



Association of
Environmental
Law

Access to independent expertise Experiences, challenges and good practices, further needs

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Access to independent expertise

- In administrative proceedings, if the available information is insufficient to reach a decision, the authority may initiate a procedure for taking evidence
 - In case the competent authority does not have sufficient expertise, an expert is to be consulted or an expert opinion is obtained
 - Clients and members of public concerned (not acting as clients) may submit their comments and opinions and provide evidence to the authority.
- In administrative court proceedings, the courts assesses the evidence and may order the taking of evidence on its own motion with respect to evidence to support any fact or circumstance that must be taken into consideration
- An expert may be engaged, if appointed by the party or by way of assignment of the court, upon recommendation.

Access to independent expertise: the reasons for the need

- Increasing need for independent expertise due to:
 - Lack of information about upcoming development projects and the operation of ongoing economic activities
 - Lack of specific expertise in the authorities responsible for permitting procedure
- Examples highlighting the need:
 - Hungary: 28 battery plants have been or will be established with potentially harmful effects on the environment and health of the community.
 - Negligence in the permitting procedure, lack of covering important aspects of potential environmental impacts and lack of enforcement of permit requirements, etc.



Challenges for access to independent expertise

- Costs
 - Looser pays principle
 - Interim or permanent injunctive relief
 - Expert costs need to be covered
- What expertise we talk about: Legal aid, technical expertise?
- Who can be an independent expert – legal requirements?
- Environmental authorities may be involved in capacity of experts (Hungary)
- NGOs having expertise – accepted often by court only as „private” experts
- Importance of timing in accelerated procedure– quick expertise needed before it can be used in the procedure/procedure is over
- Citizen science and when this could be used as an evidence

Some good practices

- Costs
 - Judge may order a case by case solution
 - Parties may cover their own cost in administrative cases (civil cases may be different)
 - Free access to courts for NGOs, no fees in administrative procedures
 - Efforts to reduce/limit costs
 - Access to project funding allowing covering costs for litigation including experts
- Chambers of experts, rules/requirements are established, registration
- Access to information on independent experts
 - Publicly available registers or lists of experts and NGOs providing free legal (and technical) assistance

Some conclusions

- More attention and support is needed to NGOs/communities to be able to use the help of independent experts
 - Legal provisions or practice allowing NGO experts to serve as officially recognized experts in the court procedure – could help to avoid huge costs
 - Cost exemption or reduction for those representing the public interest
 - Access to public fund to cover costs for litigation including expert fees
 - Developing guidance for citizen science in order to be used as evidence in court procedures

Thank you for the attention!

More information

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