

Early public participation

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The importance of early public participation in the process of decision-making

Public participation in environmental matters is the second pillar of the Aarhus Convention. It is obvious that public participation cannot be achieved without guaranteeing access to environmental information. The truth is that many of the decisions affecting the environment are taken behind closed doors. Most decisions could be avoided if all plans should be accompanied by a study of their impact on the environment - a study that should be made in special for the public.



Given the fact that public authorities work for the public, public participation in making decision is more than a right, it is an obligation too. So, in order to make the decisions better it is necessary to involve the public because they know the real needs of the community through work, travel, play, study, etc. A simple guaranteeing of public participation in environmental decision-making is not enough.



As we know, public participation process is based on a number of principles. One of them stipulates that the public should be trained at the initial stage, where there is a real possibility to influence the decision. This principle implies the possibility of the public to attend the very first stage, when it is possible to choose any options. So, ideally, citizens must participate in the process of environmental decision-making as earlier as possible. As soon as possible the public will be involved in the process of decision-making, more likely they will be able to influence the decision that can affect the environment.

The legal framework of Republic of Moldova regarding the public participation in the process of environmental decision-making

1)The Regulation on public participation in the development and adoption of environmental decisions, approved by Government Decision no. 72 of 25 January 2000 stipulates that Public involvement in the development and adoption of environmental decisions is the social act which guarantees the right to participate in the process of decision-making, expressing opinions on the adoption and implementation of the legislative projects and project documentation on planned economic objects and activities that affect or may affect the environment . By other words, public participation, in an ideal form would mean cooperation between public and public authorities in making decisions that could have an impact on the environment. Also, this regulation stipulates in art 9, letter (b) that public authorities should ensure public participation already at the initial stage to give them the opportunity in order to be involved in examining different variants.

2) Law no. 239 of 13.11.2008 on transparency in the process of decision-making establishes general rules applicable in order to ensure the transparency in the decision-making process within central and local public administration authorities and other public authorities. This law governs the relations between authorities and citizens, associations formed in accordance with the law and other interested parts in order to involve them in the process of adopting decisions in any field, including the environment.

According to Article 8 of the same law, the main stages of ensuring transparency of decision-making process are:

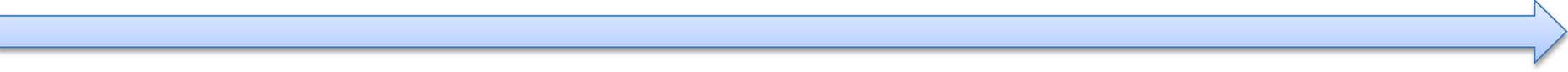
- a) Inform the public about the decision elaboration;
- b) Make available to interested parties of the draft decision and its related materials;
- c) Consultation of citizens, associations in accordance with the law
- d) Examining the recommendations of citizens, associations in accordance with the law, and other stakeholders in the process of drafting decisions;
- e) Informing the public about the taken decisions.



3) Art. 27 of **Law no. 835-XIII of 17 May 1996 concerning the principles of urbanism and landscaping**, provides that public consultation is made before the approval of all categories of urban plans and landscaping plans.



4) **The Law no. 591-XIV of 23 September 1999 on the green areas of urban and rural localities** provides the right of the citizens and NGOs to participate the elaboration and examination of decisions regarding the development and protection of green spaces.



5) **The Law no.1515 of 16.06.1993 on the protection of the environment** is provided the principle of compulsory taking into account public opinion in the design, siting and commissioning of social and economic objectives, implementation of programs and activities that generates changes in the environment (art. 3 letter d.). Local authorities have no right to take any decision without the consent of the population whose interests may be harmed by business objectives. The article 30 of the same law stipulates the right of citizens to participate in the discussion of draft laws, various economic programs, etc.

Law on Ecological Expertise and the Law on Environmental Impact Assessment provide a broader interpretation regarding the public participation in the process of decision-making on environmental issues.

According to Chapter III of the Law on Ecological Expertise are provided the aspects of carrying out ecological expertise.

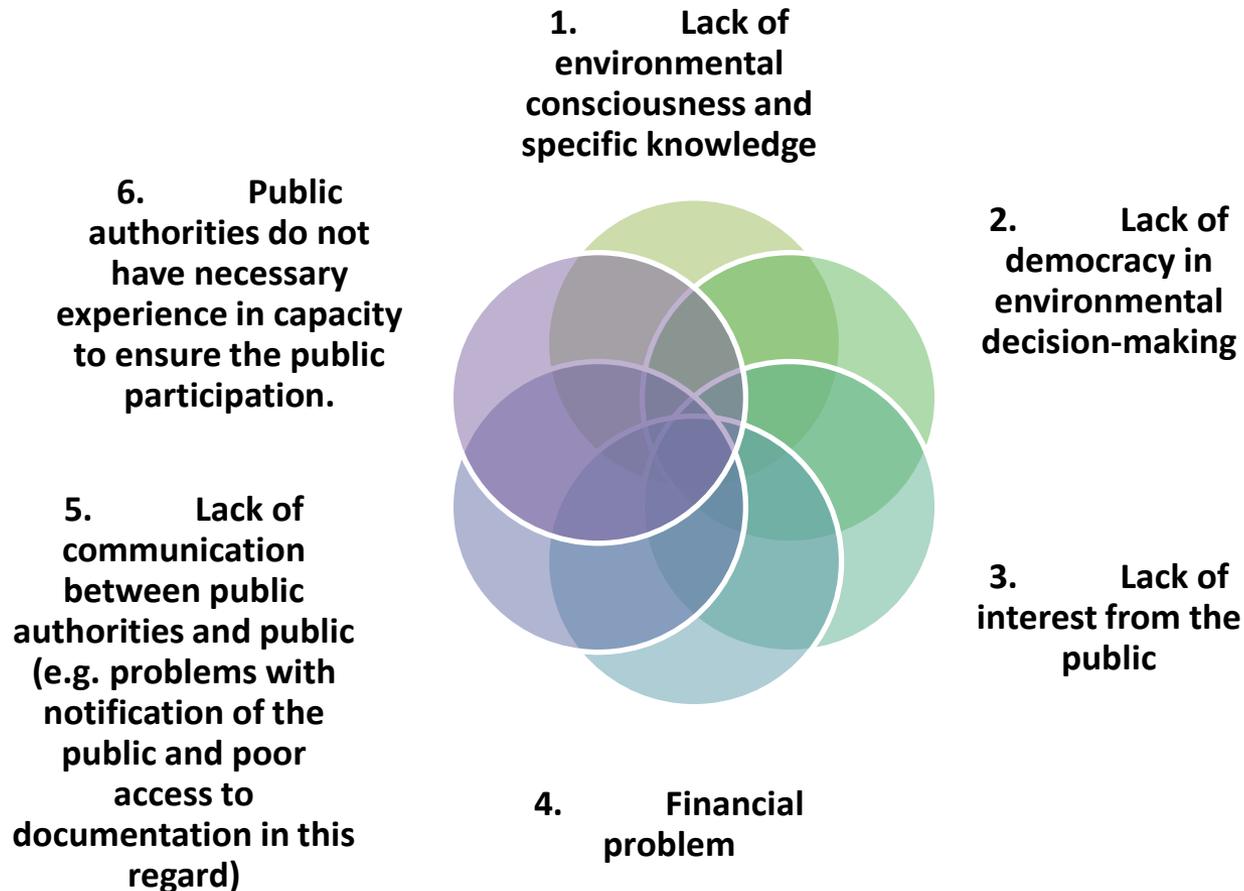
Thus:

- In art. 9 are shown the method of organization and conducting of the environmental expertise;
- Art. 10 sets out the rights of citizens and associations in the organization of expertise;
- Art. 11 - Rights to perform their expertise.

According to these articles, they have the right to request and receive any documentation regarding the project for review.

- In art. 12 are given the conditions of the public expertise, which also mentions the necessity of informing the public about the public expertise;
- According to art. 13, only in special cases (when the project documentation contain secret information, etc.) local authorities can reject the registration of the request for public environmental expertise;

The main problems regarding the process of public participation are:



In order to resolve these issues it is necessary to undertake several actions:

1. To increase the public knowledge in environmental issues

2. To involve the public in the process of decision-making in order to ensure cost-effective decision-making

3. To guarantee the early public participation in the process of decision-making

4. To ensure the transparency in the process of decision-making.

5. To incorporate public values and knowledge into decision-making, etc.

Practical case

On 14 February 2013 International Environmental Association of River Keepers “ECO-TIRAS” found out from mass-media sources about the intention of the Town hall Orhei, with the support of a foreign investor, to build a modern waste processing plant in Orhei.

By the letter of 11 March 2013 the “ECO-TIRAS” Association, on the ground of Art. 5 of the Law No. 982-XIV of 11 May 2000 on the access to information, requested the Town hall Orhei to offer the proper information regarding the initiated project. Also, the local authority was sought the information on public consultation on the decision for the construction of this object. An express requirement set by the Aarhus Convention, which is directly applicable in the Republic of Moldova.

By a letter of the Local Public Authority the “ECO-TIRAS” Association was informed only about the possibility to access the decision of the Town hall regarding the initiation of the project and about negotiations that are still in process with the potential foreign private partner. Other information the Local Public Authority didn't present.

From the answers of the Local Public Authority the association concluded that there was not respected the public consultation procedure in terms of taking decisions which may have a negative impact on the environment and population in the region. In spite of the fact, that according to Article 30 of Law No. 1515-XI on the protection of environment the State recognizes all individuals the right to a healthy environment. More than that, provides that the State ensures the right to participate in the discussion of draft laws, different economic programs or otherwise directly or indirectly aimed at environmental protection and natural resource use, the right to information and consultation on the drafting and construction of objects with negative effects on environment, restoration and landscaping of urban and rural areas (Article 30, Para. c) of Law no. 1515-XI). Also, the Regulation of the Law No. 85-XIII of 29.05.1996 on Environmental Expertise and Environmental Impact Assessment in Chapter. X determines that plants for waste processing and burning falls under the procedure of drafting and public consultation of the documentation on Environmental Impact Assessment in a compulsory way previously the projecting step. Art. 4 of the Aarhus Convention on the access to information (ratified by Parliament Decision of the Republic of Moldova No. 346-XIV of 07 April 1999) guarantee the public access to information on the questions regarding the environment, and Art. 6 establish the compulsory rule of public participation to the adoption of the decisions in the domain of environment.

As a result of these circumstances the Association “ECO-TIRAS” submitted a summon application to the Legal Court of Orhei for the annulment of the decision of City Council Orhei on “The initiation of public private partnership” by which was accepted the proposal on starting the work of building a waste processing plant in Orhei.

Thanks for your attention!