

## Principle of public participation in EU environmental policy as the public's fundamental right to participate in the implementation of projects negatively impacting the environment

### ABSTRACT

This article analyses the principle of public participation in environmental policy in relation to human rights to environment, human rights to information on the environment and its protection, and the rights of the public to participate in decision-making processes concerning projects which may negatively impact the environment. It indicates the interrelations between these human rights, as well as their relations to other principles of international environmental protection law, i.e. the principle of sustainable development, the preventative principle, and the precautionary principle. The article points to the important role of public participation in environmental impact assessments. Advance planning of all comprehensive environmental protections may thus mitigate the negative impact of the project on the elements of the environment, including human health and life.

**KEYWORDS:** *human rights to environment, public participation, environmental impact assessment*

## Introduction

The increasing degradation of environmental resources indicates a need to counteract this trend by all means available, both through national and international law. The necessity for such protection was reflected in international law as early as in the 1960s, which was a period of rapid development and the de facto beginning of modern international legal measures pertaining to environmental protection (Ciechanowicz-McLean, Nyka, 2016, p. 88). A large role in this process rested on the creation of principles guiding environmental legislation, among which, apart from the principle of sustainable development, the preventative principle, the precautionary principle, and the polluter-pays principle, the principle of public participation in environmental policy must also be included.

The principle of public participation thus stands among the fundamental principles of environmental policy, as enshrined in both international and, specifically, EU law. It is closely related to the principle of access to information established in the 1992 Declaration of Rio de Janeiro on Environment and Development, according to which every individual should have appropriate access to information on the environment and its protection (Rosencranz, 2003, p. 309–320; Roliński, 2014, p. 145–155). The intention of the principle of public participation is to ensure the access and influence of the public on shaping environmental policy. This can only be achieved through first informing the public about the environment and environmental protection contained in various documents pertaining to the state's environmental policy, i.e. in its environmental protection strategies, environmental protection plans of particular local authorities and, especially, in local documentation such as land-use plans, or documents pertaining to investments, such as environmental impact assessments. The principle of public participation in environmental policy can therefore be discussed on three levels, in relation to: 1) human right to environment, 2) human right to information on the environment and environmental protection, and 3) the right of the public to participate in decision-making on projects which may negatively impact the environment, which are the subject of the present article.

## The principle of public participation in environmental policy in relation to human rights to the environment and to information on the environment and environmental protection

In the context of public participation, human rights to information on the environment and environmental protection has its place in EU and international law, since those rights have been guaranteed in many documents, such as Principle 1 of the Stockholm Declaration on Human Environment, Principle 10 of the Rio de Janeiro Declaration on Environment and Development, UN General Assembly Resolution 37/7 of 29 October 1982 on the World Charter for Nature, and 45/94 of 14 December 1990 on the Need to Ensure a Healthy Environment for the Well-Being of Individuals, as well as the European Charter on Environment and Health adopted by the World Health Organisation's First European Ministerial Conference on Environment and Health in Frankfurt-am-Mein on 8 December 1989.

These documents formed the basis for common guidelines in the form of the language contained in the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) of 25 June 1998 (LJ 1998.78.706). The convention contains provisions concerning the realisation of three kinds of human rights. The first are the human rights to the environment as such, expressed by indicating the need to protect, preserve and improve the environmental conditions, and to ensure sustainable, environment-friendly development. Because every person has the right to live in an environment adequate to his or her health and well-being, and the duty, both individually and in association with others, to protect and improve the environment for the benefit of present and future generations. The second group of human rights concern access to information about the environment and its protection. This is also expressed in the Convention's preamble, which indicates that the ability to claim this right and discharge this duty depends on the citizens having access to information, being empowered to participate in decision-making, and having access to the justice system

in matters of the environment. Finally, the third group of rights links the right to information with public participation. This is because easy access to information and public participation in decision-making improves the quality of the decisions and their implementation, as well as increases public awareness of environmental protection. It facilitates the voicing of public opinion, and its proper recognition by the public authorities. Therefore the objective of this Convention is protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being by obligation each Party to guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention (Article 1) (see more: Jendroška, Radecki, 1999, p. 73).

The Aarhus Convention also means environmental information as any information in written, visual, aural, electronic or any other material form on: (a) The state of elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites, biological diversity and its components, including genetically modified organisms, and the interaction among these elements; (b) Factors, such as substances, energy, noise and radiation, and activities or measures, including administrative measures, environmental agreements, policies, legislation, plans and programmes, affecting or likely to affect the elements of the environment; and (c) The state of human health and safety, conditions of human life, cultural sites and built structures, inasmuch as they are or may be affected by the state of the elements of the environment or, through these elements (Article 2.3).

In Poland, the human right to information on the environment and its protection and to public participation is guaranteed in the Constitution (LJ 78.483), specifically in Art. 74.2, according to which everyone is entitled to information on the quality of the environment and its protection. Furthermore, public authorities are obliged to support the activities of citizens to protect and improve the quality of the environment. The regulations governing the form and rules of informing about the environment and its protection are specified in the Act of 3 October 2008 on Providing Information on the Environment and Environmental Protection, Public Participation in

Environmental Protection and on Environmental Impact Assessment – AEP (LJ 2018.2081). According to Art. 8 of the cited Act, public authorities are obliged to make available to all persons the information on the environment and its protection which they hold or which is intended for them, in the areas falling within their legislative purview, and in the case of courts and tribunals – their jurisdiction. Furthermore, public authorities are obliged to provide the necessary help and instruction in searching for information on the environment and its protection.

Elements which are made available are the following: 1) the state of elements of the environment, such as air, water, land surface, minerals, climate, landscape and natural areas, including marshes, coastal and maritime areas, flora, fauna, and fungi, as well as other elements of biodiversity, including genetically modified organisms, and the mutual interactions among these elements; 2) emissions, including those of radioactive waste and the pollutants which affect or may affect the elements of the environment referred to in point 1; 3) such measures as administrative measures, policies, legal provisions relating to the environment and water management, plans, programmes, and agreements on environmental protection, the actions which affect, or may affect, the elements of the environment referred to in point 1 as well as the emissions and pollutants referred to in point 2, and the measures and actions designed to protect these elements; 4) the reports on the implementation of the legislation on environmental protection; 5) cost and benefit analyses and other economic analyses and assumptions used within the framework of the measures and actions referred to in point 3; 6) the state of health, safety and living conditions of persons as well as the state of cultural sites and structures -Article 9 AEP (see more: Zębek, Biedrzycki, 2017, p. 45–59).

## The principle of public participation in environmental policy in international and EU law

The primary regulatory act concerning the principle of public participation in environmental policy is the Aarhus Convention, adopted by the European Community on 17 February 2005. Among the aims of the Convention is the

desire to assure the right of the public to participate in decision-making on environmental matters, with the purpose of safeguarding the right to live in an environment conducive to people's health and well-being. Article 6 of the Convention postulates the participation of the public in decision-making concerning specific kinds of projects enumerated in Annex I of the Convention, and kinds of activities not enumerated therein which may severely impact the environment. Each Party shall make appropriate practical and/or other provisions for the public to participate during the preparation of plans and programmes relating to the environment, within a transparent and fair framework, having provided the necessary information to the public (Article 7). This especially concerns the projects listed in Annex I of the Convention, e.g. Energy sector (mineral oil and gas refineries, nuclear power stations), Production and processing of metals (metal ore roasting, installations for surface treatment of metals and plastic materials), Mineral industry (installations for the manufacture of glass), Chemical industry, Waste management (installations for the incineration, recovery, chemical treatment or landfill of hazardous waste), Waste-water treatment plants with a capacity exceeding 150 000 population equivalent, Industrial plants (production of paper), Construction of lines for long-distance railway traffic, trading ports, express roads.

Within the EU law, a noteworthy statute containing the principle of public participation in environmental protection is Directive 2011/92/EU of the European Parliament of 13 December 2011 on the Assessment of the Effects of Certain Public and Private Projects on the Environment - Assessment Directive (EJL 2012.26.1.). The preamble of the directive makes references to other very important principles of environmental protection law contained in Art. 191 TFEU (LJ 2012.326), which stipulates that EU environmental policy rests on the precautionary principle, the preventative principle, the principle that environmental damage should as a priority be rectified at the source, and that the polluter should pay.

According to the Assessment Directive, environmental impact should be dealt with at the earliest possible stage in all processes of technical planning and decision-making. The principles of the assessment of environmental

effects should be harmonised, in particular with reference to the projects which should be subject to assessment, the main obligations of the developers and the content of the assessment. Because Member States may set thresholds or criteria for the purpose of determining which of such projects should be subject to assessment on the basis of the significance of their environmental effects. That is because the effective participation of the public in decision-making enables the public to express, and the decision-makers to consider, the opinions and concerns which may be linked to those decisions, thereby increasing the responsibility and transparency of the decision-making process and contributing to the public awareness of environmental issues and support of the decisions made.

The directive in question employs assessment of the environmental effects from projects (Article 1). For this purpose, an instrument called an Environmental Impact Assessment (EIA) was created. The environmental impact assessment shall identify, describe and assess in an appropriate manner, in the light of each individual case, the direct and indirect effects of a project on the following factors: (a) human beings, fauna and flora; (b) soil, water, air, climate and the landscape; (c) material assets and the cultural heritage; and (d) the interaction between the factors (Article 3). According to the directive, this procedure must involve public participation. These regulations have been implemented in Polish legislation in the Act of 3 October 2008 on Providing Information on the Environment and Environmental Protection, Public Participation in Environmental Protection and on Environmental Impact Assessment (AEP).

## Public participation in environmental impact assessments

Environmental Impact Assessments (EIA) are an important element in the procedure of obtaining a decision on environmental conditions. Performing the EIA procedure is required both for planned projects and existing projects undergoing significant changes (especially in group I). According to Art. 3.1.8 of AEP, EIA is the procedure for the assessment of the environmental impact of the proposed project, including, in particular:

- the verification of the environmental impact report for the project
- the acquisition of the opinions and approvals required by the Act
- ensuring the possibility of public participation in the procedure.

Therefore, according to the cited regulation, good practice of the EIA procedure consists of four elements. The first is screening – assessing the project with reference to the criteria adopted pursuant to the ordinance of the Council of Ministers of 9 November 2010 on projects which may significantly affect the environment (LJ 2016.71); the second element is scoping – determining the scope of the report; the third element necessary in the EIA is securing the mandatory opinions and approvals. Finally, the fourth element is ensuring the possibility of public participation in the procedure (see more: Zębek, 2017, p. 22–28). The assessment must identify and assess the effects of the project on individual elements of the environment. It should be stressed that according to Article 3.2 of AEP, the impact on the environment also means the impact on human health. Furthermore, EIA also specifies the means of mitigating negative impacts, as well as programmes of monitoring introduced after the project is completed. This procedure does, of course, include public consultations as an integral element (Ciechelska, 2009, p. 49). The purpose of performing the EIA is therefore providing the decision-making authorities, as well as the conciliation organs and all other entities included in the decision process, particularly the public, with the necessary information about the effects of the proposed plan, programme, or project on the environment (see more: Bar, Jendrośka, Lenart, 2011). The EIA procedure aims to supply information to the competent public authorities on whether the investment's environmental impact has been optimally planned and whether the benefits resulting from its realisation compensate for the losses in the environment. The EIA identifies, extrapolates, interprets and transmits information to the competent authorities and to the public regarding the predicted impact of the planned project on the environment, including human health. An important element of the EIA is environmental risk assessment, being an assessment of the impact on human health and life, and of environmental risk – including the effect on the quality of surface water (Ciechanowicz-McLean, 2009, p. 124).

Many environmental aspects are defined, analysed and assessed within a project's environmental impact assessment, pertaining to, i.a.: (a) direct and indirect impact of the project on the environment and the populace, especially health and living conditions; natural resources; cultural heritage; landscape, including cultural landscape; interactions among these elements and accessibility of mineral deposits; as well as the risk of serious industrial accidents, natural and construction disasters; (b) possibilities and ways of preventing and mitigating the project's negative impacts on the environment; and (c) the required scope of monitoring (Art. 62.1.2 of AEP).

Polish law guarantees the right to public participation in EIA in Part III of AEP - *Public participation in environmental protection*. Public participation ensures the democratic character of the decision-making process, better implementation of the goals of sustainable development, and consideration of the interests of all stakeholders. The duty to conduct the procedure with public participation, including communicating the decision to the public, along with the possibility to ascertain its contents and the relevant documentation, lies with the authority issuing the environmental decision for projects significantly impacting the environment, especially from group I. Under these provisions, the authority is obliged to communicate to the public information about the launch of the EIA, the initiation of the procedure, the subject matter of the decision, the authority competent to issue decisions, or the authorities competent to provide opinions and grant approvals, as well the possibilities of becoming acquainted with the necessary documentation and the possibility of submitting comments and suggestions (Wiszniewska, Farr, Jendrońska, 2002, p. 103; Zębek, 2012, p. 179). The right to submit comments and suggestions in a procedure requiring public participation is granted to all persons (Art. 29 of AEP). The authority gathering the documentation for the project provides at least a 21-day period for their submission. It should be noted that according to Art. 34 of the Act, comments and suggestions may be submitted in three forms: (1) in written form; (2) verbally to be recorded in the minutes; and (3) using the means of electronic communications without the need to secure them with a safe electronic signature.

## Conclusions

In summary, the principle of public participation in environmental policy is one of the primary principles in environmental protection law, be it international, EU, or Polish state law. This principle also guarantees human rights to the environment, which are the foundation of all human rights, since environmental resources of sufficient quantity and quality guarantee ecological security indispensable for proper functioning and economic development of society. It pertains to the present and future generations, by which it relates to the principle of sustainable development. The principle of public participation is linked closely with the right to information on the environment and its protection, which guarantees every citizen the ability to learn this information and, if willing, to participate in the planning and shaping of the state's ecological policy. The principle also safeguards the right of the public to participate in the decision-making process, especially concerning projects which may negatively impact the environment. Public participation in decision-making is beneficial for all parties, primarily for administrative authorities who conduct the process, since it contributes to a better understanding of the public's expectations and dispositions, as well as public understanding of the considerations which influence the process of decision-making. Furthermore, the comments and suggestions submitted by the public may be instrumental in discerning vital environmental issues, which otherwise might be noticed only at a later stage of the project's execution and operation. In this way, the principle of public participation in environmental protection also implements precautionary and preventative principles. Advance planning of all comprehensive environmental protections may thus mitigate the negative impact of the project on the elements of the environment, including human health and life.

REFERENCES:

- Bar, M., Jendrońska, J., Lenart, W. (2011). Environmental impact assessment in a construction project, Legal procedure and preparation of reports in the investment process. Warszawa: Verlag Dashofer Sp. z o.o. Press.
- Ciechanowicz-McLean, J. (2009). The lexicon of environmental protection. Warszawa: C.H. Beck Press.
- Ciechanowicz-McLean, J., Nyka, M. (2016). Environmental Law. Warszawa-Gdańsk: UG Press.
- Ciechelska, A. (2009). Impact assessments as a tool for achieving sustainable development. Białystok: Wydawnictwo Ekonomia i Środowisko.
- Dobrowolski, G. (2011). Decision on environmental conditions. Toruń: Dom Organizatora Press.
- Jendrońska, J., Radecki, W. (1999). Convention on access to information, public participation in decision-making and access to justice in environmental matters with commentary. Wrocław: Centrum Prawa Ekologicznego Press.
- Roliński, M. (2014). From the issues of environmental protection principles. *Studia Iuridica Lublinensia* 21, pp. 145–155.
- Rosencranz, A. (2003). The Origin and Emergence of International Environmental Norms. *International and Comparative Law Review* 26(3), pp. 309–320.
- Wiszniewska, B., Farr, J.A., Jendrońska, J. (2002). Proceedings regarding the environmental impact assessment of planned projects. Warszawa: Ministerstwo Środowiska Press.
- Zębek, E. (2012). Environmental impact assessment and water protection against pollution. *Studia Prawnoustrojowe* 18, pp. 173–185.
- Zębek, E. (2017). Administrative, legal and economic instruments in environmental protection. Olsztyn: Kortowski Przegląd Prawniczy Monografie, UWM Press.
- Zębek, E., Biedrzycki, R. (2017). Regulations concerning dissemination of information about the condition and protection of natural environment in the light of legal acts in force. *Scientific Journal WSFiP* 4, pp. 45–59.

LEGISLATION:

- Act of 3 October 2008 on Providing Information on the Environment and Environmental Protection, Public Participation in Environmental Protection and on Environmental Impact Assessment. LJ 2018.2081

Constitution of Republic Poland of 2 April 1997. LJ 78.483

Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) of 25 June 1998. LJ 1998.78.706

Directive 2011/92/EU of the European Parliament of 13 December 2011 on the Assessment of the Effects of Certain Public and Private Projects on the Environment, EJL 2012.26.1.

Regulation of Council of Ministers of 9 November 2010 on projects which may significantly affect the environment. LJ 2016.71

The Treaty on the Functioning of the European Union, ELJ 2012.326.49