

Case study on public participation and legal standing – Focus on Water Framework Directive

JUDr. Vojtěch Vomáčka, Ph.D., LL.M.

Why do you need to know (more) about the Aarhus Convention?

You are dealing with public participation in the context of EU environmental law = you need to solve the case from the perspective of the Aarhus Convention.

Example: In a beautiful mountain country of Salvinia (EU Member State), an NGO did not obtain the status of a party **to the administrative procedure for the grant of a permit in respect of a project that may be contrary to the obligation to prevent the deterioration of the status of bodies of water under Article 4 of Directive 2000/60**. It contests the decision that it is not a party to the procedure.

- 1) Is the Aarhus Convention applicable?
- 2) Can you implement the national law in compliance with the Aarhus Convention?
- 3) Can the NGO rely on the direct applicability of the EU law?

The NGO contests the **permit to carry out the project**.

- 1) Is the Aarhus Convention applicable?
- 2) 2) Can you implement the national law in compliance with the Aarhus Convention?
- 3) Can the NGO rely on the direct applicability of the EU law?



In January 2021, the government of Salvinia (EU Member State) announced a long-awaited relief from the restrictive anti-COVID measures. In particular, the schools, the cultural and the sports facilities could finally reopen. And the restaurants, of course.

Since Salvinia is a beautiful mountain country, it hosts a large number of skiing resorts. However, **due to the mild weather, there is a lack of snow, and the operators apply for a permit to abstract water from the river to produce snow for a ski resort. This raises some environmental concerns as the applications come all at once, and nature is almost ready for springtime.**

Most notably, in the small-town Garde, people believe that a permit to abstract water from the local river Xirarnea (inland surface water) would deteriorate, which would affect the status of aquatic ecosystems. Otherwise, **the project seems to have a relatively low impact on the environment and does not fall under the EIA Directive or the Habitats Directive. Therefore, the environmental issues related to that particular procedure fall within the scope of Directive 2000/60/EC (the Water Framework Directive).**

A local **NGO** called Watter4Garde applied to obtain the status of a party to the administrative procedure for the grant of a permit in respect of the abovementioned project. Later on, it was joined with applications filed by:

- **Mrs Santos, who owns agricultural land** in the town and is afraid of losing of losing water from the soil.
- **Prof. Modeno, who is a respected scholar in the field of water protection** living in the capital city of Salvinia, 50 km away from Garde.
- **The town of Garde**, which is afraid of losing water in the public fountains and also points to its constitutional obligation to protect the local environment.

According to the national law, **a party to the administrative procedure** for a permit to abstract water from the surface water is 1) the applicant for the permit, 2) the affected owner of the neighbouring land, 3) other individuals based on the requirements of the international law or EU law.

Moreover, persons under 2) and 3) have to pay **a fee of EUR 200** to participate in the proceedings.

Only the participants to the administrative proceedings who have submitted their objections against the permit in 'good time' in the course of the administrative proceedings are allowed **to challenge the decision before the national court**, under the **court fee of EUR 500**.

Except for Mrs Santos, the applicants have been all denied the status of a party to the administrative procedure.

According to the official authority, neither the Aarhus Convention nor the EU law requires them to become parties to the procedure. They were also refused access to justice since they have not submitted their objections against the permit in 'good time' in the course of the administrative proceedings.

Mrs Santos has participated in the proceedings and challenged the decision. However, **the court concluded that she could not raise any objections regarding the protection of aquatic ecosystems** since she can be only affected by a lower quantity of water.

QUESTIONS:

- 1) Should the applicants concerned (any/some/all of them) be accorded status as a party to the proceedings at the administrative stage, based on the Water Framework Directive read in conjunction with the Aarhus Convention? Could they become parties to these proceedings in your country?
- 2) Should the applicants concerned be allowed access to justice, based on the Water Framework Directive read in conjunction with the Aarhus Convention? What would be the scope of their objections (Mrs Santos)? Could they challenge the decision in your country?
- 3) Can national procedural rules in Salvinia preclude the individuals from challenging an administrative decision on appeal where they have not submitted their objections against the permit in 'good time' in the course of the administrative proceedings? Are there any similar conditions in your national law?
- 4) Would you consider the participatory fees violate the requirements of the Aarhus Convention? Are there similar fees in your country? Can you lower (moderate) them as a judge?
- 5) Bonus question: In your country, would it be possible to challenge the permit if it was granted *en bloc* for all resorts by the Ministry of Tourism in the form of legislative regulation?

THANK YOU FOR YOUR ATTENTION!

vomacka@mail.muni.cz