



Twenty-seventh meeting of the Working Group of the Parties to the Aarhus Convention 26-28 June 2023, Geneva

4. (a) Thematic session on public participation in decision-making

Public participation with regard to large-scale infrastructure/transport projects

**Csaba Kiss
Justice and Environment
European Eco Forum**

Structure of the presentation



Definition of large-scale infrastructure/transport projects (technical and legal)

Large scale infrastructure/transport projects in the Aarhus Convention

Typical problems re public participation in large scale infrastructure projects

Reflection of such problems in the case law of the ACCC and the CJEU

Good examples of public participation in such projects

Unsuccessful examples of public participation in such projects

Definition of large-scale infrastructure/transport projects

Technical

- Projects that cost more than US\$1 billion and attract a large amount of public attention because of substantial impacts on communities, the natural and built environment, and budgets (Wikipedia based on the 2017 Oxford Handbook of Megaproject Management).

WIKIPEDIA

- Large scale infrastructure (LSI) are mega projects, that require extensive budget, planning, construction periods, and expertise in numerous areas. Their main purpose is to enable development, achieved by integrating or accelerating the economic growth in a specific area. Some examples of LSI are highways, hydroelectric dams, mines, bridges, transmission lines, etc.



Legal

- Large-Scale Infrastructure means infrastructure which has the potential to impinge on the integrity of the natural environment or on the aesthetic quality of the landscape.



- Geneva Declaration on Environmental Democracy for Sustainable, Inclusive and Resilient Development (21 October 2021)



- Council Regulation No. 1311/2013 laying down the multiannual financial framework for the years 2014-2020: Large-scale infrastructure projects whose lifetime extends well beyond the period set for the MFF.



Large scale infrastructure/transport projects in the Aarhus Convention



5. Waste management installations...

6. Waste-water treatment plants ...



8. (a) Construction of lines for long-distance railway traffic and of airports ...; (b) Construction of motorways and express roads ...



9. (a) Inland waterways and ports ...; (b) Trading ports, piers ...



11. (a) Works for the transfer of water resources between river basins ...



13. Dams and other installations designed for the holding back or permanent storage of water ...



14. Pipelines for the transport of gas, oil or chemicals ...



17. Construction of overhead electrical power lines ...



Typical problems re public participation in large scale infrastructure projects

Environmental problems

- Disruption of ecosystem
- Need for building materials
- Need for transportation
- Land use change
- Landscape change
- Alteration of water resources
- Loss of habitat
- CO2 emission

Societal problems

- Displacement
- Loss of livelihoods
- Changes in the cultural fabric of the community
- Human rights infringements
- Technology lock-in

Public participation problems

- No meaningful prior strategic assessment or no adequate participation in strategic level decision-making
- Project level public participation happens too late (important details are already decided)
- Lack of adequate information to the members of the public
- Language of the Environmental Impact Statements
- Lack of taking the comments of the members of the public into due account

Reflection of such problems in the case law of the ACCC and the CJEU

- **ACCC/C/2005/12**
(Vlora Bay, Albania)

- In this regard, the Committee wishes to make clear that once a decision to permit a proposed activity in a certain location has already been taken without public involvement, providing for such involvement in the other decision-making stages that will follow can under no circumstances be considered as meeting the requirement under article 6, paragraph 4, to provide “early public participation when all options are open”. This is the case even if a full environmental impact assessment is going to be carried out. Providing for public participation only at that stage would effectively reduce the public’s input to only commenting on how the environmental impact of the installation could be mitigated, but precluding the public from having any input on the decision on whether the installation should be there in the first place, as that decision would have already been taken.



- **ACCC/C/2006/1**
(Kazokiskes Landfill, Lithuania)

- The requirement to provide “reasonable time frames” 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. 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.
- 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. Within each and every such procedure where public participation is required, it should be provided early in the procedure, when all options are open and effective public participation can take place.



Reflection of such problems in the case law of the ACCC and the CJEU

- **ACCC/C/2007/22**
(Fos-sur-Mer Landfill, France)

- In the present case, to meet the criteria that all options are open and effective public participation can take place, it is not sufficient that there is a formal possibility, de jure, for the Prefect to turn down the application. If the practice in the jurisdiction of the Party concerned is such that, despite the possibility of the permit authority to reject an application, this never or hardly ever happens, then de facto all options would not be open at the stage in question. Thus, there would be no room for effective public participation as required by the Convention. The information given to the Committee does not suggest that this is the case with the authorization procedures before the French Prefects



- **ACCC/C/2013/88**
(Kok Zhailau Ski Resort, Kazakhstan)

- In particular, the Rules on Public Hearings omit the requirements to notify the public of the authority responsible for making the decision, the date of commencement of the procedure, the indication of the time schedule for the transmittal of comments or questions and whether the activity is subject to a transboundary environmental impact assessment or not.
- The Committee considers that providing notice a minimum of 20 calendar days before the public hearing for the public to become acquainted with the documentation and to prepare to participate may generally be sufficient, bearing in mind that longer periods may be required in complex cases or when there is voluminous documentation. However, it is apparent that when this period partially or fully overlaps with the days of major religious festivals, national days or, to a certain extent, the main summer or winter holidays, the actual time frames envisaged for the public to prepare to participate are automatically shortened.



Reflection of such problems in the case law of the ACCC and the CJEU

- **C-416/10**
(Krizan and others, Pezinok Landfill, Slovakia)

(EU law)

- requires that the public concerned have access to an urban planning decision, such as that at issue in the main proceedings, from the beginning of the authorisation procedure for the installation concerned
- does not allow the competent national authorities to refuse the public concerned access to such a decision by relying on the protection of the confidentiality of commercial or industrial information
- does not preclude the possibility of rectifying, during the administrative procedure at second instance, an unjustified refusal to make available to the public concerned an urban planning decision ... if all options and solutions remain possible and that ... stage of the procedure still allows that public effectively to influence the outcome of the decision-making process



- **Case C-280/18**
(Flausch and others, Ios Island Tourist Resort, Greece)

(EU law)

- precludes a Member State from carrying out the procedures for public participation in decision-making that relate to a project at the level of the headquarters of the competent regional administrative authority, and not at the level of the municipal unit within which the site of the project falls, where the specific arrangements implemented do not ensure that the rights of the public concerned are actually complied with
- precludes legislation which results in a period for bringing proceedings that starts to run from the announcement of consent for a project on the internet being relied on against members of the public concerned where they did not previously have an adequate opportunity to find out about the consent procedure



Good examples of public participation in such projects

- Austria
 - **380 kV Overhead Power Line in Lower Austria (early public involvement)**
- Bosnia and Herzegovina
 - **Trgovska gora nuclear waste disposal facility (transboundary EIA managed with appropriate information)**
- Croatia
 - **Incinerator of medical waste in the Hospital Complex Rebro in Zagreb (redone consultation and participation after public pressure)**
- Czechia
 - **Brno - Vienna Highway (active participation of CZ and AT NGOs)**
 - **High-voltage electricity lines (alternatives must be subject to assessment)**

Unsuccessful examples of public participation in such projects

- Austria
 - **S8 Highway (assessment redone after no alternatives examined)**
- Bosnia and Herzegovina
 - **Enlargement of coal mine for TPP Gacko (transboundary public participation in Montenegro only after second annulment of EIA approval)**
- Croatia
 - **Krk LNG terminal (plans of expansion without EIA)**
- Hungary
 - **Hamzsabégi street railway extension (EIA approval annulled twice, major gaps in assessing alternatives and noise abatement)**

Systemic challenges and suggestions for improvements

Challenges	Suggestions
Project is part of a larger scheme adopted on a strategic level	Make sure the strategic level assessment involves the public
Late involvement of the public in the assessment and permitting	Inform public early „when all options are open” and involve public from the first stage of a multi-layer process
Lack of adequate information	Assess location and technology alternatives
Technical language of assessment	Put emphasis on the non-technical summary
Taking comments into due account	Respond to comments in a systematic way to make further remedies possible

Thank you for your attention!

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