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DOGAJANJE NA PODROČJU UREDITVE UDELEŽBE JAVNOSTI NA MADŽARSKEM IN VLOGA NOVEGA OMBUDSMANA ZA OKOLJE

Ključne besede: sodelovanje javnosti, krepitev zmogljivosti, varuh okolja, trajnostni razvoj in medgeneracijska enakost

1. Uvod

Namen tega članka je oceniti dogajanje na Madžarskem v zvezi z zakoni o udeležbi javnosti pri odločanju o okoljskih zadevah v zadnjih dveh desetletjih. Na kratko bom predstavil tudi prispevek urada madžarskega ombudsmana za prihodnje generacije (v nadaljevanju OPG) k okoljski demokraciji od začetne faze njegovega delovanja, ki se je začela v drugi polovici leta 2008, naprej. Podati pa bom poskušal tudi širšo analitično sliko udeležbe javnosti in delovanja OPG v širšem okviru trajnostnega razvoja.

2. Dogajanje v madžarski pravni praksi na področju udeležbe javnosti v zadnjih dveh desetletjih – revolucija in protirevolucija

Po demokratični tranziciji v zgodnjih devetdesetih letih je madžarska zakonodaja vzpostavila široke možnosti za udeležbo javnosti na splošno in še zlasti v okoljskih zadevah. Od splošne zakonodaje je najbolj izstopal zakon LXIII o varstvu osebnih podatkov in dostopu do podatkov v javnem interesu (v nadaljevanju zakon LXIII). Ta zakon je povzročil nekakšno pravno revolucijo: javni so bili vsi podatki, s katerimi ravnajo javni organi in niso osebni podatki. Glavno pravilo je bilo, da morajo biti javni podatki na zahtevo dostopni vsakomur v 15 dneh (negativni odgovor pa je treba sporočiti v 8 dneh) in za nadomestilo, ki ne presega stroškov fotokopiranja in dostave zahtevanih podatkov. Izjeme zaradi državnih in upravnih interesov ter interesov tretjih oseb so navedene na izčrpnem seznamu. Od leta 1992 naprej je bil zakon LXIII večkrat spremenjen, in sicer vedno na slabše, vendar glavne lastnosti še vedno veljajo.

Okoljski zakonik iz leta 1995 je vseboval tudi precej določb o udeležbi javnosti: temu vprašanju je namenjeno celo poglavje. To poglavje med drugim vsebuje splošno določbo o udeležbi okoljskih organizacij civilne družbe (NVO) v vseh okoljskih upravnih zadevah na ozemlju, na katerem delujejo. V letih po začetku veljavnosti okoljskega zakonika pa so se odvijale burne razprave o skoraj vseh elementih te določbe. Javni organi so začeli precej ozko razumevati izraz „okoljske organizacije civilne

družbe“. V nekaterih primerih so bili pripravljeni sprejeti udeležbo NVO samo, če je bila izključno „okoljske“, v drugih primerih pa se je izkazalo, da oblasti ne štejejo fundacij ali drugih posebnih oblik NVO za organizacije civilne družbe, in so udeležbo omogočili samo združenjem. Tudi pomen izraza „okoljska zadeva“ se je začel zelo kmalu ožiti: „okoljske“ so bile samo presoje vpliva na okolje.

Končno je leta 2004 madžarsko vrhovno sodišče izdalo splošno zavezujočo izjavo o razlagi navedenih določb okoljskega zakonika. V skladu s Sklepom o poenotenju št. 1/2004 so se kot okoljske razlagale vse zadeve, ki so jih obravnavali okoljski organi, če so v postopku sami odločali o zadevi ali če so samo izdali uradno mnenje na zahtevo drugega organa. Vrhovno sodišče pa je dodalo, da so lahko v takih primerih okoljske NVO udeležene samo v okoljskem delu zadeve, in sicer pri vprašanjih, ki so jih dejansko obravnavali okoljski organi. V nekaterih primerih je ta omejitev videti precej naravna, v drugih primerih pa ta pristop sproža poplavo argumentov, s katerimi se želi prikazati udeležbo okoljskih NVO v upravnih zadevah le kot formalnost.

V pravni praksi je najpomembnejša odločitev sodišča v prvih letih „zlate dobe“ sklep št. 28/1994. (V. 20.) AB madžarskega ustavnega sodišča. V tem sklepu, ki ga okoljski organi imenujejo tudi „temeljni sklep“, je sodišče v madžarsko okoljsko zakonodajo vpeljalo *načelo nenazadovanja*. Sklep določa, da medtem, ko je v primeru drugih vrst ustavnih pravic morda mogoče, da raven varstva niha zaradi sprememb finančnih in drugih sredstev države, pa si v primeru pravice do zdravega okolja država ne sme dovoliti, da bi že doseženo raven varstva zmanjšala. To je zato, ker je škoda v primeru degradacije okolja v večini primerov nepopravljiva, na primer zato, ker po izgubi dela biotske raznovrstnosti izumrle vrste ni več mogoče oživiti. Na podlagi tega in glede na temeljni sklep je madžarsko ustavno sodišče razveljavilo več novih zakonov, ker so zmanjševali obstoječo raven varstva okolja. Vendar pa so madžarski strokovnjaki ustavnega prava[1] opozorili, da je v zadnjem desetletju prakse ustavnega sodišča sklicevanja na sklep št. 28/1994 vse manj.

Sprejetje Aarhuške konvencije o udeležbi javnosti pri odločanju o okoljskih zadevah leta 1998 je na splošno prineslo nov veter v evropsko okoljsko pravo in tudi upravno pravo. Madžarski zakonodajalec pa se je lahko bolj ali manj sprejemljivo zanašal na že obstoječe rezultate določb iz preteklih let o progresivni udeležbi javnosti. Na podlagi tega je bilo navedeno, da je bil prenos Konvencije zaključen, že preden se je sploh lahko začel. Ta izjava ni upoštevala dejstva, da je Aarhuška konvencija zbrala vse pomembne elemente udeležbe javnosti (ki se navadno imenujejo trije stebri konvencije[2]) in jih organizirala v dosleden sistem, v katerem se ti elementi medsebojno dopolnjujejo. Takšen sistem v madžarski okoljski zakonodaji ni bil nikoli vzpostavljen. Pravila o udeležbi javnosti so ostala razpršena v številnih ločenih zakonih, v nekaterih primerih so si celo nasprotovala. Kljub temu bi lahko rekli, da je bilo to obdobje po demokratični tranziciji v državi zlata doba okoljske demokracije. Nosilci odločanja, upravni voditelji ter poslovne interesne skupine pa so kmalu ugotovili, da bi lahko udeležba javnosti močno vplivala na rezultate v njihovih zadevah, z njihovega stališča pogosto v njihovo škodo, in tako se je začelo nazadovanje.

V primerjavi s predhodnim desetletjem so na Madžarskem prva leta 21. stoletja prinesla veliko manj pravne podpore udeležbi javnosti v postopkih odločanja o okolju. Najbolj tipičen primer tega novega trenda je bil leta 2003 zakon CXXVIII. o javnem interesu in razvoju avtocestne mreže v Republiki

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[1] Npr. Attila Gábor Tóth, osebna komunikacija.

[2] Ta popularni pristop pa bi lahko bil nekoliko zavajajoč. Navadno se navajajo trije stebri: dostop do informacij, udeležba javnosti in dostop do pravnega varstva. Ti elementi sistema udeležbe javnosti pa celotnega sistema ne izčrpajo popolnoma. Pravila o izgradnji zmogljivosti (predvsem v členu 3), pomen izrazov (člen 2) in splošna načela (v uvodnem delu) so prav tako pomembni elementi.

Madžarski. Zakon je določil poseben postopek odločanja za gradnjo avtocest. Namen tega postopka je bil poenostaviti in pospešiti izdajo okoljskih dovoljenj za najpomembnejša avtocestna gradbišča. Njegove pomanjkljivosti pa so najbolje povzete v sklepu ACCC/C/2004/4 Odbora za izvajanje Aarhuške konvencije,[3] sprejetem po obravnavi pritožbe, ki jo je vložila madžarska NVO. Sklep je navajal:

- skrajšanje postopka izdaje dovoljenj tako, da se odpravi uvodna okoljska presoja za take odločitve in s tem omeji udeležba javnosti v postopku odločanja v celoti,
- določitev nezadostnega roka 90 dni, ki ga ni mogoče podaljšati, za postopek odločanja, ki tako ne omogoča dovolj časa za udeležbo javnosti,
- določitev, da se končna odločba o avtocestni trasi sprejme z ministrskim odlokom, s tem pa se omejijo možnosti pritožb na odločitev,
- določitev, da se lahko na odločitev prve stopnje okoljskega organa pritoži samo isti organ in da je odločitev druge stopnje izvršljiva takoj, s tem pa so onemogočene kakršne koli prihodnje sodne pritožbe in niso zagotovljena primerna ter učinkovita pravna sredstva, zlasti pa ne sodna prepoved,
- omejitev udeležbe okoljskih organov v celotnem procesu izdaje dovoljenj, zlasti pa po sklepu o vplivu na okolje.

Pritožniki navajajo številne trdne argumente, sam pa bi poudaril tretjo točko, in sicer reševanje posamezne zadeve z zakonskim aktom (odločbo) namesto upravne odločitve, na katero bi se bilo mogoče pritožiti na sodišču. Menim, da bi lahko to rešitev poleg tega, da zmanjšuje dostop do pravnih sredstev, lahko šteli tudi kot neustavno, ker krši temeljna načela ločevanja državnih vej oblasti: zakonodajna oblast vstopa na področje izvršilne oblasti in izključuje velik del strokovnih in upravnih mnenj iz postopka odločanja, da bi postavila nekatere politične in gospodarske interese v ugodnejši položaj. Kot je bilo mogoče predvideti, se je žal v naslednjih letih ta zakonodajna metodologija za omejevanje udeležbe javnosti razširila tudi na druge vrste vlaganj velikega gospodarskega interesa.

Drugi primeri zakonov, v katerih se jasno vidi namen zmanjševanja udeležbe javnosti, so spremembe zakonika o upravnem postopku iz leta 2004 v zvezi z udeležbo in dostopom do pravnega varstva. Leta 2008 je madžarsko ministrstvo za pravosodje pripravilo osnutek z namenom

- vključiti dodaten pogoj za udeležbo: osebe, katerih interesi so zastopani, so bile lahko udeležene samo, če so bili interesi „pomembni“,
- zagotoviti, da je udeležba vseh tistih, ki živijo v bližini načrtovane dejavnosti na prizadetem zemljepisnem območju, bolj izjema kot pravilo,
- omejiti pravico NVO do pritožb zoper upravne sklepe samo na tiste primere, ko so sodelovale v zadevi prve stopnje od samega začetka.

[3] Natančnejši opis zadeve in sklepa Odbora za izvajanje je na spletni strani www.unece.org pod naslovom ECE/MP.PP/C.1/2005/2, med „Sporočili javnosti“. Dodati moram, da Odbor za izvajanje v tem primeru sicer ni sprejel nedvoumne odločitve o nepravilnem izvajanju konvencije, na naslednjem srečanju pogodbenic v Almaty leta 2005 pa je bilo rečeno, da bi morale pogodbenice upoštevati načelo nenazadovanja v svojih zakonodajah v zvezi z udeležbo javnosti pri okoljskem odločanju tudi v primerih, ko so novi zakoni še v okviru konvencije.

3. Možne vloge urada madžarskega ombudsmana za prihodnje generacije (OPG) pri zagotavljanju učinkovite udeležbe javnosti

Ko je ministrstvo za pravosodje javnosti predstavilo spremembo zakonika o upravnem postopku, je OPG že deloval in je lahko uspešno lobiral proti zgoraj navedenima prvi in tretji točki iz osnutka zakona ministrstva. Tretja točka, ki je na prvi pogled videti neškodljiva, bi dramatično omejila udeležbo NVO, ker je v praksi skoraj nemogoče, da bi lahko sodelovale v tisočih upravnih postopkov prve stopnje samo zaradi tistih maloštevilnih zadev, v katerih so tako nezadovoljne s sklepi, da se želijo proti njim pritožiti. Projekt zakonika o upravnem postopku je bil za OPG pomemben tudi z metodološkega vidika, saj je pokazal, da čeprav izjava ombudsmana ni zavezujoča za zakonodajne ali upravne organe, lahko odbor parlamenta za okolje, nacionalni okoljski svet in številne okoljske NVO oblikujejo široko koalicijo, ki lahko bistveno vpliva na takšne večje zakonodajne postopke, kakršen je bil sprememba zakonika o upravnem postopku.

V nekaterih primerih zagovarjanja v parlamentu si je OPG tudi prizadeval, da bi ohranil vsaj obstoječo raven okoljske demokracije, med drugim v primeru spremembe odloka o izdaji lokalnih okoljskih dovoljenj (vladni odlok št. 358/2008 (XII. 31)), pri katerem so bile precej okrnjene pravice sosedov do dejavne udeležbe v postopku odločanja. V tem primeru je ministrstvo za gospodarstvo formalno sprejelo naše stališče, vendar končna različica objavljenega odloka našega dogovora ni upoštevala, zato smo zadevo napotili na ustavno sodišče z zahtevo, naj se odlok razveljavi. Drugi zakonodajni akt, pri katerem smo se borili za večjo udeležbo javnosti, je bil novi zakon o gozdarstvu (Zakon XXXVII iz leta 2009). V tem primeru nam je uspelo preprečiti izključitev lokalnih skupnosti iz nekaterih postopkov izdaje dovoljenj – tudi tokrat v sodelovanju z več naravovarstvenimi NVO in z odborom parlamenta za okolje.

OPG prejme letno v povprečju 300 stvarnih individualnih pritožb. Najučinkovitejši prispevek našega urada za dvigovanje stopnje učinkovitosti javne udeležbe je natančna analiza teh pritožb in dosledno odzivanje na potrebe po pravni ter strokovni pomoči iz NVO. Tudi pri udeležbi javnosti je najboljša metodologija učenje z delom. To pomeni, da v primeru, da lahko OPG bistveno poveča pripravljenost lokalnih skupnosti in (zlasti temeljnih) NVO in da se poveča tudi stopnja uspešnosti njihovih pravnih zadev, naše delo prispeva k okoljski demokraciji.

OPG poleg zagovarjanja javne udeležbe v parlamentu in doslednega odgovarjanja na pritožbe državljanov opravlja tudi znanstvene in mrežne (razširjanje) dejavnosti. Naše sodelovanje na številnih konferencah, ki jih organizirajo NVO, ter v drugih pravnih in strokovnih razpravah je pomemben program izgradnje zmogljivosti, ki madžarskim okoljskim NVO omogoča učinkovitejše sodelovanje v upravnih postopkih odločanja. Poleg tega smo začeli šestletni raziskovalni projekt o ustvarjanju in dostopu do okoljskih informacij ter upamo, da bodo tudi njegovi rezultati predstavljali velik prispevek k okoljski demokraciji.

4. Medgeneracijska pravičnost – koncept, na katerem temelji ustanovitev OPG

Udeležba javnosti je nujna predvsem za cilje trajnostnega razvoja, zlasti zaradi vpliva na okolje tistih, ki živijo v bližini nekaterih okoljsko pomembnih dejavnosti (zaradi onesnaževanja). OPG je odgovoren tudi za podporo varstvu okolja in s tem medgeneracijski pravičnosti. V zaključku bi zato želel razširiti okvir naše teme, okoljske demokracije.

Trajnostni razvoj je opredeljen z medgeneracijsko pravičnostjo. Prihodnjim generacijam bi morali zagotoviti vsaj enak dostop do naravnih virov in vsaj enako kakovost zdravega okolja, kot ju imamo zdaj mi. Ne smemo pozabiti, da smo prihodnje generacije deloma tudi sami: cilj zahtev po trajnostnem razvoju je varstvo tudi naše osebne prihodnosti, in sicer naših virov ter našega zdravja, ko bomo 10–15 let starejši kot danes. Neverjetno kratkovidno je, da zanemarjamo svoje potrebe v bližnji prihodnosti, kaj šele potrebe svojih otrok in vnukov.

Zagotavljanje minimalne ravni trajnostnega razvoja ima za naše družbeno življenje nekaj očitnih zaključkov. Sprejeti moramo – tudi najuspešnejši podjetniki v novih tržnih gospodarstvih Vzhodne Evrope –, da nekatere dejavnosti na določenih lokacijah niso več sprejemljive. Zavedati se moramo, da so nekateri problemi globlji, kakor smo si predstavljali: na primer z lahkoto zanemarjeno vprašanje hrupa v mestih ali elektrosmoga, ki ga povzročajo gospodinjski aparati in relejne postaje, kar bi na primer lahko postalo pravo prekletstvo v našem življenju. Pri obravnavanju trajnostnega razvoja moramo tudi preurediti sistem ustavnih pravic: pravica do življenja in zdravega okolja mora imeti prednost pred gospodarskimi pravicami ali na primer pravico do mobilnosti z avtomobilom ali letalom. Trajnostni razvoj pa v praksi zahteva, da se države spopadejo z ogromnimi nalogami, ki jih mogoče še niso v celoti prepoznale: neposredno so odgovorne za nekatere storitve za javne dobrine, kot je varstvo sladkovodnih virov, zagotavljanje stalnega pogozdovanja ali minimalne genetske raznolikosti na nekaterih mestih, ki so nepogrešljive za naše preživetje. To so glavne lekcije, ki se jih je OPG naučil v zadnjih dveh letih iz mase zadev v lokalnih, regionalnih in nacionalnih okoljskih sporih.

S trajnostnim razvojem se ukvarjajo številni strokovnjaki, ki na različne načine sodelujejo z OPG. Gospodarstveniki in družboslovci so pripravljeni ponuditi svoje rešitve. Naši pravniki seveda predlagajo, da moramo ustvariti zakone, ki bodo našim družbam preprečili zlorabo razpoložljivih naravnih virov in onesnaževanje okolja z dolgotrajnimi, nepopravljivimi posledicami. Taki zakoni bi morali vsebovati institucionalna in proceduralna jamstva za izvajanje teh zahtev, vključno s hudimi kaznimi in doslednimi programi izvajanja. Proceduralna pravila v zvezi z udeležbo javnosti spadajo med najpomembnejša jamstva za trajnostni razvoj in medgeneracijsko pravičnost.

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DEVELOPMENTS IN THE REGULATION OF PUBLIC PARTICIPATION IN HUNGARY AND THE ROLE OF THE NEW ENVIRONMENTAL OMBUDSMAN

Keywords: public participation, capacity building, environmental ombudsman, sustainable development and intergenerational equity.

1. Introduction

In the following article I would like to assess the developments in the last two decades in Hungary in relation to the laws concerning public participation in environmental decision-making. In addition, I would like to summarise the contribution of the Office of the Hungarian Ombudsman of the Future Generations (hereinafter: JNO) to environmental democracy since during its initial phase of operation, starting in the second half of 2008. Finally, I would like to draw a broader analytical picture trying to put both public participation and the operation of JNO into the wider context of sustainable development.

2. Developments in the Hungarian legal practice of public participation in the last two decades – revolution and counter-revolution

After the democratic transition in the early nineties, Hungarian legislation established widespread possibilities for public participation in general and especially in environmental matters. The most outstanding general legislation was Act LXIII on the protection of personal data and on the access to public interest data (hereinafter: Atv.). It was a kind of legal revolution that Atv. has introduced: any data was to qualify as public which is handled by public authorities and does not represent a personal data. As a main rule, public data must be made accessible upon request for anyone within 15 days (while denial must be announced within 8 days) and for a remuneration not exceeding the costs of copying and delivery of the data requested. Exemptions out of state, administrative or third person interests are set out in an exhaustive list. Since 1992 Atv. has been modified a number of times, always for a little worse, but the main features remained in place up to now.

The 1995 Environmental Code (hereinafter: Kvtv.) also contained quite generous public participation provisions: a separate chapter is specifically dedicated to the topic of public participation. Amongst other, in this chapter we can find a general provision of standing for environmental civic organisations (NGOs) in all environmental administrative cases on the territory of their operation.

However, the years following the onset of Kvtv. brought up fierce debates on almost all elements of this provision. Public authorities started to interpret the term "environmental civic organisation" in quite a narrow way.

In some cases they were willing to accept the standing for an NGO only if it was exclusively environmental, while in other cases it turned out that the authorities do not consider foundations or other specific forms of NGOs as civic organisations, they granted standing only for associations. Furthermore, the scope of an "environmental case" started to shrink quite early: only environmental impact assessment cases counted to be "environmental".

Finally, in 2004 the Hungarian Supreme Court has issued a generally binding statement on the interpretation of the said provisions of the Environmental Code. According to Uniformity Decision No. 1/2004 all cases are to be interpreted as environmental once they are handled by environmental authorities either in a process when these authorities decide the cases on their own or in the cases where they just issue an official opinion upon an other authority's request. However, the Supreme Court added that in all such cases environmental NGOs can use their standing only in respect to the environmental parts of the cases, i.e. the issues which were actually dealt with by the environmental authorities. In some cases this constraint seems to be quite natural, while in other cases this approach reopens the floodgate for arguments that wish to make the participation of the environmental NGOs in the administrative cases a mere formality.

As concerns the legal practice, the most important court decision from the early years of the "Golden Age" is decision No. 28/1994. (V. 20.) AB of the Hungarian Constitutional Court. In this decision, also referred to by the environmental profession as the "basic decision", the Court introduced the *non retrogression principle* in Hungarian environmental law. The decision stipulates that while in cases of other kinds of constitutional rights it might be possible that, due to changes in the financial and other means of the State, the level of protection might fluctuate, in the case of the right to a healthy environment, the State cannot allow itself to decrease the level of protection already reached. This is because environmental degradation in the majority of the cases is irreversible, for instance once a certain loss in biodiversity happened, there is no chance to revive species that have gone extinct. Following and in the light of the basic decision the Hungarian Constitutional Court has quashed a series of new legislation because they lowered the pre-existing level of environmental protection. However, as constitutional legal scholars in Hungary[4] have pointed out in the last decade of the practice of the Constitutional Court references to the Decision No. 28/1994 have tapered down.

The adoption of the Aarhus Convention on public participation in environmental decision-making in 1998 brought fresh air to European environmental law and administrative law in general alike. However, the Hungarian legislator could more or less acceptably rely on the already existing results of the previous years' progressive public participation provisions. Based on that, it was claimed that transposition of the Convention had been completed even before it could have started. This statement overlooked the fact that the Aarhus Convention collected all the important elements of public participation (which are sometimes called the three pillars of the Convention[5]) and organised into a coherent system where the elements mutually reinforce each other. Such a system was never

[4] E.g. Attila Gábor Tóth, personal communication.

[5] This popular approach might be a little bit misleading, however. Usually three pillars are mentioned: access to information, participation and access to justice. These elements of the public participation system do not fully exhaust the whole system. Capacity building rules (mainly in Article 3), definitions (Article 2) and general principles (in the Preamble) are also important elements here.

created in Hungarian environmental law. The public participation rules remained scattered in several dozens of separate laws, sometimes contradicting each other.

Even if so, we might say that this period after the democratic transition in the country was the Golden Age of environmental democracy. Decision-makers, administrative leaders and business pressure groups, however, soon realized that public participation might greatly influence the outcome of their cases, often into a negative direction from their viewpoints – and the decline has started.

Compared to the previous decade the first years of the 21st century have brought much less legal support to public participation in environmental decision making procedures in Hungary. The most typical example of this new trend was Act CXXVIII. of 2003 on Public Interest and Development of the Expressway Network in the Republic of Hungary. The Act established a special decision-making procedure for the construction of expressways. This procedure aimed to simplify and expedite the environmental permitting of the most important highway constructions. The shortcomings of this legislative development are best summarized by the decision ACCC/C/2004/4 of the Aarhus Convention Compliance Committee[6] that was adopted following the deliberation of a complaint lodged by a Hungarian NGO. According to the decision this included:

- reducing the permitting procedure by cutting out the preliminary environmental assessment (scoping) phase for such decisions therefore limiting public participation in the decision-making as a whole,
- providing an insufficient and non-extendable time of 90 days for the decision-making procedure, and therefore failing to allow sufficient time for public participation,
- establishing that the final decision on the road track is taken by a ministerial decree and therefore limiting the possibility of appealing the decision,
- establishing that a first instance decision of an environmental authority can only be appealed within the same authority and that a second instance decision is immediately executable, thus undermining any future judicial appeal procedure and failing to ensure adequate and effective remedies and, in particular, injunctive relief,
- restricting the involvement of environmental authorities in the overall permitting process, in particular, after the decision on the environmental impact.

While the other arguments of the complainants are also substantial, I would like to highlight the third item, namely the resolution of an individual case with a legislative act (a decree) instead of an administrative decision which could have been duly taken to a court for legal remedy. Apart from decreasing access to legal remedies, in my opinion, this solution should also be seen as unconstitutional because of violating the basic principle of separation of State powers: the legislative branch is intruding into the realm of the executive branch excluding a great deal of professional and

[6] See the detailed description of the case and the decision of the Compliance Committee on the home page of www.unece.org under the title ECE/MP.PP/C.1/2005/2 amongst the „Communications from the public". I have to add that while the Compliance Committee in this occasion failed to accept an unambiguous decision on the failure to properly implement the Convention, the following Meeting of the Parties in Almaty, 2005 declared that Parties should follow the non-retrogression principle in their legislation concerning public participation in environmental decision-making even if the new pieces of legislation are still within the frames of the Convention.

administrative considerations from the decision-making procedure in order to give preference to certain political and economic interests.

Unfortunately, as it was foreseeable, in the following years this legislative methodology for limiting public participation took more room with regard to other types of investments of great economic interest.

Other examples of legislation with clear signs of intention to diminish public participation are the amendments of the 2004 Administrative Procedures Code (hereinafter: Ket.) concerning standing and access to justice. In 2008 the Hungarian Ministry of Justice prepared a draft that aimed at

- including an additional condition of standing: people whose interests are concerned could have standing only if this concern were "significant",
- providing standing for those who lived in the vicinity of the planned activity on the affected geographical area as an exception rather than a general rule,
- limiting NGOs right to appeal administrative decisions only if they participated in the first instance case from its very beginning.

3. The possible roles of the Office of the Hungarian Ombudsman for Future Generations (JNO) in ensuring effective public participation

At that time when the Ket. amendment was made public by the Ministry of Justice JNO was already in operation and could successfully lobby against the above first and the third items from the ministry's draft law. The third one, while it seems quite innocent at the first glance, would have constricted the participation of NGOs dramatically because in practice it is nearly impossible for them to follow and take part in thousands of first instance administrative procedures just for those small number of cases where they are so much discontent with the decisions that they wish to appeal against them. The Ket. project of the JNO was also important from the methodological point of view, because it showed that even if the statement of the ombudsman is not binding to any legislative or administrative bodies, a broad coalition could be formed by the Environment Committee of Parliament, the National Environmental Council and several dozens of environmental NGOs that could significantly influence such major decision-making procedures as Ket. amendment was.

In some later parliamentary advocacy works JNO also strived to at least maintain an already existing level of environmental democracy, amongst others in the case of the amendment of the local environmental permitting governmental decree (Governmental Decree No. 358/2008. (XII. 31.)) where the rights of the neighbours to actively participate in the decision-making procedure was significantly trimmed back. Here our position was formally accepted by the Ministry of Economics but the final version of the published decree did not mirror our agreement, hence we referred the issue to the Constitutional Court with a request to annul the decree. Another legislative act where we fought for enhanced public participation was the new Forestry Act (Act XXXVII of 2009). In this matter we could prevent the exclusion of the local communities from certain permitting procedures – again working in coalition with several nature protection NGOs and the Environmental Committee of Parliament.

JNO receives 300 substantial individual complaints a year as an average. The most effective contribution of our office to raising the level of effectiveness of public participation is a careful analysis of these complaints and consistent responding to the need for legal and professional assistance from NGOs. "Learning by doing" is the best methodology in public participation, too. That

means if JNO can significantly raise the willingness of the local communities and (especially the grassroots) NGOs and the success rate of their legal cases grows as well, environmental democracy will gain from our work.

Apart from parliamentary advocacy in public participation matters and consistent responding the citizens' complaints, JNO runs scientific and networking (outreach) activities, too. Our participation in a large number of NGO-organised conferences and other legal and professional discussions amount to a meaningful capacity building program that enables Hungarian environmental NGOs to take part in the administrative decision-making procedures more effectively. Moreover we started a six-year long research project on generation of and access to environmental information whose results, as we hope, will also represent a substantial contribution to environmental democracy.

4. Intergenerational equity – the concept that was behind establishing JNO

Public participation is instrumental in serving the goals of sustainable development first of all because of the bias for the environment of those who live in the vicinity of certain environmentally significant (polluting) activities. JNO is also responsible for supporting environmental protection and hence intergenerational equity. In the closing part, therefore, I would like to broaden the context of our topic, environmental democracy.

Sustainable development is defined by intergenerational equity. We should ensure that the following generations have at least equal access to natural resources and at least the same quality of healthy environment as we enjoy now. We should not forget that future generations are partly us: the requirements of sustainable development are aimed to protect our own personal future, too, i.e. our resources and our health when we are 10-15 years older than today. It is amazingly short-sighted as we overlook our needs in the immediate future, let alone the needs of our children and grandchildren.

Ensuring the minimum level of sustainable development has certain obvious conclusions on our social life. We need to accept – even the most successful private entrepreneurs in the new market economies in Eastern Europe – that certain activities at certain locations are not viable anymore. We have to realize that certain problems are much deeper than we thought: for instance such easily neglected issues as noise in the cities or the electrosmog caused by household devices and relay stations might turn out to be real curses in our life. Talking about sustainable development we also have to rearrange the system of constitutional rights: right to life and to a healthy environment must prevail over economic rights or, say, the right to mobility by car or aeroplane. Finally, in the practice, sustainable development requires states to tackle enormous tasks they might not have fully acknowledged yet: they are directly responsible for certain services for public goods, like protection of fresh water reservoirs, ensuring continuous forestation or the minimum genetic variability at certain places are indispensable for our survival. These are the main lessons JNO has learnt in the last two years from the mass of cases, local, regional and national environmental conflicts.

Sustainable development is handled by several professions working for JNO in several ways. Economists, social scientists are ready to offer their respective solutions. Our lawyers naturally suggest that we should create laws that prevent our societies from abusing the available natural resources and polluting the environment with long-lasting, irreversible effects.

These laws should contain institutional and procedural guarantees for the implementation of these requirements, including severe sanctions and consistent enforcement programmes. The procedural rules in connection with public participation are amongst the most important guarantees of sustainable development and intergenerational equity.