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CONTENTS

Editorial

This issue of *elni Review* deals with the interdependence between European law and environmental law in non-European countries. On the one hand environmental law developments in a number of countries are initiated by adaptation processes as they seek to implement the European model into their national context. But there are also on the other hand further driving forces like investment policies.

The current issue of *elni Review* contains several contributions by legal scholars and practitioners that highlight different aspects of the interdependence between European law and environmental law.

In her article "European investment projects in the third countries: LEGALLY GREEN?" *Daria Ratsiborinskaya* analyses how European environmental standards are applied outside of Europe in the case of foreign direct investments.

"Market-based Mechanisms as Climate Policies: Insights for Brazil" is the title of *Natascha Trennepohl*'s contribution, which highlights the basic elements of a trading scheme by focussing on the model of the European Union Emissions Trading Scheme and the development of the carbon market in Brazil.

The adoption of the European acquis in Croatia is discussed by *Lana Ofak* in her article "Public participation in decisions on specific activities in environmental matters in Croatia". The article provides a general overview of the legal framework for public participation in decisions on specific activities in Croatia and highlights specific problems in exercising the right to participate in environmental impact assessment procedures.

Brahim Zyani gives a valuable overview of the current environmental law situation in Morocco by tracing the developments in recent decades in his article "Nouveautés constitutionnelles, juridiques et de politique générale relatives au Droit de l'Environnement et du Développement Durable dans le Royaume du Maroc". Since the article is written in French a summary is provided in English.

Additionally, the current issue of *elni Review* makes available new information about recent developments, e.g. the revision of the Brazilian Forest Code, which has received critical press in recent media; and the environmental regulatory developments after the 'Arab Spring' in Tunisia. The relevant article is also written in French and briefly summarized in English.

We hope you enjoy this issue! The next issue of *elni Review* will focus on water. Please send contributions on this topic as well as other interesting articles to the editors by mid-September 2012.

Nicolas Below/Gerhard Roller
May 2012

International conference on the European Habitats Directive

from 12-13 December 2012
in ***Antwerp*, The Netherlands**

"20 years of Habitats Directive: European Wildlife's Best Hope?"

The conference aims at assessing the strengths and weaknesses of the Habitats Directive in the light of the European 'no net loss' approach. In this respect focus will not only rest on the existing threats to biodiversity (e.g. nitrogen deposit) but also on new challenges, such as climate change and invasive alien species. Is the Habitats Directive robust enough to tackle these new and existing threats or do we need other or better legal instruments?

Although the conference will mainly be dedicated to legal issues, it will not lose sight of the broader, more multidisciplinary ecological context.

This conference is co-organised by the Université Catholique de Louvain (Séminaire de droit de l'urbanisme et de l'environnement (SERES) and Biodiversity Research Centre (BDIV)), Ghent University (Centrum voor Milieu- en Energierecht (CMR) of the Department of Public Law and the Department of Public International Law), Facultés Universitaires Saint-Louis (Centre d'Etude du Droit de l'Environnement (CEDRE)), The Flemish Environmental Law Association (VVOR) and ARGUS-het milieupunt van KBC en CERA.

More information and application:
www.omgevingsrecht.be

Public participation in decisions on specific activities in environmental matters in Croatia

Lana Ofak

1 Introduction

Croatia finished accession negotiations with the EU in June 2011. The Accession Treaty was signed on 9 December 2011. The EU accession referendum in Croatia was held in January 2012 with a positive outcome. 66.27% of Croatian citizens voted in favour of Croatian accession to the European Union and 33.13% of votes were against the accession. Following ratification of the Accession Treaty by the 27 EU member states, accession of Croatia to the EU is expected to take place on 1 July 2013.

In the 2011 Progress Report, European Commission stated that there has been progress in the area of environment. Overall, Croatia's environment-orientated preparations are nearing completion in terms of both alignment and implementation of the relevant legislation. However, implementation of the horizontal *acquis*, and in particular effective public participation and access to justice in environmental matters, need to be improved.[1]

The purpose of this article is twofold. Firstly, it will provide a general overview of the legal framework for public participation in decisions on specific activities in Croatia, which is intended to implement provisions of Art. 6 of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (hereinafter: the Aarhus Convention or Convention).[2] Implementation of Art. 7 and 8 of the Aarhus Convention will not be discussed. Secondly, specific problems in exercising the right to participate in environmental impact assessment procedures in Croatia will be analysed. It will be shown that there are cases of non-compliance with the provisions of Art. 6 of the Aarhus Convention.

2 Croatian legal framework for public participation in administrative proceedings in environmental matters

The 1994 Environmental Protection Act[3] was the first Croatian environmental act which regulated environmental protection in a systematic way. When Croatia became a candidate for EU membership in 2004, it accepted the responsibility of adopting the EU *acquis*. Croatian Parliament passed the new Environmental Protection Act in 2007 (hereinafter: EPA).[4] As a result Croatia has almost completed the transposition process as regards to horizontal environmental EU legislation.

Aarhus Convention entered into force in respect of Croatia on 25 June 2007.[5] In accordance with the Croatian Constitution the provisions of the Convention have a stronger legal force than domestic law.[6]

Public participation in decision-making on specific activities in the Republic of Croatia is regulated by a series of legal acts and regulations. Provisions of the EPA regulate public participation in the environmental impact assessment procedure (hereinafter: EIA procedure).[7] Participation is also regulated in the procedure of determining integrated environmental protection requirements for installation intended for performing an activity, which may cause emissions that pollute the soil, air, water and sea.[8] These two administrative proceedings may be conducted within a single (integrated) procedure.[9] Consulting the public is also prescribed in the procedure of giving consent to the Safety Report, which an installation operator has to develop when he ascer-

1 European Commission, Croatia 2011 Progress Report, SEC(2011) 1200 final, p. 60.

2 Art. 6 refers to public participation in decisions by public authorities on whether to permit specific activities with a potentially significant environmental impact.

3 Official Gazette (Narodne novine), no. 82/94; the Act was amended in 1999 (Official Gazette, no. 128/99).

4 Official Gazette, no. 110/07.

5 Act on the Ratification of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, Official Gazette – International Contracts, no. 1/07.

6 Under Art. 141 of the Constitution (Official Gazette, no. 85/10 – consolidated text) international treaties which have been concluded and ratified in accordance with the Constitution, published and which have entered into force shall be a component of the domestic legal order of the Republic of Croatia and shall have primacy over domestic law. Their provisions may be altered or repealed only under the conditions and in the manner specified therein or in accordance with the general rules of international law.

7 Projects for which EIA is mandatory and projects subject to screening are stipulated in the Regulation on the environmental impact assessment (Official Gazette, no. 64/08, 67/09), which was adopted in order to transpose the Directive 85/337/EEC.

8 Activities which may cause emissions and details related to the procedure of determining integrated environmental protection requirements are prescribed by the Regulation on the procedure for determining integrated environmental protection requirements (Official Gazette, no. 114/08), which was adopted in order to transpose the Directive 96/61/EC.

9 When a project for which EIA is carried out pertains to an installation for which the determining of integrated environmental protection requirements is mandatory, a decision on the request for EIA and the request for determining integrated environmental protection requirements shall be made within a single procedure (Art. 70(1) EPA).

tains the presence of large quantities of dangerous substances in the installation.[10]

The legislator has delegated the regulation of certain questions related to information and public participation in procedures defined in the EPA to the Government of the Republic of Croatia, which has adopted a Regulation on information and participation of the public and the public concerned in environmental matters.[11]

In addition to the EPA, public participation in various administrative proceedings in environmental matters is also prescribed by other acts and pieces of delegated legislation, for instance:

- in the nature impact assessment procedure (Nature Protection Act[12] and Ordinance on the assessment of acceptability of plans, programmes and interventions for the ecological network[13]),
- in the procedure for issuing permits for introduction of wild taxa (Nature Protection Act and Ordinance on the method of preparing and implementing risk assessment studies with respect to introduction, reintroduction and breeding of wild taxa[14]),
- in the procedure for issuing permits for deliberate release of GMOs into the environment (Act on Genetically Modified Organisms[15]), and
- in the procedure for issuing permits for disposal of extractive waste (Ordinance on the management of waste resulting from the exploration and excavation of mineral resources[16]).

The fact that public participation in administrative proceedings in environmental matters is regulated in different pieces of legislation causes several problems in practice. Firstly, in a situation where there are conflicts between the norms of the Aarhus Convention, national acts and delegated legislation, public administration bodies are more inclined to apply norms of delegated legislation (regulations or ordinances) or national acts, even if they are in direct conflict with the norms of the Aarhus Convention. In general, norms of international treaties are rarely applied by the national public authorities despite the fact that they have primacy over domestic law. Secondly, in the absence of special provisions public authorities in some instances do not apply the provisions of general law. For instance, Waste Act[17] is not yet fully harmonised with the EU *acquis*. It does not contain any provisions regarding public participation. Nevertheless, the right of public to participate in proceedings regulated by the Waste Act can stem from provisions of general environmental law, e.g. EPA and the Aarhus Convention. However, there are cases where the public authorities did not provide for public participation in the process of adopting local waste management plans[18] or where the public concerned was deprived of the right to participate in the procedure for issuing permit for co-incineration of hazardous waste[19]. Thirdly, citizens and environmental non-governmental organisations (NGOs) are not well-informed about their rights to participate in different administrative proceedings in environmental matters.[20]

3 Specific problems in exercising the right to participate

In the course of the project *"Implementation of the Aarhus Convention in the Adriatic Region Countries"*[21] I made contacts with several Croatian environmental NGOs. The problems presented in this chapter will be, to a large extent, based on their experience gained while participating in the EIA procedures. Although the EIA procedures are not the only ones to which Art. 6 of the Aarhus Convention applies, they are the most common in Croatia. Other procedures are still developing (due to alignment with the *acquis communautaire*), and many citizens are not familiar with the fact that they have the right to participate.

3.1 Withholding of information relevant to the decision-making

In the EIA procedure for the construction of the golf course "Baštijunski brig", one journalist, as a member of the public concerned and as a media representative, requested access from the Ministry of Environmental Protection to information about specialists and members of the committee that evaluated the EIA study (the name of ornithologist, the names of

10 The details related to the Safety Report are prescribed by the Regulation on the prevention of major accidents involving dangerous substances (Official Gazette, no. 114/08), which was adopted in order to transpose the Directive 96/82/EC.

11 Official Gazette, no. 64/08.

12 Official Gazette, no. 70/05, 139/08, 57/11.

13 Official Gazette, no. 118/09.

14 Official Gazette, no. 35/08.

15 Official Gazette, no. 70/05, 46/07, 137/09.

16 Official Gazette, no. 128/08. Pursuant to the Art. 20 of the Ordinance, public participation is carried out in accordance with the Regulation on information and participation of the public and public concerned in environmental matters.

17 Official Gazette, no. 178/04, 153/05, 111/06, 60/08.

18 A number of waste management plans in the Split-Dalmatia County (Hvar, Sinj, Stari Grad, Vis, Vrgorac...) was adopted without public participation.

19 Decision of the Ministry of Environmental Protection, Physical Planning and Construction from 25 February 2011, Klasa: UP/I-351-02/10-11/73, Urbroj: 531-13-2-1-1-11-6.

20 For analysis of legal status of NGOs in environmental protection proceedings in Croatia see: Medvedović, D.; Ofak, L., The Legal Position of Associations in Environmental Protection Procedures in the Republic of Croatia, Facta Universitatis - Series: Law and Politics Vol. 9, No 1, 2011, pp. 69-84, http://facta.junis.ni.ac.rs/lap/lap201101/lap201101-05.pdf.

21 For project publications see: http://aarhus.zelena-istra.hr/node/79.

committee members). Access to information was denied. The Ministry's spokeswoman gave the following response: *"Public authorities may deny the right of access to information if there is reasonable doubt that its publication would prevent the effectiveness, independence and impartiality of judicial, administrative or other legal proceedings, execution of court decisions or penalties. The administrative procedure is pending until a decision becomes final."* This means that the public concerned will receive access to the requested information only when an EIA decision becomes legally final, i.e. when deadline for submitting an appeal and/or bringing a court action passes. Thus, information could not be used to challenge the legality of the EIA decision, since the deadline for filing claims would already have elapsed.

Pursuant to Art. 6(6) of the Aarhus Convention, competent public authorities shall give the public concerned access to all information relevant to the decision-making. Refusal to disclose certain information must be in accordance with Art. 4(3) and (4) of the Aarhus Convention. In my opinion, the confidentiality of the proceedings of public authorities was not a valid justification for denying the right of access to information in this concrete case. The requested information was important because the public concerned could point to certain irregularities in the EIA procedure, e.g. that the procedure involved a person who was supposed to be exempted due to partiality reasons or reasons that cast doubt on his or her professional knowledge.

It is often the case that the authorities do not allow access to minutes during the procedures nor to contracts that public authorities enter into with private parties.[22] Minutes are a part of files of the administrative procedure and should be available even before the decision is made. The public authorities use the usual excuse for refusing access to and copying of minutes during the EIA procedure, explaining that the procedure is still ongoing and therefore the minutes cannot be disclosed. Verified minutes are completed documents and a request for access to it and making copies cannot be refused on the grounds that the EIA procedure has not been completed.[23] As for access to contracts, the public authorities act in the public capacity even when they enter into private contracts.[24] Therefore, the public authorities are obliged to provide access to information on contracts with private parties, with the exceptional possibility to withhold certain information in accordance with Art. 4(4) of the Convention.

How can the public concerned effectively protect their rights in case when they were, contrary to the Convention, denied important information for decision-making? If they submit an appeal against the refusal of a request for information, Personal Data Protection Agency as a competent second-instance public authority must render the decision on the appeal and serve it to the party without delay, and no more than 30 days from the day the appeal was submitted. Exceptionally, when Agency has to apply the "public interest test", i.e. assess if the interest against disclosure outweighs the public interest in favour of disclosure, the decision on the appeal must be rendered and served no more then 60 days from the day the appeal was submitted.[25] Since submitting an appeal against the refusal of a request for information does not affect the course of the EIA procedure, the EIA decision could be rendered and become final before Personal Data Protection Agency decides on the appeal. Thus, any subsequent access to information virtually loses its meaning. In my opinion, withholding information may constitute one of the reasons for the complaint against the EIA decision. It could constitute a violation of Art. 6(6) of the Convention, and the public concerned has a right to file a lawsuits against the decision referred to in Art. 6 for any reason of illegality. The question of whether a separate lawsuit was filed against the decision refusing access to information is irrelevant.

3.2 Access to the entire EIA study is available only on the spot where public inquiry is carried out

Access to the entire EIA study can be obtained only at the place where public inquiry is carried out (generally during working hours of the public authorities entrusted with the organisation of the public debate). Ministry of Environmental Protection publishes only summaries of the EIA studies on the internet. Making copies of the complete study is denied on the grounds that it would violate the intellectual property rights of the author of the study (see: *infra* 3.3).

22 See: Green Istria (*Zelena Istra*), *Comments on the Report on the Implementation of the Aarhus Convention*, December 2010, http://www.zelena-istra.hr/files/news/Komentari_Zelene_Istre_na_Nacrt_Izvjesca_o_provedbi_Aarhuske_konvencije.pdf .

23 For a similar case see: Conseil d'Etat (France), decision 266.668 of 7 August 2007 (cited from: Krämer, L. *The Application of the Aarhus Convention in the European Union*, in: Radojcic, D. (ed.), Proceedings: Implementation of the Aarhus Convention in the Adriatic Region Countries, Green Istria, Pula, 2011, p. 36).

24 Krämer, L., *supra* note 23, p. 33.

25 Art. 17(4) and (5) of the Act on the Right to Access Information (Official Gazette, no. 172/03, 144/10, 37/11, 77/11).

Aarhus Convention Compliance Committee[26] in its decision with regard to communication ACCC/C/2009/36 concerning compliance by Spain concluded that *"by requiring the public to relocate 30 or 200 kilometres, by allowing access to thousands of pages of documentation from only two computers without permitting copies to be made on CDROM or DVD, and by, in these circumstances, setting a time frame of one month for the public to examine all this documentation on the spot, the Spanish authorities failed to provide for effective public participation and thus to comply with article 6, paragraphs 6 and 3, respectively, of the Convention."*[27]

3.3 Refusal of copying of requested information

Since Aarhus Convention came into force in respect of Croatia there has been only one judgement of the Administrative Court of Republic of Croatia in which the provisions of the Aarhus Convention were directly applied.

Croatian Society for Bird and Nature Protection submitted a request to make copies of the complete EIA study for the project *"Control works on the river Drava from 0 +000 to 56 +000 rkm"*. Ministry of Environmental Protection allowed the access to the entire study. However, the request for making copies of the study was rejected because there was reasonable doubt that the intellectual property rights of the author of the study were at risk of abuse. The Society appealed without success. The Society then brought an action against the second-instance decision before the Administrative Court of the Republic of Croatia. The Administrative Court dismissed the lawsuit[28]. In my opinion, the Administrative Court wrongly interpreted the relevant provisions of the Convention in several important points.

The first error was that the Administrative Court did not examine whether the study was really protected by copyright, but it held this to be indisputable. The Court only found that, pursuant to Art. 4(4), a request for environmental information may be refused if the disclosure would adversely affect, among other things, intellectual property rights. It did not give any reasons for the opinion that copying of the EIA study is forbidden on the grounds of intellectual property law. It also did not explain why copying the study would adversely affect the intellectual property rights. The plaintiff noted that he had never abused anyone's intellectual property rights. He never intended to become an authorised developer of EIA studies. Therefore, there was not even a theoretical risk of the abuse of intellectual property rights.

There are also cases from EU Member States where the administrations have refused public access to EIA studies with the argument that the studies are protected by copyright or intellectual property provisions.[29] Aarhus Convention Compliance Committee in its report with regard to communication ACCC/C/2005/15 concerning compliance by Romania raised doubts that intellectual property rights could ever be applicable in connection with the EIA documentation. *"Even if it could be, the grounds for refusal are to be interpreted in a restrictive way, taking into account the public interest served by disclosure. Decisions on exempting parts of the information from disclosure should themselves be clear and transparent as to the reasoning for non-disclosure. Furthermore, disclosure of EIA studies in their entirety should be considered as the rule, with the possibility for exempting parts of them being an exception to the rule."*[30]

The Administrative Court held that the right of the plaintiff has not been violated since he had been granted the access to the complete study. He was only deprived of the right to copy it. However, the right to copy information is an integral part of the right of access to information.

The public authorities shall make information available to the public, including, where requested, copies of the actual documentation containing or comprising such information (Art. 4(1)). A copy of the document, i.e. receiving information in the form requested, can be denied if it is reasonable for the public authority to make it available in another form, in which case reasons shall be given for making it available in that form, or the information is already publicly available in another form (Art. 4(1)). Since the Ministry of Environmental Protection published a summary of the study on the official website, the Administrative Court considered that Art. 4(1) was respected in this case. In my opinion, this is not a valid interpretation of Art. 4(1). The Society requested a copy of the entire study. Another form in

26 For Aarhus Convention Compliance Committee case law and procedures see, for instance: Jendrośka, J. Public Participation in Environmental Decision-Making. Interactions Between the Convention and EU Law and Other Key Legal Issues in its Implementation in the Light of the Opinions of the Aarhus Convention Compliance Committee, in: Pallemaerts, M. (ed.), The Aarhus Convention at Ten: Interactions and Tensions between Conventional International Law and EU Environmental Law, Europa Law Publishing, Groningen, 2011, p. 91-147; Andrusevych, A., Alge T. and Konrad C. (eds), Case Law of the Aarhus Convention Compliance Committee (2004-2011), 2nd Edition, RACSE, Lviv, 2011; Koester, V. The Compliance Committee of the Aarhus Convention: An Overview of Procedures and Jurisprudence, In: Environmental Policy and Law, Vol. 37, No. 2-3, 2007, p. 83-96.

27 Findings and recommendations of the Compliance Committee with regard to communication ACCC/C/2009/36 concerning compliance by Spain, ECE/MP.PP/C.1/2010/4/Add.2, 15–18 June 2010, para. 62.

28 Judgment of the Administrative Court of the Republic of Croatia, Us-5235/2009-5, 23 October 2009.

29 Krämer, L., *supra* note 23, p. 33.

30 Report by the Compliance Committee, Addendum, Compliance by Romania with its obligations under the Convention, ECE/MP.PP/2008/5/Add.7, 16 April 2008, para. 30.

which information is made available must constitute the functional equivalent of the form requested, not just the summary. The information should be available in its entirety.[31]

Although this is only one judgment in which the Administrative Court directly applied the provisions of the Aarhus Convention, it is evident that the court did not comply with the role of the protector of the rights guaranteed by the Convention. It is not enough to read what the norm of the Convention prescribes, its true meaning needs to be understood. There is also a responsibility of the State to provide training for judges in cases which involve protection of rights guaranteed by international treaties.

The problem of denial of copying also relates to other information requested by the public concerned. There is one interesting case in which Green Istria (based in Pula), with the recognized status of the public concerned, requested copies of certain documents related to the EIA procedure regarding the construction of golf course "Brkač" in Motovun. Ministry of Environmental Protection partially granted the request with a note that access to the requested documents and a copy thereof was available at the premises of the Ministry in Zagreb (distance from Pula: 290 km). Information was, therefore, not granted in the form requested, although it would be very easy to send it by fax or mail at the expense of the recipient.[32] I believe that such violations of the Aarhus Convention can be a valid reason for challenging the legality of the decision rendered in the EIA procedures. It constitutes an important error in the procedure that deprives the public concerned of the rights guaranteed by the Convention.

3.4 Public notice is given solely on the website of the Ministry of Environmental Protection

Information on inclusion of the public and the public concerned in the decision-making process in environmental matters is disclosed only on the website of the Ministry of Environmental Protection (http://puo.mzoip.hr), which adversely affects the right to participate. For instance, in one case regarding the proposed liquefied natural gas terminal the Ministry of Environmental Protection organised a public hearing in Zagreb and thus impeded the participation of a significant part of the public concerned since the most suitable locations that were selected were in the Kvarner Bay. The study was published on the website of the Ministry. However, local public from the Kvarner Bay was not informed about that fact neither about the possibility to comment the study.[33] According to a research conducted by GfK Croatia, 58% of people above the age of 15 use the internet in Croatia. However, only 33% of the population aged 55-64 years, and only 11% of citizens aged over 65 years use internet.[34]

Aarhus Convention Compliance Committee in its decision with regard to communication ACCC/C/2009/43 concerning compliance by Armenia held that notification via the Internet (for example on the website of the competent Ministry) cannot be regarded as an effective manner if the population lives in the area without regular access to the internet. In order to inform the public concerned effectively, it will normally be necessary to use several different media (local TV, internet, newspapers, etc.), and sometimes it may also be necessary to have repeated notifications so as to ensure that the public concerned has been notified.[35]

The public is informed of the EIA decision and access to administrative and judicial review procedures only by notification on the website of the Ministry of Environmental Protection.[36] The public concerned is not informed about the exact day when the competent authority will bring the decision and publish it on the internet. Since the EIA procedures usually last for several months (6 months or longer), the public concerned cannot be required to check the website every day in order to be informed whether the decision has been adopted and what the deadline is for filing a complaint. In my opinion, the Ministry's practice of notifying the public concerned solely via website also constitutes a breach of Art. 145(2) of the EPA which prescribes that the public concerned shall be notified of a relevant decision and of their right to file a complaint, by the decision being delivered to them if the public authority has their personal information, or through a public notice in accordance with the Regulation on information and participation of the public and public concerned in environmental matters. The delivery of the act, provided that the information about a person is known to the public authority, is stated as the primary means of informing the public concerned. Therefore, this method of delivery should be used first; during the public hearing or public inquiry members of the public concerned should be

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31 Stec, S.; Casey-Lebkowitz, S., *The Aarhus Convention: An Implementation Guide*, United Nations, New York and Geneva, 2000., p. 55.

32 See: Green Istria, *Comments on the Report on the Implementation of the Aarhus Convention*, March 2009, http://www.zelenitelefon.org/pub/Participator/Novosti/Komentari_Zelene_Istre__na_Izvjesce_o_provedbi_Arhuske_konvencije.pdf.

33 Green Istria (Zelena Istra) *supra* note 22.

34 http://www.gfk.hr/public_relations/press/press_articles/007232/index.hr.html.

35 Findings and recommendations with regard to communication ACCC/C/2009/43 concerning compliance by Armenia, ECE/MP.PP/C.1/2010/8/Add.2, 17 December 2010, par. 70.

36 Green Istria (Zelena Istra) *supra* note 22.

informed to leave their contact addresses if they want the decision to be delivered to them in person.

3.5 Not ensuring that in the decision due account is taken of the outcome of the public participation

The decisions adopted by public authorities differ in terms of the quality of reasoning. In some decisions, the comments of the public and the public concerned are assessed in detail and explanations are given of why the comments have not been accepted.[37] But there are decisions in which it is only stated that the comments of the public and the public concerned are unfounded without providing any explanation.[38]

The provision of Art. 6(8) provides that in the decision due account is taken of the outcome of the public participation. This is not an obligation to accept all submitted comments and objections. However, the public authorities must seriously consider all comments received, which means that the decision must consist of a written explanation that includes consideration of the outcome of public participation.[39] If no explanation is given as to why the public authorities rejected the comments of the public concerned, this constitutes a breach of duty to make accessible to the public the reasons and considerations on which the decision is based (Art. 6(9)).[40]

In my opinion, reasoning must be given as an integral part of the decision pursuant to Art. 98 of the General Administrative Procedure Act[41] and not just in some of the documents in the case file. The provisions of Art. 18 of the Croatian Constitution guarantee the right to an appeal or an alternative legal remedy against individual legal decisions made in first-instance proceedings by courts or other authorized bodies, whereas the provision of Art. 19(2) guarantees judicial review of individual decisions made by administrative authorities and other bodies vested with public powers. These constitutional rights cannot be efficiently exercised unless the reasons, being disputed in an appellate procedure, in a procedure involving a different type of legal protection or in a procedure involving judicial review of the legality of individual decisions, are known to potential claimants.[42] The persons who do not know the reasons behind the decision are certainly at a disadvantage in relation to those who are acquainted with such reasons.

3.6 Decisions contain important errors in their reasoning

The problem of important errors in the reasoning of the EIA decisions has already been addressed *supra*. However, it not only relates to deficiencies in the reasoning for why comments from the public and the public concerned have not been accepted, but also when expert opinions of various bodies have been ignored. For this reason, among others, Green Istria filed a complaint against the EIA decision on the environmental acceptability of the construction of golf course "Brkač" in Motovun. The Administrative Court upheld the complaint and quashed the decision of the Ministry of Environmental Protection. The Administrative Court found that the Ministry did not take into account opinions of all members of the expert committee, even though three of its members, who attended the third session for assessment of the EIA study, gave dissenting opinions in which they opposed to the assessment that the study was environmentally acceptable. The Ministry did not consider either the fourth (also negative) dissenting opinion of the committee member who did not attend the third session.

The Administrative Court emphasised that the area of environmental protection, as a public good, requires the special transparency of all procedures that may result in approval of project that have an impact on the environment. Thus, the decisions that are made in such proceedings must be explained in detail. Although the Ministry is not obliged to accept the opinions of the committee members, it must give reasons for its decision.[43]

3.7 The length of the public inquiry is not determined by taking into account the circumstances of each case

Aarhus Convention Compliance Committee held in its report with regard to communication ACCC/C/2006/16 concerning compliance by Lithuania that: *"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*

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37 See, for example decision on environmental impact of the „Golf Course Baštijunski brig, Biograd n / m", http://puo.mzopu.hr/UserDocsImages/Rjesenje_12_07_2010.pdf

38 For example, a decision on environmental impact of the construction of temporary asphalt base in Žminj, http://puo.mzopu.hr/UserDocsImages/Rjesenje_30_07_2010_1.pdf

39 Findings and recommendations with regard to Communication ACCC/C/2008/24 concerning compliance by Spain, ECE/MP.PP/C.1/2009/8/Add.1, 30 September 2010, para. 100.

40 Ibid.

41 A decision includes: a header, introduction, disposition, explanation and instruction about the legal remedy, signature of the official and seal of the administrative body. (Art. 98(1) of the General Administrative Procedure Act, Official Gazette, no. 47/09).

42 See: Decision of the Constitutional Court of the Republic of Croatia, U-I-206/1992, U-I-207/1992, U-I-209/1992, U-I-222/1992, 8 December 1993.

43 Judgment of the Administrative Court of the Republic of Croatia, Us-4410/2009-9, 21 July 2011.

impact may well not be reasonable in case of a major complex project."[44]

According to the provision of Art. 143(2) of the EPA, public inquiry shall last at least 30 days. By looking at the website of the Ministry of Environment[45] one can see that in 2011 every public review process, without exception, lasted only 30 days. Even in the case of large and highly controversial projects like the reconstruction of Thermal Power Plant Plomin.

4 Conclusion

Croatian Parliament ratified the Aarhus Convention in December 2006. Harmonisation of Croatian legislation with the Aarhus Convention was generally performed by adapting to the EU *acquis*. However, the practices of the public authorities show that public participation is considered a formality that unnecessarily prolongs the EIA procedures and that should be conducted in a restrictive manner without giving the real possibility to the public and the public concerned to effectively be involved in the decision-making in environmental matters in Croatia.

The Constitutional Court stated in its recent communication that a legal practice in Croatia shows that "*there is still a prevalent juridical ("textual") positivism, which is characterised by narrow and partial interpretation of individual legal norms without their necessary contextualization and without finding their social purpose based on the principle of proportionality and without looking at the constitutional values which are the foundation of the Croatian constitutional state*."[46]

The Constitution of the Republic of Croatia states that, *inter alia*, "the conservation of nature and human environment" is one of the highest values of the constitutional system of the Republic of Croatia, and it is, as such, a basis for the interpretation of the Constitution.[47] The conservation of nature and human environment is hence put side by side with freedom, equal rights, national and gender equality, pacifism, social justice, respect for human rights, inviolability of ownership, the rule of law and a democratic multiparty system. Public authorities should, therefore, cease viewing legal rules on public participation as an end in themselves and start perceiving them as a means of achieving certain social objectives e. g. enhancing the quality of decisions, raising public awareness of environmental issues and contributing to the 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.

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44 Report by the Compliance Committee, Compliance by Lithuania with its obligations under the Convention, ECE/MP.PP/2008/5/add.6, 4 April 2008, para. 69.

45 http://puo.mzopu.hr/default.aspx?id=5191.

46 Communication of the Constitutional Court of the Republic of Croatia, U-VII/5293/2011, 12 November 2011, Official Gazette, no. 133/11. Although this communication did not concern environmental issues, but certain issues related to the parliamentary election, findings of the Constitutional Court were formulated in a general way and could, thus, apply to various fields of legal practice of public authorities in Croatia.

47 See Art. 3. of the Croatian Constitution.

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sofia

The Society for Institutional Analysis was established in 1998. It is located at the University of Applied Sciences in Darmstadt and the University of Göttingen, both Germany.
The sofia research group aims to support regulatory choice at every level of public legislative bodies (EC, national or regional). It also analyses and improves the strategy of public and private organizations.
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elni

In many countries lawyers are working on aspects of environmental law, often as part of environmental initiatives and organisations or as legislators. However, they generally have limited contact with other lawyers abroad, in spite of the fact that such contact and communication is vital for the successful and effective implementation of environmental law.

Therefore, a group of lawyers from various countries decided to initiate the Environmental Law Network International (elni) in 1990 to promote international communication and cooperation worldwide. elni is a registered non-profit association under German Law.

elni coordinates a number of different activities in order to facilitate the communication and connections of those interested in environmental law around the world.

Coordinating Bureau

Three organisations currently share the organisational work of the network: Öko-Institut, IESAR at the University of Applied Sciences in Bingen and sofia, the Society for Institutional Analysis, located at the University of Darmstadt. The person of contact is Prof. Dr. Roller at IESAR, Bingen.

elni Review

The elni Review is a bi-annual, English language law review. It publishes articles on environmental law, focussing on European and international environmental law as well as recent developments in the EU Member States. elni encourages its members to submit articles to the elni Review in order to support and further the exchange and sharing of experiences with other members.

The first issue of the elni Review was published in 2001. It replaced the elni Newsletter, which was released in 1995 for the first time.

The elni Review is published by Öko-Institut (the Institute for Applied Ecology), IESAR (the Institute for Environmental Studies and Applied Research, hosted by the University of Applied Sciences in Bingen) and sofia (the Society for Institutional Analysis, located at the University of Darmstadt).

elni Conferences and Fora

elni conferences and fora are a core element of the network. They provide scientific input and the possibility for discussion on a relevant subject of environmental law and policy for international experts. The aim is to gather together scientists, policy makers and young researches, providing them with the opportunity to exchange views and information as well as to develop new perspectives.

The aim of the elni fora initiative is to bring together, on a convivial basis and in a seminar-sized group, environmental lawyers living or working in the Brussels area, who are interested in sharing and discussing views on specific topics related to environmental law and policies.

Publications series

elni publishes a series of books entitled "Publications of the Environmental Law Network International". Each volume contains papers by various authors on a particular theme in environmental law and in some cases is based on the proceedings of the annual conference.

elni Website: elni.org

The elni website www.elni.org contains news about the network. The members have the opportunity to submit information on interesting events and recent studies on environmental law issues. An index of articles provides an overview of the elni Review publications. Past issues are downloadable online free of charge.

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