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Veröffentlichungsversion / Published Version

Sammelwerksbeitrag / collection article

Empfohlene Zitierung / Suggested Citation:

Ban, A. (2004). Environmental protection: public participation and access to information. In K. Ott (Ed.), *Croatian accession to the European Union. Vol. 2, Institutional challenges* (pp. 223-248). Zagreb: Institute of Public Finance, Zagreb. <https://nbn-resolving.org/urn:nbn:de:0168-ssoar-61599>

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Chapter 9

ENVIRONMENTAL PROTECTION: PUBLIC PARTICIPATION AND ACCESS TO INFORMATION

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ABSTRACT

Awareness of the need for environmental protection must in Croatia be translated into a clear, overall and long-term concept, particularly because of the process of rapprochement with the European Union (EU), in which it is one of the key topics. This paper gives a brief review of the existing system of environmental protection in Croatia with emphasis on the institutional framework, the information system, the education system, and public participation. In the context of access to information and public participation, separate treatment is given to the Aarhus Convention, as well as to attitudes to this convention in Denmark, Estonia and Croatia. It is upon the basis of attitudes to Aarhus, one of the possible models for the democratisation of the process of environmental protection, that the final part of the paper draws certain conclusions and recommendations for political decision-makers and agencies in charge of implementing such decisions on Croatia's path to convergence with the EU.

Key words:

environmental protection, convergence with European Union standards, information system, environmental awareness, public participation, Aarhus Convention

INTRODUCTION

The process of convergence with the EU has led to new challenges in the protection of the environment. The EU requires detailed regulation of all matters in this area, with numerous statutory, administrative and financial modifications. At the same time, important changes are required in the organisation of human resources, in harmony with the environmental *acquis*.¹ It is necessary the while to pay attention to the numerous Croatian national special features and needs. This matter needs approaching with extreme seriousness; it has to be carefully planned, organised, financed; and finally, everything that is in the long-term national interest must be accomplished irrespective of the outcome for EU candidacy. That is, adoption of the environmental protection standards of the EU, never mind what our final status inside the EU, will provide us with a higher level of environmental protection, and the opening of the Croatian market to Europe with respect to trade in goods and services.

As well as an objective, the paper has a component relating to subjective experience. During work over the last few years for a number of projects for the Ministry of Environmental Protection and Physical Planning (abbreviated below to Ministry of the Environment), an absence of any high-quality strategic approach to the overall environmental protection policy was noted. The projects had been on the whole initiated, financed and put through by the relevant European bodies and consultancy firms. The purpose of the projects was to enable Croatia to become acquainted with the imminent procedure for converging on EU standards, as well as its own advantages and shortcomings in the framework of the process. The experience of other countries showed that right in the basic organisational segment there were a number of changes waiting for us so that we should be able to transfer and apply EU standards. Strengthening social capital, that is, educating the public, allowing more access to information and enabling public participation in matters of environmental protection are all just the next step on the way. This step is of course conditioned by changes of an organisational form. Accordingly, environmental protection requires an integrated and multidisciplinary approach.

The paper analyses the existing system of environmental protection in Croatia as well as its strengths and weaknesses. The emphasis is placed on the social capital that the existing system of environmental protection does have, with an emphasis on the information, education

and public participation systems. A particular account is given of the Aarhus Convention and the attitudes of Denmark, Estonia and Croatia towards the ratification and implementation of this Convention. The conclusions drawn and recommendations made at the end are primarily concerned with the procedure for drawing up a future strategy for the procedure of harmonising environmental protection regulations, which Croatia has registered with CARDS 2002-2004.ⁱⁱ

THE CURRENT SITUATION IN CROATIA

The EU convergence procedure is in itself highly predictable and in essence comes down to the adoption of standards and procedures that the EU has set up for itself, and that it has mostly already fulfilled, and then additionally imposed as conditions on all the candidates. The EU has explained the procedures through the mass of cookbooks and guides (Guide to the Approximation of EU Environmental Legislation, SEC (97) 1608) and documents (White Papers, Green Papers) and shown the way it is most advisable to take.ⁱⁱⁱ Experience shows that harmonisation with the policies and standards of environmental protection will be exceptionally complex and demanding for the candidates because of the marked differences in the standards to date, the differences in the legislative and administrative situation, and because of the actual state of affairs in the environment. And, of course, convergence will be expensive. It has been calculated that the overall price of the basic steps for convergence in matters of environmental protection will come to about 120 billion euros for the ten East European candidates. Slovenia has estimated its costs for converging on EU standards and for accession at 1,300 euros p.c. in the area of environmental protection.^{iv}

By signing the SAA in October 2001, and then submitting its official candidature for membership in the EU in March 2003, Croatia confirmed its wish and hence the obligation to adopt the existing law of the EU. There are also specific obligations of Croatia in this domain that derive from the SAA. The SAA Implementation Plan has already defined detailed measures and certain deadlines by which statutes have to be harmonised; this is the first operational document in the area. For all the sectors, including environmental protection, key areas were determined on which work has to be done in the 2001-2006 period. Since the amendments to the environmental protection legislation set are less

far-reaching than those in other sectors, the relevant bodies will manage them in the given periods with a relative degree of success.^v

Environmental protection will be included into the National EU Integration Programme for the first time for the year 2004,^{vi} a plan being drawn up by the MEI. This is a document that will address the procedure of harmonising environmental protection regulations in more detail than the Implementation Plan.

However, the Ministry of the Environment has already undertaken a number of steps independently of the measures laid down by the Implementation Plan. Through various international projects, in cooperation with numbers of consultants from the EU, preliminary studies and analyses comparing Croatian legislation with EU regulations in most sectors have already been worked out.^{vii} The projects were meant to allow the Ministry a better insight into the upcoming requirements to do with modifications of regulations and adoption of EU standards, as well as a view of the current situation in Croatia itself. Capacity building^{viii} is a frequent common denominator of these projects, which at once suggests that Croatia will have additionally to strengthen and build on existing capacities.

The first results in from the analyses and studies carried out suggest that there is a fairly good legal basis in all sectors (waste management, air and nature protection), but which of course has to be harmonised with EU standards (vertical legislation, as it is called). In matters of horizontal legislation the situation was considerably worse. These are provisions that go horizontally across all areas of environmental protection. In regulatory terms they are more general and more procedural, in substance they establish the various different methods and mechanisms, through which principle the procedure of decision making is accelerated, such as for example the directive on environmental impact evaluations, on public access to environmental data, on requirements for proper reporting, on fostering the role of the non-governmental sector in environmental protection concerns. The problem here is that all the structures of the government administration are involved horizontally in the solution of these matters, and the involvement of citizens in a series of procedures that were previously in the exclusive jurisdiction of governmental bodies is now essential, as well.

This is an especially challenging area since the relationship of public and bodies of the government administration is essentially altered, as is the interaction between them. Experience in an attempt to ratify one such international instrument, the Aarhus Convention, is detai-

led below. Meanwhile, we would like to emphasise the essential role to be played by social capital in the development of society and the improvement of any policy whatever, particularly environmental protection policy, the basis of which is in the concept of sustainable development. This is a concept that is in turn founded on new understandings about and awareness of the need for development that meets the requirements of today, as well as enabling future generations to satisfy their requirements.^{ix} Naturally, the problem today lies in our not being able to tell with exact certainty what the needs of future generations will be, but the principle of sustainable development assumes that they will not be lower or fewer than those of us today. It is this principle that is the basis for the entire environmental protection policy, and members of the public have to be aware of its importance and existence, they have to apply it and live with it. It is the existence of this kind of social capital that is a crucial premise for any successful environmental protection policy.

Most projects carried out so far have shown that there is still a good deal of lack of harmonisation in the work of the competent bodies, not only at the organisational but also at the conceptual level, which is often a stumbling block in the implementation of any project, programme or piece of legislation. Often there is no record of which project has been carried out, and how it has been carried out, even within a single ministry, and certainly not among a number of them.

In addition, during the actual implementation of projects, perhaps excessive importance is too often attached to the relevant experience of neighbouring countries, their statutory approaches and strategies. At the same time, too little is done to work out the necessary background studies concerning the specific features of Croatian problems in a given area. Most often extensive analyses of the pertinent documents of other countries that have trodden the same path are performed without any questioning of just how their experience is really able to assist us. When we look over documents from Slovenia, the Czech Republic or Slovakia, one should ask how much this experience can, apart from methodologically, really assist us, in, for example, the matter of protecting the Adriatic coast, the sea and the islands, the protection of the karst area, the problems of mine-fields in forests or abandoned farmland, one of the many consequences of the recent war. There is an exceptionally important lack of any appropriate information system to give us an insight into the realistic state of affairs in the field. And this in turn is a major constraint on our ability to think more with our own

heads, preferring, instead, to waste time looking over and even copying out examples of strategies and documents from other countries.

It seems, nevertheless, to be becoming clear that Croatia will have to understand its own procedure of adjustment to EU standards and its own procedure of vertical and horizontal harmonisation. For this reason Croatia has entered the elaboration of a strategy for the procedure of adjusting regulations in the area of environmental protection for the CARDS 2002-2004 programme. This highlighted the urgent need for a strategic approach, because the National Strategy for Environmental Protection (drawn up by the Strategic Development Office) together with the National Action Plan for the Environment (drawn up by the Ministry of the Environment with assistance from the WB) are defective. These documents actually constantly refer to the priority of adjusting Croatian regulations to the relevant EU laws and the necessity of adopting a strategic document for the whole procedure of harmonising regulations, as was the case in the other candidates. Such a document is necessary so that it will no longer be necessary to waste time and energy through precipitate, patchy and uncoordinated attempts to adjust Croatian regulations via numbers of different projects in different bodies of the government administration.

ENVIRONMENTAL PROTECTION IN CROATIA

The institutional framework

Since environmental protection is very complex, for it impinges on almost all sectors (water, forest, farming, tourism, energy, health), the Ministry of the Environment alone cannot cover all the problems, rather has to assign competence for their solution among the various governmental departments. The coordination of all the bodies and a clear delimitation of their activities within given competences will be one of the greatest challenges in the achievement of an effective institutional organisation for environmental protection, at national, regional and local levels.

The legislative arm is in Parliament, which has four committees - for physical planning and environmental protection; farming; marine affairs, transport and communications; and tourism.

In the executive arm, the following are the competent authorities: the Ministry of the Environment, as well as other relevant mini-

stries; national administrative organisations (the Water Administration, the Weather Bureau and the Hydrographic Institute); and the county offices dealing with physical planning and environmental protection, communal and housing affairs and construction,^x as well as with control by the government inspectorate. There are also the separate city offices of the county offices.

The Ministry of the Environment is competent for the implementation of all laws, the adoption of regulations and byelaws, all matters of expertise and administration and so on in general environmental protection policy, that is, the protection of the air, waste management and nature conservation. The Ministry shares inspection matters to do with environmental protection with the construction and physical planning administrations. This kind of institutional approach is not always very adroit from an administrative point of view. The management of water, for example, is beyond the jurisdiction of the Environment Ministry, which is often a difficulty when problems are being solved or future projects being planned that touch on the protection of water. A similar problem appeared in the CARDS project for the elaboration of the National Municipal Waste Management Strategy^{xi} where the demarcation line between the Ministry of Public Works and the Ministry of the Environment was in dispute.^{xii}

Here one should certainly mention two newly formed bodies. The first is the Environmental Protection Agency, founded by a government ordinance (NN 75/02), which was one of the obligations laid down in the SAA. The basic task of this agency is to organise collection of all information about the condition of the environment at the national level, creating a single and unified Environmental Protection Information System (known as ISZO). For the sake of effective implementation of environmental protection policy, the Agency is bound to analyse and interpret these data for state administration bodies, for the Government and Parliament. Its activity includes proactive participation in the planning and development of new forms of environmental protection, and monitoring the implementation of active programmes and environmental protection projects. The organisational structure of this agency is planned in such a way as to correspond to the structure and criteria of the European Environmental Protection Agency, with which it has managed to work well, and it is part of the European Information and Observation Network.

One of the obligations defined by the SAA is the creation of an Environmental Protection Fund, which was founded by statute (NN

107/03), coming into force at the beginning of 2004. The Fund will carry out matters related to the financing of preparations, the implementation and development of programmes, projects and similar activities in the field of conservation, sustainable use, protection and improvement of the environment, as well as for energy efficiency and use of renewal sources of energy projects. Like the Agency, it is founded on the model of kindred bodies in the EU with which in the future it will be in closer cooperation. Both bodies are legal bodies with public authorities, and are totally independent of the Ministry of the Environment.

Croatia is very active internationally in the environmental protection scene, at several levels – multilateral, regional,^{xiii} subregional^{xiv} and bilateral.^{xv} This activity springs primarily from the international legal instruments to which Croatia is already party or to which it will now become a signatory. All the major international instruments have already received ratification in Croatia, but there are some others that are still waiting to be ratified. The reason for this is the many changes necessary for making a given regulation. Apart from the actual change in legislation, a common problem is to earmark the substantial financial resources required and then to initiate and carry through the major administrative and institutional changes, since the implementation of a given international legal instrument is very often in the hands of various government departments.

In spite of this, Croatia has signed some of the thirty or so most important documents, such as the Ozone Layer Protection Convention (Vienna, 1985), the Montreal Protocol on substances that damage the ozone layer (Montreal, 1987), the UN Climate Change Outline Convention (Kyoto, 1998), the Biodiversity Convention (Rio, 1992), the Geneva Convention on Mediterranean protected areas and biological diversity, the Nuclear Safety Convention (Vienna, 1994), and the Cross-border Environmental Impact Assessment Convention (Espoo, 1991).

Information system

A precondition for effective functioning of environmental protection is a high-quality information system. This should be based on proper monitoring and numbers of social and economic data; however, in Croatia there is unfortunately a very clear shortage of basic data about the situation in the environment. From this follows the lack of quality processed statistical data.

A poor or non-existent information system is a weakness of all the transitional countries that have only recently, assuming the obligations enshrined in various international conventions, taken on the obligation to convey various data and reports to given international institutions. Croatia halfway manages to meet these obligations by collecting the relevant data that are dispersed in various public and scientific institutions (Ruđer Bošković Institute, Geological Research Institute, National Hydrometeorological Institute, Public Health Institute), or even in some corporations (INA-Naftaplin) and in some thematic centres, like the Croatian Water geo-information system.

Although provided for in various regulations, in the real sense of the word the ISZO does not yet really exist. The Environmental Protection Law (NN 82/94), for example, stipulates the obligation of all environmental protection bodies and nature conservation bodies to work on the establishment of the system in coordination with the ministries and other departments. In more detail, the ISZO Ordinance (NN 74/99) prescribes the contents, methodology, obligations of the participants and the manner of forwarding data about the environment, as well, finally, as the way in which these data are managed. According to this ordinance, ISZO covers data about air, soil, sea, water, biological and landscape activities, climate, cultural history, spatial features, waste and other data important for environmental protection. The connection of all these data with other social and economic data that have to be dealt with via special indicators^{xvi} has still not been settled, with each of these thematic areas likely to be a complex information system in itself. After this comes the special system for linking ISZO with all the other systems, such as the information systems of the Parliament, Government, Presidential Office, economic establishments, economic organisations, with members of the public and everyday users. The EPA will have great responsibility because it will be the chief link in the process of adjustment with the EEA information system located in Copenhagen, as well as with EIONET, the European Information and Observation Network, so that the necessary data concerning the environment can be used for the making of correct reports about the situation in Croatia. Currently there is work on important amendments to the Environmental Emissions Cadastre, which will be one of the mainstays of the total environmental information system, the previous implementation of which foundered in practice because of its shortcomings.

So far no information system has been organised primarily because of inadequate institutional strengths in the competent government

departments, and an incompletely settled legal and technical framework. A serious obstacle is constituted by the complexity of the system, as well as by the great costs involved in its establishment, and the already existing problems of horizontal and vertical coordination among the participants. Additional problems came into being because of the dilatoriness of the administrative and the unusableness of the existing databases. The human factor too was not negligible, because there is still no awareness of the essential need for quality data for the decision-making process. Apart from that, there is no proper training or interest for getting involved in international programmes and projects for data exchange.

As for the EU requirements in this area, they are practically without number. Almost every directive has a number of provisions about the monitoring required, and then about the system of reporting to the relevant bodies. All these reports together are subsequently sent on to special bodies that then again work out special reports for special occasions. It is almost impossible systematically, in short, to explain the exigencies of the EU information system. Still, for the sake of coordination, what is common for all members, and practically obligatory, is bodies such as the EPA, which are, alongside the environment ministries, the central points of each country for the collection of all necessary data and for sending on these reports in line with obligations according to various documents or projects (see above: obligations of the Agency).

Training and education

On the whole, the EU leaves the training and education systems in the matter of environmental protection to the members themselves, expecting that they will do all in their power to achieve a high quality implementation of the standards.

Unfortunately, Croatia has not yet adequately developed the practice of linking scientific research work with strategic considerations and decision making. An integrated approach would facilitate the total and transparent exchange of data among all stakeholders imagined through the establishment of ISZO. Similarly, it would be advisable to set up a proper training system at all levels of society so as to make possible an acquaintanceship with the bases of environmental protection philosophy, its models, and in particular the everyday implementation of it.

In Croatian elementary and secondary schools there is no special subject to take care of this, rather in the curricula of the Ministry of Education this is found fragmentarily in several subjects. Even this kind of education is sporadic and unsystematic, up to individual schools and teachers. According to the National EAP for 2002 (MZOUN, 2002), it would seem that there is no analysis to give an empirical image of the extent to which ecological material is found in higher education and science.^{xvii} On the contrary, apart from a few courses (for the chemical engineering and technology course, the environmental protection engineering course, and in the science faculty in Zagreb, biology department, ecological engineering course), it can be taken that there is no systematic education on ecological affairs at the tertiary level. Only in most recent times at given faculties have the relevant subjects been brought in, but they tend to be of an optional nature (e.g. an option at the Law Faculty is called Environmental Law), while as for required subjects, some ecological topics at natural science and technical faculties, though within the contexts of various chairs. Data about the conditions of post-graduate courses are also opaque and hard to obtain, and the document already mentioned proposes the foundation of interdisciplinary and inter-faculty courses at post-grad levels in the area of environmental protection and sustainable development.

We might here pick out the extra-institutional system that through various programmes does deal with the training and further training of government employees in various administrative departments. These programmes are financed by the actual departments according to their need. Here we cannot talk of any systematically organised extra-institutional system of training and education in this area. There are, for example, sanitation inspectors and environmental protection inspectors (country, city and municipal offices on the whole employ but a single such person).

In the last decade the number of NGOs promoting environmental protection has grown, and many of these do draw attention to questions of environmental education. Their occasional courses, panel discussions and actions can hardly be expected to be sufficient, of course. Also, inadequate is the educational role of the mass media, although we have to admit that in recent times environmental programmes have appeared on radio and TV channels. The daily press has a mainly sensational approach, and the other printed media mainly come down to the publishing activities of given expert bodies (e.g., the magazine *Oko-*

lis of the Ministry of the Environment and the magazine *Croatian Water*). The interest of publishers and users of popular and other books is fairly low, and the most attractive medium in Croatia, the Internet, does not offer very much. Pertinent pages, such as the official site of the Ministry of the Environment, are not kept up to date frequently enough and so the employment of its figures is of dubious value.^{xviii} This absence of systematic education concerning the environment and its protection is one of the major reasons for the public taking such little interest in environmental questions.

Public participation

Active participation by the public in the creation and implementation of environmental protection policy is a precondition for the creation of the already mentioned principle of sustainable development. And yet in Croatia the general public is poorly aware of matters of environmental protection and still less able to take an active part in the passing and implementation of legislation, even if there are any legal grounds for this.

Having identified the importance and power of the public in such matters, the EU at first started moving via the institutionalisation of the collection and flow of information. Starting with Directive 90/3123/EEC concerning the right to require environmental information, it gave individuals the right to seek any kind of data from the administrative departments in connection with the environment without having to show what the nature of his or her interest in this kind of information was. A further step was public participation in strategic planning of certain interventions into the environment. Directive 85/337/EEC (amended by Directive 97/11/European Commission) on environmental impact assessments for some public and private projects makes it possible for information to be given and the public to take part in the drawing up of strategies, plans and programmes in matters of environmental protection. In continuation from these, the Aarhus Convention on public access, participation in decision making and access to the courts was drawn up.^{xix}

THE AARHUS CONVENTION: PUBLIC ACCESS TO INFORMATION AND PARTICIPATION

The Aarhus Convention

The currently most important international instrument in the domain of public information and participation is the UN/ECE Convention that consists of a first pillar concerning access to information, a second pillar concerning public participation in decision making, and a third pillar on access to the courts in environmental matters. The Convention was signed in 1998 in Denmark's Aarhus by the EU and all 15 members. Subsequently the question of its ratification and application in domestic legal systems arose. Croatia too is a signatory and for two years its ratification has been planned as part of the project entitled "Application of the Aarhus Convention in Croatia".

How Denmark mastered the Convention?

Denmark was the first country to ratify the Convention, even going beyond its demands as far as public access to information and public participation are concerned. For several decades Danish society has been a leader in many areas of nature protection. Thanks to a convention that enabled great rights to the non-governmental sector, the connection between the environment and democracy has been even strengthened.

Of course, it is one thing to sign a convention and another to incorporate it into national legislation and then breathe life into it. In Denmark, preparations for the ratification started in 1999. In order to meet the demands of the convention, the Danish environmental protection and energy ministry attempted from the very beginning to open the procedure as much as possible. It organised a conference at which government officials, NGOs and journalists discussed the Convention, and at the same time launched a powerful media campaign. At the end of 1999, a draft law was opened for public discussion so as to elicit as many comments and proposals about the ratification. Finally, all the comments from all debates were collected, and the proposal was sent to Parliament for reading. The law was proclaimed in May and officially

came into force in September 2000. From that moment on many things changed for Denmark.

First of all, 13 environmental protection laws had to be changed. Of special difficulty were objections according to the third pillar of the Convention (access to justice in questions of environmental protection), because the NGOs that deal with environmental protection matters had, in the ratification of the Convention, won the right to appeal to the courts. The same right was given to other NGOs that do not perhaps deal only with environmental problems. Denmark had thus gone a step further than the Conference.

In brief, Denmark undertook five major steps.

- It settled the matter of access to special documents – the question of access to documents, reports and various materials in the possession of government departments or the corporate sector was changed and handled by a Public Law, Law on the Administration and Law on the right of access to data (the Aarhus Law).
- Access to information was enhanced – in line with the Convention, bodies of the administration are bound to store all relevant and properly processed environmental information in electronic form. This obligation refers not only to central government but to all lower levels, which is of exceptional importance for the information network and system.
- Public participation in the decision making process has been stepped up – public debates and public participation during the decision making process were common practice in Denmark even before, in line with the laws concerning physical planning, nature protection and during environmental impact assessments. Additional rules concerning public debate and public participation before and during the making of given decisions came with the ratification of the Convention.
- Encouragement of group participation – in certain cases, NGOs have greater rights than individuals and are encouraged to combine forces in order to work better for the final outcome. Here it is primarily the right to be listened to that is thought of, with the right of objection and the right to be informed about decisions (like, for example, the new right of the exceptionally strong and well-known Danish NGO *Nature*, to have all official decisions in connection with environmental protection sent to it).
- Access to the courts has been made easier – special rules of appeal are governed by special regulations. What is essential for all competent

bodies is that their written decisions must all contain instructions about how to appeal, which include information about the appeal procedure, and to whom and where to appeal in line with the procedure.

After making very great efforts to apply the Convention at home, Denmark decided to put in extra work as well. In its “Environmental protection matters assistance strategy for countries of Eastern Europe during 2001-2006” (Ministry of Environment and Energy, Danish Environmental Protection Agency, 2001). Denmark earmarked assistance in preparations for the ratification and implementation of the Convention as one of the priority areas for assistance.

How Denmark assisted Estonia to ratify the Aarhus convention?

Estonia immediately applied to Denmark for the assistance programmes on offer. With powerful support from its environmental protection agency (DEPA), Denmark set enthusiastically out on this project with Estonia. The situation before the ratification seemed fairly hopeful. Before ratifying the Convention Estonia had already known some of the elements, and all the necessary amendments of the relevant laws were effected in the shortest possible time.

In spite of the rapid changes of the laws and regulations, the process Estonia has had to go through has been anything but painless. Although the Estonian government always said the Convention would be ratified as soon as possible, the first major logjam came when the Convention was being ratified. The Cabinet needed almost half a year to think carefully through the effects of ratification and to find out whether the demands of the third pillar – access to the courts – were in line with the judicial system in Estonia. And then, after all the principles of the Convention had nevertheless been adopted and incorporated into Estonian legislation, a number of challenges in connection with practical implementation showed up.

The first difficult matter was to train the civil service for its new obligations. A special guide was made for officials explaining the fulfilment of the demands of the Convention in everyday work, and in particular in complex procedures of environmental impact assessment and the issue of permits related to the environment and physical planning. The guide also explains which kinds of information the public must ha-

ve access to, depending on the phase of the procedure in the making of some decision; or to which the general public should have no access.

However, the main barrier in the way of good application of the Convention was the fact that the Estonians were not really very aware of political openness and the liberal and democratic spirit that it brought with it. The government departments were not only faced with the implementation of the new requirements defined in the convention, but the demanding convention went even further. A new obligation was imposed on the civil service departments to keep the public constantly informed about new rights and also about where, when and how the public could best avail itself of these rights. For this reason what was facing them was in essence two mutually dependent tasks: (1) the right of immediate participation during the making of decisions was a novelty to many individuals, primarily because of the convictions and inherited beliefs that it was impossible to trust government departments and it was pointless to take part in any way at all; and (2) the bodies of the administration thus had to be very open and vocal about the new rights of members of the public and actively encourage them to take part.

At the first moment it seemed that these tasks were so difficult of achievement that the ratification of the Convention had perhaps been hurried since a fair lot more time would be required before it could come to life in the minds of the Estonian public. But in the end it was not like this. One indirect confirmation of good practice in Estonia is what would seem at first sight to be an unimportant but actually extremely indicative datum. This is the Government's project for opening the Internet portal "Today I Decide" which gives the public the opportunity to comment on all new regulations, or possibilities to send to the competent bodies their own proposals for regulations. In less than a year, various ministries obtained 300 commentaries on the proposals and almost as many proposed regulations from citizens (from demands for the introduction of summer working time to requests for the implementation of capital punishment). However, statistics from the portal show that there were fewest of all proposals and comments about environmental protection matters (a mere handful). This suggests that all interest groups, from individuals to the most aggressive NGOs, had clearly successfully and contentedly used the new rights (access to data, participation during decision making or access to the judiciary) acquired in the Convention, and that they paid almost no attention to this new and then fairly popular channel of communication between the government and the public.

It is clear from everything shown, that the Convention, if it is ratified and starts being implemented, will radically change the relations between government departments and the public, giving rise to much more vigorous dialogues and interactions. And this is why it is difficult to accept it at first in countries that have been through authoritarian forms of government with a practice of cutting out their citizens, first of all by not giving them information, and then by closing off any participation from them in the decision making process.

What is the problem in Croatia?

Croatia is also involved in this Danish programme, in the project “Assistance to Croatia during application of the Aarhus Convention” (MZOUN, 2002). This project was officially launched in January 2002, and is still going on. It set off ambitiously with an analysis of all Croatian regulations that cover the areas from the first two pillars of the convention, the third pillar being left for some subsequent project. Within the framework of the project, a number of inter-ministerial working groups were held, at which the representatives of all the ministries were able to comment on the requirements of the Convention and to make their own proposals and give the best solutions for the adoption of these requirements. A number of visits were made to the local administrative offices (county, town, municipality) that can expect to have a lot of new obligations and great changes. The whole time there was essential work with the non-governmental sector that deals with environmental protection matters and that would particularly benefit from the ratification of the Convention. But with all the effort, the results of this work are still almost impossible to discern. The cause for this might be a fair absence of any political will (unlike the situation in Estonia) to have the Convention ratified as soon as possible, since the results of the analyses carried out do not suggest there are any insuperable obstacles to the ratification in Croatia, which signed the Convention among the very first.

We can say that in Croatia there are certain reluctances in connection with the requirements of the first pillar of the Convention, public data access:

- Application of the Convention assures everyone the right to have access to specific information, which might necessitate time for identi-

fication and processing. Information is in most cases stored in bodies with environmental jurisdiction at the local or regional level (country, city, municipality – the offices for environmental protection). For these officials, the Convention involves the introduction of new working routines and new manners of meeting applications. Current practice, as measured in a project considering a random sample of four counties, involves the reception of 30 to 200 applications for information a year, while the cities receive more than 300 requests (Osijek); Dubrovnik even from 800 to 1200 applications a year (MZOUN, 2002). An application can be anything from a phone call to an application in written form, which means that a file about it has to be opened.

- Croatian regulations do not contain detailed provisions about all aspects of procedures concerning requests for information. Although the Constitution (NN 41/00, 55/01, Article 38, Paragraph 3) guarantees journalists the right to have access to information, it does not mean that any person at all has the right of access to data. The Environmental protection Law (NN 82/94), Article 49, entitled “The public nature of environmental data” contains one key provision. It insists that environmental data are public in nature, including the obligation that the public must be informed about matters of environmental import, and that all requests for information about the environment must be answered. However, how to proceed if the public department does not have the information required is not specified in the law. In this case, the General Administrative Procedure Law has to be applied (NN 53/91), which binds all departments and defines their working procedures. Article 66, Paragraph 3 states that if a government department is not competent to receive an application, an official of this department has to inform the seeker and send the application to the actually competent body. If the application, in spite of this information, insists that the body that is not competent has to respond, then this body is bound to accept the application, and then has to issue a conclusion rejecting the application. The same law says (Article 218, Paragraph 1) that the competent body has to reply to an applicant’s request as soon as possible and at the latest within a month. It is another matter if this is the reasonable period of time that the Convention refers to.
- Various procedures related to the following questions have also been discovered: the various time limitations and levels of ambition related to responses to applications, and various perceptions about whether all information seekers need to be treated in the same way. There is one requirement that is at odds with administrative procedure in Croa-

tia. The General Administrative Procedure Law recognises only parties in a procedure or those who are not but have nevertheless managed to prove their interest in a procedure. In line with the Convention, persons asking information do not have to show that they have any interest, do not have to prove their identity or show in any way that they are competent or interpreting the information they receive correctly. The results of research in this project showed clear indications of bias against those applications that civil servants considered “provocative” or submitted “only for political reasons”.

- One of the key issues is how to identify the correct sources of information. According to the experience of some NGOs, it is not very difficult to obtain information, but it is difficult to know where it might be. The problem is coordination among various departments competent for environmental protection and the absence of a consistent data exchange system at all levels. The existing system seems to rest on the principle of good will, even among bodies that carry out the environmental protection policy together, and especially when there are relations between these bodies and the public.
- It would seem that there is a shortage of resources as a result of increased demand for specific information, and in particular a shortage of experts. An aptness to assign low priority to the provision of environmental information if it is in conflict with the performance of other duties has been observed.

According to these shortcomings, we can conclude that the success of the Convention will depend above all on the economy and ambition of the implementation process. Otherwise, there is a risk that the Convention will not be implemented at all.

Finally, the following advantages connected with the first pillar have been observed. In theory at least, all the bodies responsible for environmental protection do support the Convention. Another great advantage is the fact that many agencies today have already set up the procedures for the provision of information, and do not have to set up new mechanisms, only implement those that exist already more effectively. It is an advantage of Croatia that there is a relatively well-developed tradition of participating in the making of environmental impact assessments.

The second pillar relates to public participation in the decision making process when this is related to specific activities, plans, programmes and policies, and executive regulations and/or generally ap-

plicable binding instruments. In the project of the Environment Ministry already mentioned, the analysis was concentrated on EIAs and physical planning. Croatia has a long practice in the area of carrying out EIAs and involving the public in the process, since this is an area that has been regulated since 1984 (today by the Regulations on Environmental Impact Assessment, last version, NN 59/00). For this reason there is a general impression that the obligations of the second pillar are not radical innovations in administrative practice. Public debates are obligatory for any plans of using land at the country, municipal and city level. Going on from the first pillar, one should say that the most comment requests for information are for data about land use. At the local level there are about 10 requests p.a. At the national level, there are between 80 and 100 requests a year. The vigour with which the public takes part depends on the given matter. In most cases there is not a lot of interest – there are no written comments and there are few participants at public debates. The cause of this is held to be in the previous authoritarian culture that, in spite of a relatively high degree of interest in politics, inculcated the idea that members of the public had no very great influence in the creation of policy. These convictions get in the way of any motivation for participation and have to be opposed with an enhanced system of information by an appropriate education system.

CONCLUSIONS AND RECOMMENDATIONS

According to an analysis of the general state of affairs in Croatia, an overview of the importance of the Aarhus Convention for the development of public access to information and public participation, and a review of the relations to the Convention in Denmark, Estonia and Croatia, in this part we shall draw certain conclusions and make recommendations that relate above all to the democratisation of the process of environmental protection.

In general, it can be pointed out that there is already a tried and tested system that can reduce many dangerous long-term mistakes. Before the making of any decision it is necessary to have a serious and open approach to the multi-disciplinary problems of environmental protection, multilateral and bilateral and regional collaboration with the member countries and/or candidates through all the projects and programmes available, as well as exhaustive studies and analyses of both EU requirements and of domestic conditions and specific features. A

consistent and strategic approach is essential during any decision-making, a good legislative process during the translation of these decisions into binding regulations and finally, encouragement of public participation in the whole process, so that these decisions should take off during the everyday life of the society, and become an integral part of it.

The Ministry of Environmental Protection should draw up a strategy representing a reasonable framework and a single methodology for the adjustment of regulations in the area of environmental protection that will precisely lay down the objectives, the per-sector existing situation, the priorities, timetable, participants of the procedure, questions of jurisdiction and so on. A strategic approach to the whole situation would reduce all further haphazard attempts to apply any given instrument without a prior consistent approach, such as was the case in the long-term project for the implementation of the Aarhus Convention, which was not preceded by any necessary analysis of all the existing structures in Croatia that do carry out environmental protection policy, and which will inevitably be affected by the application of such a convention. What is more, it would seem that the citizens themselves were the least acquainted with this project. Hence it is necessary to set out in another way, a strategic way, so that for a beginning we can find out precisely what we have got and what has to be done for the purpose of an effective application of any given instrument, in line with EU requirements. A comprehensive strategy harmonising all Croatian regulations with all the relevant EU requirements is certainly a necessary beginning. A strategy of this kind should include an implementation plan with realistic timetabling, deadlines, and a cost estimate. A strategy should lay out in advance the bodies responsible for the planning, implementation and control of all procedures. The recommended timetable of possible activities during the making of the strategy for the harmonisation of environmental protection regulations would be as follows:

- Lay down or confirm priorities in the harmonisation of regulations. In line with the understanding of the situation in the environment to date, it can be assumed that the order might be as follows: waste management, air protection, climate change, water protection, nature protection, industrial pollution, chemicals, genetically modified organisms and the whole of the horizontal legislation.
- It is necessary to lay down, according to the priorities established, or per sector, all the relevant participants for each sector, at all levels, and clearly to demarcate their separate jurisdictions.

- Take into account the results of analyses already performed of harmonisation of regulations with EU requirements. The Environmental Protection Ministry has already carried them out in various projects, and they need simply to be brought up to date, and those that are missing to be made.
- Set up an inter-ministerial and inter-institutional working group for an analysis of regulations from areas not in the exclusive jurisdiction of the Environmental Protection Ministry (for example, water protection in collaboration with the National Water Agency).
- Pursuant to all these data collected, make a kind of basic study for each sector separately, with the participants identified, with data about common practices, the institutional framework and in general the current situation in the sector.
- Determine, inter-institutionally, all similar projects and analyses already carried out or in planning phase so that there should be no nugatory overlaps and repetitions.
- Organise numbers of inter-institutional forums at which all the contentious matters in the sector can be discussed, with respect to both the EU requirements to which adjustment is needed and to some specific situations in Croatia.
- Always whenever possible include all the stakeholders, the NGOs that deal with environmental protection and all the relevant people from the profession.
- Collect the results of all legal analyses carried out, reports, studies and commentaries, and endeavour to bring them all together into a single united strategic approach to each sector. In this factor it is important to know the key directives, and to distinguish those that will be easy to incorporate into Croatian regulations, and put to work quickly and cheaply, from those that will represent problems.
- Provide expertise and technical assistance to the legal departments of the bodies of the public administration that draw up drafts, amendments and completely new adjusted and harmonised regulations.
- Investigate in parallel and make studies concerning all the necessary operations and changes in the administrative and institutional framework, with particular attention addressed to the overall costs of future, necessary and proposed operations.
- And finally, according to exhaustive legal and other analyses of the impacts of the application of the solutions proposed and obtained, draw up approximation plans in which all the statutory and institutional changes will be stated, their costs, with a list of practical imple-

mentation steps for each sector, including assessments of appropriate projects to implement and for the necessary human resources.

Only after the end of all this could we say that we have in outline an idea about how far off we are from the EU requirements, and then what we have to do to fulfil them and acquire the conditions for membership. The job in front of us is immense, and quite unpredictable with respect to scope and results. But if we neglect this way of drawing up a strategy for the process of coordinating Croatian regulations with EU regulations, we shall still have to start off from somewhere. Therefore, we can always simply “start off from what is necessary, go on to what is possible, and at the end we shall surely find that we are doing the impossible...”^{xx}

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- i *The environmental acquis – all the forms of policies, laws and objectives respecting the environment the EU has agreed on; including all the directives and decisions relating to the environment, accepted according to the various treaties that together make up the primary laws of the EU.*
 - ii *According to EU Council Order no. 2666/00 of December 5, 2000 for the countries of the former Yugoslavia (not inc. Slovenia but inc. Albania) for the 2000-2006 period.*
 - iii *Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee, the Committee of the Regions and the Candidate Countries in Central and Eastern Europe on Accession Strategies for Environment: Meeting the Challenge of Enlargement with the Candidate Countries in Central and Eastern Europe, COM (98) 294.*
 - iv *Development of a Costing Assessment for the Slovenian Environmental Approximation Strategy, PHARE SLO-101 (1998).*
 - v *For 2001, it was agreed to draw up a Draft of a Law on an environmental protection fund and adopt an environmental protection strategy. There were more obligations for 2002, mainly related to changes in regulations in coordination with other bodies. Among the important measures, we pick out the obligation to found the Fund and the Environmental protection Agency, and to draw up a draft Law amending the environmental protection law. For 2003, the amendment of a few bylaws is anticipated, an analysis of the degree of coordination of the legislation with the acquis and the elaboration of an implementation programme to be put through via the CARDS programme.*
 - vi *Still being drawn up; other relevant documents available at [www.mei.hr].*
 - vii *First analysis of this type was carried out in 2001, in connection with regulations governing waste management, for the purpose of drawing up a draft set of amendments to the Waste Law.*
 - viii *For example: Capacity Building for EU Accession in Air Protection Sector in Croatia, Capacity Strengthening Measures for the Environmental Agency, Capacity Building for EIA/SEA and Environmental Audit and Environmental Management Systems.*
 - ix *Definition of the Brundtland Commission, as it is called; World Commission on Environment and Development printed in the document «Our Common Future» (1987).*

- x *County offices carry out environmental protection matters in the country or city, in line with the provisions of the environmental protection law and the physical planning law, the last amendments to which devolved a number of environmental matters to the regional and local level (NN 30/94, 68/98, 61/00).*
- xi *Proposal of document available at: www.mzopu.hr.*
- xii *Law on Communal Activities puts communal /municipal/ waste management in the lap of the Ministry of Public Works, but at the same time all matters of waste management are in principle in the jurisdiction of the Environmental protection Ministry.*
- xiii *At the regional level, in 1998 Croatia confirmed the amendments to the "Convention on the protection of the marine environment and the coastal area of the Mediterranean" and is an active participant. Croatia is included in all regional initiatives as part of the Danube Basin Environmental protection Programme.*
- xiv *Croatia is an active member of the Croatian-Italian-Slovene commission on the protection of the Adriatic that is part of the Stability Pact.*
- xv *Particularly marked was the bilateral collaboration with neighbouring countries in the area of water protection, regulated by a number of bilateral treaties (with Hungary, for example, 1994, and Bosnia and Herzegovina, 1996).*
- xvi *The indicators are synthetic data that link the state of the environment, i.e. the consumption of natural assets, with social and economic development, such as the use of public as against private transport. There are different proposals for setting up the indicators. One of them is Indicators of Sustainable Development Framework and Methodologies, UN, 1996.*
- xvii *See NEAP, MZOPU 2002; C. 6.5; Environmental Education.*
- xviii *See www.mzopu.hr, Projekti, where there is the Analysis of the Legal Gaps Project. On this page only the first project of this kind is quoted (it was carried out in 2001). Since then three more relevant analyses of legal gaps have been carried out that are not mentioned here at all. The web site of this project does not contain a single relevant document.*
- xix *All documents available on: www.europa.eu.int/eur-lex/en/index.html.*
- xx *St Francis of Assisi, 1181-1226.*

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