

Rationale and means of public participation

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Sometimes it is necessary to summarize the preconditions and reasons, also the means and methods:

- Legally comprehensible elements of SD (not simply 'linguistic pollution')
- Rationale for PP as such
- Means of PP beside the direct – e.g. Aarhus - route

SD and law

Several attempts to provide a legal flesh to the bones of sustainable development, e.g.:

- - UN Expert group, 1995
- - ILA principles, 2002, 2012
- - EC commissioned study 2000
- - IUCN draft covenant, latest version 2010

Summing up the legally manageable elements:

- The *rights of future generations* or intergenerational equity. This may be coupled with *the right to environment* – Parliamentary Assembly proposal (2009) within the Council of Europe: „A. Draft recommendation ... 9. Bearing in mind that society as a whole and each individual in particular must pass on a healthy and viable environment to future generations, in accordance with the principle of solidarity between generations, the Assembly invites the governments of member states to:..”
- *Public participation* – see e.g. Article 1 of the Aarhus Convention
- *Cooperation* or cooperative instruments
- *Integration* as a kind of summary and the institutionalization of sustainability – see, for example Gabčíkovo-Nagymaros judgment par.140. ...This need to reconcile economic development with protection of the environment is aptly expressed in the concept of sustainable development.”
- *Precautionary principle* (risks and foresight)
- *Subsidiarity*

Rationale and grounds for public participation

There are many possible sources, from among them we consider briefly the following questions here:

- **DEMOCRACY** – direct and representative democracy. Both have their role to play, but direct democracy must always have a share.

Environmental democracy - balancing the failures of economic development.

Environmental democracy: transparent, accountable government, involving people in decisions (Århus)

TEU Art. 1: “This Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken **as openly as possible** and **as closely as possible to the citizen.**”

- **RULE OF LAW -**
- "For the United Nations, the rule of law refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, **participation in decision-making**, legal certainty, avoidance of arbitrariness and procedural and legal **transparency**." (S/2004/616) *Report of the Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*

- **COLLECTIVE OR 'COMMUNITY' DIMENSION** – holistic vision is needed, generational equity in broader sense
- **COMMON CONCERN OF HUMANITY** -
UN Expert group 1995, on legal principles of SD:
„82. ...The foundation of the concept is the recognition of a legitimate interest of the international community to concern itself with certain issues and values which, by their nature, affect the community as a whole. The scientifically-based reality of ecological interdependence, and the concomitant recognition of the global nature of environmental problems, made it only a logical step to apply the concept of common concern to the environment of the planet, or elements thereof.”

- **COMMON HERITAGE**

Example: The Cultural Heritage Convention (1972) Article 6: „1. Whilst fully respecting the sovereignty of the States on whose territory the cultural and natural heritage mentioned in Articles 1 and 2 is situated, and **without prejudice to property right** provided by national legislation, the States Parties to this Convention recognize that such heritage constitutes a world heritage for whose protection it is **the duty of the international community as a whole to co-operate.**”

- **COMMON GOOD**

26. ... the common good, that is, the sum of those conditions of social life which **allow social groups and their individual members relatively thorough and ready access to their own fulfillment**, today takes on an increasingly universal complexion and consequently involves rights and duties with respect to the whole human race. Every social group **must take account of the needs and legitimate aspirations of other groups, and even of the general welfare of the entire human family.**(Gaudium et spes – Paul VI, 1965)

- **SUBSIDIARITY**

79. ... Just as it is gravely wrong to take from individuals what they can accomplish by their own initiative and industry and give it to the community, so also it is **an injustice and at the same time a grave evil and disturbance of right order to assign to a greater and higher association what lesser and subordinate organizations can do.** For every social activity ought of its very nature to furnish help to the members of the body social, and never destroy and absorb them. (XI. Pius Quadragesimo anno, 1931)

TEU: Art. 10 (3): „Every citizen shall have the right to participate in the democratic life of the Union. Decisions shall be taken as openly and as closely as possible to the citizen.”

- **ENVIRONMENTAL JUSTICE**

„Environmental Justice is the fair treatment and **meaningful involvement of all people** regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” (EPA)

DIFFERENT PRACTICAL RATIONALES

of public participation, for example:

- create trust in connection with administration,
- to enhance legitimacy,
- to add the dimension of mutual learning by incorporating public values into decisions,
- to assist in conflict resolution among divergent interests, or reduce the level of conflicts,
- to make better substantive decisions,
- to increase acceptance and commitments, broaden public support
- improve decisions by relevant and accurate information;
- fostering democratic and civic values, etc.

Different forms of public participation

Beside the 3 pillars of public participation, as presented in Principle 10 of UNCED!

Local government level

- primarily the division of competences between the different levels of public administration, based on subsidiarity
- election of representatives
- participation in committees, councils
- direct agreements with interest representations (e.g. about participation in legal regulation)
- public hearings
- referendum

Regional level

- division of competences between the different levels of public administration, based on subsidiarity
- representation of local governments in the regional level institutions
- participation in committees, councils
- direct agreements with interest representations (e.g. about participation in legal regulation)
- possibly referendum

Central/Government level:

- elections
- commenting drafts by the public (today usually via internet)
- direct agreements with interest representations (e.g. about participation in legal regulation or authorizing NGOs or other private/public bodies with special roles - eco-label, EMAS, etc.)
- public forums occasionally
- referendum
- possible access to Constitutional Court or similar judicial body/organ (Supreme Court, Conseil d'État, etc.)
- institutions, representing the public interests:
 - ombudsman-type (general or specialised) organs
 - public prosecutor (e.g., special competence in protecting public interest in Hungary – access to courts, or Brazil) or
 - similar 'official' representatives of public interest
 - consultative bodies or councils (such as the National Environmental Council in Hungary)
 - public auditing (see Canada)

April 22, 2014, Earth Day

