vključevati morajo tehtno argumentacijo. V tem pogledu litovski zakon ne zagotavlja popolnega obsega pravic, ki jih predvideva Konvencija« (ACCC/C/16/Litva – ECE/MP.PP/2008/5/Dodatek 6, 80. odstavek).

Ustrezno se upošteva izid udeležbe javnosti

Člen 6.8 določa, da se »pri odločitvah ustrezno upošteva izid udeležbe javnosti«. Ta določba velja tudi za načrte in programe, kajti 7. člen se v zvezi s tem jasno in neposredno sklicuje na člen 6.8. Obveznost se pojavi tudi v 8. členu, čeprav se uporablja nekoliko drugačna formulacija.

Pravni pomen obveznosti o »ustreznem upoštevanju« je predmet različnih razlag in si ga je treba ogledati z različnih strani. Najpomembnejše vprašanje je, ali je njegov namen omogočiti javnosti odločilno vlogo pri odločanju.

In this respect one should note the opinion of the Aarhus Compliance Committee who observed that the requirement in Article 6.8 of the Convention that due account in the decision is taken of the outcome of the public participation does not amount to the right of veto accorded to the public, in particular this provision should not be read as requiring that the final word as to the faith and design of the project rests with the local community living nearby the project and their acceptance is always needed.[9]

Furthermore, it is quite clear that the obligation to take due account in the decision of the outcome of the public participation can not be considered as a requirement to accept all the comments, reservations or the opinions submitted. The obvious reason for this is that quite often opinions of the public differ. It is not uncommon, especially in case of large infrastructure projects like airports, landfils or wastewater treatment plants, that while those living in the vicinity vigorously oppose the project the general public support such a project which is meant generally to improve the conditions of their life. Both sides usually represent their own private interests and they have the right for doing so. Yet another point of view is represented by environmental NGOs who are suppossed to protect the objective interest of the environment.[10]

While it is impossible to accept the substance, quite often opposite, of all the comments submitted - the relevant authority must seriously consider all the comments received regardless of whether their purpose is to protect private or public interest and regardless of whether they are motivated. Moreover, the way the respective provisions are drafted can be interpreted as requiring authorities to 'take due account' of the comments submitted regardless of whether they are related to environmental concerns, as long as they remain within the ambit of the relevant decision and competence of the relevant public authority.
As rightly observed in the Aarhus Convention Implementation Guide 2000 the obligation to 'take due account' under Article 6.7 should be seen in the light of the obligation under Article 6.9 to 'make accesible to the public the text of the decision along with the reasons and considerations on which the decision is based'. Therefore the Guide suggests that in the countries where general administrative law already requires decisions to be reasoned and given in writing 'taking due account of the outcome of the public participation might be interpreted to require the written reasoned decision to include a discussion of how the public participation was taken into account'.[11]
The above interpretation of the legal meaning of the obligation to 'take due account' should not however lead to narrowing down the scope of this obligation only to the procedural requirement. The Guide makes it clear that 'the relevant authority is ultimately responsible for the decision based on all information, including comments received, and should be able to show why a particular comment was rejected on substantive grounds'.[12]

Decision notified and made available to the public

After the agency has considered comments by the public and has decided on the final version of the decision, it publicize the final decision. This involves notifying the public about taking the decision and about places wher the decison is made available for the public.

In addition to reprinting the full text of the final decision, the agency should provide a concise written statement explaining the legal, factual and policy reasons for the decision. The statement shall summarize the comments submitted by the public, and explain why the comments were either accepted or rejected. This statement helps the public understand why the project was accepted and it also forces the agency to examine carefully the comments it receives, and reconsider the decision in light of those comments.

[9] Report of the 24th meeting of the Compliance Committee ECE/MP.PP/C.1/2009/4, paragraph 28
[10] Such situation happened in the case of Kazokiski landfil whereby the Compliance Committee noted 'that the decision-making procedure concerning the landfill in question was appreciated by some nationwide Lithuanian environmental NGOs and cited as being a good example of carrying out public participation procedures (ACCC/C/16/Lithuania - ECE/MP.PP/2008/5/Add.6, para 60)
[11] The Aarhus Convention Implementation Guide 2000 p 109
[12] The Aarhus Convention Implementation Guide 2000 p 109

V zvezi s tem je treba zapisati mnenje Odbora za izvajanje Aarhuške konvencije, ki je izjavil, da zahteva iz člena 6.8 Konvencije, da se pri odločitvah ustrezno upošteva izid udeležbe javnosti, ne pomeni priznavanja pravice veta javnosti, še zlasti pa te določbe ne bi smeli razumeti kot zahteve, da ima lokalna skupnost, ki živi v bližini projekta, zadnjo besedo glede pomena in načrta projekta ter da je njeno odobravanje projekta vedno nujno.[9] Poleg tega je popolnoma jasno, da obveznosti, da se pri odločitvi ustrezno upošteva izid udeležbe javnosti, ni mogoče šteti kot zahtevo za sprejetje vseh predloženih pripomb, pridržkov ali mnenj. Očiten razlog za to je, da se mnenja javnosti zelo pogosto razhajajo. Neredko se dogaja, zlasti v primeru velikih infrastrukturnih projektov, kot so letališča, odlagališča ali čistilne naprave za odpadne vode, da tisti, ki živijo v bližini projekta, temu odločno nasprotujejo, medtem ko širša javnost podpira tak projekt, katerega namen je na splošno izboljšati njihove življenjske razmere. Obe strani po navadi zastopata svoje zasebne interese, do česar imata vso pravico. Nevladne okoljske organizacije, ki naj bi ščitile nepristranske interese okolja, pa zastopajo še dodatno stališče.[10]

Čeprav je nemogoče sprejeti bistvo, ki je pogosto nasprotujoče, vseh predloženih pripomb, mora pristojni organ resno preučiti vse prejete pripombe, ne glede na to, ali je njihov namen zaščititi zasebni ali javni interes, ter ne glede na to, ali so utemeljene. Poleg tega je mogoče posamezne določbe zaradi načina priprave njihovega osnutka razlagati kot zahtevo, da organi »ustrezno upoštevajo« predložene pripombe ne glede na to, ali se nanašajo na okoljska vprašanja, dokler te ostajajo v obsegu ustrezne odločitve ali pristojnosti ustreznega javnega organa.

Kot je upravičeno ugotovljeno v Priročniku za izvajanje Aarhuške konvencije 2000, je treba obveznost o »ustreznem upoštevanju« iz člena 6.7 upoštevati v skladu z zahtevo iz člena 6.9, da je treba »javnosti omogočiti dostop do besedila odločitve skupaj z razlogi in utemeljitvami, na podlagi katerih je bila odločitev sprejeta«.Zato Priročnik predlaga, da je v državah, kjer splošno upravno pravo že določa, da morajo biti odločitve utemeljene in predložene v pisni obliki, »ustrezno upoštevanje izida javne udeležbe mogoče razumeti kot zahtevo, da pisno utemeljene odločitve vključujejo tudi razpravo o načinu upoštevanja udeležbe javnosti«.[11]

Zgornja razlaga pravnega pomena obveznosti o »ustreznem upoštevanju« ne sme voditi k zmanjšanju uporabe te obveznosti zgolj na proceduralno zahtevo. Priročnik jasno določa, da je »ustrezni organ na zadnji stopnji odgovoren za odločitev na podlagi vseh informacij, vključno s prejetimi pripombami, in da mora biti sposoben pojasniti, zakaj je bila določena pripomba zavrnjena na podlagi konkretnih razlogov«.[12]

Sporočilo o odločitvi in dostopnost odločitve za javnost

Potem ko agencija preuči pripombe javnosti in določi končno različico odločitve, končno odločitev objavi. To vključuje obvestilo javnosti o sprejetju odločitve in krajih, na katerih je odločitev dostopna za javnost.

Poleg ponovnega tiskanja celotnega besedila končne odločitve mora agencija dati kratko pisno izjavo, v kateri pojasni pravne in dejanske razloge ter razloge politike za odločitev.

Izjava povzema vse pripombe, ki jih je predložila javnost, in pojasni razloge za sprejetje ali zavrnitev pripomb. Izjava pomaga javnosti razumeti, zakaj je bil projekt sprejet, prav tako agencijo prisili, da skrbno preuči prejete pripombe in odločitev še enkrat preuči v luči teh pripomb.

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[9] Poročilo Odbora za izvajanje s 24. konference EKE/MP.PP/C.1/2009/4, 28. odstavek.

[10] Take razmere so bile v primeru odlagališčaKazokiski, za katerega je Odbor za izvajanje zapisal, »da so bile postopku odločanja o zadevnem odlagališču naklonjene nekatere vsedržavne litovske okoljske nevladne organizacije in ga navajale kot dober primer izvajanja postopkov javne udeležbe« (ACCC/C/16/Litva – EKE/MP.PP/2008/5/Add.6, 60. odstavek).

[11] Priročnik za izvajanje Aarhuške konvencije 2000, str. 109.

[12] Priročnik za izvajanje Aarhuške konvencije 2000, str. 109.

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The Awareness on the Importance of a Healthy Living Environment – Practice of the Human Rights Ombudsman of the Republc of Slovenia

Abstract
What is our life like? We wish to live in material comfort whereas, on the other hand, our living environment is becoming more and more polluted and less rich. Do we realize that the right to have a healthy living environment is a constitutionally protected entitlement? Do we know what is the content of this right? A greater awareness regarding environmental protection projects surely enables a greater possibility of cooperation in decision-making processes. Our State ratified the international convention concerning this field, the Aarhus Convention in 2004. The objectives and values recorded in this Convention represent a lever for the formation of consciousness concerning the values and participative culture of decision-making on activities affecting the environment. The Human Rights Ombudsman of the Republic of Slovenia as an independent state authority has been pointing out for some time that the role of the public (the civil society) in these procedures is too limited.

72. Article 72 of the Constitution of the Republic of Slovenia defines the right to a healthy living environment as follows:
Everyone has the right in accordance with the law to a healthy living environment. The state shall promote a healthy living environment. To this end, the conditions and manner in which economic and other activities are pursued shall be established by law. The law shall establish under which conditions and to what extent a person who has damaged the living environment is obliged to provide compensation. The protection of animals from cruelty shall be regulated by law.

The aforementioned constitutionally guaranteed right belongs to the so-called third generation of human rights[1]. With this right, the solidarity aspect is emphasized. Without the approach of the entire social community in solidarity it is singularly not possible to ensure the implementation of the protection of the environment. This right is not linked to the personality of an individual and it is not intended for the protection of personal benefits and interests of the individual although it cannot be denied that the living environment always influences the living standards of the individual to a certain degree.

[1] The first generation of human rights comprises rights with which the State should not interfere (they tend to be the so-called „negative“ human rights). They are mostly defined in the second Chapter of the Constitution of the Republic of Slovenia and they are actionable at individual level (the example of the inviolability of human life, prohibition of torture). The second generation of human rights includes rights the exercise of which the State should actively protect (it refers to the so-called positive status). This category comprises economic, social and cultural rights; they are defined in the second and the third Chapter of the Constitution of the Republic of Slovenia (Economic and Social Relations); they are mostly exercised at the collective level. The third generation of human rights has evolved as a consequence of demands for a global distribution of capital, wealth and power. These rights overreach the frameworks of civil, economic and social rights and have characteristics of both the first and the second generations of human rights. We also name them solidarity rights (for example, the right to a healthy living environment prohibits the State from pursuing excessive activities that affect the environment, whereas, on the other hand, it imposes on the State the requirement to adopt special measures for the protection of the environment).

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Zavedanje o pomenu zdravega življenjskega okolja – praksa Varuha človekovih pravic RS

Povzetek
Kakšno je naše življenje? Želimo živeti v materialnem blagostanju, na drugi strani pa je naše življenjsko okolje čedalje bolj revno in onesnaženo. Se zavedamo, da je pravica do zdravega življenjskega okolja ustavno varovana kategorija? Ali vemo, kakšna je vsebina te pravice? Večja obveščenost o okoljevarstvenih projektih vsekakor omogoča večjo možnost sodelovanja pri odločanju. Naša država je leta 2004 na tem področju ratificirala mednarodno konvencijo, Aarhuško konvencijo. Cilji in vrednote, ki so zapisani v tej konvenciji, pomenijo vzvod za oblikovanje zavesti o vrednotah in participativni kulturi odločanja o posegih v okolje. Varuh človekovih pravic RS kot samostojen in neodvisen državni organ že nekaj časa glasno opozarja na premajhno vlogo javnosti (civilne družbe) v teh postopkih.

72. člen Ustave RS opredeljuje pravico do zdravega življenjskega okolja.
Vsakdo ima v skladu z zakonom pravico do zdravega življenjskega okolja.
Država skrbi za zdravo življenjsko okolje. V ta namen zakon določa pogoje in načine za opravljanje gospodarskih in drugih dejavnosti.
Zakon določa, ob katerih pogojih in v kakšnem obsegu je povzročitelj škode v življenjskem okolju dolžan poravnati škodo. Varstvo živali pred mučenjem ureja zakon.

Ta ustavno zajamčena pravica spada v tretjo generacijo človekovih pravic.[1] Pri tej pravici je izrazito poudarjen solidarnostni vidik. Brez solidarnostnega ravnanja in pristopa celotne družbene skupnosti namreč ni mogoče zagotavljati uresničevanja varstva okolja. Ta pravica ni vezana na osebnost posameznika in ni namenjena varovanju osebnih koristi in interesov posameznika, čeprav ob tem ne moremo zanikati, da življenjsko okolje vedno v določeni meri vpliva na življenjski standard posameznika. Prav zaradi tega pravico do zdravega življenjskega okolja povezujemo s človekovo pravico do osebnega dostojanstva. Vplivi iz okolja, zlasti daljša izpostavljenost škodljivim vplivom kot so npr. onesnažen zrak, hrup, smrad in drugi dejavniki vplivanja, lahko namreč močno posegajo na osebno področje vsakega posameznika.

[1] V prvo generacijo človekovih pravic spadajo pravice, v katere država ne sme posegati (gre za negativen status človekovih pravic). Opredeljene so večinoma v drugem poglavju Ustave RS in so iztožljive na individualni ravni (primer nedotakljivost človekovega življenja, prepoved mučenja). V drugo generacijo človekovih pravic spadajo pravice, za katere uresničitev se mora država aktivno zavzemati (gre za pozitiven status). V to kategorijo spadajo ekonomske, socialne in kulturne pravice, opredeljene so v drugem in tretjem poglavju Ustave RS (gospodarska in socialna razmerja), uresničujejo pa se večinoma na kolektivni ravni. Tretja generacija človekovih pravic pa je nastala kot posledica zahtev po globalni porazdelitvi kapitala, bogastva in moči. Te pravice presegajo okvire državljanskih, ekonomskih in socialnih pravic ter imajo značilnost prve in druge generacije človekovih pravic, imenujemo jih tudi solidarnostne pravice (npr. pravica do zdravega življenjskega okolja državi prepoveduje čezmerne posege v okolje, na drugi strani pa državi nalaga sprejetje posebnih ukrepov za zaščito okolja).

This is exactly why the right to a healthy environment is linked to the human right to personal dignity. Influences from the environment, particularly longer exposure to detrimental effects such as, for example, polluted air, noise, bad smells, and other influential factors may significantly interfere with the personal sphere of each and every individual.

Under the above mentioned Article 72 of the Constitution of the Republic of Slovenia the State has a triple duty: It has to define by law the content and the extent of the right to a healthy living environment; it has to establish by law the conditions regarding the pursuit of economic and other activities. Likewise, the State should establish by law conditions and the extent of compensation for any damage that a certain person causes to the living environment.

With this provision the Constitution of the Republic of Slovenia has assigned to the State the task to responsibly take over the care for a healthy living environment, to adopt such measures and regulations with which it will maintain the principle of a balance of nature. The fact that the Constitution of the Republic of Slovenia in the second paragraph of Article 72 stipulates that economic activity may be pursued only when legal conditions are satisfied in accordance with the public interest regarding the protection of the living environment, is not negligible. Numerous regulations determine limitations of this kind, all with the aim of protecting the environment and the balance of nature, particularly: The Environment Protection Act,[2] the Spatial Planning Act, the Spatial Planning Act, the Construction Act, the Nature Conservation Act, the Agricultural Land Act, the Act on Forests, the Wild Game and Hunting Act, and others.

Pursuant to the second paragraph of Article 3 of the Environment Protection Act an activity affecting the environment is any activity or omission of any activity which is likely to affect the environment in a way detrimental to human health, well-being and quality of life and to the survival, the health and well-being of other organisms. Activities affecting the environment shall include in particular the use of natural resources, pollution of the environmental components, construction and use of facilities, manufacturing and other industries, placing of products on the market and their consumption.

Do we realize that with all of these, with regard to the right to a healthy living environment, the issue is about one of the fundamental human rights which is guaranteed legal protection by the Constitution? Do we have at our disposal enough information and knowledge regarding the legal means available with regard to exercising this right? We have at our disposal legal protection in compliance with the Constitution of the Republic of Slovenia, Law of Property Code, Code of Obligations and the Environment Protection Act). Some activities (the contamination of drinking water, the contamination of food and fodder, destruction of forests, etc.) are even defined as criminal offences under the Criminal Code. Certain forms of protection are also provided under procedures conducted by independent state authorities such as the Human Rights Ombudsman of the Republic of Slovenia, the Information Commissioner, the Commission for the Prevention of Corruption. International legal protection is also available. But within this framework we have to distinguish between the damage incurred to the environment and the damage (property or non-property damage) incurred to an individual and which is judged by virtue of the general principles of the law of damages.

Constitutional protection of the right to a healthy living environment is ensured in accordance with the already mentioned Article 72 of the Constitution of the Republic of Slovenia where it is an issue about the obligation of a person causing damage to compensate for the damage incurred to the living environment in accordance with legal regulation. 11. Article 11 of the Environment Protection Act, on the other hand, regulates the subsidiary obligation of the State

[2] The Environment Protection Act in Article 3 stipulates that the Environment is that part of nature which is or could be affected by human activity. The same article proceeds to define nature as the material world and the structure of interdependent elements and processes interlinked according to natural laws. With this it expressly reinforces the fact that humans are an integral part of nature.

Po navedenem 72. členu Ustave RS ima država trojno dolžnost: z zakonom mora opredeliti vsebino in obseg pravice do zdravega življenjskega okolja, z zakonom mora določiti pogoje opravljanja gospodarskih in drugih dejavnosti, z zakonom mora določiti tudi pogoje in obseg poravnave škode, ki jo določena oseba povzroči življenjskemu okolju.

Ustava RS s to določbo daje državi nalogo, da odgovorno prevzame skrb za zdravo življenjsko okolje, da sprejema takšne ukrepe in predpise, s katerimi ohranja načelo naravnega ravnovesja. Pri tem ni zanemarljivo, da je Ustava RS v drugem odstavku 72. člena določila, da se gospodarska dejavnost lahko opravlja takrat, kadar so skladno z javno koristjo varovanja življenjskega okolja za to izpolnjeni zakonski pogoji. Številni predpisi določajo tovrstne omejitve, vse v cilju varovanja okolja in naravnega ravnovesja, zlasti zakoni o varstvu okolja,[2] o urejanju prostora, o prostorskem načrtovanju, o graditvi objektov, o ohranjanju narave, o kmetijskih zemljiščih, o gozdovih, o divjadi in lovstvu ter drugi.

Po drugem odstavku 3. člena Zakona o varstvu okolja je poseg v prostor vsako človekovo ravnanje ali opustitev ravnanja, ki lahko vpliva na okolje tako, da škodi človekovemu zdravju, počutju ali kakovosti njegovega življenja ter preživetju, zdravju in počutju drugih organizmov. Poseg v okolje se nanaša zlasti na rabo naravnih dobrin, onesnaževanje delov okolja, gradnjo in uporabo objektov, proizvodne in druge dejavnosti ter dajanje izdelkov na trg in njihovo potrošnjo.

Ali se ob vsem tem zavedamo, da gre pri pravici do zdravega življenjskega okolja za eno temeljnih človekovih pravic, ki ji ustava zagotavlja pravno varstvo? Ali imamo na razpolago dovolj informacij in znanja o poteh, ki so nam v zvezi z uresničevanjem te pravice na voljo? Na voljo imamo pravno varstvo skladno z Ustavo RS, Stvarnopravnim zakonikom, Obligacijskim zakonikom in Zakonom o varstvu okolja. Nekatera ravnanja (onesnaženje pitne vode, onesnaženje živil ali krme, uničenje gozdov itd.) pa so po Kazenskem zakoniku opredeljena kot kazniva dejanja. Določene oblike varstva so zagotovljene tudi s postopki pri neodvisnih državnih organih, kot so Varuh človekovih pravic RS, Informacijski pooblaščenec, Komisija za preprečevanje korupcije. Na voljo imamo tudi mednarodnopravno varstvo. Seveda pa moramo v tem okviru ločiti škodo, povzročeno okolju, od škode (premoženjske in nepremoženjske), ki je povzročena posamezniku in ki se presoja po splošnih načelih odškodninskega prava.

Ustavno varstvo pravice do zdravega življenjskega okolja je zagotovljeno z že omenjenim 72. členom Ustave RS, kjer gre za dolžnost povzročitelja, da skladno z zakonsko ureditvijo povrne škodo, povzročeno življenjskemu okolju. 11. člen Zakona o varstvu okolja pa ureja subsidiarno odgovornost države za odpravo posledic čezmernega obremenjevanja okolja, kadar tega ni mogoče naprtiti povzročiteljem ali za to ni ustrezne pravne podlage.

[2] Zakon o varstvu okolja v 3. členu določa, da je okolje tisti del narave, kamor seže ali bi lahko segel vpliv človekovega delovanja. Isti člen v nadaljevanju naravo opredeljuje kot celoto materialnega sveta in sestav z naravnimi zakoni med seboj povezanih ali soodvisnih delov in procesov. Pri tem izrecno določa, da je človek del narave.

to eliminate the consequences of excessive environmental burdens when payment of costs cannot be imposed on persons causing the damage or when there is no legal basis for this.

The Law of Property Code in Article 75, which defines the prohibited nuisances (smoke, foul odours, soot, tremors violent noise, effluents, disturbing neon commercial signs, various radiations, prevention of light, deprivation of air, various activities affecting air quality, etc.) stipulates that the owner of the property when using the property should omit carrying out actions and obviate causes arising from the said person's property and making harder the use of other properties over the extent to which, considering the nature and the purpose of the property as well as with regard to local conditions, is considered usual, or causing greater material injury (prohibited nuisance). Without any special legal title any kind of disturbance with special devices is prohibited. The same Code in Article 99 governs the field of unjustified disturbances, that is, if a third party unlawfully disturbs an owner or alleged owner in any other manner and not by the deprivation of things, the owner or the alleged owner may demand the disturbance cease and prohibit further disturbances by means of an action. But once damage has been caused by means of disturbance, the owner holds the right to demand its compensation under the general rules concerning compensation for damage.

The Code of Obligations, in Article 133 states that any one person may request another to remove the source of danger which threatens to cause the said person or an undetermined number of people greater damage, and to desist from activities which cause disturbance or the damage could not be prevented by appropriate measures.

The Environment Protection Act in Article 14 states that individuals, societies, associations and organizations may file a request at the court that the person responsible for an activity affecting the environment ceases the activity if it causes or would cause excessive environmental burden or presents or would present a direct threat to human life or health, and that the person responsible for the activity affecting the environment be prohibited from starting the activity if there is a strong probability that the activity would present such a threat. In the same Article a provision regarding the responsibility of the Human Rights Ombudsman ('the Ombudsman') for the protection of the right to a healthy living environment is specially added.

The European Convention on Human Rights does not define specifically the right to a healthy living environment. However However the protection of this right would, in spite of this, be possible within the framework of the right to respect private and family life and within the framework of the right to own property.

As an independent right under international law, the right to a healthy environment is defined in Article 37 of the EU Charter of Fundamental Rights, namely, among the solidarity rights the protection of environment is defined as the policy of the European Union which is assured in accordance with the principle of sustainable development.

Slovenia ratified the **Aarhus Convention** in 2004. The aforementioned, in accordance with Article 8 of the Constitution of the Republic of Slovenia[3], means that the provisions of this Convention apply directly. International acts, particularly the Aarhus Convention which gives people an active right in adopting and implementing environmental policy, like national regulations form this field, provide the theoretical basis for the achievement of the sustainable development of society. At the same time these regulations also show clearly the connection between the protection of the environment and the protection of human rights. The Aarhus Convention strengthens the role of the non-governmental sector, it provides and generates new categories of rights, namely: the right to receive information, the right to participation in the decision-making processes, and legal protection with regard to access to information.

[3] Article 8 of the Constitution of the Republic of Slovenia states that laws and other regulations must comply with generally accepted principles of international law and with treaties that are binding on Slovenia. Ratified and published treaties shall be applied directly.

Stvarnopravni zakonik v 75. členu, ki opredeljuje prepovedane izpuste (dim, neprijetni vonji, saje, tresljaji, ropot, odplake, moteče neonske reklame, razna sevanja, preprečevanje svetlobe, odtegovanje zraka, različna delovanja na zrak itd.), določa, da mora lastnik nepremičnine pri uporabi nepremičnine opuščati dejanja in odpravljati vzroke, ki izvirajo iz njegove nepremičnine in otežujejo uporabo drugih nepremičnin čez mero, ki je glede na naravo in namen nepremičnine ter glede na krajevne razmere običajna, ali povzročajo znatnejšo škodo (prepovedani izpusti). Brez posebnega pravnega naslova je prepovedano kakršno koli motenje s posebnimi napravami. Isti zakonik v 99. členu ureja področje neupravičenega vznemirjanja, in sicer če kdo tretji protipravno vznemirja lastnika ali domnevnega lastnika kako drugače, ne pa z odvzemom stvari, lahko lastnik oziroma domnevni lastnik s tožbo zahtevata, da vznemirjanje preneha in se prepove nadaljnje vznemirjenje. Če pa je bila z vznemirjenjem povzročena škoda, ima lastnik pravico zahtevati njeno povrnitev po splošnih pravilih o povrnitvi škode.

Obligacijski zakonik pa v 133. členu določa, da lahko vsakdo zahteva od drugega, da odstrani vir nevarnosti, od katerega grozi njemu ali nedoločenemu številu oseb večja škoda, ter da se vzdrži dejavnosti, iz katere izvira vznemirjanje ali škodna nevarnost, če nastanka vznemirjanja ali škode ni mogoče preprečiti z ustreznimi ukrepi.

Zakon o varstvu okolja pa v 14. členu določa, da lahko posamezniki, društva, združenja ali organizacije pred sodiščem zahtevajo, da nosilec posega v okolje ustavi ta poseg, če povzroča ali bi povzročal čezmerno obremenitev okolja ali če povzroča ali bi povzročal nevarnosti za življenje in zdravje ljudi, lahko se mu tudi prepove začeti izvajanje takega posega, če je podana velika nevarnost takšne posledice. V istem členu je posebej dodano določilo o pristojnosti Varuha človekovih pravic RS (Varuh) za varovanje pravice do zdravega življenjskega okolja.

Evropska konvencija o človekovih pravicah pravico do zdravega življenjskega okolja posebej ne opredeljuje. Zaščita te pravice bi kljub temu morda bila mogoča v okviru pravice do zasebnega in družinskega življenja ter v okviru pravice do zasebne lastnine.

Kot samostojna pravica mednarodnega prava pa je pravica do zdravega življenjskega okolja, opredeljena v 37. členu Listine Unije o temeljnih pravicah, in sicer se med solidarnostnimi pravicami varstvo okolja opredeljuje kot politiko Evropske unije, ki se zagotavlja skladno z načelom trajnostnega razvoja.

Slovenija je leta 2004 ratificirala **Aarhuško konvencijo**. To po 8. členu Ustave RS[3] pomeni, da se določila te konvencije uporabljajo neposredno. Mednarodni akti, sploh Aarhuška konvencija, ki daje ljudem aktivno pravico pri sprejemanju in izvajanju okoljske politike, in nacionalni predpisi s tega področja pomenijo teoretično podlago doseganja trajnostnega razvoja družbe. Hkrati ti predpisi tudi jasno kažejo povezavo med varovanjem okolja in zaščito človekovih pravic. Aarhuška konvencija krepi vlogo nevladnega sektorja, daje in ustvarja nove kategorije pravic, in sicer pravico do obveščenosti, pravico do udeležbe pri odločanju in pravno varstvo v zvezi z dostopom do informacij.

[3] 8. člen Ustave RS določa, da morajo biti zakoni in drugi predpisi v skladu s splošnoveljavnimi načeli mednarodnega prava in z mednarodnimi pogodbami, ki obvezujejo Slovenijo. Ratificirane in objavljene mednarodne pogodbe se uporabljajo neposredno.

The Ombudsman has established that individuals, societies, associations and organizations who work in the field of environmental protection and ecology do not know to a sufficient degree the rights which they have in decision-making processes in accordance with the Aarhus Convention and national regulations[4]. Because of this ignorance they become involved too little in the decision-making processes. Frequently the opposing party who should provide information and be open takes advantage of this and without respecting the principal of participation a unilateral decision is adopted.

With the goal of providing the greatest amount of information to the civil society, once a month, the Ombudsman organises a meeting with representatives of non-governmental organizations from the fields of environment, spatial planning, ecology and preservation of nature. Meetings are well attended. At each meeting we point out one of the topics that are particularly interesting for non-governmental organizations. Forms of cooperation of this kind mean a possibility of raising awareness and exchanging cases of good practice, especially among those who are connected by having the same or similar interests. In reality this is an interesting experience also for the Ombudsman since the cooperation of the Ombudsman and non-governmental organizations has had a long tradition which arises from the fact that both the Ombudsman and non-governmental organizations (civil society organizations) champion the rights of individuals and with irregularities established they apply pressure on violators. In this sense the Ombudsman and non-governmental organisations are natural allies who, together with the media, challenge authority. They meet at joint meetings, conferences and other events where conclusions are also adopted and the media is informed about them. Last but not least, this year's conference Environment and Human Rights is the second conference of this kind organized by the Human Rights Ombudsman of the Republic of Slovenia. Because of the strong interests in the conference on the part of the public and all other interested parties we may announce that such meetings and education will become our constant forum for the future.

From statistical data concerning the treatment of initiatives by the Human Rights Ombudsman of the Republic in Slovenia it is shown that in 2007, 123 cases were heard from the field of environment and spatial planning, in 2008, 132 cases, and in 2009, 133 cases, which means from 3% to 4% out of the total number of all initiatives received. The fact that also the initiatives received are a reflection of the actual state in society is pleasing. As individuals we are more and more aware that a healthy living environment is of essential importance for us and also for our descendents. The consequences of our careless, negligent and irresponsible actions will be felt by the next generations for a great many years. If we do not start with carefully planned upbringing and education immediately, if we will not change our relationship with nature and the environment it may easily happen that material goods, the welfare of the world, global markets and global imbalance will push us to ecological catastrophe. The recession is at the same time an opportunity to reconsider the significance of both personal and business values. What is the measurement of success? Be healthy? Have a lot of money? What is the priority? The questions mentioned most certainly demand from all of us to make a halt and to think over whether with our conduct we, as individuals and members of a particular society, are developing the ethics of personal, entrepreneurial and social responsibility.

Do we realize that in satisfying short-term goals we destroy the natural environment and natural resources which are ever-diminishing. But without both, because of biological needs, mankind cannot live.The right to a healthy environment with a care for the present, and in the direction of sustainable development, the care for future, should become the basis for the socially responsible conduct of each and every individual. Only in this way can we avoid the catastrophe which otherwise inevitably follows our great and uncritical grab for abundance.

The right to a healthy living environment is thus becoming more and more the foundation and the basis for all other human rights.

[4] With regard to public participation in adopting regulations the Resolution on Legislative Regulation (Official Gazette of the Republic of Slovenia, No. 95/2009 is also important).

Varuh ugotavlja, da posamezniki, društva, združenja in organizacije, ki delujejo na področju varovanja okolja in ekologije, ne poznajo v zadostni meri svojih pravic, ki jih imajo skladno z Aarhuško konvencijo in tudi nacionalnimi predpisi[4] v odločevalskih procesih. Zaradi tega nepoznavanja se premalo vključujejo v odločanje, prav to pa velikokrat nasprotna stran, ki bi morala zagotavljati informacije in biti odprta, izkoristi in brez upoštevanja načel o participativnosti sprejme enostransko odločitev.

V cilju kar največje obveščenosti civilne družbe Varuh enkrat na mesec organizira srečanje s predstavniki nevladnih organizacij s področja okolja, prostora, ekologije in ohranjanja narave. Srečanja so dobro obiskana, na vsakem izmed srečanj izpostavimo eno izmed vsebin, ki je za nevladne organizacije posebej zanimiva. Tovrstne oblike sodelovanja pomenijo možnost ozaveščanja in izmenjave dobrih praks zlasti med tistimi, ki jih povezujejo enaki ali podobni interesi. Vsekakor je tudi za Varuha to zanimiva izkušnja, saj ima sodelovanje Varuha in nevladnih organizacij dolgo tradicijo, ki izvira iz tega, da se oboji zavzemajo za pravice posameznikov in ob ugotovljenih nepravilnostih izvajajo pritisk na kršitelje. V tem smislu so Varuh in nevladne organizacije naravni zavezniki, ki skupaj z mediji pritiskajo na oblast. Srečujejo se na skupnih sestankih, konferencah in drugih dogodkih, kjer se sprejmejo tudi sklepi, o teh pa so obveščeni mediji. Ne nazadnje, letošnja konferenca o okolju in človekovih pravicah je druga tovrstna konferenca, ki jo organizira Varuh človekovih pravic RS. Glede na veliko zanimanje javnosti in vseh zainteresiranih lahko naznanimo, da bodo takšna srečanja in izobraževanja postala naša stalna oblika druženja.

Iz statističnih podatkov obravnave pobud pri Varuhu človekovih pravic RS je razvidno, da smo v letu 2007 obravnavali 123 zadev s področja okolja in prostora, v letu 2008 132 zadev, v letu 2009 pa 133 zadev, kar pomeni od tri do štiri odstotke glede na število vseh prejetih pobud. Razveseljuje dejstvo, da so tudi prejete pobude odsev dejanskega stanja v družbi. Čedalje bolj se kot posamezniki zavedamo, da je zdravo življenjsko okolje ključno za nas in za naše naslednike. Posledice našega malomarnega, nevestnega in neodgovornega ravnanja bodo naslednje generacije občutile še mnogo let. Če ne bomo začeli načrtnega vzgajanja in izobraževanja takoj zdaj in če ne bomo takoj spremenili svojega odnosa do narave in okolja, se kaj lahko zgodi, da nas bodo materialne dobrine, blaginja sveta, globalni trg in globalno neravnovesje sil pahnili v ekološko katastrofo. Recesija je hkrati priložnost, da razmislimo o pomenu vrednot, tako osebnih kot poslovnih. Kaj je merilo uspeha? Biti zdrav, imeli veliko denarja? Kaj je prioriteta? Ta vprašanja prav gotovo terjajo od vseh nas razmislek o tem, ali kot posamezniki in člani neke družbe s svojim ravnanjem razvijamo etiko osebne, podjetniške in družbene odgovornosti.

Se zavedamo, da za zadovoljitev kratkoročnih ciljev uničujemo naravno okolje in naravne vire, ki jih vse bolj zmanjkuje? Brez obojega človeštvo zaradi bioloških razlogov ne more živeti. Pravica do zdravega življenjskega okolja kot skrb za sedanjost, v smeri trajnostnega razvoja pa skrb za prihodnost naj postane osnova družbeno odgovornega ravnanja vsakega posameznika. Le tako se bomo lahko izognili propadu, ki sicer neizogibno sledi prevelikemu in nekritičnemu hlastanju za izobiljem.

Pravica do zdravega življenjskega okolja tako vse bolj postaja temelj za vse druge človekove pravice.

[4] Glede sodelovanja javnosti pri sprejemanju predpisov je pomembna tudi resolucija o normativni dejavnosti (Uradni list RS, št. 95/2009).

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Access to Environmental Information Pursuant to the Access to Information of a Public Nature Act, in Theory and Practice

Abstract:
The aim of the paper is to present the practice of the Deputy Information Commissioner from the perspective of access to environmental information and to call attention to issues arising in practice.

Keywords: Access to Public Information Act, environmental information

In accordance with the Access to Information of a Public Nature Act (Official Gazette of the Republic of Slovenia, No. 51/06 – officially consolidated text – and 117/06 – ZDavP-2; hereinafter ZDIJZ), environmental information is classed within the circle of information of a public nature, to which access may not be restricted, even if in the process it is found that one of the exceptions defined by the ZDIJZ is given. Paragraph three of Article 6 of the ZDIJZ provides that, irrespective of the provision of the first paragraph (which defines 11 exceptions to free access), access to information of a public nature shall be permitted if this involves information regarding emissions into the environment, waste, hazardous substances in plants or information from safety reports and other information for which the act governing environmental protection so provides. **Such a provision means in consequence that environmental information is always public, and it cannot be determined as a commercial or any other kind of secret, which might pursuant to the ZDIJZ represent exceptions from freely accessible information of a public nature.**

In order for access to environmental information of a public nature to be possible, firstly the condition must be met whereby such information exists at an authority bound by the ZDIJZ and by its requirement that the information be provided on request. The key issue regarding access to environmental information that is encountered by the Information Commissioner, is thus the question of whether the person that supposedly disposes of the environmental information is actually bound to provide information under the ZDIJZ, and whether the information of a public nature can be found in a materialised form.

The ZDIJZ places the duty to provide information of a public nature on state authorities, local community bodies, public agencies, public funds and other persons of public law, those holding public authorisation and the providers of public services. In this respect the ZDIJZ conforms to the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention[1]), in which Article 4 ensures access to environmental information possessed by "public authorities". In accordance with the definition given in Point 2 of Article 2 of the Convention, a public authority means government at national, regional and other level, natural or legal persons performing public administrative functions under national law, including specific duties,

[1] Act Ratifying the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Official Gazette of the Republic of Slovenia, No. 17/2004).

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Dostop do okoljskih informacij po Zakonu o dostopu do informacij javnega značaja v teoriji in praksi

Povzetek:
Namen prispevka je predstaviti prakso Informacijskega pooblaščenca z vidika dostopa do okoljskih informacij ter opozoriti na odprta vprašanja, ki se pojavljajo v praksi.

Ključne besede: Zakon o dostopu do informacij javnega značaja (ZDIJZ), okoljske informacije

Po Zakonu o dostopu do informacij javnega značaja (Ur. l. RS, št. 51/06 – uradno prečiščeno besedilo in 117/06 – ZDavP-2; v nadaljevanju: ZDIJZ) spadajo okoljske informacije v krog informacij javnega značaja, do katerih dostopa ni mogoče omejiti, tudi če se v postopku ugotovi, da je podana ena izmed izjem, ki jih opredeljuje ZDIJZ. Tretji odstavek 6. člena ZDIJZ namreč določa, da se ne glede na določbe prvega odstavka (ki opredeljuje enajst izjem od prostega dostopa) dostop do informacije javnega značaja dovoli, če gre za podatke glede izpustov v okolje, odpadkov, nevarnih snovi v obratu ali podatke iz varnostnega poročila in druge podatke, za katere tako določa zakon, ki ureja varstvo okolja. **Takšna določba posledično pomeni, da so okoljski podatki vedno javni in se jih ne more določiti kot poslovne ali kakšne druge skrivnosti, ki bi bile po določbah ZDIJZ izjeme od prosto dostopnih informacij javnega značaja.**

Da bi bil dostop do okoljskih informacij javnega značaja mogoč, mora biti najprej izpolnjen pogoj, da te informacije obstajajo pri organu, ki je zavezanec po ZDIJZ in ki jih mora posredovati prosilcu. Ključno vprašanje, s katerim se v pritožbenih postopkih glede dostopa do okoljskih informacij srečuje Informacijski pooblaščenec, je tako vprašanje, ali je oseba, ki naj bi imela okoljske informacije, sploh zavezanec za posredovanje informacij po ZDIJZ in ali je informacija javnega značaja v materializirani obliki.

ZDIJZ kot zavezance za posredovanje informacij javnega značaja zavezuje državne organe, organe lokalnih skupnosti, javne agencije, javne sklade in druge osebe javnega prava, nosilce javnih pooblastil in izvajalce javnih služb. V tem pogledu je ZDIJZ skladen s Konvencijo o dostopu do informacij, udeležbo javnosti pri odločanju in dostopu do pravnega varstva v okoljskih zadevah (Aarhuška konvencija[1]), ki v 4. členu zagotavlja dostop do okoljskih informacij, ki jih imajo organi javne oblasti. Skladno z določbo iz druge točke 2. člena te konvencije organ javne oblasti pomeni vlado na državni, regionalni ali drugi ravni, fizične ali pravne osebe, ki opravljajo javnopravne naloge po notranji zakonodaji, vključno s posebnimi nalogami, dejavnostmi ali storitvami v zvezi z okoljem, vse druge fizične ali pravne osebe, ki imajo javna pooblastila ali naloge ali opravljajo javne storitve v zvezi z okoljem, in institucije katere koli organizacije za regionalno gospodarsko povezovanje, ki je podpisnica konvencije. **Tako Aarhuška konvencija kot ZDIJZ torej ne zagotavljata pravno**

[1] Zakon o ratifikaciji Konvencije o dostopu do informacij, udeležbi javnosti pri odločanju in dostopu do pravnega varstva v okoljskih zadevah (Ur. l. RS, št. 17/2004).

activities or services in relation to the environment all other natural or legal persons with public authorisations or tasks or that perform public services relating to the environment and the institutions of any regional economic integration organisation that is a Party to the Convention. **Thus neither the Aarhus Convention nor the ZDIJZ ensure any legally protected right to demand environmental information directly from an entity of private law pursuing a commercial activity in the market (for instance from a commercial company that is responsible for environmental emissions).** Insofar as the applicant requests information that the authority bound by the ZDIJZ does not possess, the applicant will not be successful in any complaint procedure lodged with the Information Commissioner.

If we compare the definition of environmental information given in Article 2, Point 3 of the Aarhus Convention with the definition of information of a public nature given in Article 4 of the ZDIJZ, we may ascertain that both relate solely to information found in a materialised form.

Put a different way, the ZDIJZ does not create for bound authorities a direct obligation to provide answers to applicants' questions, to make abstracts from documents, to interpret legal documents and formulate explanations. According to Article 4 of the ZDIJZ, information of a public nature is any information that stems from the working area of the relevant body, but exists in the form of a document, a case, register, file, record or documentary material created by the body itself, in cooperation with other bodies or obtained from other parties (Article 4 of the ZDIJZ). The provisions of Articles 1 and 4 of the ZDIJZ make it clear that for the existence of information of a public nature the following three criteria must be cumulatively fulfilled:
1. information must stem from the working area of the body,
2. the body must have it in its possession (existence of information in narrower sense),
3. it must exist in a materialised form.

As may be concluded from the first paragraph of Article 4 of the ZDIJZ and also the Aarhus Convention (Point 3 of Article 2), environmental information of a public nature may only be a document that already exists, is already created, or a document that the body has already created or obtained within the remit of its working area. This is a condition that in theory is known as the "criterion of materialised form". Authorities that are bound by the ZDIJZ are indeed bound to enable access only to already existing information, and are not bound to create a new document or obtain or establish a document they do not possess at the time of the request.

In view of the statistics on cases received where in relation to access to information of a public nature applicants have referred directly to the Aarhus Convention, or cases that were the subject of the environmental information procedure, it may be concluded that in practice there is no problem of bound authorities denying access to the requested information for the reason of an exception (such as protection of commercial secret), but because they do not actually dispose of the requested information.

According to the statistics on decisions issued by the Information Commissioner in the area of access to information of a public nature[2], between 2005 and November 2009 a total of 16 complaint cases related to environmental information of a public nature, which is relatively few. Indeed this figure represents a mere 2.5% of all complaint cases. In 11 cases the subject of the complaint procedure was the question of whether the bound authority disposed of the requested information. The Information Commissioner found here that in 8 cases the bound authority did not dispose of the requested information and consequently the applicant's complaint had to be dismissed.

[2] Decisions can be viewed on the website http://www.ip-rs.si/informacije-javnega-znacaja/iskalnik-po-odlocbah/

varovane pravice zahtevati okoljske informacije neposredno od zasebnopravnega subjekta, ki izvaja gospodarsko dejavnost na trgu (npr. od gospodarske družbe, ki je odgovorna za izpuste v okolje). Če prosilec zahteva informacije, ki jih organ, zavezanec po ZDIJZ, nima, v pritožbenem postopku pred Informacijskem pooblaščencem ne more uspeti.

Če primerjamo določbo okoljske informacije iz tretje točke 2. člena Aarhuške konvencije z določbo informacije javnega značaja po 4. členu ZDIJZ, ugotovimo, da se obe nanašata samo na informacije, ki so že v materializirani obliki.

Povedano drugače, ZDIJZ za organe zavezance ne ustvarja neposredne obveznosti, da bi prosilcem morali odgovarjati na vprašanja, pripravljati izvlečke iz dokumentov, razlagati pravne akte in ustvarjati pojasnila. Po 4. členu ZDIJZ je informacija javnega značaja vsaka informacija, ki izvira iz delovnega področja organa in je v obliki dokumenta, zadeve, registra, dosjeja, evidence ali dokumentarnega gradiva, ki ga je organ izdelal sam, v sodelovanju z drugim organom ali pridobil od drugih oseb (4. člen ZDIJZ). Iz določb 1. in 4. člena ZDIJZ izhaja, da morajo biti za obstoj informacije javnega značaja kumulativno izpolnjeni trije kriteriji:
1. informacija mora izvirati iz delovnega področja organa,
2. organ mora z njo razpolagati (obstoj informacije v ožjem smislu),
3. informacija mora biti v materializirani obliki.

Kot izhaja iz določbe prvega odstavka 4. člena ZDIJZ in iz Aarhuške konvencije (tretja točka 2. člena), okoljske informacije javnega značaja predstavlja samo dokument, ki že obstaja, je že ustvarjen, oziroma dokument, ki ga je organ v okviru svojega delovnega področja že izdelal oziroma pridobil. Gre za pogoj, ki je v teoriji znan kot »kriterij materializirane oblike«. Organi, ki so zavezanci po ZDIJZ, morajo namreč omogočiti dostop le do že obstoječih informacij in niso dolžni ustvariti novega dokumenta ali pridobiti oziroma vzpostaviti dokumenta, ki ga v času zahteve nimajo.

Glede na statistiko pritožbenih zadev, v katerih so se prosilci v zvezi z dostopom do informacij javnega značaja neposredno sklicevali na Aarhuško konvencijo ali pa so bile predmet postopka okoljske informacije, je mogoče ugotoviti, da v praksi ni problem, da bi zavezanci dostop do zahtevanih informacij zavrnili iz razloga obstoja izjeme (npr. varstvo poslovne skrivnosti), ampak ker zahtevanih informacij nimajo.

Po statistiki izdanih odločb Informacijskega pooblaščenca s področja dostopa do informacij javnega značaja[2] se je v letih od 2005 do novembra 2009 16 pritožbenih zadev nanašalo na okoljske informacije javnega značaja, kar je razmeroma malo. To število namreč zajema le 2,5 odstotka vseh pritožbenih zadev. V 11 primerih je bilo predmet pritožbenega postopka vprašanje, ali zavezanec ima zahtevano informacijo. Informacijski pooblaščenec je pri tem ugotovil, da zavezanci v osmih primerih niso imeli zahtevanih informacij in posledično je bilo treba pritožbo prosilcev zavrniti.

[2] Odločbe so dostopne na spletni strani http://www.ip-rs.si/informacije-javnega-znacaja/iskalnik-po-odlocbah/

So in the case under job number 021-118/2007/4 of 19 March 2008 the Information Commissioner determined that since the Slovenian Environment Agency (ARSO) did not have at its disposal updated measurements of atmospheric emissions and measurements of noise from a specific industrial plant, at maximum operation of facilities with a decided indication of capacity utilisation, it was not bound to communicate that data to the applicant. In this specific case the applicant did not even complain for the reason that she believed the authority possessed the requested information but would not disclose it. In the complaint the applicant herself states that she entirely believed the assertions of the authority that it did not possess the requested information. The applicant complained because in her opinion ARSO should have possessed the relevant information and provided it to her, and in particular it should have taken account of the information in the procedure for issuing an environmental permit. The applicant wanted ARSO to treat the matter substantively and to provide answers to the questions she posed. In the specific complaint procedure the Information Commissioner found that ARSO did not dispose of the documents that would have provided answers to the questions posed by the applicant. The bound authority indeed asserted that there was no legal basis that would lay down its obligation to have the documents in question. Even insofar as such a legal basis might have existed, within the confines of its competence the Information Commissioner could not, under the ZDIJZ, order the bound authority in the procedure to create the specific documents. The right of access to information of a public nature relates only to documents that the bound authority has already created, obtained or which already exist in a materialised form. Here it should be pointed out that in the complaint procedure, regarding access to information of a public nature the Information Commissioner has no jurisdiction to adjudicate over the legality and rationality of the bound authority's actions or to delve into the issue of why it did not possess the environmental information.

Nevertheless, it should be pointed out that by acting in a way that does not accord with their lawful competence, bound authorities are not operating in a light of transparency, especially if their passivity has the consequence of information that would otherwise represent information of a public nature, not being accessible to applicants. Indeed by omitting to act as their duty dictates, bound authorities should not wriggle out of the obligations placed on them by the ZDIJZ, especially in cases where applicants may justifiably expect them to possess certain information, and where this involves an area as important as environmental information.

Tako je Informacijski pooblaščenec v zadevi pod opr. št. 021-118/2007/4 z dne 19. 3. 2008 ugotovil, da ker Agencija RS za okolje (ARSO) nima ažurnih meritev izpustov v zrak in meritev hrupa za določen industrijski obrat, ob maksimalnem delovanju naprav z decidirano navedbo izkoristka zmogljivosti, jih prosilki ni dolžna posredovati. V konkretnem primeru se prosilka niti ni pritožila, ker bi menila, da organ ima zahtevane informacije, pa jih ne želi posredovati. Prosilka v pritožbi namreč tudi sama navaja, da navedbam organa, da zahtevanih informacij nima, povsem verjame. Prosilka se je pritožila, ker bi moral ARSO po njenem mnenju imeti predmetne informacije in ji jih posredovati, predvsem pa bi jih moral upoštevati v postopku izdaje okoljevarstvenega dovoljenja. Prosilka je od ARSA želela, naj zadevo obravnava vsebinsko in ji posreduje odgovore na zahtevana vprašanja. V konkretnem pritožbenem postopku je Informacijski pooblaščenec ugotovil, da ARSO nima dokumentov, iz katerih bi izhajali odgovori na vprašanja, ki jih postavlja prosilka. Zavezanec je namreč zatrjeval, da ni nobene pravne podlage, iz katere bi izhajala njegova obveznost, da bi predmetne dokumente moral imeti. Tudi če bi takšna pravna podlaga obstajala, Informacijski pooblaščenec v okviru svojih pristojnosti zavezancu v postopku po ZDIJZ ne bi mogel naložiti, naj določene dokumente ustvari. Pravica dostopa do informacij javnega značaja se namreč nanaša samo na dokumente, ki jih je zavezanec že izdelal, pridobil oz. so že v materializirani obliki. Pri tem je treba poudariti, da Informacijski pooblaščenec v pritožbenem postopku glede dostopa do informacij javnega značaja nima pristojnosti, da bi se spuščal v presojo zakonitosti in smotrnosti ravnanja zavezanca ter v vprašanje, zakaj nima okoljskih informacij.

Ne glede na to je treba opozoriti, da zavezanci z ravnanjem, ko ne postopajo skladno z zakonitimi pristojnostmi, ne delujejo transparentno, še zlasti če je posledica njihove pasivnosti , da prosilcem niso dostopne informacije, ki so informacije javnega značaja. Zavezanci se z opustitvijo dolžnega ravnanja namreč ne smejo izmikati obveznostim, ki jim jih nalaga ZDIJZ, še zlasti v primerih, ko prosilci upravičeno pričakujejo, da bodo imeli določene informacije, in ko gre za tako pomembno področje, kot so okoljske informacije.

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Access to Environmental Information and Public Participation in Issuing Environmental Consent and Permit

1. INTRODUCTION

Since the right to a healthy living environment is an exceptionally important value for every citizen, environmental legislation provides the public with several possibilities for active participation in and influencing the implementation of environmental policies. The umbrella document that provides these possibilities is the Aarhus Convention, or the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters. On the EU level, two important directives are Directive 2003/4/EC on public access to environmental information and Directive 2003/35/EEC providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC. In the Slovenian legal system, these requirements of the convention and directives have been regulated by the Environmental Protection Act (ZVO-1, Official Gazette of the Republic of Slovenia, No. 39/06 – official consolidated text, 49/06-ZMetD, 33/07-ZPNačrt, 70/2008 and 108/2009).

Under the principle of participation, in adopting policies, strategies, programmes, plans, designs and general legal instruments relating to environmental protection, the government and municipalities must enable the participation not just of the parties causing the burden, providers of public environmental protection services and other entities providing environmental protection, but also of the public. Under the principle of public nature, environmental information is public and anyone has the right of access to such information in accordance with the law. Equally, the public has the right to participate in procedures of issuing environmental consent and certain environmental permits.

2. ACCESS TO ENVIRONMENTAL INFORMATION

In accordance with Article 110 of the ZVO-1, environmental information is information particularly on:
– the state of the environment and sections thereof,
– natural phenomena,
– natural goods (natural public good, natural values and biodiversity, including genetically modified organisms, and natural resources),
– emissions, waste and hazardous substances, including information on the environmental burden that they cause and on environmental accidents,
– activities including the procedures of national authorities, municipal authorities and other persons of public law, public service contractors and holders of public authorisation relating to the adoption of general and specific instruments associated with environmental protection or the adoption of strategies, plans, programmes, agreements, environmental principles and reports, the keeping of registers and records, including such instruments, registers and records,

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Dostop do okoljskih podatkov in sodelovanje javnosti pri izdajanju okoljevarstvenih soglasij in dovoljenj

1. UVOD

Ker je pravica do zdravega življenjskega okolja izredno pomembna vrednota za slehernega državljana, daje okoljevarstvena zakonodaja javnosti več možnost aktivnega sodelovanja in vplivanja na izvajanje okoljskih politik. Krovni akt, ki daje te možnosti, je Aarhuška konvencija oziroma Konvencija o dostopu do informacij, udeležbi javnosti pri odločanju in dostopu do pravnega varstva v okoljskih zadevah. Na ravni EU pa sta pomembni Direktiva 2003/4/ES o javnem dostopu do informacij o okolju in Direktiva 2003/35/EGS o zagotavljanju udeležbe javnosti pri sprejemanju določenih planov in programov, ki se nanašajo na okolje, in dopolnitvah, ki se nanašajo na udeležbo javnosti in dostop do pravice Direktive 85/337/EGS in 96/61/ES. V slovenskem pravnem sistemu je zahteve konvencije in direktiv uredil Zakon o varstvu okolja (ZVO-1, Uradni list RS, št. 39/06 – uradno prečiščeno besedilo, 49/06-ZMetD, 33/07-ZPNačrt, 70/2008 in 108/2009).

Po načelu sodelovanja morata država in občina pri sprejetju politik, strategij, programov, načrtov in splošnih pravnih aktov, ki se nanašajo na varstvo okolja, omogočati sodelovanje povzročiteljev obremenitve, izvajalcev javnih služb varstva okolja in drugih oseb, ki opravljajo dejavnosti varstva okolja, ter javnosti. Po načelu javnosti so okoljski podatki javni in vsakdo ima pravico dostopa do teh podatkov skladno z zakonom. Javnost ima tudi pravico sodelovati v postopkih izdaje okoljevarstvenih soglasij in določenih okoljevarstvenih dovoljenj.

2. DOSTOP DO OKOLJSKIH PODATKOV

Okoljski podatek je skladno s 110. členom ZVO-1 zlasti podatek o:
– stanju okolja in njegovih delov,
– naravnih pojavih,
– naravnih dobrinah (o naravnem javnem dobrem, naravnih vrednotah in biološki raznovrstnosti, vključno z gensko spremenjenimi organizmi, ter naravnih virih),
– izpustih, odpadkih in nevarnih snoveh, vključno z informacijami o obremenjevanju okolja, ki ga povzročajo, in okoljskih nesrečah,
– dejavnostih, vključno s postopki državnih organov, občinskih organov in drugih oseb javnega prava, izvajalcev javnih služb in nosilcev javnih pooblastil, ki se nanašajo na sprejetje z varstvom okolja povezanih splošnih in konkretnih pravnih aktov ali sprejemanje strategij, načrtov, programov, sporazumov, okoljskih izhodišč in poročil, vodenje registrov in evidenc, vključno s temi akti, registri in evidencami,
– ekonomskih analizah in ocenah, uporabljenih pri sprejetju ukrepov iz prejšnje točke,
– zdravstvenem stanju, varnosti in življenjskih razmerah ljudi, vključno s podatki o onesnaženosti prehranjevalnih verig in stanju objektov kulturne dediščine, če nanje vpliva ali bi lahko vplivalo obremenjenost okolja ali z njimi povezani dejavniki ali postopki in dejavnosti, in
– varnostnih ukrepih za preprečevanje večje nesreče, ki jih mora izvesti povzročitelj tveganja.

– economic analyses and estimates used in adopting measures referred to in the preceding point,
– the state of health, safety and living conditions of people, including information on the pollution of food chains, and on the state of cultural heritage structures, where they are impacted or could be impacted by environmental burden, or associated factors or procedures and activities and
– security measures for preventing major accidents, which must be implemented by those generating risk.

The ZVO-1 provides two fundamental principles for enabling the public to obtain environmental information, these being at the request of the applicant or through the proactive role of state and local authorities by publishing certain documents or data.

2.1 Access to environmental information on request

Environmental information is held by a large number of different institutions (state authorities, municipal authorities, public agencies, public funds and other entities of public law, as well as holders of public authorisation and public service contractors in the area of environmental protection). First and foremost among them, given its field of work, is the Ministry of the Environment and Spatial Planning and its attached bodies. It applies to all these institutions that they must enable access to environmental information for interested parties on request. In this, the applicant does not need to demonstrate a legal interest to obtain information or a document.

The ZVO-1 does not itself address the procedure whereby these institutions should provide environmental information to applicants and thereby also ensure the legal safety of this right, but refers instead to the application of the Access to Information of a Public Nature Act (ZDIJZ-UPB2, Official Gazette of the Republic of Slovenia, No. 51/2006, 117/2006-ZDavP-2). So applicants may request access to information of a public nature or repeated application through an informal request or written request. It should be pointed out that the right to justice (complaint, administrative dispute) is held only by an applicant who has made a request in writing. An e-mail is considered to be a formal request only if the request contains an electronic signature in accordance with the regulations governing e-business.

Applicants have the right to obtain information of a public nature or repeated application by obtaining it to view, or obtaining a transcript, photocopy or electronic record. The official competent for providing the requested information is bound to respond to requests within a maximum of 20 working days from the day of the completed application.

2.2 Notification from the Ministry of the Environment and the Environment Agency

While the ZVO-1 does not lay down that under the system set out in Article 110, environmental information should be published, it does require the ministry competent for the environment to establish an Environmental Protection Register, to manage the Environmental Protection Information System, and to produce and publish on its website environmental reports. In addition to the above forms of compulsory public notification of environmental information, the Ministry and the Environment Agency (ARSO) produce several publications (for instance Environmental & Spatial Planning newsletters, Our Environment and meteorological and hydrological yearbooks), while also providing information to public media.
The Environmental Protection register contains records of entities that hold environmental permits, records on environmental protection commercial public service contractors, records of entities with authorisation or certification to perform environmental protection activities and records of organisations registered in the EMAS system.

ZVO-1 določa dva osnovna načina omogočanja javnosti do pridobivanja okoljskih podatkov, in sicer na zahtevo prosilca ali s proaktivno vlogo organov državne in lokalne oblasti z objavljanjem določenih dokumentov oziroma podatkov.

2.1 Dostop do okoljskih podatkov na zahtevo prosilca

Okoljske podatke ima več različnih institucij (državni organi, organi občin, javne agencije, javni skladi in druge osebe javnega prava ter nosilci javnih pooblastil in izvajalci javnih služb na področju varstva okolja). Med njimi, prav zaradi svojega delovnega področja, prednjači Ministrstvo za okolje in prostor s svojimi organi v sestavi. Za vse te institucije velja, da morajo zainteresiranim osebam na njihovo zahtevo omogočiti dostop do okoljskih podatkov. Prosilcu pri tem ni treba izkazati pravnega interesa za pridobitev podatka oziroma dokumenta.

Postopka, po katerem naj bi te institucije dajale prosilcem okoljske podatke in bi tako zagotavljal pravno varstvo te pravice, ZVO-1 ni razdelal, ampak je napotil na uporabo Zakona o dostopu do informacij javnega značaja (ZDIJZ-UPB2, Uradni list RS, št. 51/2006, 117/2006-ZDavP-2). Tako prosilec lahko zahteva dostop do informacije javnega značaja ali ponovno uporabo z neformalno zahtevo ali pisno zahtevo. Poudariti je treba, da ima pravico do pravnega varstva (pritožba, upravni spor) le tisti prosilec, ki je zahtevo podal pisno. Elektronska pošta se šteje za formalno zahtevo le, če zahteva vsebuje elektronski podpis skladno s predpisi, ki urejajo elektronsko poslovanje.

Prosilec ima pravico pridobiti informacijo javnega značaja ali ponovno uporabo tako, da jo pridobi na vpogled ali da pridobi njen prepis, fotokopijo ali elektronski zapis. Uradna oseba, ki je pristojna za posredovanje zahtevane informacije, mora na zahtevo odgovoriti v roku največ 20 delovnih dni od dneva popolne vloge.

2.2 Obveščanje Ministrstva za okolje in prostor in Agencije RS za okolje

ZVO-1 ne določa, da bi bili okoljski podatki po sistemu, kot jih našteva v svojem 110. členu, javno objavljeni, ampak zahteva od ministrstva, pristojnega za okolje, da vzpostavi Register varstva okolja, vodi Informacijski sistem varstva okolja, objavlja na svetovnem spletu in izdeluje poročila o okolju. Poleg teh oblik obveznega obveščanja javnosti o okoljskih podatkih Ministrstvo za okolje in prostor (MOP) in Agencija RS za okolje (ARSO) izdajata več publikacij (na primer bilteni Okolje & prostor, Naše okolje, Meteorološki in hidrološki letopisi), podatke pa posredujeta tudi javnim medijem.

Register varstva okolja vsebuje evidence oseb, ki imajo okoljevarstveno dovoljenje, izvajalcev gospodarskih javnih služb varstva okolja, oseb, ki imajo pooblastila ali potrdila za opravljanje dejavnosti varstva okolja, ter evidenco organizacij, registriranih v sistem EMAS.

In order to perform tasks of the state in the area of environmental protection, including the familiarisation of the public with environmental data, the ministry ensures the management and maintenance of an **environmental information system**. The information system contains in particular information on the state of the environment, natural phenomena and natural assets, areas determined as threatened or protected by regulations in the area of environmental protection, nature conservation and protection and use of natural goods, the impacts of environmental pollution on human health, emissions and their sources, waste and waste management, hazardous substances, the use of natural goods, environmental accidents, structures and facilities intended for environmental protection, those causing environmental burdens, environmental protection commercial public service contractors and other entities involved in environmental protection, nature conservation and water regulation public service contractors, non-governmental organisations in the area of environmental protection and nature conservation, public finances used for environmental protection and nature conservation, regulations, standards and norms for environmental protection and the state of technology and other matters of importance for evaluating sustainable development.

Sources of data referred to in the preceding paragraph comprise, in addition to data obtained on the basis of the ZVO-1, data relating to the environment from national statistics, cadastral registers, public books, registers, records and other databases established at state authorities and municipal authorities and at other organisations pursuant to the law. The holders of databases are bound to send to the ministry on an ongoing basis information which the ministry requires for the needs of operating the environmental protection information system.

In cooperation with other ministries, at least every four years the ministry prepares a **report on the environment in the Republic of Slovenia**. This report contains in particular information on natural phenomena, the state of the environment and environmental pollution, biodiversity and natural assets, threatened and protected areas and regulations on the protection and use of natural goods, long-term trends and changes to the environment, evaluating the state of the environment, parts thereof and the level of threat to them, the impact of individual sectors on the state of the environment, especially agriculture, fisheries, forestry, energy, transport, manufacturing, tourism and use of natural resources, including an assessment of the incorporation of environmental protection demands into the development policies of individual sectors, the impacts of environmental pollution on human health, the implementation of the national environmental protection programme and operational programmes, implementation of programmes and measures to improve the quality of degraded environments, resources and the use of funds for implementing environmental protection policies, providing environmental protection public services, nature conservation and water regulation, education, notification and participation of the public in the area of environmental protection, important international events in the area of environmental protection and other information important for environmental protection. This report is passed by the government and submitted to the National Assembly, and must be published in such a way that it is publicly accessible.

The Environment Ministry and ARSO must post on the **internet** in particular:
– municipal regulations relating to the environment but not published in the Official Gazette of the Republic of Slovenia. To this end municipalities must send the text of such regulations to the Ministry in electronic form,
– the national environmental protection programme and action plans,
– environmental principles,
– reports on the environment,
– data or data summaries from monitoring of the environment,
– environmental consent and environmental permits, except for information which pursuant to regulations is not accessible to the public, or an indication of the authority from which consent or permits may be obtained and
– environmental reports and environmental impact reports or an indication of the authority from which reports may be obtained.

Za opravljanje nalog države na področju varstva okolja, vključno s seznanjanjem javnosti z okoljskimi podatki, MOP zagotavlja vodenje in vzdrževanje **informacijskega sistema okolja**. Informacijski sistem vsebuje zlasti podatke o stanju okolja, naravnih pojavih in naravnih vrednotah, območjih, ki so s predpisi s področja varstva okolja, ohranjanja narave in varstva ter rabe naravnih dobrin določena kot ogrožena, varovana ali zavarovana, vplivih onesnaženosti okolja na zdravje prebivalstva, izpustih in njihovih virih, odpadkih in ravnanju z njimi, nevarnih snoveh, rabi naravnih dobrin, okoljskih nesrečah, objektih in napravah, namenjenih varstvu okolja, povzročiteljih obremenjevanja okolja, izvajalcih gospodarskih javnih služb varstva okolja in drugih osebah, ki se ukvarjajo z varstvom okolja, izvajalcih javnih služb ohranjanja narave in urejanja voda, nevladnih organizacijah na področju varstva okolja in ohranjanja narave, javnih finančnih sredstvih, porabljenih za varstvo okolja in ohranjanje narave, predpisih, standardih in normativih varstva okolja ter stanju tehnike in tehnologije in drugih zadevah, pomembnih za vrednotenje trajnostnega razvoja.

Viri omenjenih podatkov so poleg podatkov, pridobljenih na podlagi ZVO-1, tudi podatki, ki se nanašajo na okolje iz državne statistike, katastrov, javnih knjig, registrov, evidenc in drugih baz, vzpostavljenih pri državnih organih in organih občin ter drugih organizacijah na podlagi zakona. Nosilci baz podatkov morajo ministrstvu sprotno pošiljati podatke, ki jih ta zahteva za potrebe delovanja informacijskega sistema varstva okolja.

MOP v sodelovanju z drugimi ministrstvi najmanj vsako četrto leto pripravi **poročilo o okolju v Republiki Sloveniji.** Poročilo vsebuje zlasti podatke o naravnih pojavih, stanju okolja in onesnaževanju okolja, biotski raznovrstnosti in naravnih vrednotah, ogroženih, varovanih in zavarovanih območjih in predpisih o varstvu in rabi naravnih dobrin, dolgoročnih trendih in spremembah okolja, vrednotenju stanja okolja, njegovih delov in ogroženosti, vplivu posameznih sektorjev na stanje okolja, zlasti kmetijstva, ribištva, gozdarstva, energetike, prometa, industrije, turizma in rabe naravnih virov, vključno z oceno vključevanja zahtev varstva okolja v politike razvoja posameznih sektorjev, vplivih onesnaženosti okolja na zdravje prebivalstva, izvajanju nacionalnega programa varstva okolja in operativnih programov, izvajanju programov in ukrepov za izboljšanje kakovosti degradiranega okolja, virih in porabi sredstev za izvajanje politik varstva okolja, izvajanju javnih služb varstva okolja, ohranjanja narave in urejanja voda, izobraževanju, obveščanju in sodelovanju javnosti na področju varstva okolja, pomembnih mednarodnih dogajanjih na področju varstva okolja in drugih podatkih, pomembnih za varstvo okolja. Poročilo sprejme vlada in ga posreduje državnemu zboru, objavljeno pa mora biti tako, da je dostopno javnosti.

MOP in ARSO morata **v svetovni splet** posredovati zlasti:
– predpise občin, ki se nanašajo na okolje, in niso objavljeni v Uradnem listu Republike Slovenije. V ta namen mora občina ministrstvu v elektronski obliki posredovati besedilo tega predpisa,
– nacionalne in operativne programe varstva okolja,
– okoljska izhodišča,
– poročila o okolju,
– podatke ali povzetke podatkov monitoringa okolja,
– okoljevarstvena soglasja in dovoljenja, razen podatkov, ki po predpisih niso dostopni javnosti, ali navedbo organa, pri katerem je soglasja ali dovoljenja mogoče dobiti, in
– okoljska poročila in poročila o vplivih na okolje ali navedbo organa, pri katerem je poročila mogoče dobiti.

3. PUBLIC PARTICIPATION IN ISSUING ENVIRONMENTAL CONSENT AND PERMITS

The **public** is deemed to be one or more natural or legal persons and their associations, organisations or groups. The ZVO-1 provides them with certain rights without them having to demonstrate the fulfilment of any special conditions. The public has three basic rights:

1. the right to obtain environmental information,
2. the right to participate in the adoption of policies, strategies, programmes, plans and designs (for instance the National Environmental Protection Programme, action plans, the national plan for allocating emission coupons), and also in the adoption of regulations (laws, decrees, rules and decisions) that might have a major impact on the environment (such as the Environmental Protection Act and the Rules on what is deemed to be a project in environmental impact assessments),
3. the right to participate in certain administrative procedures (for instance in issuing decisions confirming the acceptability of plans, environmental consent and environmental permits). Within the framework of this participation, the public has the right, within the set legal deadline of 30 days, to access documentation that is the subject of decision-making and to give its comments and opinions regarding this documentation. Prior to the adoption of a final decision, the deciding authority must take a view on all the comments and opinions received. However, this right does not include the right to submit complaints where there is a belief that the decision was unlawful. This right is only enjoyed by those with a material interest in the matter.

Those with a material interest, or the concerned public, denotes those who have more than just general rights, but certain conditions must be met to obtain the rights referred to in the ZVO-1. The concerned public is deemed to be only

– persons who reside permanently or who own or otherwise hold real estate in the area impacted by the environmental encroachment or facility or plant that is the subject of the environmental permit,
– non-governmental organisations in the field of environmental protection operating in the public interest.

The most important right held by the concerned public or persons comprising it, is their involvement in the administrative procedure for issuing environmental consent and environmental permits for IPPC facilities and Seveso plants as accessory participants, meaning that they have the same rights as active parties, and also the right to submit complaints. This right may be used only if exercised in the procedure in the proper way, that is, if during the public unveiling of documentation (30 days) they have submitted a request for entry into the procedure for issuing the environmental consent or permit.

The concerned public, however, does not have the right to be an accessory participant in environmental permits pursuant to Article 82 of the ZVO-1, that is, in issuing permits for the operation of non-IPPC facilities. The public or individuals thereof may participate in these procedures and exercise rights as accessory participants only if they have a legal interest pursuant to the General Administrative Procedure Act.

3. SODELOVANJE JAVNOSTI PRI IZDAJANJU OKOLJEVARSTVENIH SOGLASIJ IN DOVOLJENJ

Za **javnost** se šteje ena ali več fizičnih ali pravnih oseb ter njihova združenja, organizacije ali skupine. Tem ZVO-1 daje določene pravice, ne da bi jim bilo treba dokazovati izpolnjevanje še posebnih pogojev. Javnost ima tri osnovne pravice:

1. do pridobivanja okoljskih podatkov,
2. sodelovati pri sprejemanju politik, strategij, programov in načrtov (na primer Nacionalnega programa varstva okolja, operativnih programov, državnega načrta razdelitve emisijskih kuponov) ter pri sprejemanju predpisov (zakonov, uredb, pravilnikov, odlokov), ki lahko pomembneje vplivajo na okolje (na primer Zakon o varstvu okolja, pravilnik o tem, kaj se šteje za projekt pri presoji vplivov na okolje),
3. sodelovati v določenih upravnih postopkih (npr. pri izdaji odločbe o potrditvi sprejemljivosti načrta, okoljevarstvenega soglasja in dovoljenja). V okviru tega sodelovanja ima javnost v postavljenem zakonskem roku 30 dni pravico do vpogleda v dokumentacijo, ki je predmet odločanja ter na to dokumentacijo dajati svoje pripombe in mnenja. Pred sprejetjem končne odločitve se mora odločujoči organ opredeliti do vseh prejetih pripomb in mnenj. Ta pravica pa ne vključuje pravice vlaganja pritožb, če meni, da je bila odločitev nezakonita. To ima le zainteresirana javnost.

Zainteresirana javnost je javnost, ki ima več pravic kot splošna, vendar mora za pridobitev pravic iz ZVO-1 izpolnjevati določene pogoje. Za zainteresirano javnost se namreč štejejo le:

– osebe, ki stalno prebivajo ali so lastniki ali drugi posestniki nepremičnine na vplivnem območju posega v okolje ali naprave ter obrata, ki je predmet okoljevarstvenega dovoljenja,
– nevladne organizacije na področju varstva okolja, ki delujejo v javnem interesu.

Najpomembnejša pravica zainteresirane javnosti je vključenost v upravni postopek izdajanja okoljevarstvenega soglasja in dovoljenja za naprave IPPC in obrata Seveso kot stranski udeleženec, kar pomeni, da ima enake pravice kot aktivna stranka, med temi tudi pravico vložiti pritožbo. Te pravice lahko izkoristi le, če jih uveljavlja v postopku na ustrezen način, če je torej v času javne razgrnitve dokumentacije (30 dni) vložila zahtevo za vstop v postopek za izdajo okoljevarstvenega soglasja oziroma dovoljenja.

Zainteresirana javnost nima pravice biti stranski udeleženec pri okoljevarstvenih dovoljenjih po 82. členu ZVO-1, to je pri izdajanju dovoljenja za obratovanje naprave, ki ni naprava IPPC. V teh postopkih lahko javnost oziroma posameznik iz te javnosti sodeluje in uveljavlja pravice kot stranski udeleženec le, če ima pravni interes po določilih Zakona o splošnem upravnem postopku.

Boštjan Pihler
Eko krog

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

Boštjan Pihler
Eko krog

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

Prevzem 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

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*

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.

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

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 ugodi 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).

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.

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 ogleda 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, 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.

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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The Public and its Participation in Environmental Decision-Making and Access to Environmental Information

Abstract
The public is one or more natural persons, and – in line with the legislation or practice of an individual country – an association, organisation or group thereof. Public participation is a process that should accompany public documents from their inception to their drafting, adoption and practical implementation. Participation of the public means on the one hand the voluntary involvement of experts and lay people from the community in environmental decision-making, while on the other hand it ensures more intensive pressure on the implementation of documents thus adopted.
A prerequisite for high-quality public participation in decision-making is of course being able to view and access information on the environment and nature. The City of Maribor was selected by the Human Rights Ombudsman of Slovenia as an example of best practices in the area of accessibility of environmental information.

Keywords: environment, public, participation, information, access

1. The public and its participation in environmental decision-making

The participation of the public is any process that includes the public in solving problems or decision-making, and applies contributions from the public in adopting decisions. Public participation in planning long-term measures and decision-making is all the more important, because it is groups from the public that are usually familiar with local issues, interests, objectives, needs and resources. Their participation generally contributes to socially more acceptable and consequently more rational solutions. In line with the Aarhus Convention, Slovenian legislation in the area of environmental protection and nature conservation implemented for the public the right of access to information on the environment and the right to participate in the drafting and adoption of documents.

The Aarhus Convention defines the public in two senses, as “the public” and as “the concerned public”. Here the public means one or more natural persons, and – in line with the legislation or practice of an individual country – an association, organisation or group thereof. The concerned public means those affected or likely to be affected by environmental decision-making and having an interest in environmental decision-making.
Of course in terms of adopting decisions, in addition to the cooperation of expert circles, the participation and cooperation of interested public parties is extremely important where decisions have a lasting character. Article 72 of the Constitution of Slovenia provides that in accordance with the law, everyone has the right to a healthy environment and that the state will work to ensure a healthy living environment.

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Javnosti in njihovo vključevanje v okoljsko odločanje ter dostop do okoljskih podatkov

Povzetek
Javnosti so ena ali več fizičnih oseb in skladno z zakonodajo ali prakso posamezne države njihova združenja, organizacije ali skupine. Vključevanje javnosti je proces, ki naj bi spremljal javne dokumente od njihove zasnove, priprave, sprejetja in izvajanja v praksi. Vključevanje javnosti pomeni na eni strani prostovoljno angažiranje strokovnega in laičnega potenciala skupnosti v okoljsko odločanje, na drugi strani pa zagotavlja intenzivnejši pritisk na izvajanje tako sprejetih dokumentov.
Pogoj za kakovostno vključevanje javnosti v odločanje je vsekakor vpogled in dostop do podatkov o okolju in naravi. Varuh človekovih pravic Republike Slovenije je Mestno občino Maribor izbral kot primer dobre prakse na področju dostopnosti do okoljskih podatkov.

Ključne besede: okolje, javnosti, vključevanje, podatki, dostop

1. Javnosti in njihovo vključevanje v okoljsko odločanje

Sodelovanje javnosti je vsak proces, ki vključuje javnosti v reševanje problemov ali odločanje, in uporablja prispevke javnosti pri sprejemanju odločitev. Sodelovanje javnosti pri načrtovanju trajnostnih ukrepov in odločanju je pomembno še toliko bolj, ker so prav javnosti tiste, ki običajno dobro poznajo lokalne težave, interese, cilje, potrebe in vire. Njihovo sodelovanje praviloma prispeva k družbeno sprejemljivejšim in posledično tudi racionalnejšim rešitvam. Slovenska zakonodaja na področju varovanja okolja in ohranjanja narave je skladno z Aarhuško konvencijo javnostim uvedla pravico dostopa do podatkov o okolju in pravico do sodelovanja pri pripravi in sprejemanju dokumentov.

Aarhuška konvencija opredeljuje javnosti v dveh smislih, in sicer kot javnosti in kot vključene javnosti. Pri tem javnosti pomenijo eno ali več fizičnih oseb in skladno z zakonodajo ali prakso posamezne države njihova združenja, organizacije ali skupine. Vključene javnosti so tiste, ki jih okoljsko odločanje prizadene ali bi jih lahko prizadelo in imajo interes pri okoljskem odločanju. Vsekakor je z vidika sprejemanja odločitev izjemnega pomena poleg sodelovanja strokovne javnosti vključiti tudi in sodelovanje zainteresiranih javnosti, če naj bodo odločitve trajnostne. Ustava Republike Slovenije v 72. členu določa, da ima vsakdo skladno z zakonom pravico do zdravega okolja in da država skrbi za zdravo življenjsko okolje.

Article 21 of the Local Self-Government Act provides that municipalities independently perform matters of public importance, which include concern for protection of the air, soil, water sources, protection from noise and the collection and disposal of waste, and they also perform other environmental protection tasks.
Article 13 of the Environmental Protection Act provides that environmental information is public. The public has the right to participate in procedures of adopting regulations, plans and designs relating to environmental protection.
A detailed definition is also provided by the Nature Conservation Act, which lays down directly in Articles 57 and 107 the rights of the public to be informed in establishing protected areas.

Even before the adoption of the Aarhus Convention and modern legislation in the area of environmental protection and nature conservation, the City of Maribor administration was positively geared towards involving the public in decision-making on environmental solutions. Such practices were important and necessary in the 1980s in order to overcome the famous NIMBY and NIMET syndromes, which were more pronounced wherever the environmental problems were greater. Maribor, a former industrial city, was ultimately characterised by the fact that it had and is still dealing with problems that other major cities in Slovenia did not have (hazardous waste disposal site at Metava, tar disposal sites in water protection areas).

In the area of environmental protection, more recently the public was especially activated in the drafting and adoption of the Municipal Environmental Protection Programme (MEPP) in 2007/08. For the actual procedure of drafting the MEPP, a programme of drafting the MEPP was formulated and confirmed at the city council, and inherent in this was a programme of public participation, which took the form of thematic workshops and surveys, with the help of the public relations and media office. On this basis the MEPP was drafted through a very open democratic process, and in public circles it is a well-known municipal document of sustainable development. A document drawn up in this way consequently results in the fact that the public has an interest in monitoring implementation of the document and in individual cases the public exerts a certain pressure on the city administration, which is also reflected in the greater allocation of funds for the purpose of fulfilling the programme.

The city authorities also recognised the need for financial support for public groups with a special interest. Thus in the annual budget for a number of years now we have had a special item, “public participation in environmental decision-making”, out of which we co-finance the programmes of societies whose activities are in any way tied to environmental protection and nature conservation. On an annual level we allocate around EUR 50,000 for this requirement, and funds are distributed on the basis of a set of rules adopted by the city council. In any event, access to information on the environment is of primary importance for the participation and involvement of the concerned public.

2. Access to environmental information

The City of Maribor was selected by the Human Rights Ombudsman of Slovenia as an example of best practices in the area of accessibility of environmental information. This opinion was formulated on the basis of the website www.maribor.si/okolje, which reflects all the areas of operation of the municipal Environmental Protection and Nature Conservation Section. This website has in fact existed in various forms for ten years now, but came online in its upgraded form at the beginning of 2010. Both technically and visually it represents part of the web portal of the City of Maribor, but the content is created and published entirely independently.

Zakon o lokalni samoupravi v 21. členu določa, da občina samostojno opravlja zadeve javnega pomena, med katere spada tudi skrb za varstvo zraka, tal, vodnih virov, varstvo pred hrupom, za zbiranje in odlaganje odpadkov in opravlja druge naloge varstva okolja. Zakon o varstvu okolja med drugim v 13. členu določa, da so okoljski podatki javni. Javnost ima pravico sodelovati v postopkih sprejemanja predpisov, planov, načrtov, ki se nanašajo na varstvo okolja. Podobno določa tudi Zakon o ohranjanje narave, ki neposredno v 57. in 107. členu določa pravice seznanjanja javnosti pri vzpostavljanju zavarovanih območij.

Občinska uprava Občine Maribor je bila že pred sprejetjem Aarhuške konvencije in sodobne zakonodaje na področju varstva okolja in ohranjanja narave pozitivno naravnava do vključevanja javnosti v odločanje o okoljskih rešitvah. Takšna praksa je bila v osemdesetih letih 20. stoletja pomembna in potrebna zaradi premagovanja znanih sindromov NIMBY in NIMET, ki so bili izrazitejši tam, kjer so bili okoljski problemi večji. Za Maribor kot nekdanje industrijsko mesto je bilo vendarle značilno, da se je in se še spopada s težavami, ki jih druga večja mesta v Sloveniji niso imela (odlagališče nevarnih odpadkov v Metavi, odlagališča gudrona na vodovarstvenih območjih).

Na področju varstva okolja so bile javnosti v zadnjem času še posebej aktivirane pri pripravi in sprejemanju Občinskega programa varstva okolja (OPVO) v letih 2007/08. Za pripravo OPVO je bil izdelan in na mestnem svetu potrjen program priprave OPVO, ki je impliciral tudi program sodelovanja javnosti, kar je potekalo v obliki tematskih delavnic, anket, s pomočjo službe za stike z javnostmi in mediji. Na podlagi tega je bil OPVO pripravljen po zelo odprti demokratični poti in je v krogu javnosti dobro znan občinski dokument trajnostnega razvoja. Rezultat tako pripravljenega dokumenta je, da javnosti zainteresirano spremljajo izvajanje dokumenta in v posameznih primerih izvajajo določen pritisk na mestno upravo, kar se kaže tudi v večjem angažiranju sredstev za namene realizacije programa.

Mestna občina je prepoznala tudi potrebo po finančni podpori zainteresiranim javnostim. Tako imamo v letnem proračunu že več let posebno postavko Vključevanje javnosti v okoljsko odločanje, iz katere sofinanciramo programe društev, katerih delovanje je kakor koli povezano z varovanjem okolja in ohranjanjem narave. Na letni ravni za te potrebe namenjamo približno 50 tisoč EUR, sredstva dodelimo na podlagi pravilnika, ki ga je sprejel mestni svet. Vsekakor pa je za sodelovanje in vključevanje zainteresiranih javnosti primarnega pomena dostop do podatkov o okolju.

2. Dostop do okoljskih podatkov

Varuh človekovih pravic Republike Slovenije je Mestno občino Maribor izbral kot primer dobre prakse na področju dostopnosti do okoljskih podatkov. To mnenje se je izoblikovalo na podlagi spletne strani www.maribor.si/okolje, ki kot ogledalo odseva vsa področja delovanja občinskega sektorja za varstvo okolja in ohranjanja narave. Ta spletna stran v različnih oblikah obstaja že deset let, v prenovljeni podobi pa je zaživela v začetku leta 2010. Tako tehnično kot vizualno je del spletnega portala Mestne občine Maribor, vendar se vsebina povsem neodvisno oblikuje in objavlja.

For users it is particularly important that access to the website from the portal www.maribor.si is simple, meaning that the link must be in a visible place. For this reason we designed several possible methods of access:
– via the “quick link” tab by clicking on “Environment and Nature” – intended mainly for those users making a systematic or targeted search for information.
– on the “Weather” tab a link is created to “environmental information” – intended primarily for random users.
– the long way: City of Maribor → City Administration → Department of Municipal Services, Traffic, Environment and Spatial Planning → Environmental Protection and Nature Conservation Section – intended primarily for civil servants.

Users need only remember the keywords “Maribor” and “environment”, and on entering these two words, web browsers will provide the link to the website as the first option. What environmental information is accessible on the website? Since we are aware that municipality residents have the right to be informed about the state of the environment in which they live, we generally make use of the “active” means of providing information, i.e. through self-initiative. In this way we employees also ease our workload, since interested parties themselves can get to the desired information via the website.

We have formulated six sets of information:
1. Working areas – we present each working area of the section separately: air, water, noise, nature, climate change and waste.
2. Projects – we present current projects and a project archive.
3. Cooperation with the public – we publish invitations to events and everything related to co-financing of environmental non-governmental organisations.
4. Current – we publish current information and notices concerning the local environment.
5. Materials – we have published: the Municipal Environmental Protection Programme for Maribor, the Report on the State of the Environment and also our own articles, leaflets and brochures.
6. Web links – links are arranged in groups, ranging from local, national and European institutions to data, maps and other related content.

Areas such as air, water and noise are presented more comprehensively, since the majority of the Section’s work relates precisely to them. As far as air is concerned, we should highlight the current data on air quality from two measuring points in Maribor and one at Pohorje, which are updated hourly. Where certain hourly limit values are determined, this is also indicated on the graph. Equally, a presentation is possible in the form of a table under which are given all the limit, warning, alarm or target values for a specific pollutant.

As for water, the data from immission monitoring of underground waters are especially interesting. The map shows all six areas of the aquifer systems in Maribor and neighbouring municipalities. By clicking on the individual location of the piezometer, a graph is presented with data on the concentrations of pesticides, nitrates and the water level. For noise, increasing relevance is ascribed to maps of the most common locations for public events and of course the forms for permits for temporary or occasional excessive burdening of the environment with noise and the application to use sound equipment at meetings and events. The instructions for submitting applications are also enclosed.

For each area we also set out the legal basis, and most commonly there is a link to regulations that are published on the website of the Ministry of the Environment and Spatial Planning. We opted for this method since the regulations are very numerous, and they also change relatively quickly. Where local regulations apply, this is specially indicated.

Za uporabnika je predvsem pomembno, da je dostop do spletne strani s portala www.maribor.si preprost, kar pomeni, da mora biti povezava na vidnem mestu. Zato smo izoblikovali več možnih načinov dostopanja:
– prek zavihka Hitre povezave s klikom na Okolje in narava – namenjeno predvsem tistim uporabnikom, ki sistematično/namensko iščejo podatke,
– pri zavihku Vreme je povezava Podatki o okolju – namenjeno predvsem naključnim uporabnikom,
– dolgi način: Mestna občina → Mestna uprava → Urad za komunalo, promet, okolje in prostor → Sektor za varstvo okolja in ohranjanje narave – namenjeno predvsem javnim uslužbencem.

Zapomniti si je treba le ključni besedi Maribor in okolje, ob vpisu teh dveh besed pa bodo spletni iskalniki ponudili povezavo do spletne strani na prvem mestu. Kateri okoljski podatki so dostopni na spletni strani? Ker se zavedamo, da imajo občani pravico biti obveščeni o stanju okolja, v katerem živijo, v glavnem uporabljamo aktivni načina podajanja informacij, t. j. samoiniciativno. Tako si tudi zaposleni olajšamo delo, ker zainteresirani sami na spletni strani dobijo želene podatke.

Izoblikovali smo šest sklopov informacij:
1. Delovna področja – predstavljamo vsako delovno področje delovanja sektorja posebej: zrak, vode, hrup, narava, podnebne spremembe in odpadki.
2. Projekti – predstavljamo aktualne projekte in arhiv.
3. Sodelovanje z javnostjo – objavljamo vabila na dogodke in vse, kar je povezano s sofinanciranjem okoljskih nevladnih organizacij.
4. Aktualno – objavljamo aktualne informacije in obvestila, ki se tičejo lokalnega okolja.
5. Gradiva – objavljeni so: Občinski program varstva okolja za Maribor, Poročila o stanju okolja ter naši članki, zloženke in brošure.
6. Spletne povezave – povezave so oblikovane po sklopih, in sicer do lokalnih, državnih in evropskih institucij, podatkov in zemljevidov ter drugih sorodnih vsebin.

Področja kot so zrak, vode in hrup so predstavljena obsežneje, ker se večina dela sektorja nanaša prav na njih. Pri zraku naj izpostavimo aktualne podatke o kakovosti zraka z dveh merilnih mest v Mariboru in enem na Pohorju, ki se osvežujejo vsako uro. Kjer so določene mejne urne vrednosti, je to tudi na grafu označeno. Možen je tudi prikaz v obliki tabele, pod njo pa so navedene vse mejne, opozorilne, alarmne ali ciljne vrednosti za določeno onesnaževalo.

Pri vodah so še posebej zanimivi podatki imisijskega monitoringa podzemnih voda. Na zemljevidu je označenih vseh šest območij vodonosnih sistemov v mariborski in sosednjih občinah. S klikom na posamezno lokacijo piezometra se izriše graf s podatki o vsebnosti pesticidov, nitratov in nivoju vode.Pri hrupu so vedno bolj aktualni zemljevidi najpogostejših lokacij javnih prireditev in seveda obrazca za dovoljenje za začasno ali občasno čezmerno obremenitev okolja s hrupom oz. prijavo uporabe zvočnih naprav na shodih in prireditvah. Priložena so tudi navodila za oddajo vloge.

Pri vsakem področju so navedene tudi pravne podlage, najpogosteje je narejena povezava do predpisov, ki so objavljeni na spletni strani Ministrstva za okolje in prostor. Za tak način smo se odločili, ker so predpisi številni in se tudi razmeroma hitro spreminjajo. Kjer veljajo lokalni predpisi, je to posebej navedeno.

Interest of local residents

We define providing information at the request of residents as a “passive” method of accessing information. Most commonly this is performed by telephone. Where possible, we provide information immediately, and in certain cases we direct interested parties to a website or invite them in for a talk.

Since we have found that questions often do not touch directly on the work of the Section, but rather on the work of other institutions, such as inspection services (inter-municipality, national) or public commercial companies, we will soon be posting a FAQ section online. In this way we will gather together in one place questions and answers with contact information for the competent services.

Environmental information based on the GIS

Along the lines of location information, the Geographical Information System and Data Processing Section at the municipality has formulated environmental information, although for the moment this is only for internal use. It operates on the basis of the geographical information system (GIS) and serves as an overview of all environmental information for a given parcel. All the information is stored in Oracle Spatial 10.2.
Layers over which intersections are made on a selected parcel:

- Layers in location information:
  - municipal spatial plan
  - targeted use
  - protection bands for drinking water supply
  - nature conservation areas - polygons
  - nature conservation areas – points
- Layers applied only in environmental information:
  - other expert basis information
  - mapping and nature protection evaluation of habitat types in the municipal territory
  - information being formulated
  - land register of noise
  - areas of forest with special purpose
  - other information
  - parcels with tar disposal sites (old burdens)
  - Slovenian Environment Agency (ARSO) information
  - areas of ecological importance
  - Natura 2000
  - protected areas
  - information from the Ministry of Agriculture, Forestry and Food
  - actual use of physical space

This serves to ease considerably the determining of impact areas of various activities, the planning of encroachments and so forth. In the future we plan to produce and provide environmental information at the request of residents, and access to information via the website.

We may conclude with the thought that the publication of current and intelligibly presented environmental information on the website is in the interest both of expert circles and the general public, for only well-informed and aware individuals and organisations can actually contribute actively to environmental protection and nature conservation.

Sources:

Constitution of the Republic of Slovenia, source: http://www.dz-rs.si/?id=150&docid=28&showdoc=1
Environment Protection Act: http://www.uradnilist.si/1/objava.jsp?urlid=200441&stevilka=1694;
Nature Conservation Act, source: http://www.uradni-list.si/1/objava.jsp?urlid=199956&stevilka=2655

Interes občanov

Kot pasiven način dostopa do informacij opredeljujemo podajanje teh na zahtevo občanov. Najpogosteje to poteka po telefonu. Če je mogoče, damo informacijo takoj, v določenih primerih zainteresirane usmerimo na spletno stran ali jih povabimo na pogovor. Ker ugotavljamo, da se vprašanja pogosto ne tičejo neposredno dela sektorja, ampak dela drugih institucij, kot so inšpekcijske službe (medobčinska, državne), ali javnih gospodarskih podjetij, bomo v kratkem objavili še rubriko Pogosta vprašanja. Tako bomo na enem mestu zbrali vprašanja in odgovore s kontaktnimi podatki pristojnih.

Okoljska informacija na podlagi GIS

Po vzoru lokacijske informacije so na občinskem sektorju za geografski informacijski sistem in obdelavo podatkov oblikovali okoljsko informacijo, ki je za zdaj samo v interni uporabi. Deluje na podlagi geografskega informacijskega sistema (GIS) in je nekakšen pregledник nad vsemi okoljskimi podatki na izbrano parcelo. Vsi podatki so shranjeni v aplikaciji Oracle Spatial 10.2.

Sloji, nad katerimi se izvajajo preseki na izbrano parcelo:
- sloji v lokacijski informaciji:
  - občinski prostorski plan:
  - namenska raba,
  - varstveni pasovi za oskrbo s pitno vodo,
  - območja ohranjanja narave – poligoni,
  - območja ohranjanja narave – točke,
- sloji, ki se uporabljajo samo v okoljski informaciji:
  - drugi podatki strokovnih podlag:
  - kartiranje in naravovarstveno vrednotenje habitatnih tipov na območju MOM,
  - podatki v izdelavi:
  - kataster hrupa,
  - območja gozdov s posebnim namenom,
  - drugi podatki:
  - parcele z odlagališči gudrona (stara bremena),
  - podatki ARSO:
  - ekološko pomembna območja,
  - Natura 2000,
  - zavarovana območja,
  - podatki Ministrstva za kmetijstvo, gozdarstvo in prehrano:
  - dejanska uporaba prostora.

Tako je precej olajšano ugotavljanje vplivnih območij raznih dejavnosti, načrtovanje posegov in podobno. V prihodnje načrtujemo izdelavo in podajanje okoljske informacije na zahtevo občanov in dostop do podatkov prek spletne strani. Sklenemo lahko z mislijo, da je objava aktualnih in v razumljivi obliki podanih okoljskih podatkov na spletni strani tako v interesu strokovne kot širše javnosti, namreč le obveščeni in ozaveščeni posamezniki oz. organizacije lahko dejansko aktivno prispevajo k varstvu okolja in ohranjanju narave.

Viri:

Ustava RS, http://www.dz-rs.si/?id=150&docid=28&showdoc=1.
Zakon o varstvu okolja, http://www.uradnilist.si/1/objava.jsp?urlid=200441&stevilka=1694.
Zakon o ohranjanju narave, http://www.uradni-list.si/1/objava.jsp?urlid=199956&stevilka=2655.

Boris Šuštar
Coordinator of Civil Initiatives of Celje

Organised Civil Society Resistance as a Factor Limiting the Spread of "Dirty" Industry and the Only Guarantee for Implementing the Aarhus Convention

The Civil Initiatives of Celje was set up owing to the legitimate and legal requirement for the rehabilitation of the degraded Celje basin, and in order to prevent additional environmental pollution. A synthesis of all the research and scientific analysis performed in the past and commissioned by the Civil Initiatives of Celje, shows the serious "old" pollution and the current pollution, which is demonstrably threatening human health. People in the Celje basin do not enjoy the right to live in a healthy environment, as provided by the Slovenian Constitution.

Air polluted with heavy metals poisons and kills people, with as many as 80 people a year dying from this, because measures have not been taken to reduce pollution with PM 10 dust particles. The ozone present in the environment is exacerbating the negative consequences of PM10 and PM 2.5 contaminated dust particles.

Polluted groundwater is polluting the environment in the long term and irretrievably, and one sample taken on a night in January 2009 recorded at minus 13 Celsius had a temperature of 20 degrees Celsius. The groundwater sample had an iron level above the determining capacity of the spectrographic analyser, and was labelled as unsuitable for washing cars owing to its chloride content. The samples had the odour of sulphur compounds and were all labelled as non-potable.

Drinking water from the Medlog catchment that is contaminated with nitrates and other poisons must be urgently treated in order to even be usable for human water supply.
The polluted rivers Hudinja and Voglajna are in the fourth bracket of quality, and have been contaminated with heavy metals and all manner of poisons, which flow into the Savinja.

Celje also has the most polluted site in Slovenia, the site of the old Zinc Works, where concentrations of as much as 593 mg/kg s.s cadmium have been measured in the earth, alongside other poisons, and this is certainly a sad world record in terms of urban sites. The polluted site of the old Zinc Works has been labelled the Slovenian Chernobyl. However the local authority permitted the hauling in of thousands of tons of construction waste and poisons from the site of the old Zinc Works to a meadow next to houses in Bukovžlak, and this is demonstrably poisoning the air and groundwater, since this illicit dump lies above important groundwater sources for Celje. It has been demonstrated that we are threatened with the dry dumping of titanium gypsum at the Za Travnikom disposal site, since the contaminated dust it generates is carried far around and poisons nature and people with heavy metals.

In the local environment we are constantly exposed to serious floods "of the century", which tend to repeat here every eight years, and this also threatens the environment and contributes to the serious psychological and social stress on people.
The local authority has meanwhile allowed itself to build in a completely degraded environment a municipal waste and sewage sludge incinerator, which is additionally polluting the environment, since the geographical basin here is burdened with temperature inversion for as many as 114 days a year.

Boris Šuštar
Koordinator civilnih iniciativ Celja

Organiziran upor civilne družbe kot omejitveni dejavnik širitve »umazane« industrije in edino zagotovilo za implementacijo Aarhuške konvencije

Civilne iniciative Celja so ustanovljene zaradi legitimne in legalne zahteve za sanacijo degradirane Celjske kotline ter preprečevanja dodatnega onesnaževanja okolja. Sinteza vseh v preteklosti opravljenih raziskav in znanstvenih analiz, ki smo jih dali narediti, dokazujejo huda »stara« onesnaženja okolja in aktualna onesnaženja, ki dokazano ogrožajo zdravje ljudi. Ljudje v Celjski kotlini nimamo z Ustavo Republike Slovenije zagotovljene pravice do bivanja v zdravem okolju.

Onesnažen zrak s težkimi kovinami zastruplja in mori ljudi, saj kar 80 ljudi na leto umre zaradi tega, ker niso sprejeti ukrepi za zmanjšanje onesnaženja s prašnimi delci PM 10. Ozon v okolju negativne posledice onesnaženih prašnih delcev PM10 in PM 2,5 še poslabša. Onesnažene podzemne vode dolgoročno in nepopravljivo onesnažujejo okolje.

En vzorec je imel pri temperaturi zraka minus 13 stopinj Celzija ponoči januarja 2009 kar 20 stopinj Celzija. Vzorec podzemne vode je imel nad določljivostjo spektrografskega analizatorja železa in bil označen kot neprimeren za pranje avtomobilov zaradi vsebnosti kloridov. Odvzeti vzorci so imeli vonj po žveplovih spojinah in vsi so bili označeni kot nepitni. Z nitrati in drugimi strupi onesnažena pitna voda iz zajetja v Medlogu je nujno potrebna čiščenja, da je sploh uporabna za preskrbo ljudi. Onesnaženi reki Hudinja in Voglajna sta v četrtem kakovostnem razredu in sta zastrupljeni s težkimi kovinami in vsemi mogočimi strupi, ki se izlivajo v Savinjo.

V Celju imamo tudi najbolj onesnaženo območje v Sloveniji, območje stare Cinkarne, kjer je izmerjenih kar 593 mg/kg s. s. kadmija v zemlji, in to poleg drugih strupov, kar je zagotovo žalosten svetovni rekord v urbanem območju. Onesnaženo območje stare Cinkarne je označeno za slovenski Černobil. Lokalna oblast pa je dovolila navoz več tisoč ton gradbenih odpadkov in strupov z območja stare Cinkarne na travnik zraven hiš v Bukovžlaku, s temi se dokazano zastruplja zrak in podtalnico, saj ta črna deponija leži nad pomembnimi podzemnimi vodnimi viri Celja. Dokazano smo ogroženi s suhim odlaganjem titanove sadre na deponiji Za travnikom, saj to onesnaženo prašenje nosi daleč okoli in zastruplja s težkimi kovinami naravo in ljudi.

V našem okolju smo nenehno izpostavljeni hudim »stoletnim« poplavam, ki pa se pri nas ponavljajo na osem let in prav tako ogrožajo okolje in vplivajo na hudo psihosocialno stisko ljudi. Lokalna oblast pa si je v popolnoma degradiranem okolju dovolila graditi sežigalnico komunalnih odpadkov in blata iz komunalne čistilne naprave, ki dodatno onesnažuje okolje, saj je naša kotlina obremenjena s temperaturno inverzijo kar 114 dni v letu.

All the stated facts caused 25% higher mortality from cancer in 2003, and 30% higher cancer-related mortality in 2004 than the average for Slovenia. The "reaper syndrome" is the name given to the large and alarming variance in the mortality rate, when the most at-risk, sick and vulnerable sections of the population die in a very short time. In all population structures, respiratory diseases are in first place.

Meanwhile capital interests, with the blessing of the politicians, sought to build for us in the local community a crematorium for 1,000 cremations a year and an asphalt depot, plus a plant for recycling construction waste and concrete in the village of Začret. At Ljubečna, next to a dormitory settlement, they wanted to locate a wholesale transport and logistics centre standing 45 metres high, for loading around 600 lorries a day, with the reasoning that such an extraordinary increase in traffic and pollution from lorries would not significantly affect people's living conditions.

Only the exceptionally effective organisation and collection of signatures in opposition to these environmentally controversial projects blocked the insatiable interests of capital and politics, which are acting so irresponsibly with the environment and threatening human health. By lobbying the political parties in the City Council, however, we were able to ensure that the projects that would additionally threaten human health, were "non-starters". In other words ordinary people fought back and showed, through analyses and scientific studies that we paid for ourselves, that environmentally controversial projects do not belong in the completely degraded environment of the Celje basin. When we approached the environmental inspectors, given the clear threat to the environment, they declared themselves to have no jurisdiction to act, and once even threatened us with a fine of 500 euros, if we did not immediately offer up all the data relating to the hauling in of poisons to the illicit dump at Bukovžlak three years earlier.

At that time they were informed by the directly affected residents that hazardous waste was being brought to the meadow beside the houses, but they took no action to prevent this criminal and barbaric act.

We constantly approached state authorities and public institutes to obtain relevant information, and quite a few times, including through the mediation of the Information Commissioner, we obtained all the documents that, put together, showed an appalling picture of all the environmental pollution and the calamitous state of people's health. The democratic right to being informed is an essential condition for the civil society to have any idea of what is going on in the environment. The analysis and research performed with public money by their very nature "make" this information publicly accessible. Often, however, we have to remind those responsible to peruse the Aarhus Convention, which Slovenia ratified and thereby undertook to ensure that both individuals and organised civil society groups have the undisputed right to participate in the planning and locating of controversial environmental projects. In this way, unacceptable projects in the environment can be stopped before the actual construction. The Civil Initiatives of Celje are not against new industrial and commercial projects, but we are opposed to the spread of dirty industry and against the continued poisoning of people, especially given the past experiences.

In the 21st century it is essential to develop a society that will be based on nature-friendly and sustainable development, where natural resources and human health will not be threatened. Progress should not be tied to additional burdening of the environment. In Celje we need to introduce zero tolerance for all polluters, since Celje is demonstrably the most polluted city in Slovenia.

Where the measure of progress in a society is any kind of job, no matter how questionable in environmental terms, ordinary people must resist such unwise policies that exhaust and burden the environment.

Vsa ta dejstva so povzročila 25 odstotkov večjo umrljivost za rakom leta 2003 in 30 odstotkov večjo umrljivost za rakom leta 2004, kot je povprečje v Sloveniji. »Sindrom žetve« imenujejo tako velika in alarmantna odstopanja v umrljivosti populacije, ko najbolj ogrožen, bolan in ranljiv del prebivalstva umre v zelo kratkem času. V vseh populacijskih strukturah prebivalstva so bolezni dihal na prvem mestu.

Kapital, ob strinjanju politike, pa je hotel v naši krajevni skupnosti zgraditi še krematorij za 1000 kremiranj/leto in asfaltno bazo ter obrat za reciklažo gradbenih odpadkov in betona v naselju Začret. Na Ljubečni, zraven spalnega naselja, pa so želeli umestiti grosistično-transportno logistični center, visok 45 metrov, za oskrbovanje približno 600 kamionov na dan, z utemeljitvijo, da tako izredno povečan promet in onesnaženje s kamioni ne bosta pomembno poslabšala življenjske razmere ljudi.

Samo izredno učinkovito organiziranje in zbiranje podpisov nasprotovanja tem ekološko spornim projektom je preprečilo nenasiten interes kapitala in politike, ki dela tako neodgovorno z okoljem in ogroža zdravje ljudi. Z lobiranjem pri političnih strankah v mestnem svetu občine pa smo dosegli, da so propadli projekti, ki bi dodatno ogrožali zdravje ljudi. Tako smo si ljudje sami izborili, da smo tudi z analizami in znanstvenimi študijami, ki smo jih sami plačali, dokazovali, da ekološko sporni projekti ne spadajo v popolnoma degradirano okolje Celjske kotline. Ko smo se ob evidentnem ogrožanju okolja obračali na inšpekcijo za okolje, so se razglašali za nepristojne za ukrepanje in celo enkrat zagrozili s kaznijo 500 evrov, če ne bomo nemudoma javili vseh podatkov o navozu strupov na črno deponijo v Bukovžlaku pred tremi leti.

Takrat so bili od neposredno prizadetih prebivalcev takoj obveščeni, da nevarne odpadke vozijo na travnik zraven hiš, pa niso ukrepali in preprečili tega kriminalnega in barbarskega dejanja.

Vseskozi smo se obračali na državne organe in javne zavode, da smo dobili relevantne podatke, in kar nekajkrat tudi s posredovanjem informacijske pooblaščenke pridobili vse dokumente, ki so skupaj dali strašljivo podobo o vseh onesnaženjih okolja in poraznem zdravstvenem stanju ljudi. Demokratična pravica do obveščenosti je nujen pogoj, da civilna družba sploh ve, kaj se dogaja v okolju. Analize in raziskave, ki so opravljene z javnim denarjem, te podatke že same po sebi naredijo javno dostopne. Velikokrat pa moramo tudi odgovorne spomniti, naj si preberejo Aarhuško konvencijo, ki jo je Slovenija ratificirala in s tem obvezala, da ima tako posameznik kot organizirana civilna družba nesporno pravico do sodelovanja že pri načrtovanju in umeščanju spornih okoljskih projektov. S tem se lahko nesprejemljive projekte v okolju ustavi pred samo gradnjo. V Civilnih iniciativah Celja nismo proti novim industrijskim in poslovnim projektom, smo pa proti širitvi umazane industrije in proti nadaljnjemu zastrupljanju ljudi, predvsem zaradi izkušenj v preteklosti.

V 21. stoletju je nujno razvijati družbo, ki bo temeljila na sonaravnem in trajnostnem razvoju, kjer ne bodo ogroženi naravni viri in zdravje ljudi. Napredek ne sme biti povezan z dodatnim obremenjevanjem okolja. V Celju je treba uvesti ničelno stopnjo tolerance do vseh onesnaževalcev, ker je Celje dokazano najbolj onesnaženo mesto Slovenije.

Ko je merilo za napredek družbe vsakršno delovno mesto, naj bo še tako sporno z okoljskega vidika, se moramo ljudje upreti tako nespametni politiki, ki izčrpava in obremenjuje okolje. V Sloveniji je veliko umazane industrije, ki ne spada v 21. stoletje in našo z naravnimi lepotami posejano deželo.

In Slovenia there is plenty of dirty industry, which does not belong in the 21st century or in our country, which otherwise has its fair share of natural beauty.

We must endeavour to make Slovenia, a jewel of Europe, even more beautiful, and to remediate old problems of pollution and "return" it to our descendants in a cleaner state than we received it from our fathers.

Our local bigwigs, who won a mandate in the elections to manage the community property, are involved however in controlling and plundering the remaining (previously socially-owned) wealth. Since we have 210 municipal environmental policies, the same as the number of municipalities and mayors, we have a blind and uncoordinated policy of spatial management, and even the best agricultural land is being built on without reservation. We have a mere 800 m^2 per inhabitant of cultivable land left, and this in no way suffices for the population to be self-sufficient in food. From a level of 80% food self-sufficiency 15 years ago, we have "fallen" to 45% self-sufficiency in the food we produce, which is extremely worrying and unacceptable in terms of the strategic interest of survival of the Slovenian nation. And when this remaining agricultural land is being poisoned by emissions from the chemical industry and other sources, our future looks very bleak. Where 20 years ago the Celje basin had 6000 ha of excessively polluted land, of which 2200 ha was under cultivation, we now have 7000 ha of excessively polluted land, of which 2800 ha is cultivated land, on which produce has been grown all these years, and this contaminated food is poisoning the population.

In other words, this fact also demonstrates that the state of environmental pollution is deteriorating and not improving, as the local politicians are even allowing to be spread around, in order to be able to keep ruling over people.

For this reason the operation of the civil society is essential, since in developed countries it acts as a corrective force to the unbridled interests of capital and politics. Consistent account needs to be taken of affected members of the population in the planning and locating of facilities and activities that burden the environment and threaten human health. And those responsible must enable monitoring of environmental impact reports, which are a constituent part of projects, and immediately withdraw authorisation from those "experts" who adapt non-creditable reports for the benefit of investors.
Sadly, however, in Slovenia we have no tradition of respect and support for the civil society operating in the field of environmental protection. We finance our activities entirely on our own, yet we are subject even to denigration and personal discrediting.

I firmly hope that this Conference will also be a step towards change in the inappropriate attitude to the civil society in Slovenia, and an important milestone in the proper implementation of the Aarhus Convention, which ensures for the public the right to information. Only a credibly informed public can act as a qualified partner in speaking to local authorities and owners of capital, to whom their own material benefit means more than a socially responsible attitude to nature and people.

Slovenijo, biser Evrope, se moramo potruditi narediti še lepšo, sanirati stare težave z onesnaženji in jo vrniti našim potomcem čistejšo, kot smo jo dobili od svojih očetov.

Naši lokalni veljaki, ki so dobili mandat na volitvah za upravljanje premoženja skupnosti, pa se ukvarjajo z vladanjem in plenjenjem še preostalega (prej družbenega) bogastva. Ker imamo 210 občinskih okoljskih politik, kot je občin in županov, imamo stihijsko in nenačrtno politiko gospodarjenja s prostorom, nekritično se pozidava tudi najboljša kmetijska zemljišča. Imamo le še 800 m^2 na prebivalca obdelovalne zemlje, kar nikakor ne zadošča za prehransko samopreskrbo prebivalstva. Z 80-odstotne prehranske samooskrbe pred petnajstimi leti smo padli na 45-odstotno samooskrbo s pridelano hrano, kar je skrajno skrb vzbujajoče in nedopustno iz strateškega interesa preživetja slovenskega naroda. Ko pa se ta preostala kmetijska zemljišča zastruplja še z izpusti kemijske industrije in drugih virov, je naša prihodnost zelo črnogleda. Če smo imeli v Celjski kotlini pred dvajsetimi leti 6000 ha prekomerno onesnažene zemlje in od tega 2200 ha obdelovalne, imamo zdaj 7000 ha prekomerno onesnažene zemlje, od tega 2800 ha obdelovalne zemlje, na kateri vsa leta pridelujejo pridelke in s to onesnaženo hrano zastrupljajo prebivalstvo.

Torej, tudi to dokazuje, da se stanje onesnaženja okolja slabša, ne boljša, kot si celo dovolijo zavajati lokalni politiki, da bi lahko še naprej vladali ljudem.

Za to je nujno potrebno delovanje civilne družbe, ki je v razvitih državah korektiv nebrzdanemu interesu kapitala in politike. Nujno je dosledno upoštevanje prizadetih prebivalcev pri načrtovanju in umeščanju objektov ter dejavnosti, ki obremenjujejo okolje in ogrožajo zdravje ljudi. Odgovorni pa morajo omogočiti nadzor nad poročili o vplivih na okolje, ki so sestavni del projektov, in takoj odvzeti pooblastila tistim »strokovnjakom«, ki v korist vlagatelja prilagajo neverodostojna poročila. Žal v Sloveniji še nimamo tradicije spoštovanja in podpore civilne družbe, ki deluje na področju okoljevarstva. Svojo dejavnost v celoti financiramo sami, deležni pa smo celo podcenjevanja in osebne diskreditacije.

Trdno upam, da je tudi ta konferenca korak k spremembi neprimernega odnosa do civilne družbe v Sloveniji in pomemben mejnik pri dejanskem izvajanju Aarhuške konvencije, ki zagotavlja javnosti pravico do obveščenosti. Samo verodostojno obveščena javnost pa je lahko kvalificiran sogovornik lokalnim oblastnikom in lastnikom kapitala, ki jim lastna materialna korist pomeni več kot družbeno odgovoren odnos do narave in ljudi.

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The experience of MWS in drafting a Triglav National Park law

Abstract
In this paper the author cites the experience of members of non-governmental organisations in Slovenia, legislation applied, the procedures and the reactions of the government side in drafting the proposed law on Triglav National Park. Here it is impossible to escape the impression that:

1. the attitude of the government sector in Slovenia to the majority of non-governmental organisations (NGOs) is significantly worse than in the advanced areas of the European Union, where governments do not just tolerate the activities of NGOs, but even promote and work in partnership projects with them.
2. Environmental and nature protection policy in Slovenia has now under several government terms been pushed to the margins, instead of defining the basic marginal conditions for the country's development strategy.
3. There is an equally problematic attitude to the internationally adopted obligations from the Kyoto Protocol, the European Landscape Convention and the Convention on Biodiversity. Slovenia all too easily takes on obligations but inadequately ensures that these obligations are also observed.
4. This results in a schizophrenic attitude of the national authorities to implementation of the Aarhus Convention, which has the aim of the most transparent and high-quality decision-making possible on environmental matters. For this reason, owing to the delays in implementing measures and owing to non-fulfilment of other obligations, this convention causes frequent unusual patterns of behaviour or convulsions in the operation of the Environment Ministry and its bodies.

Keywords: Triglav National Park, Aarhus Convention, Convention on Biodiversity, Natura 2000, European Landscape Convention, IUCN, WCPA

Legislative Tools for Nature Conservation

In exercising basic civic rights in environmental and nature protection matters, it is necessary to arm oneself intellectually and legally prior to any communication with Slovenian bureaucrats, since many cases indicate that frequently neither favour nor assistance can be expected from them.
Here it is best to begin with the Slovenian Constitution, adopted in December 1991. I should point out a few of its most important articles that are applicable in environmental disputes: Articles 2, 8, 39, 44, 59, 71, 72 and 73. Articles 71 to 73 are particularly important. Article 71 talks about the protection of land, especially agricultural land, and especially in mountain areas, while Article 72 addresses the right to a healthy living environment and Article 73 protection of natural and cultural heritage.

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Izkušnje MWS pri pripravi zakona o Triglavskem narodnem parku

Povzetek
Avtor v prispevku navaja izkušnje članov nevladnih organizacij v Sloveniji, uporabljeno zakonodajo, postopke in odzive vladne strani ob pripravljanju predloga zakona o Triglavskem narodnem parku. Ob tem se ne more izogniti vtisu, da:

1. je odnos vladnega sektorja v Sloveniji do večine nevladnih organizacij precej slabši, kot je v razvitem delu Evropske unije, kjer vlade aktivnosti nevladnih organizacij ne le tolerirajo, ampak celo spodbujajo in delujejo tudi v partnerskih projektih z vladnimi organizacijami;
2. je okoljska in naravovarstvena politika v Sloveniji že nekaj mandatov odrinjena na rob, namesto da bi določala osnovne robne pogoje za razvojno strategijo države;
3. je enako sporen odnos do mednarodno sprejetih obveznosti od kjotskega protokola, Evropske konvencije o krajini do Konvencije o biotski raznovrstnosti. Slovenija preveč nalahko sprejme obveznosti in preslabo poskrbi, da bi jih tudi spoštovala;
4. je rezultat shizofren odnos državne oblasti do izvajanja Aarhuške konvencije, ki ima za cilj bolj transparentno in kakovostno odločanje o okoljskih zadevah. MOP in organom v sestavi tako zaradi zamud pri izvajanju ukrepov in neizpolnjevanja drugih obveznosti ta konvencija povzroča pogoste nenavadne vzorce obnašanja ali krče v delovanju.

Ključne besede: Triglavski narodni park, Aarhuška konvencija, Konvencija o biotski raznovrstnosti, Natura 2000, Evropska konvencija o krajini, IUCN, WCPA

Zakonska orodja za varovanje narave

Ob uveljavljanju osnovnih pravic državljanov v okoljskih in naravovarstvenih zadevah se je nujno intelektualno in zakonsko pripraviti pred vsako komunikacijo s slovenskimi birokrati, saj mnogi primeri kažejo na to, da od njih pogosto ni pričakovati naklonjenosti ali pomoči. Pri tem je najbolje začeti z Ustavo RS, sprejeto decembra 1991. Naj navedem nekaj najpomembnejših členov ustave, ki so uporabni v okoljevarstvenih sporih: 2., 8., 39., 44., 59., 71., 72. in 73. člen. Posebej so pomembni členi od 71 do 73; 71. člen opredeljuje varstvo zemljišč, še posebej kmetijskih in še posebej na gorskih območjih, 72. člen opredeljuje pravico do zdravega življenjskega okolja, 73. člen pa varovanje naravne in kulturne dediščine. Naslednji sklop pravnih orožij so mednarodni sporazumi, pri čemer je Aarhuška konvencija iz leta 2001 ena od najpomembnejših. Cilj te konvencije je varstvo pravic sedanjih in

The next set of legal tools is international treaties, where the Aarhus Convention of 2001 is one of the most important. The aim of this convention is to protect the rights of current and future generations to live in a suitable environment, which is ensured through three rights, specifically 1) access to environmental information, 2) public participation and 3) justice. Slovenia ratified the convention (MKDIOZ) in 2004, and Articles 2 and 8 of the Constitution automatically guarantee its validity. Article 2 of the constitution provides that Slovenia is a state ruled by law and a social state, while Article 8 provides that ratified and published international treaties are applied directly.

The umbrella Slovenian nature protection law is the Nature Conservation Act (ZON) adopted in 1999. This set of tools also includes other sectoral laws on environmental protection and their implementing regulations, which precisely define the implementation of this legislation. You might expect that you cannot protect nature if you do not protect the environment. Possible infringements of rights and possible discrepancies between domestic legislation and the constitution and international treaties, publication processes and the validity of legislation in time, and the method of resolving these discrepancies, are all regulated by Articles 153 to 159 of the Slovenian Constitution.
Regarding protected areas of nature, general provision is made in Article 53 of the ZON. In the Nature Conservation Act, Slovenia has undertaken to observe international criteria for protected areas in determining protected areas:

Article 53 (protected areas)

(2) In determining types of protected area referred to in Point 2 of the preceding paragraph, account shall be taken of the criteria of international nature conservation organisations of which the Republic of Slovenia is a member state.

The international organisation operating in the field of protected areas is the International Union for the Conservation of Nature (IUCN) and its World Commission for Protected Areas (WCPA). Based on the IUCN's Guidelines for Applying Protected Area Management Categories (IUCN, 2008) a world database on protected areas has also been established. For the category of national parks there is the following definition: "large natural or near natural areas set aside to protect large-scale ecological processes, along with the complement of species and ecosystems characteristic of the area, which also provide a foundation for environmentally and culturally compatible spiritual, scientific, educational, recreational and visitor opportunities." The primary objective of a national park is: "To protect natural biodiversity along with its underlying ecological structure and supporting environmental processes, and to promote education and recreation." The primary administrative objective is implemented on at least 75% of the protected area.

These guidelines are also supported by the Convention on Biodiversity, adopted in 1992 in Rio de Janeiro, which was ratified by Slovenia (MKBR) in 1996, and by more recent documents such as the European Landscape Convention ratified (MEKK) in 2002 and the Prague European Wildlife Resolution of May 2009.

Within the currently valid boundaries, Triglav National Park falls for the most part within the Natura 2000 areas. A Natura 2000 area is one where birds and/or habitats are protected in line with the European directive. With the designation of Natura areas by the European Union, Slovenia has in fact concluded a treaty on special protection for habitats and bird species that are important in Europe. Breaching the Natura regime is therefore breaching a European treaty, with all the consequences for the state that breaches the treaty.
In 2004 Triglav National Park received a Council of Europe Diploma, with recommendations for improvements.

prihodnjih generacij za življenje v primernem okolju, kar zagotavlja s tremi pravicami, in sicer s pravico 1) do dostopa do okoljskih informacij, 2) do udeležbe javnosti in 3) do pravnega varstva. Slovenija je konvencijo ratificirala (MKDIOZ) leta 2004, 2. in 8. člen ustave pa avtomatično zagotavljata njeno veljavnost. Drugi člen ustave določa, da je Slovenija pravna in socialna država, 8. člen pa, da se ratificirane in objavljene mednarodne pogodbe uporabljajo neposredno.

Krovni slovenski zakon za varovanja narave je Zakon o ohranjanju narave (ZON), sprejet leta 1999. V tem sklopu so še drugi sektorski zakoni o varovanju okolja in njihovi podzakonski akti, ki natančneje določajo izvajanje te zakonodaje. Pričakovali bi, da ne morete varovati narave, če ne varujete okolja. Morebitne kršitve pravic in morebitna neskladja med domačo zakonodajo ter ustavo in mednarodnimi pogodbami, postopke objave in veljavnost zakonodaje v času in način rešitev teh neskladij urejajo členi Ustave RS, in sicer od 153. do 159. člena. Zavarovana območja narave na splošno določa tudi 53. člen ZON. Slovenija se je v ZON zavezala, da bo pri določanju zavarovanih območij upoštevala tudi mednarodna merila za zavarovana območja:

53. člen (zavarovana območja)

(2) Pri določanju vrste zavarovanega območja iz 2. točke prejšnjega odstavka se upoštevajo tudi merila mednarodnih organizacij za ohranjanje narave, katerih članica je Republika Slovenija.

Mednarodna organizacija, ki deluje na področju zavarovanih območij, pa je IUCN s Svetovno komisijo za zavarovana območja (WCPA) v Svetovni zveza za varstvo narave (IUCN). Na podlagi IUCN-ovega sistema kategorij zavarovanih območij in s smernicami za njihovo upravljanje (Guidelines for applying protected area management categories, IUCN, 2008) je tudi vzpostavljena in se vodi svetovna baza podatkov o zavarovanih območjih. Za kategorijo narodnih parkov obstaja definicija, da »so večja naravna ali skoraj naravna območja, kjer so zavarovani ekološki procesi z vrstami in ekosistemi, značilnimi za območje, in so temelj za zagotavljanje okoljskih in kulturno skladnih pogojev za zadovoljevanje duhovnih, znanstvenih, izobraževalnih potreb ter za rekreacijo.« Primarni cilj narodnega parka je: »Varovanje naravne biotske pestrosti skupaj z ekološko strukturo in okoljskimi procesi območja ter spodbujanje izobraževanja in rekreacije.« Primarni upravljavski cilj se uveljavlja na najmanj 75 odstotkih zavarovanega območja.

Te smernice podpirajo tudi Konvencija o biološki raznovrstnosti, sprejeta leta 1992 v Rio de Janeiru, ki jo je Slovenija ratificirala (MKBR) leta 1996, in novejši dokumenti, npr. Evropska konvencija o krajini, ratificirana (MEKK) v letu 2002, in Evropska resolucija o divjini iz Prage (maj 2009).

Triglavski narodni park (TNP) v trenutno veljavnih mejah se v glavnem prekriva tudi z območji Nature 2000. Področje Natura 2000 je ozemlje, kjer se skladno z evropsko direktivo ščitijo ptice in/ali habitati. Slovenija je z določitvijo območij Nature z Evropsko unijo v bistvu sklenila pogodbo o posebnem varovanju evropsko pomembnih habitatov oz. ptičjih vrst. Kršenje režima Nature je torej kršitev evropske pogodbe z vsemi posledicami za državo, ki krši pogodbo. TNP je leta 2004 dobil diplomo Sveta Evrope s priporočili za izboljšanje stanja.

Saga of drafting the Triglav National Park law

The proposed law on the Triglav National Park (TNP) can be divided into three periods named after those proposing the law or then ministers of the environment:
– the “Vuček bill” during the time of Minister Kopač
– the “Podobnik bill”
– “Erjavec’s cosmetic enhancement of the Podobnik bill”

Details of all the activities can be perused in the Chronology of efforts for a high-quality new Triglav National Park Act on the MWS website.
The civil society made representations for the objectives published in the Memorandum for TNP, which demands a high-quality national park in line with the IUCN and Council of Europe recommendations. The civil society therefore attempted to garner as many ideas as possible from experts heading successful related projects from international organisations such as the IUCN, Pan Parks, the High Tauern National Park, Berchtesgaden National Park and eminent Slovenian institutions such as SAZU (the Academy of Sciences and Arts).
Environment ministry representatives took part in these consultations, but with fairly obvious reluctance.

One thing that the Coalition of NGOs for TNP produced is the non-governmental basis for the law. Pressure from the civil society resulted in the inclusion of two of its representatives in the commission for drafting the TNP law appointed by Minister Podobnik. This commission frequently involved two opposing viewpoints.

One of the culminations of this opposition in drafting the bill during this period was the 17th meeting of the commission and its minutes, which did not include the NGO position. The NGO side reacted to these minutes by writing to the minister, and the ministry even responded to this – but in an inappropriate way, according to the NGO side.
Overall, the collected documents on the subject of TNP on the MWS website clearly indicate that the state responded to less than one tenth of the initiatives given by the civil society.
Under the Pahor government, the NGOs have obviously harboured fruitless expectations of a change in attitudes to TNP. Meanwhile the construction plans for development of Rudno polje have already been set in motion, and designs for a Planica Nordic centre have been drawn up on the sly. Mechanical felling is already under way in the area of the park, with catastrophic consequences for nature and the landscape.

The proposed law now submitted to the National Assembly contains, in comparison with the “Podobnik bill”, some cosmetic improvements, and during the term of the Pahor government, before submission to the National Assembly it was once again harmonised by the Environment Ministry, but the fundamental environmental and nature protection comments remained unanswered. The proposed law, while still written to suit perfectly those **demanding economic development** across a major part of the area that is now still the central protected area of the national park, is unclear and not concise, and runs counter to the international IUCN recommendations for category II and to the Council of Europe recommendations. The consequence of such a law will be merely a national park on paper.
The unusual conclusion to this saga is the persistent belief among top officials at the Environment Ministry, TNP and certain parliamentary deputies, that the law is good precisely because no one is happy with it. So where will this weird conception of quality lead us?

Saga o pripravi predloga zakona o Triglavskem narodnem parku

Pripravo predloga zakona o TNP lahko razdelimo v tri obdobja, imenovana po pobudnikih zakona ali tedanjih ministrih za okolje:
– Vučkov predlog v času ministra Kopača,
– Podobnikov predlog,
– Erjavčeva kozmetika Podobnikovega predloga.

Podrobnosti o vseh aktivnostih je mogoče prebrati v kronologijah prizadevanj za kakovosten nov Zakon o Triglavskem narodnem parku na spletišču MWS. Civilna družba je zastopala cilje, objavljene v Spomenici za TNP, ki zahteva kakovosten narodni park skladno s priporočili IUCN in Sveta Evrope. Civilna družba je zato poskušala zbrati čim več idej od strokovnjakov, ki vodijo uspešne sorodne projekte iz mednarodnih organizacij, kot so IUCN, Pan Parks, Narodni park Visoke ture, Narodni park Berchtesgaden, in uglednih domačih institucij, npr. SAZU. Predstavniki MOP so se teh posvetovanj sicer udeleževali, a z dokaj očitnim odporom.

Eden od izdelkov koalicije NVO za TNP so nevladna izhodišča zakona. Rezultat pritiskov civilne družbe je bila vključitev dveh njenih predstavnikov v komisijo za pripravo zakona o TNP, ki jo je imenoval minister Podobnik. Ta komisija je bila pogosto dveh nasprotujočih si stališč. Ena od kulminacij nasprotovanj pri pripravi predloga v tem obdobju je bila 17. seja komisije z zapisnikom, ki ne zajema stališč nevladnikov. Na ta zapisnik se je nevladna stran odzvala z dopisom ministru, ministrstvo pa se je nanj celo odzvalo – a po mnenju nevladne strani neprimerno. V celoti je iz zbranih dokumentov na temo TNP na spletišču MWS razvidno, da je država odgovorila na manj kot eno desetino danih pobud civilne družbe.

Nevladniki smo v času Pahorjeve vlade očitno brezplodno pričakovali spremembe odnosa do TNP. Medtem so se gradbeni načrti za gradnjo Rudnega polja že začeli izvajati, po tiho pa so se pripravljali tudi projekti za Nordijski center Planica. Na območju parka že poteka strojna sečnja s katastrofalnimi posledicami za naravo in krajino. Predlog zakona, ki je zdaj vložen v državni zbor, vsebuje v primerjavi s Podobnikovim predlogom nekaj kozmetičnih izboljšav in je bil v mandatu Pahorjeve vlade pred vložitvijo v državni zbor ponovno usklajevan na ravni MOP, a temeljne okoljevarstvene in naravovarstvene pripombe so ostale neodgovorjene.

Predlog še vedno ustreza tistim, ki **zahtevajo gospodarski razvoj** tudi na večjem delu območja, ki je zdaj še osrednje zavarovano območje narodnega parka, je nejasen in nekoncizen ter v neskladju z mednarodnimi priporočili kategorije II po IUCN ter v nasprotju s priporočili Sveta Evrope. Posledica takega zakona bo le narodni park na papirju. Nenavaden sklep te sage so vztrajna prepričevanja vodstvenih uradnikov MOP, TNP in nekaterih poslancev, da je zakon dober prav zato, ker ni nihče zadovoljen z njim. Le kam nas bo še pripeljalo to čudno pojmovanje kakovosti?

Conclusion

This case of the drafting of a TNP law is therefore anything but a case of good practice, and anything but a model for the functioning of government bodies in the spirit of the Aarhus Convention. Sadly we cannot regard this as an isolated incident, but more as systematic policy. It is clear not just that the government is providing poor funding for the environment department, but also that it is disincentivising the activities of any kind of society in the area of environmental protection through stricter criteria relative to societies in other fields.
The result of the described plunder-and-consume approach to Slovenia's natural environment, the dismissive attitude to best practices that Slovenia could acquire through membership of international organisations, and ignoring the nature protection work of the public both on the part of the Environment Ministry and the official TNP management, as well as partly by other stakeholders, have led to a situation where there is a real danger that in the year of biodiversity, Slovenia will be de facto without its only national park. In places the public still has an active memory of the vision that Slovenia might be the garden of Europe, but all the politicians in power buried this vision long ago.

Sklep

Omenjeni primer priprave zakona o TNP je torej vse prej kot primer dobre prakse in vse prej zgled za delovanje vladnih organov v duhu Aarhuške konvencije. Na žalost na to ne moremo gledati kot na osamljen pojav, ampak prej kot na sistematično politiko. Očitno je, da vlada slabo financira vladni okoljski resor, ampak tudi destimulira dejavnosti katerega koli društva na področju varovanja okolja s strožjimi merili glede na društva drugih dejavnosti. Rezultat opisanega plenilsko-potrošniškega odnosa do slovenske narave, omalovažujočega odnosa do najboljših praks, ki bi jih Slovenija lahko pridobila s članstvom v mednarodnih organizacijah in ignoriranjem naravovarstvenega dela javnosti tako od MOP kot vodstva zavoda TNP in deloma tudi drugih deležnikov, je privedla do stanja, da obstaja resna nevarnost, da bo Slovenija v letu biotske raznovrstnosti de facto ob svoj edini narodni park. Ponekod v javnosti še živ spomin na vizijo, da bi bila Slovenija vrt Evrope, pa so vsi politiki na oblasti že davno pokopali.

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Public Participation in the Physical Locating of Transmission Lines

Abstract
Electricity is essential for the functioning of the economy and for ensuring the standard of living of the population. The electricity grid has environmental impacts, it impacts social acceptability and has economic consequences. In this paper I address problems of public participation in the physical locating of transmission lines, including: inadequate legislation, insufficient possibilities for the public to obtain information and to participate in decision-making, protecting the environment to the detriment of the population's development needs, the excessively late involvement of the public in procedures, opposition of the public without known reasons and without proposals being offered and the meagre capacity for communication, participation and coordination. Certain good experiences to date are presented. The paper also gives several possible reasons for problems, such as bad experiences in the past, the interweaving of public and private interests, the conviction of being powerless to influence decisions and a lack of trust. At the end of the paper I offer several proposals for improving participation.

Keywords: public participation, electricity grid, physical locating

1. Introduction

Alongside water and food, energy is a basic human need (Sanghvi, 2006). Electricity is not just a commodity, but an essential service that cannot be replaced (Cooper, 2003). Its usefulness is diverse, but it cannot be stored.

The electricity grid links together power stations, where we convert primary energy into electricity for consumers. Conversion of fossil fuels and nuclear fuel into electricity usually takes place close to centres of consumption, and is subordinated to the needs of consumers. Since renewable sources are of low frequency, time-variable and dependent on the environment, additional parts of the electricity grid need to be built. Sections of the transmission grid are necessary for the operation of the single electricity market in the EU. The electricity transmission grid is a key infrastructure element of modern society and the economy, which must be in the public interest (Cooper, 2003). In the locating of transmission lines, many demands need to be satisfied, wherein there are most commonly opposing interests of the public and environmental protection. The process of determining the location for lines takes on average between 5 and 10 years both in the EU and in Slovenia, and sometimes even several decades. The reasons are: increasing environmental protection demands, opposing interests of stakeholders and public opposition.

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Sodelovanje javnosti pri umeščanju prenosnih daljnovodov v prostor

Povzetek
Električna energija je nujno potrebna za delovanje gospodarstva in zagotavljanje življenjskega standarda prebivalstva. Elektroenergetsko omrežje povzroča vplive na okolje, vpliva na družbeno sprejemljivost in ima ekonomske posledice. V referatu obravnavam težave pri sodelovanju javnosti ob umeščanju prenosnih daljnovodov v prostor, kot so neustrezna zakonodaja, premajhne možnosti javnosti pri pridobivanju informacij in za sodelovanje pri odločanju, varovanje okolja v škodo razvojnih potreb prebivalstva, prepozno vključevanje javnosti v postopke, nasprotovanje javnosti brez znanih razlogov in podajanja predlogov, skromne sposobnosti komuniciranja, sodelovanja in usklajevanja. Predstavljene so nekatere dosedanje dobre izkušnje. Podanih je nekaj možnih vzrokov za probleme, na primer slabe izkušnje v preteklosti, prepletenost javnih in zasebnih interesov, prepričanje v nemoč vplivanja na odločitve in pomanjkanje zaupanja. Na koncu referata podajam nekaj predlogov za izboljšanje sodelovanja.

Ključne besede: sodelovanje javnosti, elektroenergetsko omrežje, umeščanje v prostor

1. Uvod

Poleg vode in hrane je energija osnovna človekova potreba (Sanghvi, 2006). Električna energija ni le blago, temveč je nujno potrebna storitev, ki nima nadomestkov (Cooper, 2003). Njena uporabnost je raznovrstna, vendar je ni mogoče skladiščiti.

Elektroenergetsko omrežje povezuje elektrarne, kjer pretvarjamo primarno v električno energijo s porabniki. Pretvarjanje fosilnih goriv in jedrskega goriva v električno energijo je običajno blizu središč porabe in podrejeno potrebam potrošnikov. Ker so obnovljivi viri nizke gostote, časovno spremenljivi in odvisni od okolja, je treba graditi dodatne dele elektroenergetska omrežja. Deli prenosnega omrežja so potrebni za delovanje enotnega trga električne energije v EU. Elektroenergetsko prenosno omrežje je ključna infrastruktura sodobne družbe in gospodarstva, ki mora biti v javnem interesu (Cooper, 2003). Pri umeščanju prenosnih daljnovodov je treba zadostiti mnogim zahtevam, pri čemer so si najpogosteje nasprotujoči interesi javnosti in varstva okolja. Procesi umeščanja le-teh trajajo v EU kot v RS v povprečju med 5 in 10 let, včasih celo več desetletij. Vzroki so vse večje zahteve varstva okolja, nasprotujoči si interesi deležnikov in nasprotovanje javnosti.

2. Problems to date in public participation

Following ratification of the Aarhus Convention in Slovenia, certain laws acquired additional provisions facilitating more information for the public and their participation in decision-making. Owing to the inadequate resolving of discord arising with public participation in environmental matters, the currently valid laws have again reduced the possibility of public participation. The Spatial Planning Act (ZPNačrt) enables just one public unveiling and one public debate per municipality. The Environmental Protection Act (ZVO-1) and Nature Conservation Act (ZON) require just a public unveiling.

Those making capital investments in infrastructure of national importance are restricted in public participation, since legislation does not envisage any extensive public participation, and since the state administration does not support these activities and is not involved in coordination. Investing in public participation without any basis in law is treated as uneconomical use of funds. Investors who have few or bad experiences are often constrained themselves to organise and manage public participation in the physical placing of new structures of national importance.

National authorities or institutions authorised by them implement and interpret environmental protection and nature conservation legislation in such a way as to restrict the development needs of the population, wherein they often have no evidence to support such restrictions. They advocate the position that the environment and especially nature have an infinite value, and that it is best to prevent all human activity. They have no desire to present such a position to local communities, which are affected by these restrictions. In the procedures of site locating, they exercise their demands by issuing guidelines, opinions and consent, irrespective of the opposition of local residents. Frequently the public is only involved at a late stage in the procedures for the physical locating of infrastructure facilities. In a number of cases, despite the early notification of the local public regarding planned encroachments, the public has not participated. Residents are not interested in events in their wider residential environment. The public is often involved in the procedures for physically locating infrastructure on the basis of warnings from individuals whose interests are threatened by the encroachment. Usually the public opposes the encroachment, without explaining the reasons for this. Only in exceptions does the public offer any proposed solution, and if it does, it is usually at the expense of neighbouring local communities. Another problem is the lack of experience and poor capacity for communication, participation and in particular coordination of all those involved in the physical locating of nationally important infrastructure.

3. Some examples of good practices with public participation in the physical locating of transmission lines

In the past we have gained several positive experiences in the physical locating of transmission lines. Despite the meagre requirements in legislation, in several cases we effected the extensive provision of information to the local public. We also rate as useful the surveys conducted among residents living close to the planned route of transmission lines. In some areas we carried out several joint site inspections with residents and representatives of special interest groups. Based on these inspections we determined the route together. Frequently interested parties called meetings and discussions, which we also attended to the greatest possible extent.

We proposed to those drawing up national location plans to hold the public unveiling over a longer period than required by law, and this was accommodated and proved beneficial. The suggestions made at the public unveilings and public debates were also taken into account, where this was feasible. For one of the planned transmission lines, we altered

2. Dosedanje težave pri sodelovanju javnosti

Po ratifikaciji Arhuške konvencije v RS so bila v nekatere zakone dodana določila, ki so omogočala javnosti boljše obveščanje in sodelovanje pri odločanju. Zaradi neustreznega reševanja nasprotij, ki so nastopila pri sodelovanju javnosti v okoljskih zadevah, so veljavni zakoni zopet zmanjšali možnosti sodelovanja javnosti. Zakon o prostorskem načrtovanju (ZPNačrt) omogoča le eno javno razgrnitev in po eno javno obravnavo v vsaki občini. Zakona o varstvu okolja (ZVO-1) in o ohranjanju narave (ZON) pa zahtevata le javno razgrnitev.

Vlagatelji v infrastrukturo državnega pomena so omejeni pri vključevanju javnosti, ker zakonodaja ne predvideva obsežnega sodelovanja javnosti in ker državna uprava ne podpira teh aktivnosti ter ne posreduje pri usklajevanju. Vlaganja v sodelovanje javnosti brez zakonske podlage so obravnavana kot negospodarno ravnanje s sredstvi. Vlagatelji, ki imajo malo ali slabe izkušnje, so pogosto prisiljeni sami organizirati in voditi sodelovanje javnosti pri umeščanju novih objektov državnega pomena v prostor.

Državni organi ali od njih pooblaščene institucije izvajajo in razlagajo zakonodajo o varovanju okolja in o ohranjanju narave tako, da omejujejo razvojne potrebe prebivalstva, pri čemer pogosto nimajo dokazov za takšne omejitve. Ti zagovarjajo stališče, da imata okolje in še posebno narava neskončno vrednost in da je najbolje preprečiti vse človekove dejavnosti. Takšnih stališč ne želijo predstaviti lokalnim skupnostim, ki jih takšne omejitve prizadenejo. V postopkih umeščanja uveljavljajo svoje zahteve z izdajanjem smernic, mnenj in soglasij, in to ne glede na nasprotovanje lokalnega prebivalstva. Pogosto se javnost pozno vključi v postopke umeščanja infrastrukturnih objektov v prostor. V več primerih kljub zgodnjemu obveščanju lokalne javnosti o načrtovanih posegih ta ne sodeluje. Prebivalci se ne zanimajo za dogajanje v svojem širšem bivalnem okolju. Javnost se pogosto vključi v postopke umeščanja infrastrukture na podlagi opozoril posameznikov, katerih interes je s posegom ogrožen. Običajno javnost nasprotuje posegu, pri čemer ne obrazloži razlogov. Le izjemoma javnost podaja predloge rešitev, če pa jih poda, so ti običajno na račun sosednjih lokalnih skupnosti. Ena od težav je tudi malo izkušenj, ob tem pa še skromne sposobnosti komuniciranja, sodelovanja in predvsem usklajevanja vseh, ki sodelujejo pri umeščanju infrastrukture državnega pomena v prostor.

3. Nekaj primerov dobre prakse pri sodelovanju javnosti ob umeščanju prenosnih daljnovodov v prostor

Pri umeščanju prenosnih daljnovodov v prostor smo si v preteklosti pridobili več pozitivnih izkušenj. Kljub majhnim zahtevam v zakonodaji smo v več primerih izvedli obsežnejše obveščanje lokalne javnosti. Koristno ocenjujemo tudi anketiranje prebivalcev, ki živijo v bližini tras načrtovanih prenosnih daljnovodov. Na nekaterih območjih smo opravili več skupnih ogledov s prebivalci in predstavniki interesnih skupin in na podlagi teh ogledov skupaj določili traso. Pogosto so zainteresirani sklicevali srečanja in obravnave, ki smo se jih v največji možni meri tudi udeleževali.

Pripravljavcem državnih lokacijskih načrtov smo predlagali daljše javne razgrnitve, kot to zahteva zakonodaja, kar je bilo upoštevano in koristno. Predloge, ki so bili podani na javnih razgrnitvah in javnih obravnavah, smo, kjer je to bilo izvedljivo, tudi upoštevali. Pri enem od načrtovanih prenosnih daljnovodov smo spremenili traso na sedmih odsekih tako, da smo še povečali razdaljo od stanovanjskih hiš. Zaradi skrbi prebivalcev v bližini načrtovanega prenosnega daljnovoda, da bodo podvrženi vplivom električnih in magnetnih polj, smo zanje pripravili predstavitev. Na njej smo izvedli meritve električnih in magnetnih polj več gospodinjskih aparatov in izvedli meritve v bližini obstoječih prenosnih daljnovodov. Lokacije meritev smo izbrali tako, da so bile podobne razmeram, ki bodo nastale z delovanjem načrtovanega prenosnega daljnovoda.

the route in seven sections such that we increased the distance from residential buildings. Owing to the concerns of local residents close to the planned transmission line that they would be subjected to electrical and magnetic fields, we organised a presentation for them. At this we carried out measurements of the electrical and magnetic fields of several household appliances, and also measured close to existing transmission lines. We selected the points of measurement so as to obtain conditions similar to those arising through the operation of the planned transmission line.
One of the fundamental principles that we observe in communicating with the public is creating and maintaining trust. For this reason we did not conceal any information, to the greatest possible extent we provided information in a professional and impartial way, we backed up our position with explanations and reasoning, and wholly fulfilled our promises.

4. Possible causes of problems in public participation

In order to improve public participation in environmental matters, it is essential to understand the reasons for difficulties. Public participation is not possible if the public does not trust all those with which it is communicating. Among the causes of problems we may certainly cite poor experiences in the past. Loss of public trust has also been caused by the hiding of private interests behind public interests. Since in several cases the decision-makers have not heeded public demands, nor have they provided sufficient explanation as to why their suggestions were not accommodated, some sections of the public have become convinced of their lack of power to influence decisions. In the locating of nationally important infrastructure, decision-makers have not observed the same principles for all local communities, and, often under political pressure, they have acquiesced in the differentiated treatment of local communities.
Another reason for the loss of public trust is the disregarding of experts opposed to the demands of political interests, which in their desire to be pleasing to the public have required adherence to solutions that are not professionally supported.

5. Proposals for greater public participation in environmental matters

In view of experiences to date, it is essential to amend the ZPNačrt, ZVO-1 and ZON in order to facilitate for the public greater access to information and the possibility of participating in decision-making by arranging conferences at which all the users of the physical environment will participate equally. It is essential to equate the importance of environmental protection and nature conservation with the development needs of the population. It would be useful to describe in law the entire decision-making process, with an indication of the role of experts in the event of a conflict of interests. Legislation must clearly distinguish between which environmental encroachments are in the public interest and which are in the private interest. Laws must be harmonised among themselves so that they observe the same criteria in the selection of the most appropriate alternatives. An attempt in the right direction is the Physical Locating of Nationally Important Encroachments Act.

In the long term, public trust needs to be cultivated and maintained. It would be beneficial for non-governmental organisations to operate in the public in such a way that the public would be more engaged in events in their surrounding area, that they would be capable of formulating clear views and grounds for them, and that they would be capable of constructive participation in the coordination of all users of the physical environment.
For all those participating in the physical locating of encroachments, the state administration should provide training for patient and honest communication, coordination and effective seeking of solutions acceptable for all.

Med temeljnimi načeli, ki jih pri komuniciranju z javnostjo spoštujemo, sta ustvarjanje in ohranjanje zaupanja. Zaradi tega nismo prikrivali informacij, v največji možni meri smo podajali informacije strokovno in nepristransko, svoja stališča smo podkrepili z obrazložitvami in utemeljitvami ter v celoti izpolnjevali obljube.

4. Možni vzroki za težave pri sodelovanju javnosti

Za izboljšanje sodelovanja javnosti v okoljskih zadevah je nujno poznati vzroke za težave. Sodelovanje javnosti ni mogoče, če ta ne zaupa vsem, s komer komunicira. Med vzroke zanesljivo lahko uvrstimo slabe izkušnje v preteklosti. Izgubo zaupanja javnosti je povzročilo tudi skrivanje zasebnih interesov za javne interese. Ker odločevalci v več primerih niso upoštevali zahtev javnosti, niti niso dovolj obrazložili, zakaj predlogov niso upoštevali, je v nekaterih delih javnosti prevladalo prepričanje v nemoč vplivanja na odločitve. Pri umeščanju infrastrukture državnega pomena odločevalci niso upoštevali enakih načel za vse lokalne skupnosti in so pogosto pod pritiski politike pristali na različno obravnavo lokalnih skupnosti. Med razlogi za izgubo zaupanja javnosti je tudi neupoštevanje stroke proti zahtevam politike, ki je v želji po všečnosti v javnosti zahtevala upoštevanje nestrokovnih rešitev.

5. Predlogi za večje sodelovanje javnosti v okoljskih zadevah

Ob upoštevanju dosedanjih izkušenj je nujno dopolniti in spremeniti ZPNačrt, ZVO-1 in ZON tako, da bo javnosti omogočeno: večja dostopnost do informacij in možnost sodelovanja pri odločanju z oblikovanjem konferenc, na katerih bodo sodelovali enakopravno vsi uporabniki prostora. Pomen varovanja okolja in ohranjanja narave je nujno izenačiti z razvojnimi potrebami prebivalstva. Koristno bi bilo v zakonu opisati celoten odločevalski proces z določitvijo vloge stroke v primeru nasprotujočih si interesov. Zakonodaja mora jasno ločiti, kateri posegi v okolje so v javnem interesu in kateri so v zasebnem interesu. Zakoni morajo biti medsebojno usklajeni tako, da upoštevajo enaka merila pri izbiri najustreznejše možnosti. Poskus v pravi smeri je Zakon o umeščanju posegov državnega pomena v prostor.

Dolgoročno je treba pri javnosti ustvariti in ohranjati zaupanje. Koristno bi bilo, da bi nevladne organizacije delovale v javnosti tako, da bi prebivalstvo bolj zanimalo dogajanje v njegovi okolici, da bi bilo sposobno oblikovati jasna stališča in utemeljitve zanje ter da bi bilo sposobno konstruktivnega sodelovanja pri usklajevanju vseh uporabnikov prostora. Za vse sodelujoče pri umeščanju posegov v prostor bi morala državna uprava zagotoviti usposabljanje za strpno in pošteno komuniciranje, usklajevanje ter učinkovito iskanje za vse sprejemljivih rešitev.

6. Conclusion

Only a legitimate process of decision-making on environmental matters that ensures for all users of the physical environment equal participation in decision-making, with a clear definition of those encroachments that are in the public interest and with an appropriate part played by experts, can lead to the effective locating of nationally important infrastructure in the physical environment. Trust among all users of the physical environment is the cornerstone for participation.

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6. Sklep

Samo legitimen postopek odločanja o okoljskih zadevah, ki vsem uporabnikom prostora zagotavlja enakopravno sodelovanje pri odločanju, s točno opredelitvijo tistih posegov, ki so v javnem interesu, in ustrezno vlogo stroke, lahko pripelje do učinkovitega umeščanja infrastrukture državnega pomena v prostor. Zaupanje med vsemi uporabniki prostora pa je temelj za sodelovanje.

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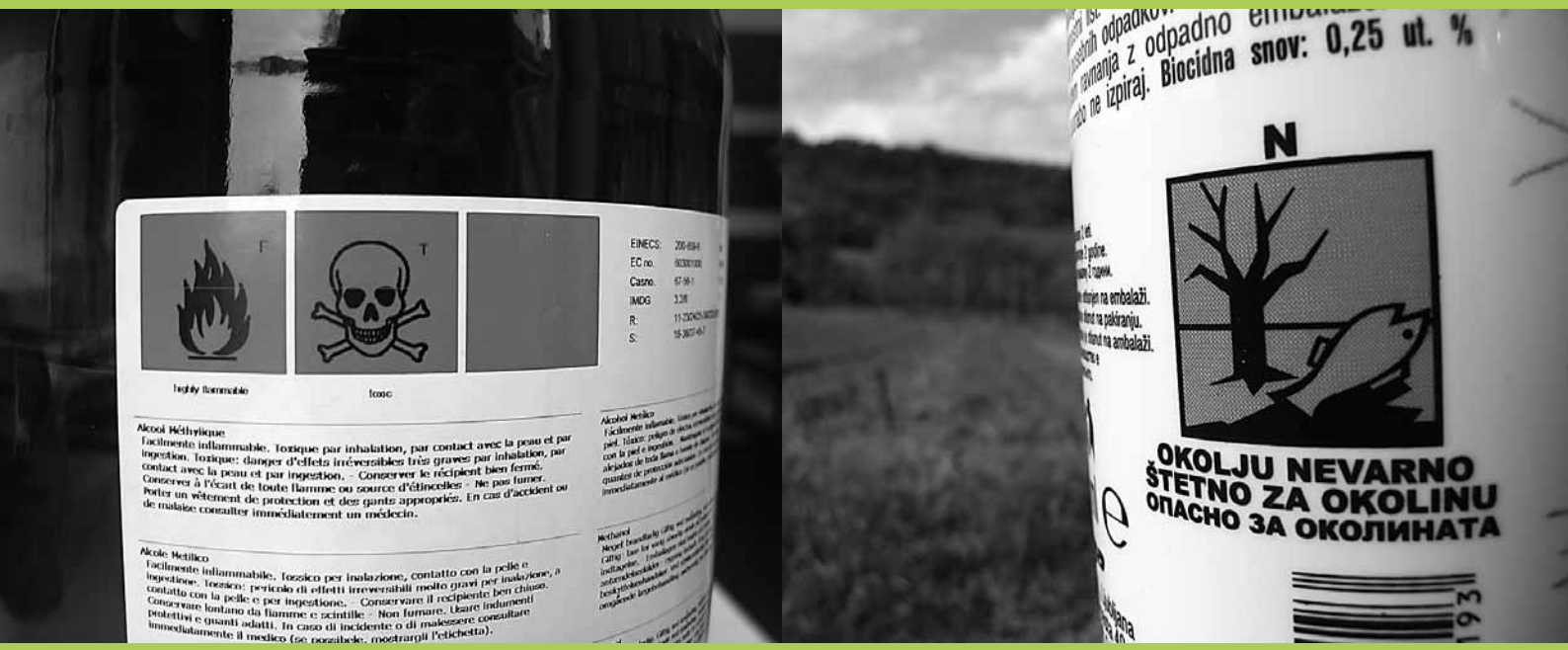

V. Sklepne ugotovitve
2. konference Okolje in človekove pravice:
Sodelovanje javnosti v okoljskih zadevah – teorija in praksa

V. Final Observations
of the 2nd conference on the Environment and Human Rights:
Public Participation in Environmental Matters in Theory and Practice

Maj / May 2010

The participants of the conference

Emphasize,

– That a clean, harmless to health and secure environment is becoming a fundamental human right, arising from the right to human dignity, and is becoming a milestone for the implementation of all other human rights;

– That environmental protection, nature preservation, and healthy living are regarded as equally important issues as the development needs of the population; Assessments and policies must be oriented towards sustainable development and a common goal for balanced and interdependent economic and social development;

– That man is not the sovereign of nature but that he is rather inseparably connected within the relationship of dependence insofar as the degradation of the environment influences his health. Public awareness of this fact is increasing as well as its willingness to participate in the decision-making process;

– That the cooperation of public means especially a search for the consent within the society regarding the positioning of the activity in the space at greater rationality and economic effectiveness and minor consequences for the space and environment. Greater engagement in the preliminary procedures of the preparation of spatial planning documents brings numerous advantages on the way of incorporation of the project. It is of great importance for the environmental projects to be presented on public discussions where experts and laic public can participate in their design thus providing legitimacy and gaining public support which are prerequisite for their successful implementation;

– That informing and public awareness regarding the access possibilities to environmental data, cooperation in decision-making, and the efficient use of legal protection and legislation are deemed necessary for full implementation of the Aarhus Convention;

– That in cases where the public is included in decision-making from the beginning, the possibility of conflicts, oppositions, initiated judicial proceedings, and other forms of objections are reduced to a minimum; thus wide consensus and social cohesion are developed;

– That many environmental issues arise from the activities at the local level, therefore the participation and cooperation of local authorities are crucial for achieving the environmental objectives. That the local level is the access point for the expression of interests and inclusion in different levels of environmental decision-making and for this reason the local authorities must represent a key role in education and public awareness regarding sustainable development;

– That any implication of a lack of employees should not be the reason for disrespecting time limits for decision-making. It is also not justifiable that decision-making on environmental issues at the local level is impeded due to the large number of municipalities or an insufficient number of employees;

poudarjajo,

– da postaja čisto, zdravju neškodljivo in varno okolje temeljna človekova pravica, ki izvira iz pravice do človekovega dostojanstva in postaja temelj za izvajanje vseh drugih človekovih pravic;

– da so varovanje okolja, ohranjanje narave in zdravega življenja enako pomembna vprašanja kakor razvojne potrebe prebivalstva. Presojanje in usmeritve morajo biti naravnani k trajnostnemu razvoju in skupnemu cilju uravnoteženega gospodarskega in socialnega razvoja, ki sta v medsebojni soodvisnosti;

– da človek ni vladar narave, ampak je z njo neločljivo povezan v razmerju odvisnosti, saj degradirano okolje vpliva na njegovo zdravje. Tega se javnost čedalje bolj zaveda, zato je tudi čedalje večje njeno zanimanje, da se vključi v odločanje;

– da je sodelovanje javnosti predvsem iskanje soglasja v družbi o umestitvi dejavnosti v prostoru, ob največji racionalnosti in gospodarski učinkovitosti ter najmanjših posledicah za prostor in okolje. Večja angažiranost v predhodnih postopkih priprave prostorskih aktov prinaša na poti do umestitve projekta v prostor številne prednosti. Za okoljske projekte je pomembno, da se opravi javne razprave ter se vključi strokovno in laično javnost v njihovo oblikovanje, saj s tem pridobijo legitimnost in podporo prebivalcev, kar je prvi pogoj za njihovo uspešno izvedbo;

– da je za polno uveljavljanje Aarhuške konvencije potrebno obveščanje in ozaveščanje javnosti glede možnosti dostopa do okoljskih podatkov, sodelovanja pri odločanju in učinkovite uporabe pravnega varstva oziroma zakonodaje;

– da je v primerih vključenosti javnosti v odločanje že od samega začetka občutno zmanjšana možnost nastajanja sporov, opozicij, začetih sodnih postopkov in drugih oblik nasprotovanja, ustvarjena pa sta širše soglasje in družbena kohezija;

– da veliko okoljevarstvenih vprašanj izvira iz dejavnosti na lokalni ravni, zato sta udeležba in sodelovanje lokalnih oblasti ključna pri izpolnjevanju okoljevarstvenih ciljev. Lokalna raven je najlažje dostopno mesto izražanja interesov in vključevanja v različne ravni okoljskega odločanja, zato morajo imeti lokalne skupnosti ključno vlogo pri izobraževanju in ozaveščanju javnosti za trajnostni razvoj;

– da sklicevanje na pomanjkanje kadrov ne sme biti razlog za nespoštovanje zakonskih rokov za odločanje. Opravičljivo tudi ni, da je zaradi velikega števila občin oziroma njihove premajhne kadrovske zasedenosti odločanje o okoljskih zadevah na lokalni ravni močno oteženo;

Identify,

– That the Human Rights Ombudsman of the Republic of Slovenia also performs the duties of the Environmental Ombudsman (and Future Generations) within the meaning of and similarly to the Hungarian Ombudsman for Future Generations;

– That activities of the Ministry of the Environment and Spatial Planning in the field of cooperation with the civil society are insufficient; therefore critiques must be reassessed and cooperation between the Ministry and civil society must be improved;

– That professional competence of local operators of effective management is frequently inadequate which additionally impedes the implementation of the principles of informing and including public to the preparation and decision-making on environmental issues;

– That local communities lack professional expertise for the preparation of a good scientific basis for decision-making, an adequate information system which would provide access to the "right" environmental information, and have no developed strategies for informing and raising public awareness and for including the local public in decision-making;

– That only a formally provided framework of including the public at the local level usually does not lead to socially acceptable results for all participants. The cooperation of the public is, in practice, frequently only formal and artificial, but nonetheless it gives the local authorities the right to formally justify their decisions regarding the environment since the legality of the procedure for public participation has been ensured, the comments regarding the content, however, are very often avoided. Frequently, the public is included in these processes too late and is not satisfied with the responses from the local authorities;

– That the local communities in practice frequently underestimate the role and the meaning of the civil society in the environmental decision-making process and do not provide efficient financial support for education and raising the awareness of the public regarding sustainable development;

Recommend,

– An altered approach of the state towards the civil society and professional public and the creation of mutual trust with respect, acknowledgement of profession, and avoidance of those politicians' requests which, in order to be pleasing, speak in favour of unprofessional solutions. National authority is not a sufficient reason in itself to accept decisions without the acknowledgement of the professionals and civil society;

– By way of its conduct, the state shows respect to the public and civil society at their involvement in adopting decisions which would contribute to a healthy environment. To this end, the state should ensure inclusion of the civil society in decision-making in due time, it should supply high-quality information, and provide adequate financial support for its operation;

– Direct reference to the provisions stipulated in the Aarhus Convention in cases when national legislation does not conform to it;

– A clearer definition of the decision-making process with the determination of the profession's role, especially in the case of opposite interests, and the determination of measures to better represent the civil society, and setting-up deadlines for the preparation of individual phases of the process;

ugotavljajo,

– da Varuh človekovih pravic RS opravlja tudi naloge ombudsmana za čisto okolje (in prihodnje generacije) v smislu in sorodno, kot ga opravlja madžarski parlamentarni ombudsman za prihodnje generacije;

– da je Ministrstvo za okolje in prostor na področju sodelovanja s civilno družbo premalo aktivno, zato bi bilo treba proučiti kritike in izboljšati sodelovanje ministrstva s civilno družbo;

– da je strokovna usposobljenost lokalnih nosilcev za kakovostno vodenje vseh procesov velikokrat šibka, kar dodatno otežuje uveljavljanje načel obveščanja in vključevanja širše javnosti v pripravo in odločanje o okoljskih zadevah;

– da so lokalne skupnosti premalo strokovno usposobljene za pripravo dobrih strokovnih podlag za odločanje, nimajo ustreznega informacijskega sistema, ki bi omogočal dostop do »pravih« okoljskih informacij in nimajo izdelanih strategij obveščanja in ozaveščanja ter vključevanja lokalne javnosti v odločanje;

– da le formalno zagotovljen okvir vključevanja javnosti na lokalni ravni velikokrat ne vodi do družbeno sprejemljivih rezultatov vseh deležnikov. Sodelovanje javnosti je v praksi velikokrat le formalno in navidezno, organi lokalnih oblasti lahko tako formalno upravičijo svoje odločitve na področju okolja, ker poskrbijo za zakonitost izvedenega postopka sodelovanja javnosti, vsebinskemu upoštevanju pripomb pa se velikokrat izognejo. Javnost je v postopke pogosto vključena prepozno in ni zadovoljna z odzivi lokalnih nosilcev oblasti;

– da lokalne skupnosti v praksi velikokrat podcenjujejo vlogo in pomen civilne družbe pri odločanju o okoljskih zadevah ter jih finančno ne podpirajo dovolj na področju izobraževanja in ozaveščanja najširše javnosti za trajnostni razvoj;

priporočajo,

– spremenjen odnos države do civilne družbe in strokovne javnosti ter ustvarjanje medsebojnega zaupanja s spoštovanjem, upoštevanjem stroke in izogibanjem tistim zahtevam politike, ki v želji po všečnosti zagovarjajo nestrokovne rešitve. Avtoriteta državne oblasti ni zadosten razlog za sprejemanje odločitev mimo stroke in civilne družbe;

– da država s svojim ravnanjem izkaže spoštovanje javnosti in civilni družbi pri njenem zavzemanju za sprejemanje odločitev, ki bodo prispevale k zdravemu okolju. V ta namen naj država zagotovi pravočasno vključevanje civilne družbe v odločanje, ji priskrbi kakovostne informacije in ji zagotovi zadostna finančna sredstva za njeno delovanje;

– sklicevanje neposredno na določila Aarhuške konvencije v primerih, ko jih nacionalna zakonodaja ne povzema;

– jasnejšo opredelitev odločevalskega procesa z določitvijo vloge stroke, zlasti v primeru nasprotujočih si interesov in določitev meril za reprezentativnost civilne družbe ter rokov za pripravo posameznih faz procesa;

– To systematically organise the financial resources of environmental impact studies which would no longer be ordered and financed by the liable person/investor as this is a frequent reason for concerns about the correctness and independence of such studies;

– All investors should already notify, listen to and hear public opinion in the early phase of a decision-making process regarding those activities which affect the physical environment, thus gaining trust and credibility;

– Active cooperation between the public and civil society with the investors and authorities and their good organisation in expressing the interests involved and communication with all who make decisions or have an influence on them;

– An amendment of the laws on spatial planning, environmental protection and nature preservation in such a way that better accessibility of information would be provided to the public as well as the possibility for cooperation in decision-making by way of preparing conferences where all users of the space could participate equally;

– That, regarding the publication of environmental data, there is consistent implementation of the third point of Article 101 of the Environmental Protection Act: An obligation that the polluter should communicate data of operational monitoring to the Ministry and municipality where it operates should be provided;

– To ensure effective control in cases where liable persons do not submit required data to databases which the authorities should manage according to applicable regulations;

– To ensure up-to-date and effective informing on the accessibility and availability of environmental data (from databases as well as current monitoring processes) and to provide help for users, searching for desired information;

– That, for those who make decisions regarding the activities which affect the physical environment, the state should ensure training for tolerant and fair communication, coordination, and an effective search for solutions which would be acceptable for all;

– That the state should provide additional training and education regarding the environmental legislation and other domestic and international standards for those officials who work in the environmental field;

– To notify the public with examples of good practice:
  • Municipality of Maribor – an example of the cooperation of the public in environmental issues,
  • Celje Action Group - an example of the organised operation of the civil society,
  • ELES – an example of an attempt for increased informing of the local public;

– To improve the quality of communication, cooperation, coordination, and trust:
  • Between individuals and the authorities,
  • Between individuals and the local community,
  • Between the state and the local community,
  • Between the authorities within the Ministry of the Environment and Spatial Planning,
  • Between all the aforementioned and the Human Rights Ombudsman of the Republic of Slovenia;

– To strengthen the role of the civil society with additional measures, especially:
  • By encouraging the population to increase its interest in the events affecting a wider area,
  • With a more active role of the Ministry of Environment and Spatial Planning and local communities in promoting the cooperation of the civil society in environmental issues.

The Human Right Ombudsman of the Republic of Slovenia invites the participants of the conference and others wishing to do so to submit initiatives to review alleged infringements, suggestions, opinions, and recommendations from the environmental area. Furthermore, she invites the civil society to join the monthly environmental meetings (see more at www.varuh-rs.si).

– da se sistemsko uredi vir financiranja študij o presoji vplivov na okolje, ki jih ne bi več naročal in financiral le zavezanec / investitor, saj je to pogost razlog za pomislek o korektnosti in neodvisnosti tako izvedenih študij;

– vsem investitorjem, naj v najzgodnejši fazi odločevalskega procesa glede posega v prostor obvestijo javnost, jo poslušajo in slišijo ter s tem pridobijo zaupanje in kredibilnost;

– tvorno sodelovanje javnosti in civilne družbe z investitorji in organi ter njihovo dobro organiziranost pri izražanju interesov in komunikaciji z vsemi, ki sprejemajo odločitve ali nanje vplivajo;

– spremembo zakonov o prostorskem načrtovanju, o varstvu okolja in o ohranjanju narave, tako da bo javnosti omogočena večja dostopnost do informacij in možnost sodelovanja pri odločanju z oblikovanjem konferenc, na katerih bodo enakopravno sodelovali vsi uporabniki prostora;

– da se v zvezi z objavljanjem okoljskih podatkov zagotovi dosledno uresničevanje tretje točke 101. člena Zakona o varstvu okolja: obveza, da mora povzročitelj obremenitve ministrstvu in občini, na območju katere oseba obratuje, sporočati podatke obratovalnega monitoringa;

– da se zagotoviti učinkovit nadzor v primerih, ko zavezanci ne posredujejo predpisanih podatkov v zbirke, ki so jih zavezani voditi organi skladno s predpisi;

– da se zagotovi sprotno in učinkovito obveščanje o dostopnosti in razpoložljivosti okoljskih podatkov (tako iz zbirk kot iz aktualnih monitoringov) in uporabnikom nudi pomoč pri iskanju želenih informacij;

– da država zagotovi za vse sodelujoče pri sprejemanju odločitev o posegih v prostor usposabljanje za strpno in pošteno komuniciranje, usklajevanje in učinkovito iskanje za vse sprejemljivih rešitev;

– da država zagotovi dodatno usposabljanje in izobraževanje uradnikov, ki delujejo na področju okolja, o okoljski zakonodaji ter drugih domačih in mednarodnih standardih;

– da se javnost seznanja s primeri dobre prakse:
  • Mestna občina Maribor – primer sodelovanja javnosti pri okoljskih zadevah,
  • Civilna iniciativa Celje – primer organiziranega delovanja civilne družbe,
  • ELES – primer prizadevanja za obsežnejše obveščanje lokalne javnosti;

– da se izboljša kakovost komuniciranja, sodelovanja, usklajevanja in zaupanja:
  • med posamezniki in organi države,
  • med posamezniki in lokalno skupnostjo,
  • med državo in lokalno skupnostjo,
  • med organi v sestavi Ministrstva za okolje in prostor,
  • med vsemi naštetimi in Varuhom človekovih pravic RS;

– da se z dodatnimi ukrepi države okrepi vloga civilne družbe, zlasti:
  • s spodbujanjem prebivalstva za večje zanimanje o dogajanju v širšem življenjskem prostoru,
  • z aktivnejšo vlogo Ministrstva za okolje in prostor ter lokalnih skupnosti pri spodbujanju sodelovanja civilne družbe v okoljskih zadevah.

Varuh človekovih pravic RS vabi sodelujoče na konferenci in druge, ki to želijo, da posredujejo pobude za obravnavo domnevnih kršitev, predloge, mnenja in priporočila s področja okolja. Prav tako vabi na mesečna srečanja civilne družbe s področja okolja (več o tem na www.varuh-rs.si).

Zbornik strokovnih prispevkov
2. konferenca Okolje in človekove pravice:
Sodelovanje javnosti v okoljskih zadevah - teorija in praksa

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