

Public Participation in EIA Procedures

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Definition

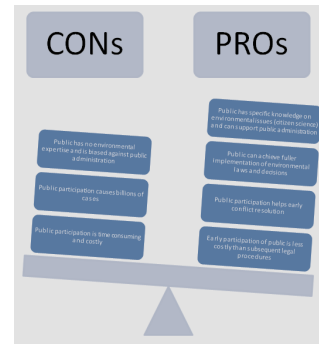
- All the actions of the (members of) the public that are performed in order to influence a planning, a programming or a project-level (individual) decision-making process before the final decision is made (in environmental matters).
- Public participation has three major forms, i.e.
 - a) access to information;
 - b) participation in decision-making;
 - c) access to justice.





Sociology

- Pro:
 - Specific public knowledge (citizen science)
 - Support in implementing laws and decisions
 - Early conflict resolution
 - Less costly than legal procedures
- Con:
 - No environmental expertise
 - Billions of cases
 - Time consuming and costly



Aarhus Convention

- Art. 6
 - Public informed early (= when all options are open and effective public participation can take place)
 - Adequate, timely and effective manner
 - Reasonable time-frames for different phases (information, preparation, participation)
 - Submit comments, information, analyses or opinions
 - Due account is taken of the outcome of PP
 - Prompt information of the decision





Aarhus Convention

- Art. 9.2
 - Members of the public concerned have access to a review procedure before a court of law and/or another independent and impartial body
 - To challenge the substantive and procedural legality of any decision, act or omission
 - + Preliminary review procedure before an administrative authority
 - + Requirement of exhaustion of administrative review procedures



EU legislation in force

- Directive 2011/92/EU
 - Information „*by public notices or by other appropriate means such as electronic media where available*”
 - Screening decision public
 - Reasonable timeframes, early and effective opportunities to participate
 - Consultation taken into consideration
 - Information on decision
 - Access to justice
 - Practical information on access to review





EU legislation upcoming

- Amendment by Directive 2014/52/EU
 - Information „*electronically and by public notices or by other appropriate means*”
 - Screening decision public
 - Reasonable timeframes, early and effective opportunities to participate
 - Not less than 30 days
 - Consultation duly taken into account
 - Prompt information on decision
 - Access to justice
 - Practical information on access to review
 - From 2017



Case law

- Crucial questions:
 - **Legal standing**
 - ACCC
 - Belgium, ACCC/C/2005/11
 - Austria, ACCC/C/2010/48
 - CJEU
 - Slovak Brown Bear, C-240/09
 - Trianel, C-115/09
 - **Practical issues**
 - ACCC
 - Lithuania, ACCC/C/2006/17
 - CJEU
 - Number of judgments



AtoJ studies - EU

- EU DG Justice
- eJustice Portal on access to justice in environmental matters
- 27 EU MS (Croatia not yet)
- Review of screening decisions (↔ DE, FR, PT, SK)
- Review of legality
- Review of technical documentation (↔ DK, EL, IE)
- Binding EIA statement/ decision (↔ CZ, DE, ES, SK)



AtoJ studies - SEE

- UNECE Aarhus Convention Secretariat
- Access to Justice in Environmental Matters in the South East European Region
- Albania, Bosnia and Herzegovina, Kosovo (UN administered territory under UN Security Council resolution 1244/1999), Montenegro, the former Yugoslav Republic of Macedonia, and Serbia
- Developed legislation
- Administrative review (except Serbia)
- Judicial review





Case example No. 1

- Cement factory in Nyergesújfalu (HU)
 - Major Swiss investor to replace old cement factory with new
 - Decision of EPA opposed by surrounding municipalities and NGOs
 - Court procedure involving multiple expert opinions
 - Judgment favorable for investor
 - 4 years after start of case
 - Investment taken to SK
 - Permit expired



Case example No. 2

- Semmering Basistunnel (AT)
 - Railway tunnel through the Semmering mountains
 - Highest Administrative Court annulled the permit
 - Quality of expert opinions, noise pollution measuring, opposing expert opinions
 - Permitting to be repeated possibly with more stringent conditions



Importance of PP in EIA

- Largest (potential) pollutions/alterations are covered
- Adaptation of the AC PP pillar (besides Directives on A2I, IED, Seveso III, ELD)
- Has a sophisticated legal regime and well elaborated practice
- Both in terms of case law and practical arrangements
- „Improve enforcement” (EC 2003)
- „Fill the gaps” (Lord Carnwath, 2008)
- Easy to comprehend by public



Thank You!



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