

Selected Articles on Public Participation in Hungary

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STRATEGY PLAN OF PESTERZSÉBET

<http://www.pestorzsebet.hu/st2.htm>

Pesterzsébet is the district XX of the Hungarian capital-Budapest. The citizens and the management of the district consider the development of their community important. Thus the strategic plan of Pesterzsébet has been prepared with public participation and the professional assistance of the Canadian Urban Institute and supported by the Canadian International Development Agency. The strategic plan indicates the major strategic directions of the city's development till 2020.

Basic characteristics of Pesterzsébet:

- Territory: 1,200 hectares (2.3% of Metro Budapest)
- Population: 70,000 (3.6% of Metro Budapest)
- Density of population: 57 inhabitants/hectare (Metro Budapest: 38)
- Households: 30,000 and overall average household size of 1.95-2.75 persons
- Garden suburb character with Danube-shore
- Number of businesses: 6,648
- A safe place to live and work
- Transit area and commercial centre of the South Pest Region
- South Gate to Metropolitan Budapest
- National and European roads and highways border the District
- Approved Strategic Plan with public participation in 1998

HUNGARIAN SITUATION ON PUBLIC PARTICIPATION IN REGIONAL DEVELOPMENT

<http://www.mtvosz.hu/kiadvanyok/AarhusKonyv.pdf> (in Hungarian)

<http://www.mtvosz.hu/kiadvanyok/AarhusBook.pdf> (in English)

Petr Pelcl, Istvan Farkas, Piotr Handerek: Public participation in regional development in Central Europe. Aarhus Convention and Regional Development Project.

Author of the following section: Istvan Farkas (National Society of Conservationists)

The Hungarian administrative and development system

Hungary is a parliamentary democracy and its key institutions include the Parliament, the Presidency and the Government. The Hungarian Parliament consists of a single chamber - the National Assembly. Its 386 members are elected for the period of four years. The system combines "first-past-the-post" single-member constituencies and proportional representation with a minimum threshold of 5% of the votes for obtaining a seat in the latter case. The Parliament exercises legislative power. It shares its right of initiative with the President of the Republic and the Prime Minister/Government. Among the mentioned players, the Prime Minister is the most powerful player in the democratic governance in Hungary.

The administrative organisation of the country is based on decentralised units of the central state administration and on local authorities whose leaders are elected for the period of four years either at county level (19 plus Budapest) or at the level of towns and villages. The 3,168 local authorities have extensive powers that are protected by the Constitution.

In Resolution 35/1998 on the National Concept for Regional Development, the Parliament established seven regions for planning and statistical purposes. The 1996 Act on Regional Development set provisions for the creation of Regional Development Councils in accordance with this. With reference to the population and geographical size, the Hungarian planning and statistical regions are in line with the regional programming levels (NUTS 2) of the European Union. The regions comprise of counties (NUTS 3), self-governmental municipal units (NUTS 5) and public administration units. The counties are well established territorial units based on a tradition that is centuries old. Municipalities fall under statistical micro-regions (NUTS 4), where some development planning (like SAPARD) happens. The self-governmental levels (municipalities and counties) and planning levels (micro-regions and regions) are separated (see Table). However the recent self-governmental levels practically have no internal resources, only support from the national budget. It causes that the development regions depend heavily on central state resources.

Name of the unit	NUTS level	No of units	Type
Municipality	NUTS 5	3168	self-governmental, administrative level
Statistical microregion	NUTS 4	150	non-administrative, planning level

County	NUTS 3	19 + the Capital	self-governmental, administrative level
Regions	NUTS 2	7	non-administrative, planning level
Country	NUTS 1	1	administrative, governmental and planning level

An Amendment to the Act on Regional Development has been approved in October 1999. In view of the special characteristics of the lake Balaton area and its high revenue generating capacity the Amendment established, apart from the seven statistical-planning regions, the Balaton Functional Region.

Regulations, rules on regional policy and legal framework of public participation

In 1996 the Hungarian Parliament issued the most essential regulation on regional policy, the 21/1996 Act on Regional Development and Spatial Planning. The law provides the legal framework of regional development, defines the institutions for regional and national developments.

The main task of the Regional Development Councils is to enhance the socio-economic and cultural development of the respective regions. According to this principle, the Act and its Amendment define the tasks and co-ordination role of the Regional Development Councils. The tasks of the Regional Development Councils include the following:

1. Analyse and evaluate the socio-economic situation of the region
2. Elaborate and approve the long- and medium-term regional development concept, and the development plan of the region, including its strategic and operational parts
3. Co-ordinate the development of the regional economy
4. Elaborate a financial plan and provide a proposal for the harmonisation and timing related to the use of different funds
5. Decide on, and organisation of the implementation of programmes and sub-programmes
6. Keep a record of the implementation of the programmes, including the financial flows
7. Ensure that funds are efficiently and properly utilised so that the aims of the programmes are met
8. Comment on the national, sector and regional development concepts, programmes and spatial development plans
9. Contribute to the resolving of social and economic crisis situations occurring in the region
10. Decide on the funds allocated to the council for development actions

11. Make agreements with the relevant institution of public administration on performing tasks that go beyond the respective regional borders
12. Perform tasks falling within its competence due to the law.

The Parliament issued the 35/1998 Resolution on National Regional Development Conception in 1998. That resolution describes a national vision of the regional development, defines the national goals and guidelines for the regional policy, gives priorities for sectors related to the regional policy (environmental protection, human infrastructure, industry, agriculture, tourism, technical infrastructure), defines tasks related to international integration.

The 184/1996 Government Regulation on Discussion and Accepting Rules of Regional Development Conceptions and Programs, and Spatial Planning Documents sets obligations for the partnership in planning and programming. The regulation defines how to discuss the plans. The regulation focuses on discussion with various local and central governmental organisations, only the business chambers and architect professional organisations are included in the processes. The civil sector is not mentioned in the regulation. The regulation includes obligations for the planners to inform the public about the planning process and how the citizens can give their opinions about the plans. Practically the public announcements do not happen.

The 53/1995 Act on the General Rules of Environmental Protection includes the right for public participation in regional development planning. The law declares that environmental civil associations have the right to participate in the designing of regional and spatial development plans, participate in environmental permission processes and give their opinion on the drafts of governmental and local governmental regulations related to the environment. The problem is that the participatory rights have no detailed regulation, and the implementation is very confused. Many times environmental associations do not get information about the planning process, so they cannot use their theoretical rights to participate.

The Act on Environmental Protection has also some provisions on the environmental analysis of plans, programmes. The law says that the legislators of bills and other regulations relating to the environmental protection concerning the national social-economic plans, regional policy concepts and decisions with a regional impact shall be obliged to assess the impacts of measures on the environment and to summarise them in an assessment analysis. The drafts and assessment analysis - before a submission to the decision-making bodies - shall be sent to the National Environmental Council. The National Environmental Council, also created by the Act on Environmental Protection, is an advisory body of the Government on the environment related issues, it consists equally of the representatives of businesses, NGO and the scientific sphere.

The Act on Regional Development and Spatial Planning and its details containing regulation obligate the planner to make an environmental, social and economy assessment, but no detailed rules about the methodology are given and nor is public participation obligation mentioned. Besides these rules, there is no regulation similar with the strategic environmental assessment of programs and plans in Hungary. In 2001 Hungary ratified the Aarhus Convention. The Environmental Ministry's position is that Hungary has no need to modify any law or regulation in order to harmonise its legal system with the Aarhus principles, Hungary should only strengthen the implementation bodies. The Hungarian NGOs criticise this position, and ask for better and detailed legal regulations in the implementation of the Convention. In particular, the provisions on public participation concerning plans, programmes and policies relating to the environment need detailed legal rules.

Preparation of the Hungarian regional policy for the EU accession

Since 1998 the Government has issued several resolutions regulating the tasks relating to the use of the Structural Funds and Cohesion Fund. The Government defined the tasks and responsibilities on the preparation of EU regional policy. As mentioned, in 1998 the Parliament created 7 planning-statistical regions for EU NUTS 2 level. The NUTS 2 regions (and most important cities):

- West-Transdanubia (Győr, Szombathely, Zalaegerszeg) – 50% of EU average GDP,
- Middle-Transdanubia (Veszprém, Székesfehérvár, Tatabánya) – 45% of EU average GDP,
- South-Transdanubia (Kaposvár, Pécs, Szekszárd) – 38% of EU average GDP,
- Middle-Hungary (Budapest, Pest county) – 70% of EU average GDP,
- North-Hungary (Miskolc, Salgótarján, Eger) – 33% of EU average GDP,
- North-Plane (Nyíregyháza, Debrecen, Szolnok) – 33% of EU average GDP,
- South-Plane (Szeged, Kecskemét, Békéscsaba) – 38% of EU average GDP.

The Act on Regional Development defines the membership of the Regional Development Councils and the National Regional Development Council. In 1996 the law stipulated the membership in the councils for social and business representatives. However the Amendment to Act on Regional Development modified the composition of the Regional Development Councils, and only governmental and local-governmental representatives received the opportunity to the membership. The members of Regional Development Councils are the presidents of the County Development Councils, the representatives of several ministers of the central Government as well as representatives of self-government's associations for regional development, representatives of cities with county rights and the president of the Regional Tourism Board. In this structure, central government bodies have the majority in the Regional Development Councils. The law does not regulate any public participation in the regional development. The business life and the social partners have no representatives in the Councils, although RDCs can invite them regularly and they have consultation rights. A majority of the RDCs do not invite NGOs for its meetings.

In Governmental Regulation 166/2001 regulating the Monitoring and Evaluation Systems of Programmes Funded from International Aids and Supports, the Government decided to set up Regional Monitoring Committees. The resolution requires public involvement in RMCs. However the RMCs have not been established and it is not clear how the NGOs will be involved in the work of RMCs.

The public participation situation at national level is better. The Act on Regional Development defines the National Regional Development Council. That Council serves as an advisory committee for the Government, and is responsible for the harmonisation of the interests of various partners, such as the government ministries, regional and county development councils, local governments, trade unions, and businesses. The law does not ensure the obligatory membership for the civil sector, but the NRDC regularly invites the representatives of the Rural Parliament (umbrella organisation of rural development civil groups) and environmental NGOs and they have consultation rights.

The Government is setting up Chapter Monitoring Committees for the monitoring of the operation of EU pre-accession funds related to the different ministries. The Environmental Ministry included two environmental NGO representatives into its Chapter Monitoring

Committee's work. Unfortunately the Ministry for Economy and the Minister responsible for Phare refused the environmental NGO involvement in its Chapter Monitoring Committees.

Regional Development Agencies have been set up in all regions to support the RDCs in their work and for administering national and international support programmes at regional level. The staff of ten to twenty people works in each RDA. The RDAs have no separate staff capacities for informing or involving the public information. The programming and planning are more expertbased, and they do not build the plans for the needs of different social and business partners. Only the local governments are involved in the planning exercise. A Synthesis Paper of the DG Regio states that one of the most important problems in the operation of Regional Development Councils and Regional Development Agencies in Hungary is that "a process of involving the various concerned partners in the region to the programming exercise has not really started." The Government developed several plans for the EU pre-accession funds and the preparation of Structural Funds. The key national plans and conceptions for the whole county are as follows.

National Programme for the Adoption of Acquis Communautaire (2000), That programme includes measures to harmonise and implement Community legislation. It also includes measures for the regional policy.

ISPA Strategy (2000), Two sector strategies have been developed for the infrastructure development pre-accession funds - an environmental and transport strategies. During the preparation of the strategies NGOs were not involved, and it seems that the ministries are not open to involve the public into the revision of the documents. The implementation of the ISPA assistance has started.

National SAPARD Plan (2000), The SAPARD Plan includes measures for the agriculture and rural development. During the planning process the Rural Parliament received opportunities to give their opinions on the plans. The SAPARD Monitoring Committee includes NGO representatives from the Rural Parliament and environmental NGOs too. The operation of the SAPARD fund has not started because of the accreditation problems of the national management authority.

Preliminary National Development Plan (2000 and 2001) In order to put the pre-accession aids into the perspective of several years and to describe the methodology for the planning of Structural Funds, the European Union asked all candidate countries from Eastern and Central Europe to elaborate their "Preliminary National Development Plan".

Based on the directive that regulates the implementation of the Phare programme, the PNDP provides a direct basis for the elaboration of the measures and projects that will be supported in the framework of the Economic and Social Cohesion chapter of Phare in the period between 2000-2003. The planning process of the PNDP was not open to the public, only an English version is made by the Government - it shows that this plan was made for the EU officials, not for the Hungarian citizens. The planning process was urged by the European Commission. This may have been the reason why the government officials did not involve any public organisations into the programming. The Government accepted several national plans, which are not funded by the European Union, but have an important impact on the regional policy:

- National Regional Development Conception (1998) - the basis for every regional development activity in Hungary,
- Szechenyi Plan for 2001-2002 (2000) - a 2,2 billion EUR national economic development plan,

- National Environmental Action Programme (1998) - measures for the developing of the environment,
- National Spatial Planning Plan (2001) - this plan have not been accepted.

At NUTS2 level, the regions have made several plans since its establishment:

- Regional Preliminary Development Plans - a regional input for PNDP.
- Regional Strategic Plans for 2000-2006,
- Regional Operative Programs for PHARE 2000-2002.

From the PHARE 2000-2001 budget, only three eastern regions are supported. Other four regions got governmental support in order to practice a Structural Fund type operation. PHARE 2000 supports:

- tender system for the co-operation of SMEs,
- local or regional infrastructure (environmental or transport) investments, industrial parks, logistic centres, incubator houses,
- tender system for the connection of economy and education,
- tender system for the employment of social handicapped people,
- education programme for the development of human resources of SMEs.

The PHARE 2002-2003 supports regional development activities for the whole country - 7 regions. The regions should choose one or two activities from the following:

- integrated settlement development,
- roads,
- environmental protection.

At micro-regional level, strategy plans and operative programs were designed for the SAPARD fund in 2000-2001. Many environmental NGOs participated in the local planning, and in some 6 micro-regions, environmental NGOs managed the planning process as gestors.

One of the most important things in line with the processes that will prepare Hungary to accede to the EU on 1 January 2004, a National Development Plan (NDP) for the period from 2004 to 2006 is drafted in order to meet EU requirements concerning the Structural Funds operation in a Member State.

The preparation of the National Development Plan started at the beginning of 2001, and it will be accepted by the Government at the end of 2002. The NDP includes a situation analysis, strategy, operative programs and description of the implementation structure.

The main NDP programming areas:

- Agriculture and rural development (co-ordinated by the Ministry for Agriculture and Regional Development),
- Infrastructure (the Ministry for Transport and Water-management),
- Economy (the Ministry for Economy),
- Human resources (the Ministry for Education),
- Regional Development (the Ministry for Agriculture and Regional Development).

The Environmental Ministry participates in each programming work group, and the European Commission tries to press the planners to integrate environmental aspects into all the Sector and Regional Plans.

Apart from the Sector Operative Programs, only one single Operative Programme for Regional Development is planned. Because each Hungarian NUTS 2 region is eligible for the Objective 1 of Structural Funds, the EU regulations allow to prepare a single OPRD instead of 7 ROPs. Last year the European Commission declared that they strongly supported the single OPRD, because they thought that the regional institutions did not have enough capacity for a safe management of the Structural Funds in the first NDP period (2004 to 2006). This decision threatens the organic development of the regional development structure in Hungary. Environmental NGOs underlined the importance of the decentralisation of the regional development, and the needs of strengthening the bottom-up and integrated approach. The Government should find a solution, where the newly established Regional Development Councils - with an extensive partnership with civil, social and business associations - can manage a real amount of development funds.

The civil society has some opportunities to participate in NDP preparation. In particular, environmental NGOs are allowed to give opinions in all Sector and Regional Plans. The public participation process started in an early phase - NGOs can provide their opinions about the situation analysis. The management and monitoring system of the Structural Fund assistance is not clear, and neither is the partnership structure.

The Hungarian Government published in its negotiating position for the EU: "Local and regional governments and economic and social partners will be involved in the planning and implementation of the programmes, in particular through the National Regional Development Council and the seven regional development councils". There is no information about the concrete implementation of the quoted principles at this time.

Activities of the environmental NGOs (especially MTVSZ/NSC) in the field of regional policy

The Hungarian environmental NGO sector is well organised. 6,000 NGOs are registered with environmental and nature conservation aims, but only some 1000 groups may operate in the country. The most active number of some 400 to 500 organisations have a network. They meet every year in the National Environmental and Nature Conservation NGO Gathering. In 2002 the National Gathering XII was held in the city of Szarvas, and organised by the local Nimfea Association. The purposes of the National Gathering are to exchange information on different environmental topics, know each other's work, to meet government officials from the Ministry for Environment, and elect representatives to various committees of the Ministry for Environmental and other governmental bodies. Since 2001 environmental NGOs can send a representative to the National Regional Development Council.

Environmental organisations have been involved in development issues, they have been contributing to the development plans of counties, micro-regions for several years. Many of them realised how the public economic and regional development can influence the local environment, society and economy. The development support of national and county level public institutions have one of the most important impacts on the chances of local sustainable development. Several NGOs tried to participate in the work of regional development institutions but without stable funding such activities are in most cases implemented "ad hoc".

The Magyar Természetvédők Szövetsége – National Society of Conservationists, which has 84 member groups with 30,000 individuals, has been working on environmental issues since 1990. The MTVSZ has been very active for the last four years, in the field of the European

Union enlargement. It formulated NGO opinions on the impacts of the accession, informed the NGOs and the public on the environmental advances and challenges of the process. During the first sixcounty Enlargement Project (supported by DG XI and co-ordinated by MTVSZ) the MTVSZ learnt that not only the environmental policy of the EU influences the environmental conditions, but also several other policies (such as transport or regional policies) have a big impact on it. The Structural Funds provide social partners (especially the environmental social partners) with the possibilities to participate in the programming, financing, monitoring and evaluation to promote a sustainable development by the integration of the environmental protection.

In 1999 MTVSZ decided to launch a programme aimed at the preparation of environmental NGOs to participate in regional development issues as well as to advocate for the public participation institutions in the regional policy. The MTVSZ organised several meetings among its member groups to develop a project during the recent years. For example MTVSZ organised regional EU forums in five regions in the period from 2000 to 2001. In each region, between 15 and 40 NGOs and representatives of the regional development institutions participated in the meetings. MTVSZ staff studied the European Union legislation on regional policy, Hungarian regulations and the situation at national level.

The annual meeting of Hungarian Environmental NGOs elected MTVSZ's director to represent environmental NGOs in the National Regional Development Council in 2001. The director regularly participates in the meetings of the NRDC, and meetings of the Parliament Committee on Regional Development. MTVSZ staff also represents environmental NGOs in the Chapter Monitoring Committee of the Ministry for Environment.

MTVSZ co-ordinates a 16 member NGO coalition (the biggest national and regional environmental NGOs such as WWF, Clean Air Work group etc.) to participate in the planning process of the National Development Plan. The project is funded by the Ministry for Foreign Affairs, Hungary. The MTVSZ chair was co-opted by the Ministry for Environment to the Ministry's internal NDP work group. The MTVSZ was also charged by the Ministry to organise public hearings for NDP, first public hearings were held with 80 participants from various sectors of the society last June.

MTVSZ and its Dutch partner, Milieukontakt Oost-Europa received a two year grant from the MATRA programme of the Dutch government intended for the "Institutionalisation of public participation in regional development in Hungary" project, which includes activities for 4 other Hungarian NUTS 2 regions. The Hungarian Ministry for Environment and Ministry for Agriculture and Regional Development also funded project activities in the North and South-Great Plane regions. The project started in October 2001. The project aims to create NGO coalitions in each region, establish NGO expert groups for the monitoring of Regional Development Councils and Agencies' activities, create regional newsletters and information points for information exchanges between the development institutions and civil groups, and to advocate for public participation and sustainable development. The project includes national and European level advocacy activities in order to establish an institutional and legal base for public participation for sustainable development.

Supplement

Regional policy, and related regulations:

- 53/1995 Act on Environmental Protection,
- 21/1996 Act on Regional Development and Spatial Planning,

- 30/1997 Parliament Resolution on Principles of Regional Development Support and Decentralisation, the Framework of Selection of the Target Territories
- 35/1998 Parliament Resolution on National Regional Development Conception,
- 184/1996 Government Regulation on discussion and accepting rules of regional development conceptions and programs, and spatial planning plans,
- 2307/1998 Government Resolution on transformation of our development system to EU compatibility,
- 2134/1999 Government Resolution on next tasks of transformation of our development system to EU compatibility,
- 2073/1999 Governmental Resolution on tasks relating to the use of Structural Funds and Cohesion Fund,
- 2171/1999 Governmental Resolution on establishment of Development Policy Inter-Ministerial Co-ordination Committee,
- 2273/1999 Governmental Resolution on next tasks relating to the use of Structural Funds and Cohesion Fund,
- 1109/1999 Governmental Resolution on PHARE 2000,
- 1063/2000 Governmental Resolution on PHARE 2001.
- 166/2001 Governmental Regulation on Monitoring and Evaluation Systems of Programs Funded International Aids

MANUAL ON PUBLIC PARTICIPATION IN ENVIRONMENTAL DECISIONMAKING – COUNTRY REPORT: HUNGARY

Current Practice and Future Possibilities in Central and Eastern Europe

Edited by Magdolna Tóth Nagy, Margaret Bowman, Jiri Dusik, Jerzy Jendroska, Stephen Stec, Karel van der Zwiep and János Zlinszky

Budapest, 1994

<http://www.rec.org/REC/Publications/PPManual>

Following country report: <http://www.rec.org/REC/Publications/PPManual/Hungary.html>

I. Introduction/Recent Political Context

As the political/economic transition started in Hungary in 1990, environment was high on the political agenda. It had been hoped that Hungary, with a relatively strong and complex economy, and a great deal of foreign interest in investment opportunities, would serve as a model for the rest of Central and Eastern Europe in matters relating to environmental protection and public participation.

An international environmental law drafting effort, through an independent working group of foreign and Hungarian legal experts, was launched in 1991. The product was intended to be a model for the region. That draft, however, has been combined with parallel efforts of the Ministry of Environment and Regional Planning and other groups, and has gotten bogged down in pre-election politics. By the time the second free elections were called for May 1994, the environment ceased to be political priority - for government, opposition and the electorate alike. In 1993 the Ministry promulgated Environmental Impact Assessment regulations based upon the effective 1974 law (Decree No. 86/1993). Another law having an effect on public participation in environmental law is Act LXIII of 1992 on the protection of personal data and free access to public data.

II. Legal Structure and Legislative Process

A. Constitution

Rather than adopting a brand new constitution, as has been done in most countries of Central and Eastern Europe, or revitalizing an old one, as has been seen in the Baltic States, Hungary has chosen to continue its pre-transition constitution (1949) in force, although thoroughly amending it in 1990. Recognizing the shortcomings of this process, however, the political forces shaping the country have discussed drafting an entirely new constitution, with a goal of adoption soon after mid-decade.

1) Basic Rights and Obligations

a. Right to Healthy Environment

Chapter I, Article 18 of the Constitution of the Republic of Hungary states: "The Republic of Hungary recognizes and implements everyone's right to a healthy environment." Article 70/D, concerning the rights of persons living within Hungary to the highest possible level of physical and mental health, places an obligation on the state to provide for protection of the man-made and natural environment.

b. Right of Expression

Article 61 guarantees the right of free expression.

c. Right to Information

Article 61 (1) of the Constitution states that everyone has the right of access to information of public interest.

d. Right of Free Assembly

The right of peaceful assembly is guaranteed by Article 62 of the Constitution.

e. Right of Association

Article 63 of the Constitution guarantees the right of association for purposes not prohibited by law.

f. Right to Petition

Article 64 provides:

In the Republic of Hungary everyone has the right to submit written petitions or complaints either alone or together with others.

g. Government's Relationship to the Citizens

Article 2 (2) of the Constitution states:

In the Republic of Hungary all power belongs to the people. The people exercise their sovereignty through elected representatives or directly.

Further, Article 19 (2) acknowledges that the Parliament exercises rights derived from the sovereignty of the people.

Chapter VII, Article 35 (1) states:

The Government shall:

- a. protect the constitutional order, protect and ensure the rights of citizens;
- b. provide for the enforcement of the laws;
- c. direct the work of the Ministries and other bodies directly subordinate to it, and coordinate their activities...

Article 36 of the same chapter states:

In the performance of its functions, the Government cooperates with the social organizations concerned.

2) Right to Petition Constitutional Court for Review

Article 32/A of the Constitution establishes the Constitutional Court. Any person may initiate proceedings before the Court pertaining to matters within its jurisdiction. Art. 32/A (3).

a. of Law or Rule

The Constitution provides members of the public the right to challenge the constitutionality of any newly enacted or existing law before the Constitutional Court. Article 32/A; see also Act XXXII of 1989.

b. of Action of Official

Persons also have the right to initiate other proceedings before the Constitutional Court such as may be prescribed by law. The Law on the Constitutional Court (Act XXXII, 1989) grants the Constitutional Court jurisdiction to decide cases where a fundamental constitutional right of a person is violated by the act or omission of another. Art. 1 (d).

3) Other Remedies

Although not specifically referring to any particular court, Article 70/K of the Constitution provides:

Claims deriving from infringement of fundamental rights and objections to state (administrative) decisions in regard to compliance with duties may be brought to the Courts.

Article 32/B of the Constitution establishes the position of Parliamentary Commissioner (Ombudsman) for Civil Rights to investigate abuses of constitutional rights and to initiate measures for redress. All persons may petition the Ombudsman to take action. As of the end of 1993, this position remained unfilled.

B. Legislation and Rule-Making

1) Constitutional Provisions

Article 36 of the Constitution states:

In the performance of its functions, the Government cooperates with the social organizations concerned.

Moreover, Chapter IX, Article 42 states in part:

The exercise of the powers of local self-government shall be an independent, democratic administration of the local public affairs concerning the community of the electors and the exercise of local public authority in the interest of the population.

2) Right of Initiative

The Constitution does not include the right of the people to initiate legislation.

However, Act XVII of 1990 on Referendum and Public Initiative (amended Act XXXIX, 1989, and Act XLVI, 1990) governs the right of the public to initiate legislation on the national level. The Parliament is obliged to consider legislation presented upon petition of 50,000 signatories.

Under Art. 45 et seq. of the Local Government law, the public has rights pertaining to initiative on the local level.

3) Right of Referendum

The Constitution does not directly address the right of the public to petition for a referendum. But under Article 30/A (1) (g), among the powers of the President of the Republic is making a motion for the holding of a plebiscite or referendum. Act XVII of 1990 on Referendum and Public Initiative governs the right of the public to call for a referendum on laws passed by the Parliament. If 100,000 signatures appear on a petition for referendum for a specific law, that act will be subject to the referendum process.

Under Art. 45 et seq. of the Local Government law, the public has rights pertaining to referendum on the local level.

Prior to the changes in government the citizens attempted to call for a referendum on the issue of the Gabčíkovo-Nagymaros dam, currently the basis of a dispute between Hungary and Slovakia following Hungary's disavowal of a treaty contemplating construction of a dam on the Danube in Slovak territory. The previous regime ignored the call for a referendum.

4) PP Provisions in Laws

The House Rules of Parliament do not include mandatory public participation in the deliberations of Parliament or its committees.

The Act on Lawmaking (Act XI of 1987) regulates the process of making legislation on the Governmental level (technically this law applies to lawmaking without reference to whether the legislative activity is undertaken by the Government or by Parliament). Although this law contains provisions for public participation, its wording is ambiguous. For instance, Article 19 of the law provides:

Citizens directly or by representative bodies cooperate in the making of laws regarding their living conditions.

Similarly, Article 20 states:

Bodies of public administration, social organizations and labor unions should be included in the process for preparing the drafts of those laws which concern interests represented and protected by them or which concern social conditions.

Article 27 enumerates those persons who may "declare their opinions" concerning drafts under consideration by the Government, and includes "concerned social organizations and labor unions." The law is vague concerning notification of such organizations concerning the process of drafting laws. Groups are to be given such notification, and the opportunity to comment on drafts, if the issues involved are of "significant" interest to them. However, the relevant government authority decides if a group has "significant" interest, and as there are no firm guidelines for measuring this significance, groups are rarely consulted.

Former Articles 33-36 of the Act on Lawmaking provided more elaborate procedures for including public comment and input into the lawmaking process. These provisions governed the organization of the "social discussion" of draft laws, and included the requirement that the social discussion be conducted at such time that the proposals and comments presented therein could be used in the process of drafting the law. These articles were repealed by Act XXXI of 1990, shortly after the change in government, with the explanation that the social discussion process was considered to be one of the hallmarks of the sham democracy of the former system and was in reality an obstacle to the legislative process. Nevertheless the current law contains no definite procedure for accepting public participation in the process of governmental lawmaking.

5) PP in Parliamentary Practice

Most laws are drafted by the Government and submitted to Parliament. In some cases, however, Parliamentary committees or individual Members of Parliament draft and submit laws. Instances of public involvement in the policy making process have occurred in the preparation of draft environmental laws. For instance, an independent group appointed by Parliament to draft a comprehensive law advertised and held several public forums, and provided for public access and commentary on its drafts. During the early days of this drafting process advertisements appeared in several daily newspapers, inviting anyone to participate in the discussion. Although there was significant response at the time, the process of drafting a new framework law has become so protracted that public involvement has waned dramatically.

6) PP in Governmental Practice

The Ministry circulated copies of its Fall 1992 draft framework environmental law to a wide range of NGOs, business interests, academics and officials from other ministries and solicited

comments. This public participation was arranged on a somewhat ad hoc basis, and it is as yet uncertain to what extent public input will be included in the draft that is accepted by parliament. The latest Ministry draft (early 1994) includes some provisions that were incorporated as a result of soliciting public comments at earlier stages of the drafting process.

The Government Decree, No. 43/1990 (IX.15.), which outlines the responsibilities and authority of the minister for environment and regional policy calls for the formation of national environmental policy. Section 1 states that the minister shall, "put forward a proposal for the national program of environmental protection, regional development and building." The only reference to public participation in the decree appears in Section 3 which states that the minister shall:

keep in touch with the citizen's organizations and movements, manage the surveys aimed at information about public views concerning environmental protection, follow up, process and evaluate the manifestations of public opinion.

The decree lacks any more specific procedures for involving the public in the ministry's formation of national environmental policy.

The Ministry of Environment and Regional Planning has an office charged with relations with public organizations. Recently this office conducted a meeting for NGO representatives to discuss the use of moneys in the Environmental Fund.

7) PP on Local/ Regional Government Level

Chapter IX, Article 42 of the Constitution states in part:

The exercise of the powers of local self-government shall be an independent, democratic administration of the local public affairs concerning the community of the electors and the exercise of local public authority in the interest of the population.

Article 44/A (1) (g) of the Constitution, enumerating the powers of local governments, provides, inter alia, that:

in public affairs of concern to the local community, [the local representative body] may put forward initiatives to the authority which has the right to decide the case.

Under Act LXV of 1990 on Local Self-Governments the local self-governments within the Republic of Hungary were granted autonomy over a wide range of matters affecting the local populace. Among the tasks of the municipal self-governments (numbering in the thousands) are, according to Chapter II, Art. 8 (1):

local development, resettlement, the protection of the built and natural environment, housing management, water management ... [cooperation] in solving problems of employment; ... facilitation of the establishment of the communal conditions of a healthy way of life.

Under paragraph 2, the self-governments have discretion to decide what tasks it will execute, to what extent and in what manner, according to the local requirements and financial limitations.

The local representative body shall hold public meetings, although upon justification it can hold closed sessions. Art. 12(3). Moreover, under Art. 13,

the representative body shall hold public hearings announced in advance at least once a year, where the citizens and the representatives of local organizations can ask questions and make proposals on matters of public interest.

A significant provision is Art. 18(2):

The representative body shall determine the order of the fora (village or town policy forum, town district meeting, village meeting, etc.) the purpose of which is to inform the citizens and social organizations directly and to involve them in the preparation of important decisions. The representative body shall be informed of the standpoint taken by these meetings and of the minority opinions expressed.

Thus, the potential exists, if local self-governments do their duty, for there to be a meaningful forum with good public participation on issues of local importance, including (under Art. 8) issues relating to local development, the natural and man-made environment, and employment.

A main task for local governments in which there has traditionally been some participation by the public is the process of adopting regional development plans under Act III of 1964 on Buildings and the executive decrees implementing this act.

C. Right-to-Know and Freedom of Information

1) Constitutional Provisions

Article 61 (1) of the Constitution states that everyone has the right of access to information of public interest.

Under Article 27, Members of Parliament may demand information from the Government and from other authorities.

2) Laws

Act LXIII of 1992 provides for the protection of personal data and for access to public interest data. The act protects business secrets, allowing the concerned company to decide what data is qualified as secret. The Act stipulates that data concerning the activities of state and local governments should be open to the public, with exceptions on data concerning national security and criminal procedures and related issues. Moreover, Section 20 of the Act requires the government agency to deliver requested data within fifteen days, or to notify the requester that the data is secret within eight days. Under Section 21, citizens can appeal such a refusal in court. Section 23 also calls for the appointment of a Data Protection Ombudsperson, to facilitate public appeals against non-compliant agencies.

The public often lacks information concerning environmental violators. There is no legal requirement that a company's violation of an environmental regulation be announced to the public, and the media rarely reports on such violations. Potentially, the newly established Data Protection Ombudsperson could increase public awareness regarding violators.

Data on pollution and health matters are now public and are required to be disclosed under the 1991 act on the Public Health Service. This has been interpreted not to apply, however, to data on individual facilities. Rather the National Public Health Service is required to publish periodically a report on the general conditions relating to health and the environment, with overall levels of pollution for areas within Hungary. The current draft environmental law still contains an EIA component that will include right-to-know provisions.

Another problem, however, is whether good data will exist. Apart from resource limitations, which are to be expected, under current law the REIs do not have inspection rights that would allow them to enter privatized premises. They may only monitor water discharges, for example, at the property line. Also, there is no requirement that industrial accidents be reported, although such circumstances normally go into calculation of fines.

Practice can often result in disclosure of information not required to be disclosed by law. For example, early in 1992 a small explosion occurred in a chemical plant in Budapest. The Lord Mayor then published a list of the biggest polluters in a newspaper of large circulation. Similarly, it is fairly common for citizens to ask local authorities for hearings on certain matters. Though this may not be a formalized process, it can result in the disclosure of useful information.

In an administrative case, a person who proves that information is necessary to protect a legal right may examine government files and make copies, but the authorities can refuse to disclose such information 1) where they determine that the requesting party doesn't have a recognizable legal right, or 2) in the interests of official secrecy. There are no enforceable guidelines at present that would limit the authorities in declaring something an official secret.

3) Procedures

Formal procedures to implement the requirements set forth above are reportedly lacking at present.

III. Legal Process

A. Administrative Law and Procedure

The Constitution, Article 50 (2) declares that the Courts shall supervise the legality of the decisions of public administration. Moreover, Article 57 (5) states:

In the Republic of Hungary everyone is entitled to legal redress or has the right of appeal against court or administrative decisions, or any other authority's decision, that infringe his rights or lawful interests.

Additionally, Article 70/K of the Constitution provides:

Claims deriving from infringement of fundamental rights and objections to state (administrative) decisions in regard to compliance with duties may be brought to the Courts.

1) Administrative Actions by the Public

Appeals from decisions of the REIs are heard by the Chief Environmental Inspectorate. Further recourse can be had in the courts. Citizens do have the right to urge action by the REIs or to complain about REI decisions. The Director of the REI should answer complaints within 30 days, after which the citizen can complain to the CEI. If no satisfaction is forthcoming, the citizen can then write a letter to the Minister of Environment. According to Ministry officials, this process is used frequently, but rarely results in any real change, as the Ministry takes a somewhat paternalistic approach to such questions.

The current law on public administration (General Rules of Administrative Proceedings, Act IV of 1957, amended 1981) contains a general statement that

the administrative procedure is based on the effective cooperation of the public authority, of the participating parties and of any other organs and persons participating in the procedure.

Participating parties are guaranteed certain procedural rights to ensure that their views are at least considered by relevant public authorities. Among the rights of a party specified under Article 2 (6) of the law are the right to make declarations and to receive remedies. In addition, parties are under an obligation to "cooperate." According to practice, "participating parties" have traditionally consisted of the central or local authorities and certain state-organized

interest groups, such as government agency representatives, workers' associations, and scientific institutes. Thus, this process more closely resembles an internal governmental consultative process than it does a public forum. Moreover, it is virtually impossible to get an outside organization added to the "flow chart." There is no obligation in law or practice to give public notice of most administrative procedures, or to invite interested parties to testify or make requests to participate.

For example, a local self-government recently considered transformation of a vacant commercial property to a trucking transfer station. Residents of the immediate vicinity had been urging the local authorities to convert the property into a park. When news of the proposal to make the trucking depot leaked out, the local residents protested. They were told by the local authorities that they were not interested parties, even though the new function of the property would result in increased traffic congestion, noise and pollution. This case has not yet been resolved.

Governmental Decree No. 26/1991 provides that citizens or municipalities may bring suit against administrative decisions. The ramifications of this decree will be discussed below in reference to the Metallochemia case.

2) Intervening in an Ongoing Case

Article 3 (4) of the General Rules of Administrative Proceedings provides that a party to a given administrative action is a person whose rights or legal interests are affected by the case. Any organization whose sphere of activity is affected by a case may thereby have the rights of a party. If an administrative authority refuses to admit a party to a case, the party may first ask the deciding authority to reconsider its decision (Art. 61), then may appeal to a higher administrative authority (Art. 62). If unsatisfied the party may then seek review by a court of law (Art. 72). There is no automatic stay of the subject proceedings while the review process proceeds, however.

3) Challenging Official Inaction

Failures of officials to carry out duties may be brought to the attention of higher administrative authorities, whose decisions on the matter may be final decisions subject to review by a court of law under the provisions cited above.

B. Public Participation in Environmental Protection Laws

The environmental protection law currently in force (adopted in 1976) is typical of such laws under the former regimes, giving lip-service to strict environmental standards, while providing no mechanism for administration or enforcement. There are no provisions in this law for public participation in decisions relating to environmental impacts, environmental protection or other decisions that might be made during the development process. Enforcement of the current law is undertaken by the Regional Environmental Inspectorates, twelve in number, which also handle permitting of facilities, in coordination with the regional Public Hygiene authorities, and the regional Water Management authorities. There has been talk about coordinating permitting (including the EIA component) under the single authority of the REIs, although this will be debated.

The recently established National Environmental Protection Fund is another instrument of national environmental policy. Act LXXXIII of 1992, as executed by Ministry Decree No.20/1993 (IV.23.), established the fund to support projects and investments related to environmental protection. The fund's revenues come primarily from fines paid by polluters, a tax on fuels and support from the state budget. There is very limited opportunity for public participation in the administration of the fund. Although one representative of environmental

NGOs sits on the committee that decides how to use the fund, the vast majority of committee members are representatives of interested ministries. The Ministry of Environment and Regional Planning recently organized a meeting for NGO representatives to discuss the principles of sharing the proceeds of the fund.

As a matter of practice, the Government Decree No. 43/1990, described above under "Public Participation in Governmental Practice," should be mentioned. This decree mandates public consultation in the formation of environmental policy on the ministry level.

1) Environmental Impact Assessment

The new, temporary EIA decree represents only a qualified step forward in public participation in environmental protection. The law calls for a two tiered EIA process, including a preliminary assessment followed by a detailed study. Public participation, in the form of a public hearing open to interested citizens, is required only in the second stage. Yet the government may issue an environmental permit after the first stage. Thus, a permit for an environmentally significant activity can be issued before any public participation has occurred. In addition, the language of the decree requiring assessment of public opinion is troublesomely vague. Article 7 (5) states:

Before its decision the Environmental Inspectorate shall examine the merits of the opinions important from the viewpoint of the environmental effects.

There is no guidance or practice as to what is "important" nor as to how the "merits" of the public comments are to be examined. The language is vague enough to be subject to differing interpretations by various officials, resulting in unequal and inconsistent application of the law. Despite its shortcomings, the temporary EIA law is vital in that it mandates environmental permitting, which had not been required before.

Even before promulgating the EIA decree, the Ministry had released guidelines on EIA in April 1991 -- Technical Instructions of the Ministry of Environment and Regional Policy on EIA. Although not a legal document, it extensively considers public participation. For example, it recommends proper presentation to interested economic and public organizations of information, data and all EIA documentation. The guidelines give instructions as to procedures and feedback mechanisms as well.

Governmental Decree No. 146/1992 (XI.4) establishes a supplemental EIA process for new power-generating facilities. This decree terms itself a "transitional regulation." As an element of pre-approval review of the environmental, social and large scale economic effects of proposed new power plants with capacities higher than 50 megawatts, the person proposing the project must submit a feasibility study and an environmental impact assessment report prepared according to the guidelines of the Ministry of Environment and Regional Planning to a committee of independent experts established by the Ministry of Industry and Trade. The proposer of the project and its expert consultants shall inform potentially affected local governments and citizens about economic and environmental impacts, and shall gather public comments. The proposer's experts must summarize and produce a report based on these comments, to be evaluated by the committee of independent Ministry of Industry and Trade experts. The expert report and the independent committee evaluation must then be passed to the ultimate administrative authority deciding the case under the law.

2) Environmental Permitting

The administrative law of 1987, the environmental framework law of 1976, and various media-specific laws, together with the new, temporary EIA decree regulate the process of environmental permitting. The older laws do not include procedures for public participation.

The draft framework environmental law has included public participation provisions throughout its many iterations. Although it is not useful at this point to predict the final form of the law or its public participation provisions, some generalizations may be made as to the types of provisions that have continued to exist in the law's draft forms. These provisions have included a general statement of principles including the principle of public participation, and an affirmative obligation of the government to encourage the active participation of the public through guaranteeing access to information and providing methods for citizen prevention and cessation of environmental damages.

3) Citizen Enforcement, Monitoring and Inspection Rights

Act I of 1977 regulates public participation in monitoring compliance with laws, regulations and permits. However, this law, like many promulgated at the time, contains only vague calls for public involvement and outlines no specific procedures.

C. Public Participation Through Other Laws

1) Land Use Laws

The centralized permitting process currently involves all of the authorities mentioned above, plus others such as the Nature Protection Directorates, the Road Transport Directorates, the Regional Land Offices, labor health authorities, and in special cases, geological survey (mining), civil protection agencies (explosives, nuclear), the Ministry of Defense and the Ministry of Interior (boilers and heating systems).

Local governments have authority over projects through two main mechanisms -- land use permitting and construction permitting. Although there is no requirement, other than what is contained in the Local Self-Government Law, for public participation in local permitting decisions, grass-roots political pressure can result in locals using their permitting authority to influence development. For example, the construction of a battery-recycling plant has been delayed, and is not yet complete, because of local procedures. A nuclear power plant project, which involves the proposed dumping of low- and mid-level radioactive wastes has been effectively halted because the local government refuses to issue the land use permit.

2) Construction Permitting

See discussion above.

3) Civil Code (Liability) and Civil Procedure

Civil Code (Act IV, 1959), Article 345, provides in pertinent part:

- (1) One who undertakes an activity that is unusually dangerous must provide compensation for harm resulting from his activity ... These rules shall apply to those whose activities endanger the environment and cause damages to another.

4) Penal Code

Criminal Code (Act IV, 1978), Article 280 states:

- (1) One who significantly pollutes, destroys or damages an object of human environmental protection commits a crime, punishable by up to 3 years imprisonment.
- (2) Punishment may be up to 5 years imprisonment if the environmental damage causes danger to life.
- (3) One who commits environmental damage by negligence commits a misdemeanor and can be punished by up to one year imprisonment, or by fine.

Article 281 applies to nature protection areas and to species under protection by law or by international agreement and provides penalties of up to one year imprisonment or fine, and up to 3 years imprisonment if damage is substantial.

IV. Anticipated Developments in the Law

The following laws are currently in drafting or on the agenda for future consideration:

- Framework environmental protection law
- Construction law
- Physical Planning and Zoning law
- Nature Protection law
- Preservation of Historical Monuments law
- Animal Protection Law

V. Case Studies on Public Participation (including Public Actions)

Public awareness seems to have ebbed a little after rising during the early days of the new regime due to the almost daily attention on the Danube Dam issue. A number of Green groups flourish, however, and sponsor activities such as bicycle rides and tree plantings. Earth Day activities have become popular. There are an estimated 2700 environmental associations and foundations registered with the Hungarian courts.

Public protests contributed to the controversy over the international agreement between Hungary and Slovakia over the construction of hydroelectric dams on the Danube River. At present, the Hungarian government has disavowed the agreement, but the dam has been completed on the Slovakian side of the border. The Hungarian government has decided to pursue the matter before the International Court of Justice. The result of public protests against a battery recycling facility and a radioactive waste dumping site have been mentioned above.

Another example occurred with regard to a closed heavy metal plant. Lead contamination was discovered in the soil in the vicinity of the plant. At the urging of the green movement public hearings were held. The mayor, acknowledging that the land was unmarketable, compensated the residents by reducing their land tax to zero.

As early as the 1970s protests by citizens living in the vicinity of the Nitrokémia chemical plant in Balatonfüzfő elevated to the level of filing a lawsuit. The court did not order any additional pollution controls to be placed on the facility, but required the company to compensate farmers for additional costs incurred in restructuring their agricultural activities in a way more resistant to the pollution.

The municipality and citizens of Nagytétény, an area of Budapest, are suing Metallokemia for damages of public health caused by its factory. The plant has already been shut down. Additional facilities shut down by public protests include the Mosonmagyaróvár and Kecel hazardous waste import and deposit facilities. Other facilities which were not built because of public protests include a hazardous waste deposit facility at Vértesacsá, a nuclear waste deposit facility at Ofalu, and a battery recycling plant at Gyöngyösoroszi.

BIBLIOGRAPHY

Caddy, J., Vári, A., "Planning the Budapest Ring-Road: A Learning Process in Public Participation". In: Vári, A., Caddy, J. (szerk.), *Public Participation in Environmental Decision-Making: Recent Developments in Hungary*. (Budapest: Akadémiai Kiadó, 1999), pp. 34-56

Caddy, J., Vári, A., "Public Participation in Environmental Decisions: Experiences, Trends and Lessons". In: Vári, A., Caddy, J. (szerk.), *Public Participation in Environmental Decision-Making: Recent Developments in Hungary*. (Budapest: Akadémiai Kiadó, 1999), pp. 181-192