

THE CITIZENS' PUBLIC PARTICIPATION UNDER EUROPEAN UNION LAW AND ENVIRONMENTAL LAW

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Abstract:

Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, June 25, 1998 (entered into force Oct. 30, 2001) [hereinafter Aarhus Convention], negotiated under the auspices of the UN/ECE (United Nations Economic Commission for Europe), is the result of the efforts to establish international legal standards in the field of citizens' environmental rights to date. Also, it is the first international document about public participation in environmental matters, developing the principle 10 of the Rio Declaration, which stresses the need for citizen's participation in environmental issues and for access to information on the environment held by public authorities. Public participation, one of the three main pillars provided by Aarhus Convention, could be one of the key factors in involving the citizens in the protection of the environment and strengthening compliance and enforcement of national and European environmental law. Under European Union regulations, the right to participate in environmental decision-making process could be exercised more effectively based on European Citizens' Initiative (ECI) procedure. Therefore, the European Citizens' Initiative (ECI), as introduced by the Lisbon Treaty, allows citizens to request new EU legislation once a million signatures from seven member states have been collected asking the European Commission to do so. This paper explores environmental citizenship within the framework of European Union (EU) environmental law.

Key words: public participation, Aarhus Convention, European Citizens' Initiative, environmental citizenship, the Lisbon Treaty.

JEL classification: K32, K33

INTRODUCTION

Environmental democracy is one of the main solution to the ecological crisis, [1] and represents a new system of governance concerned with solving environmental problems (i.e. soil erosion, deforestation, water and air pollution, protection of nature parks, biodiversity etc.) through deliberative and participatory institutions.

This form of government promotes a new concept of citizen who is able to manage all the problems resulted from the ecological crisis, namely environmental citizen. The term "environmental citizenship" (and the derived word "environmental citizen") was used for the first time by Environment Canada, the Canadian Ministry of the Environment, who emphasized that "as citizens of the world, we do not have a good history of managing our environment well – we have taken our resources for granted and have often abused the resources which we inherited"[2]. Therefore, environmental citizens have a "personal commitment to learning more about the environment and to taking responsible environmental action"[3]. Most of the environmental theorists address the environmental citizenship as a status containing two types of rights based on the conception of the environment as a "subject about which there is disagreement"[4]. Environmental citizens have the substantive right to a healthy environment, to live in an environment adequate to their health and well-being [5]. Also, they have related procedural rights to defend and to campaign for those substantive rights.

In this regard, the 1998 Aarhus Convention is the most representative treaty on environmental procedural rights, providing for citizens (public concerned) involvement in policy-making and decision-making about the environment and enabling them to challenge environmental decisions [6].

Therefore provisions of this convention form the object of the first section of our paper. We have to stress that Aarhus Convention focuses on the role of individuals and neglects the collectivity, as an important actor in environmental decision-making at regional level. Thus, European Union established a very useful mechanism for the direct participation of citizens in European decision making process, namely European Citizens' Initiative (ECI), as will develop in the second section of our paper.

PUBLIC PARTICIPATION UNDER AARHUS CONVENTION

The Aarhus Convention represent a "giant step forward" in matching of rights with duties [7]; and correlates the effects of the present activities with the well-being of future generations. In this regard, as a precondition for the enjoyment of future generation to live in a healthy environment, Convention provides for the procedural rights of present generation to participate in decision-making regarding environmental decisions [8].

Aarhus Convention establishes three procedural rights (known as pillars): the right of information about environmental concerns, right of participation in policy-making and right of access to justice.

First pillar regarding the access to information could be understood from two points of view. According to Art.4 of the Convention, public has right to receive information from public authorities, including the obligation of the public authorities to give information after submission. Also, the public authorities have the obligation to collect and disseminate information of public interest without the necessity of any request. This obligation represents an active form of the access to information and is covered by Art.5 of Aarhus Convention [9].

The second pillar represents the right of the public participation, as we will argue below. And the third pillar of the Convention deals with the right to access to justice exercised in three different ways: right to review procedures in relation to information; right to challenge decisions, acts, or omissions subject to the public participation, and right to challenge acts and omissions by any persons, including public authorities which breach environmental laws (based on administrative or judicial procedures) [10].

The second pillar, regarding public participation in decision-making, is the main core of the Aarhus Convention. In order to enforce this pillar, public must be properly informed and have the access to justice in case of breach of the right of public participation (there is a correlation between second pillar with first and third pillars). Also, pillar II involves the "activity of members of the public in partnership with public authorities to reach an optimal result in decision making and policy making"[11].

Public participation consists in a set of procedural rules ruled by Articles 6, 7 and 8 of Convention. Because these articles provide for minimal requirements thus Parties of the international treaty have to take additional internal measures to promote and facilitate public participation.

First, public participation regards the decisions permitting activities which may have a significant effect on the environment, listed in Annex I of the Convention [12]. The procedure comprises notification, preparation and effective participation by the public, and it must be clear. Public participation must occur as early as possible in the process of taking a decision. Moreover the State has the obligation to provide the public with the relevant information referring to the activity which forms the subject of the decision, free of charge, upon request, as soon as it becomes available. While the public concerned has more rights in relation to notification and examination of a decision, the entire public is entitled to comment, submit information, analyses and opinions during the decision-making process [13]. The last three paragraphs of Article 6 concern the outcome of the decision, which it must be made publicly, in an accessible way. The public authorities must make sure that the decision takes due account of public participation.

Second, public authorities have the obligation to set up a transparent and fair framework for public participation in plans, programs and policies relating to the environment. In this regard, it is

important to established clear rules for notification, about the quality of information, in determine the participating public. Also parties have to be involved in the process of participation very early in the decision making process. Regarding the policies, public authorities must establish policies to endeavor public participation in policy making to the extent appropriate. The obligation that States guarantee that “due account is taken of the outcome of public participation” means that “there must be a legal basis to take environmental consideration into account in plans, programs and policies”[14].

Art.8 of the Convention stipulates the public participation in the executive branch of political power. It regards public participation during the preparation of executive regulations and/or generally applicable legally binding instruments. This provision is “quite novel” and it not concerns private decisions but legislative decisions [15]. According to this article, States must make their best efforts, leave options open and consider involving public when decisions may have potentially a significant effect on the environment. The Convention stipulates the necessity of flexible time frames and flexibility in taking due account of the outcome, as far as possible. It should be noted that this provision is vaguely and it given to States the possibility to apply this article in a different way [16].

Briefly, Articles 6, 7 and 8 cover the principles and procedures to follow in order to implement the Aarhus Convention effectively. It is necessary to ensure that the process does not focus solely on procedure but on the essence of the decisions about the environment.

Even that Aarhus Convention carries potential in solving certain democratic deficiencies, at European Union level is developed a new extensive framework which strengthen the link between citizens and European institutions, enhance a more appropriate model of democracy.

PUBLIC PARTICIPATION UNDER EUROPEAN UNION LAW

Created by European civil society, accepted by the Convention for a future European Constitution and stipulated by article 11, paragraph (4) of the revised Treaty on European Union (TEU), and article 24 of the Treaty on the functioning of the European Union (TFEU), European Citizens’ Initiative offers to European citizens the opportunity to get involved directly in European Union (EU) politics, not only in environmental matters.

According to above mentioned provisions, two regulations were adopted: Regulation (EU) no 211/2011 of the European Parliament and of the Council on the Citizens’ Initiative, [17] and Commission Implementing Regulation (EU) no 1179/2011 laying down technical specifications for online collection systems pursuant to Regulation (EU) no 211/2011 of the European Parliament and of the Council on the citizens’ initiative [18].

As it is noted in legal doctrine, ECI are not static instruments, it has to be understood as process that stretches across interdependent stages. This means that each stage has specific objectives and unfolding conditions. In addition, ECI is developed within well-established institutional and political context which decisively influence he outcomes of this “legislative process”[19].

The success of the participation of European citizens at the EU’s democratic life through ECI largely depends on the extent to which the entire procedure is clear, simple, user-friendly and proportionate to the nature of the issue which need a legislative act. Also, the conditions for supporting a citizens’ initiative by the citizens of the Union have to be similar, regardless of the Member State from which they come; ensuring a judicious balance between rights and obligations.

Moreover it should ensure as uniform and spread over an area as large signatories, from as many Member States. In this regard, regulation provides the minimum number of signatories coming from each Member States, and the minimum number of states from which citizens must come set at one quarter of Member States [20]. It is particularly important that the participants in citizens’ initiative should have the minimum age at which citizens are entitled to vote in elections to the European Parliament. They have to be informed about the conditions in which they can exercise

this right of initiative. In order to support a citizens' initiative the citizens of the Union have to complete a statement of support form for that initiative and thus becoming "signatories".

In order to successfully carry through a citizens' initiative, it is necessary to establish an organized structure, taking the form of a committee, composed of citizens, as organizers, coming from at least seven different Member States. The members of citizens' committee are responsible for preparing and presenting its initiative the Commission. Moreover, the organisers shall designate one representative and one substitute, who shall be mandated to act on behalf of the citizens' committee and to represent it in front of the institutions of the Union throughout the procedure. In consideration of ensuring the coherence and transparency in relation to proposed citizens' initiatives and in order to avoid a situation where signatures are being collected for a proposed citizens' initiative which does not comply with the conditions laid down in this Regulation, it should be mandatory to register such initiatives on a website made available by the Commission prior to collecting the necessary statements of support from citizens.

The procedure of ECI supposes several stages. First stage of ECI procedure is detailed in Article 4 of Regulation (EU) no.211/2011 and consists in registration of a proposed citizens' initiative in one of the official languages of the Union, with an online register made available by the Commission. Any ECI shall cumulatively fulfil the specific conditions, such as: a citizens' committee with a contact persons, the necessary information set out in Annex II, in particular on the subject matter and objectives of the proposed ECI, the proposed ECI meets the Commission's powers to submit a proposal for a legal act of the Union for the purpose of implementing the Treaties, and is not manifestly abusive, frivolous or vexatious or manifestly contrary to the values of the Union as set out in Article 2 TEU. If the above conditions are met, the Commission shall register the proposed citizens' initiative under a unique registration number within two months from the receipt of the information set out in Annex II of the regulation. Also, the Commission shall establish a point of contact which provides information and assistance. If the above conditions are not fulfilled, the Commission shall refuse the registration of the proposed citizens' initiative and shall inform the organisers of the reasons for such refusal. The second stage of the procedure consist in collecting the statements of support from signatories for a proposed citizens' initiative, which, according to Regulation (EU) no.211/2011, may be done of support in paper form or electronically. In this regard, the organisers shall complete the forms as indicated in Annex III, in one of the language versions included in the register for that proposed citizens' initiative. The information given in the forms shall correspond to the information contained in the register. In case that statements of support are collected online, these shall be electronically signed using an advanced electronic signature and shall be treated in the same way as statements of support in paper form [21]. The data obtained through the online collection system shall be stored in the territory of a Member State, which certify that this system has adequate security and technical features in place [22]. In order to be valid, the signatories of a citizens' initiative shall come from at least one quarter of Member States and they shall comprise at least the minimum number of citizens corresponds to the number of the Members of the European Parliament elected in each Member State, multiplied by 750. Signatories shall be considered as coming from the Member State which is responsible for the verification of their statement of support in accordance with the second subparagraph of Article 8(1). The entire procedure of collecting the statements of support shall be completed within a period not exceeding 12 months from the date of registration of the proposed citizens' initiative. The third stage of ECI procedure is verification and certification of statements of support by the competent authorities from relevant Member State, as established by Art.8, par.1 of Regulation. Each Member State shall designate one competent authority responsible for coordinating the process of verification of statements of support and for delivering the certificates provided for therein, and shall forward the identification features of the competent authorities to the Commission. The organisers shall submit collected statements of support to the competent authorities from relevant Member State and shall separate those statements of support collected in paper form, those which were electronically signed using an advanced electronic signature and those collected through an online collection system, using the form set out in Annex V of Regulation. Within a period not

exceeding three months from receipt of the request, the competent authorities shall verify the statements of support submitted and shall deliver to the organizers, free of charge, a certificate in accordance with the model set out in Annex VI, certifying the number of valid statements of support for the Member State concerned. The fourth and last stage of ECI procedure consists in submission the ECI for examination to the European Commission. For this purpose, the organizers shall submit the citizens' initiative to the Commission, accompanied by information regarding any support and funding received for that initiative, which shall be published in the register. After the Commission received a ECI and the related documentation, it shall publish it without delay in the register. Also the Commission shall receive the organisers at an appropriate level to allow them to explain in detail the matters raised by the citizens' initiative. Within three months, the Commission shall set out in a communication its legal and political conclusions on the citizens' initiative, the action it intends to take, if any, and its reasons for taking or not taking that action. This communication shall be notified to the organisers as well as to the European Parliament and the Council and shall be made public.

CONCLUSIONS

Aarhus Convention provides an important step towards the construction of environmental democracy. However, the application of this Convention in practice encounters an internal obstacles and deficiencies, including the fact that not all provisions are stringent and observed by Parties.

Besides, by developing the ECI mechanism, the European legislator plans to strengthen the institution of European citizenship, improving democratic process within the EU. Based on a careful analysis of the whole procedure, we can identify its key element, namely the way in which the Commission will establish relationships with citizens, and the extent of it intends to exercise the powers conferred in this regard. From this point of view we refer to a high level of decision of the Commission in assessing the opportunity and admissibility of a citizens' initiative. The ECI procedure is conceived as a practical tool for European citizens to improve the already existent political legal structures at regional and national level including taking measures to sustaining the environment as provider of the basic needs of future generations.

It must be emphasized that public participation requires more than simply following a set of procedures; it involves public authorities genuinely listening to public input and being open to the possibility of being influenced by it. Ultimately, public participation should result in some increase in the correlation between the views of the participating public and the content of the decision. In other words, the public input should be capable of having a tangible influence on the actual content of the decision. When such influence can be seen in the final decision, it is evident that the public authority has taken due account of public input [23].

ENDNOTES:

- [1] Stein, T., *The Ecological Crisis (1998) – A Challenge to Constitutional Democracy? Does the Constitutional and Democratic System Work?*, *Constellations*, vol.4, p.420;
- [2] Environment Canada web site http://www.ec.gc.ca/water/en/info/pubs/mountain/-e_intro.htm;
- [3] Environment Canada web site http://www.ec.gc.ca/water/en/info/pubs/mountain/-e_intro.htm;
- [4] Bell, D., (2005) - *Liberal environmental citizenship*, *Environmental Politics*, vol.14/2, pp.179-194;
- [5] Article 1 of Aarhus Convention (The Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters);
- [6] Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, adopted in the United Nations Economic Commission for Europe framework on 25 June 1998 in Aarhus, Denmark, and entered into force in October 2001. (Aarhus Convention)

See www.unece.org/env/pp/documents/cep43e.pdf for the full text in English. Its Parties now include most of the countries in Central and Eastern Europe, the Caucasus and Central Asia and nearly all EU member States. Aarhus Convention was ratified by Romania through Law no.86/2000; Governmental Ordinance no.878/2005 - which also transposed the Directive no.2003/4/CE (Aarhus Directive)-; and Governmental Decision no.564/2006 regarding implementation of Article 7 of Aarhus Convention;

[7] Holder J. & Lee M., (2007) *Environmental Protection, Law and Policy*, Cambridge, p.100;

[8] Nadal, C.,(2008) Pursuing *Substantive Environmental Justice: The Aarhus Convention as a Pillar of Empowerment*, *Environmental Law Review*, vol.10, pp.28-45;

[9] The Aarhus Convention: An Implementation Guide, prepared by S.Stec & S. Casey-Lefkowitz in collaboration with J. Jendorska, (editorial adviser), United Nations, New York and Geneva, p.4, 2000;

[10] Marshall, F., (2006) *Two Years in the Life: The Pioneering Aarhus Convention Compliance Committee 2004–2006*, *International Community Law Review*, Vol. 8, pp.123–154;

[11] The Aarhus Convention: An Implementation Guide, prepared by S.Stec & S. Casey-Lefkowitz in collaboration with J. Jendorska, (editorial adviser), United Nations, New York and Geneva, p.85, 2000;

[12] Activities provided by Art.6 are subjected to the environmental impact assessment procedure under the UNECE Espoo Convention on Environmental Impact Assessment in a Transboundary Context.

[13] The Aarhus Convention: An Implementation Guide, prepared by S.Stec & S. Casey-Lefkowitz in collaboration with J. Jendorska, (editorial adviser), United Nations, New York and Geneva, p.108, 2000;

[14] The Aarhus Convention: An Implementation Guide, prepared by S.Stec & S. Casey-Lefkowitz in collaboration with J. Jendorska, (editorial adviser), United Nations, New York and Geneva, p.113-114, 2000;

[15] Lee, M., & Abbot, C., (2003) *The Usual Suspects? Public Participation under the Aarhus Convention*, *The Modern Law review*, pp.80-108;

[16] LAERNOES, P.E., *The Aarhus Convention :a partial solution for the Environmental and Democratic Crises?*, www.igitur-archive.library.uu.nl/student_theses/2011.../Master%20Thesis.pdf

[17] EU Regulation no.211/2011 on the Citizens' Initiative was published in the Official Journal of the European Union, L 65, on 11 March 2011, <http://eur-lex.europa.eu>;

[18] The Commission Implementing Regulation (EU) no 1179/2011 laying down technical specifications for online collection systems pursuant to Regulation (EU) no 211/2011 of the European Parliament and of the Council on the citizens' initiative, published in the Official Journal of the European Union, L 301, on 18 November 2011;

[19] de Witte, B., Trechsel, A.H., (directors), Damjanović, D., Hellquist, E., Hien, J., Ponzano, P., *Legislating after Lisbon New Opportunities for the European Parliament*, European Union Democracy Observatory (EUDO), Robert Schuman Centre for Advanced Studies, European University Institute Florence, www.eudo.eu, (2010);

[20] For the purpose of clarity, those minimum numbers should be set out for each Member State in an annex to this Regulation. The minimum number of signatories required in each Member State should correspond to the number of Members of the European Parliament elected in each Member State, multiplied by 750.

[21] According to the Directive no.1999/93/EC of the European Parliament and of the Council on a Community framework for electronic signatures, of 13 December 1999.

[22] Commission Implementing Regulation (EU) no 1179/2011 laying down technical specifications for online collection systems pursuant to Regulation (EU) no 211/2011 of the European Parliament and of the Council on the citizens' initiative.

[23] The Aarhus Convention: An Implementation Guide, prepared by S.Stec & S. Casey-Lefkowitz in collaboration with J. Jendorska, (editorial adviser), United Nations, New York and Geneva, p.85, 2000.

REFERENCES:

1. Bell, D., (2005) - *Liberal environmental citizenship*, *Environmental Politics*, vol.14/2;
2. Holder J. & Lee M., (2007) - *Environmental Protection, Law and Policy*, Cambridge;
3. Laernoes, P.E., (2011) - *The Aarhus Convention :a partial solution for the Environmental and Democratic Crises?*, Master Thesis, www.igitur-archive.library.uu.nl/student_theses/2011.../Master%20Thesis.pdf
4. Lee, M., & Abbot, C., (2003) - *The Usual Suspects? Public Participation under the Aarhus Convention*, *The Modern Law Review*;
5. Marshall, F., (2006) - *Two Years in the Life: The Pioneering Aarhus Convention Compliance Committee 2004–2006*, *International Community Law Review*, Vol. 8;
6. Nadal, C., (2008) - *Pursuing Substantive Environmental Justice: The Aarhus Convention as a Pillar of Empowerment*, *Environmental Law Review*, vol.10;
7. Stec, S. & Casey-Lefkowitz, S. (2000) in collaboration with J. Jendorska, (editorial adviser), *The Aarhus Convention: An Implementation Guide*, United Nations, New York and Geneva;
8. Stein, T., *The Ecological Crisis (1998) – A Challenge to Constitutional Democracy? Does the Constitutional and Democratic System Work?*, *Constellations*, vol.4;
9. de Witte, B., Trechsel, A.H., (directors), Damjanović, D., Hellquist, E., Hien, J., Ponzano, P., (2010) - *Legislating after Lisbon New Opportunities for the European Parliament*, European Union Democracy Observatory (EUDO), Robert Schuman Centre for Advanced Studies, European University Institute Florence, www.eudo.eu;
10. Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, adopted in the United Nations Economic Commission for Europe framework on 25 June 1998 in Aarhus, Denmark, and entered into force in October 2001. (Aarhus Convention), www.unece.org/env/pp/documents/cep43e.pdf; Aarhus Convention was ratified by Romania through Law no.86/2000; Governmental Ordinance no.878/2005 - which also transposed the Directive no.2003/4/CE (Aarhus Directive)-; and Governmental Decision no.564/2006 regarding implementation of Article 7 of Aarhus Convention;
11. The UNECE Espoo Convention on Environmental Impact Assessment in a Transboundary Context.
12. EU Regulation no.211/2011 on the Citizens' Initiative was published in the Official Journal of the European Union, L 65, on 11 March 2011, <http://eur-lex.europa.eu>;
13. The Commission Implementing Regulation (EU) no 1179/2011 laying down technical specifications for online collection systems pursuant to Regulation (EU) no 211/2011 of the European Parliament and of the Council on the citizens' initiative, published in the Official Journal of the European Union, L 301, on 18 November 2011;
14. Directive no.1999/93/EC of the European Parliament and of the Council on a Community framework for electronic signatures, of 13 December 1999.
15. Commission Implementing Regulation (EU) no 1179/2011 laying down technical specifications for online collection systems pursuant to Regulation (EU) no 211/2011 of the European Parliament and of the Council on the citizens' initiative.
16. Environment Canada web site http://www.ec.gc.ca/water/en/info/pubs/mountain/-e_intro.htm;