

# TAI in Bulgaria - RESUME

## I. Introduction.

Environment concern is a responsibility every human being should share. Disruption of the balance of nature due to environment pollution is a prerequisite for numberless negative, even disastrous, consequences either social, economic, or health. That is why the struggle for transparency and the right of public participation in the decision-making, as well as the access to justice, become necessary conditions for the good environment management. These conditions are stated in Principle 10<sup>1</sup> of the Declaration for Environment and Sustainable Development in 1992 (known as the Rio Declaration). The true meaning of the Principle is validated by the Convention for access to information, public participation in decision making, and the access to justice on environmental issues, done in Aarhus, Denmark, on 25<sup>th</sup> June 1998. The Convention is regional—it was signed by 40 members of the UN Economic Commission for Europe. Twenty-five states have ratified the Convention so far.

Bulgaria signed the Aarhus Convention at its inauguration in 1998 during the Fourth Summit “Environment and Earth.” The Convention was ratified by the Parliament on 2<sup>nd</sup> October 2003 and took effect on 16<sup>th</sup> March 2004. By the enactment, Bulgaria stood for Partnership for Principle 10, which is planned and coordinated by the global coalition of public organizations—the Access Initiative of the World Resource Institute<sup>2</sup>. In order to provide the efficiency of the public groups, which observe the application of the Rio Declaration principles in different countries, The Access Initiative has developed a common methodology for the estimation of the existing situation. On the basis of that evaluation, suggestions for the improvement of the access to information situation, the conditions of public participation, and the access to justice on environmental issues are made.

## II. The Access Initiative Methodology.

Most generally, the task of the national expert teams is to evaluate the work of state institutions in four areas:

- a) Provision of access to information
- b) Encouragement of public participation in the decision-making
- c) Provision of access to justice on environmental issues
- d) Evaluation of the government attempts to build the capacity of the administration, as well as an estimation of the extent to which the NGOs and the citizens exercise their rights.

In each area of survey, the national teams do the following: 1) analyze the existing legislation and 2) evaluate its applications by examining particular cases. For instance, in order to estimate the access to information in Bulgaria, the team has first scrutinized the legal framework—Constitutional provisions, statutes, and secondary legislation. Subsequently, several characteristic cases have been examined in order to evaluate the ongoing efforts of the administration to observe its legal obligations to provide access to information.

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<sup>1</sup> Partnership for Principle 10 <http://www.pp10.org>

<sup>2</sup> <http://www.accessinitiative.org>

Each particular case is assessed by an elaborate system of indicators.<sup>3</sup> These are questions with several answers (usually three or four) set in advance. A number between 0 and 100 corresponds to each answer and a higher value of the same indicator for different cases means better implementation of the access principles.

After the valuation of all indicators, each particular case receives a mean percentage score, by which the weaknesses could be easily detected and relevant suggestions for their overcoming could be given.

Detailed description of the methodology is accessible at the web site of The Access Initiative: <http://www.accessinitiative.org/pdf/methodology.pdf>.

### **III. The Bulgarian team.**

The national team, working on the project in Bulgaria, comprised Alexander Kashumov, Darina Palova, Gergana Jouleva, Kiril Terzijski, and Nikolay Marekov from Access to Information Programme and Petar Radev and Stoyan Yotov from “Borrowed Nature” Association. Diana Bancheva (AIP) worked on the English version of the current resume.

*Access to Information Programme (AIP)*<sup>4</sup> was founded on 23<sup>rd</sup> October 1996 in Sofia by journalists, lawyers, sociologists, and economists, determined to contribute to the establishment of informed public opinion by promoting the right of information; by encouraging the search for information through public education in freedom of information principles; and by working for the transparency of the institutions of the central and local government.

AIP cooperates with a developed network of journalists, who look for cases of information denial in 26 towns; systemizes and analyzes unlawful denials of information—more than 2000 cases; provides legal help in individual cases; observes the practices of information provision and gives recommendations for their improvement; makes suggestions for the improvement of the access to information legislation to government and municipal institutions; clarifies the right to access to information through the media; organizes workshops, seminars, and conferences on the problems related to the free access to information; develops publications and releases information in the media. AIP is a founder and a member of the International Network of Freedom of Information Advocates (FOIANet<sup>5</sup>).

*Borrowed Nature (BN)* is a Bulgarian environmental organization founded in 1992. Its mission and long term objectives are committed to the increase of public information about environmental issues and human development; the promotion of new value system, based on the principles of sustainable development; the investment in human resources through education projects and release of information; the adoption of the European and world standards of environment protection, sustainable development and public participation by the Bulgarian civil organizations and the society; the efficient use of material and energy resources; the transformation of the

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<sup>3</sup> CD-ROM *Assessing Access to Information, Participation, and Justice for the Environment: A Guide*. The Guide describes the methodology and includes more than 150 research questions designed to measure law and practice in the relevant areas.

<sup>4</sup> <http://www.aip-bg.org>

<sup>5</sup> Freedom of Information Advocates Network <http://www.foiadvocates.net>

production and consumption models; the active collaboration at a local level between civil organizations, businesses, and government authority.

The following experts took part in the development of the report:

- Alexander Assenov, Black Sea Center for Environmental Information and Education, *Oil contamination of Varna sea waters and the coastal area as a result of accident with the Moon Lake cargo ship*;
- Petar Penchev, president of the National Movement “Ekoglasnost”-Montana, *Destruction of SS-23 engines at the village of Gabrovnica (obsolete armament of the Bulgarian Army)*
- Yuriy Ivanov, president of Civil Association “Public Barometer”-Sliven, *Water facilities in Sliven*.

#### **IV. Access to Information. Legal Framework.**

The access to information is granted by article 41 of the 1991 Constitution of the Republic of Bulgaria.

**1. The Access to Public Information Act.** The access to public information has been regulated in details by the adoption of the Access to Public Information Act (APIA) in 2000. It stipulates that every Bulgarian citizen, foreigner or a person without citizenship, as well as every legal body, has the right to request access to information and to obtain such an access.

The APIA brought in obligations for the government institutions to publish actively particular categories of relevant information of public interest. Under the APIA, representatives of the executive, legislative, and judicial authority should provide access to information not only by request, but also on their own initiative. This requirement is related to information that has been collected or revealed through the activities of the particular institution and that could prevent from any life, health, or safety damages; could refute corrupt information dissemination; would be of particular public interest; or should be disclosed by the effect of another law.

Under the APIA, anyone can request access to information, verbally or in a written form, and the access to public information is free of charge. The requester covers only the expenses for the preparation of the information in the requested form.<sup>6</sup> Decree No10 of 2001 of the Minister of Finance determines the fee for the requested information according to its type.

**Limitations to the right of access to information.** The adoption of the Protection of Classified Information Act (PCIA) and the Protection of Personal Data Act (PPDA) in 2002 completed the legal framework for the exemptions to the right of access to public information. Unfortunately, the Bulgarian legislation does not provide for a balancing between the right of information and its limitations in every particular case, i.e. it lacks the so-called triple test. As a result of that legislative weakness, information that is publicly valuable under the APIA and according to international standards and that should be disclosed on government initiative since it could save

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<sup>6</sup> The possible forms of information release are: information check up, verbal check up, hard copy, electronic copy (article 25, AIPA)

people and their property from harm might be classified.

**2. The Environmental Protection Act (EPA).** The special act that initiated regulations for the right of access to environmental information in Bulgaria was adopted in 1991. The current Environment Protection Act was promulgated in the State Gazette, issue 91, 25<sup>th</sup> September 2002. Despite the declaration that its adoption was necessary for the implementation of the international standards, the act was, essentially, a step backward on the way to the establishment of those standards related to the access to information, public participation and access to justice.

The current EPA impedes the access to environmental information in several ways:

- The number of the entities obliged to disclose information by request has been reduced;
- Part of the obligations for active provision of access to information has fallen off from the bound subjects<sup>7</sup>;
- In cases of pollution, industrial accidents, etc. no special means of information disclosure have been determined;
- Additional limitations to the right of access to information have been introduced /including state, official, or production secret, prescribed by law; intellectual property; personal data and denial of a third party, which might be affected by the disclosure of information, and which is not legally bound to provide that information/.

For the provision of access to environmental information, the EPA directs to the procedure stipulated in the Access to Public Information Act.

The EPA specifies three types of environmental information—available raw information, available processed information, and deliberately prepared information. The access to the available raw and the processed environmental information is charged under the APIA. The price of the deliberately prepared information is determined for every particular case.

Bound to provide environmental information are:

- The central and regional executive institutions, which collect and dispose of environmental information. These are the Ministry of Environment and Water (MOEW), the Regional Inspectorates of Environment and Water (RIEW), Executive Environment Agency (EEA), the Basin Directorates, the mayors, and the regional governors.
- Other entities and organizations, which administer parts of the consolidated state budget and collect and dispose of environmental information. For instance, the National Center for Agrarian Studies, The Nuclear Regulatory Agency.

## **V. Access to information. Practices (accidents, environmental reports, and self-monitoring).**

### **1. Accidents.**

In that part, the quality of the collected and provided by the competent bodies environmental information in cases of accident pollution is evaluated.

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<sup>7</sup> For instance, the important obligation for public information in case of environment pollution was removed (article 13 of the old EPA)

## **Common legal framework**

Upon accidental and other pollution, the entities, which have breached the law,<sup>8</sup> as well as the bodies responsible for its observation, are obliged under the EPA to immediately inform the competent bodies,<sup>9</sup> which in turn are obliged to notify immediately the Ministry of Health and the public about the pollution and to suggest measures for the protection of human health and property.

## **Cases**

Three cases of accidental pollution have been examined in the course of the current survey. After setting out the relevant legislation and a short history of the case, a final assessment is made along with the methodology provided by the Access Initiative.

*A. Oil contamination of Varna sea waters and the coastal area as a result of accident with the Moon Lake cargo ship, September 2002.*

### Legal framework

The Law of the Sea areas, internal waters and ports of the Republic of Bulgaria<sup>10</sup> lacks a special clause for oil pollution. The main body of the Law related to that is the article 56 regulation, according to which, the Ministry of Transport and Communications, together with the interested institutions and organizations, takes the necessary measures for the prevention, limitation and the elimination of the danger in cases of an accident, or any average in the sea areas of the country. The environmental protection of the sea is a responsibility of the “Sea Administration” Executive Agency, which is subject to the Minister of Transport and Communication.

### History

On 30 September 2002, due to strong wind, the cargo-carrying ship Moon Lake, which was on a roadstead near the Varna Port, was thrown over the cliffs in the area of a secret military unit. A committee, appointed by the head of the Regional Directorate of the “Sea Administration” Executive Agency, was formed. A successful operation for the prevention from oil flood was initiated by the Navy Forces. The contaminated waters around the ship were dipped up. The outflow of wastewaters from the ship was found. The captain was fined for the outflow.

### Evaluation

- Although the information was not particularly detailed, at least the key technical events in the course of the average development reached the public in time. The limited sources of information did not discourage the media to seek data and to cover the major stages.
- At the same time, the potential long-term consequences were not considered. No information was disclosed about health and environment impact. No analysis, examination, or working reports of the particular institutions were accessible on Internet or paper. There was no information about completed investigation. The

<sup>8</sup> See art. 109, par. 4 and art. 125, par. 3 from EPA, Chapter VII “Prevention and limitation of industrial pollution”.

<sup>9</sup> Regional governors, mayors, RIEWs, Basin Directorates, the Civil Defense State Agencies, and upon changes of the radiation situation—the Nuclear Regulatory Agency

<sup>10</sup> The Law was promulgated by the Gazette, issue 12, Feb. 11, 2000, last amendment-issue 70, August 10, 2004; will be implemented January 1, 2005.

only efforts of the responsible entities for information disclosure were limited to the standard press releases in a more than laconic form.

*B. Forest Arson in National park "Pirin", Razlog, July 2003*

Legal framework

According to the Law of the Forests, the entities, responsible for fire extinction and forest protection from fire, are the National Forestry Agency (NFA), which is subject to the Ministry of Agriculture and Forestry (MAF), as well as the regional departments of NFA—the Regional Forest Agencies (RFA). The Ministry of Environment and Water (MOEW) is the body that organizes and supports the fire precaution activities in the enlisted forests and the protected areas. The mayors and the regional governors inform the local population about fires in their entrusted regions.

There are no regulations in the legislation, which prescribe the evaluation of health or environment risk in cases of fire.

History

The conflagration in the National park "Pirin" in July 2003 was considered as one of the most serious environmental accidents in Bulgaria. At the same time, it was widely discussed and effectively covered by the media. The main reason for that was that besides the fire itself, the accident comprises a military helicopter crash, which took part in the anti-fire operation, and whose four-member crew died. It was found out that the fire had been deliberately set. The helicopter crash was caused by technical or weather factors.

Evaluation

- The information was very well disclosed in the Internet. At the time of the accident, the media was well informed as well.
- The information in the investigation reports was not satisfactory. MOEW and MAF disclosed reports on wood loss only. No analysis and evaluation of the overall environment and health consequences were made.
- More detailed reports were developed by the Ministry of the Defense and the Ministry of the Interior about the helicopter crash and the death of the crew.

MOEW, MAF and their subordinate units should follow the example of the Ministry of the Defense and the Ministry of the Interior and make efforts for the preparation of detailed and timely environment reports upon accidents of national magnitude. These institutions should also take measures for the improvement of the transparency during the investigation of such cases, especially in national parks.

*C. Contamination of Struma River by a big pig-breeding farm in Blagoevgrad, July 2001.*

Legal framework

Under the Waters Act, the Minister of the Environment and Water, the Basin Directorates, and the Minister of Health execute the control over the waters, the water facilities and equipment. Upon accidents of water pollution, the owner or the entity, using the equipment that has become source of contamination is obliged to take the

necessary measures for the restriction and elimination of the consequences of the pollution under an accident plan drawn beforehand and to inform immediately the Basin Directorates and the Civil Defense State Agency.

There is no clear distinction between the functions and the capacity of the RIEWs and the Basin Directorates in relation to the protection and governing of the waters in cases of accidental and sudden pollution of water facilities.

### History

For a night, in July 2001, around 1000 cubic meters fecal liquid wastes were unlawfully thrown in Struma River from the pig-breeding farm of “Kembarow-MM-5” Ltd., situated near Blagoevgrad. The farm’s activity comprises industry of closed cycle of processing, including butchery (one of the biggest industries in the Balkans, breeding 35-40 thousand pigs).

### Evaluation

- Good results, concerning the information in the media after the accident. Satisfactory results for the information availability in the Internet, as well as the public information at the time of the accident.
- Comparatively satisfactory was the quality of the information in the investigation environmental report, which, however, did not contain analysis of the health consequences. Unsatisfactory or even negative were the results for an investigation environmental report in the Internet, as well as the range of the public, who had access to it.
- No paper information for public release was prepared by RIEW Blagoevgrad connected not only to the particular accident, but also to the total work of the institution.

It follows then that RIEW Blagoevgrad should make efforts for the expansion of the transparency at the investigation of environmental accidents. It is necessary that RIEW Blagoevgrad develops a working web site and should start the publishing and spreading of simple paper information materials.

## **2. Permanent monitoring.**

The value of the collected and disposed by the competent bodies information about the quality of the drinking water and the atmospheric air, obtained by permanent monitoring, is evaluated in that section.

### **2.1. Drinking water monitoring.**

#### **Legal framework**

The main control functions, related to the quality of the drinking water, are assigned to the Hygiene-epidemic Inspectorates (HEI) at places where they have the responsibilities of special branches of the State Sanitary Control. The quality of the drinking water in the country, provided and sold to the consumer through the water conduit, under the active legislation,<sup>11</sup> is examined “at the entry” by the regional departments of HEI. Water provider companies carry the responsibility for the quality of the water as a product, “at the exit.” In case of potential health danger, the

<sup>11</sup> Regulations for the application of the People’s Health Act; Regulations for the structure and activity of the HEI; Order № 9 from 16 March 2001 by th Health Minister, the Minister of the Regional Development and Public Works, and the Minister of the Environment and Water.

controlling bodies should prohibit and limit water usage, as well as inform the consumers for the activities.

### **Cases**

The quality of the information about the characteristics of the drinking water and the atmospheric air, collected through permanent monitoring and disclosed by the competent bodies, is analyzed on the basis of the activities of HEI-Blagoevgrad and HEI-Sofia.

#### *A. HEI-Blagoevgrad*

The quality of the drinking water in Blagoevgrad is controlled by regular measurement of all parameters (physical, chemical, microbiological, and radioactive), which is a guarantee for its high quality. The information is highly relevant since some parameters (chemical content, for example) are disclosed every second day on the basis of just measured values. The period for the microbiological components measurement is five days, for heavy metals—a month.

The public access to the data concerning the quality of the drinking water is free of charge. There is no Internet access to such kind of data since HEI Blagoevgrad has not developed its web site yet. However, such a project is under progress and the problem will soon be solved. No printed information is available. HEI Blagoevgrad periodically discloses information about the quality of the water to the media. That information reaches the public in a comprehensible press release form.

#### *B. HEI Sofia-district*

HEI Sofia-district permanently monitors 413 central water sources. The monitoring is accomplished by more than 800 checking stations, which monitor 13 indicators. Once a year, more frequently in large populated areas, HEI monitors a bigger number of indicators.

The information from the monitoring of the drinking water is archived in a data base for five to ten years. HEI discloses information periodically only to the Bulgarian Telegraph Agency (BTA). It is about the number of the completed checks and statements drawn. No information about the results from the measurements is provided. Citizens can get information about the quality of the drinking water by phone calls to the HEI, if they suspect pollution. There is no information that HEI Sofia-district performs its duty to prepare annual reports on the completed monitoring.

## **2. Air Monitoring.**

### **Legal framework**

Under the Clean Air Act (CAA) from 1996, the Minister of the Environment and Water and the executive director of the Executive Environment Agency (EEA) are the competent bodies on a central level, while the municipality mayor and the head of the Regional Inspectorate of Environment and Water (RIEW) are responsible on a local level. Order No 7 from 3 May 1999 by the Minister of the Environment and Water and the Health Minister defines in details the procedure for the measurement, registration, processing and preservation of the data from the monitoring of the air.



The National System of Observation, Control and Information about the Environmental Conditions, which is governed by the EEA, oversees the quality of the air. The information is declared state property and is preserved in the MOSW and its subordinate bodies. The access to the information, collected through the monitoring of the air, should be published in official bulletins and should be free of charge for everybody.

## **Cases**

### *A. Air monitoring in Blagoevgrad.*

All parameters of the air in Blagoevgrad are regularly checked by RIEW Blagoevgrad, which is a guarantee for its high quality. The information is immediately submitted to the EEA. Information about over-limited values of the air components, as well as the causes and the sources of these abnormal values, is accessible at the web site of the EEA. The access to the reports on the air quality is comparatively good. They are accessible at three places—RIEW Blagoevgrad, Blagoevgrad Municipality and the EEA.

A functioning web site of the RIEW Blagoevgrad should be developed as soon as possible.

### *B. Air monitoring in Sofia.*

The quality of the air in Sofia is controlled by the Executive Environment Agency (EEA) through nine measuring stations. Four of them work at automatic regime and five are manually operated. The pollutants are measured: dust, lead aerosols, sulphur dioxide, nitrogen dioxide, carbon dioxide, hydrogen sulphide, phenol, fine dust particles, and ozone. The information is imparted by the EEA through an everyday bulletin about the **state** of the air. The bulletin is accessible on the web site of the Agency. The latter also prepares a similar quarterly bulletin and annuals.<sup>12</sup>

The relevant information that is covered by the everyday bulletin is too scarce. It contains data about the registered results for the over-limited values of the observed parameters and occasional information about the conditions, causes, and sources of pollution for the last 24 hours only. The everyday bulletin has no printed form. The EEA does not provide information to the media about the quality of the atmospheric air in Sofia on its initiative.

The access to the results from the monitoring (the raw information) is provided by the EEA under request. A requirement for the applicant to explain what he needs the information for is unjustifiably stipulated. At the same time, the daily protocols from the measurements are publicly exposed every Thursday of the month.

## **3. State of environment reports in Bulgaria—the Green Book.**

### **Legal framework**

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<sup>12</sup> The quarterly bulletins contain summary information about the state of the air determined by the measured pollutants and after a comparative analysis of the air in other populated areas.

Under the Environment Protection Act, the National Assembly adopts a report on the environmental conditions, developed upon the suggestions of the Minister of the Environment and Water. It is published as a yearbook on the web site of the Executive Environmental Agency (EEA). The purpose of the report is to inform the public about the state of the environment, the tendencies, and the dynamics of the changes in comparison to previous years. It presents the existing problems and those that have been resolved, as well as initiated legal and administrative environment measures and projects. The reports on the state of environment of 1998, 2000, and 2001 are accessible on the EEA web site.

### **The State of Environment Report on the 2001**

A team of MOSW and EEA experts developed the Report. It contains information provided by the National Automated System of Environment Monitoring (subordinate to the EEA), the National Statistics Institute, the Health Ministry, the Ministry of Agriculture and Forestry, the Ministry of Regional Development and Public Works, the National Agency on Energy Efficiency. The Report has four main parts:

- State of environment and natural resources;
- Mechanism of the policies;
- Impact of the industry on the environment;
- International cooperation.

The attempts of the administration to provide the reports for a media disclosure are unsatisfactory. Furthermore, the information is not presented in a comprehensible way to the common public.

## **4. Self-monitoring.**

### **Legal framework**

Under the EPA, there are bodies, prescribed by law,<sup>13</sup> which develop plans for self-monitoring consistent with a number of stipulated requirements in the permission or the environmental impact assessment (EIA). Upon approval, the competent institutions—the Minister of the Environment and Water and the head of the respective RIEW—define the information that the bodies performing self-monitoring are bound to provide, as well as the order and the way by which they have to provide it. The data from the observations and the assessments made as a result of self-monitoring should be given to the National Automated System of Environmental Monitoring (NASEM). These results become basis for the execution of control and sanctioning in cases of law violation. Under the EPA, the data should reach the public through the publications in the quarterly and annual bulletins.

### **Cases**

#### *A. “Himko” Ltd. – Vratsa*

We requested RIEW Vratsa to provide a paper copy of the approved plan for self-monitoring of the chemical plant “Himko” Ltd., as well as information about the results from the monitoring, which “Himko” Ltd. was obliged to give to NASEM. We also requested information about the order and ways in which it was bound to provide the results.

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<sup>13</sup> The Waters Law, the Air Purity Act, the Underground resources Act, the Litter Government Act.

The RIEW imparted a copy of 10 pages of the Self- monitoring plan of “Himko” ltd.- Vratsa, accorded with RIEW Vratsa and the EEA. It contained description of the production process and the raw materials in use of “Himko” Ltd. Occasional self measurements in cases of harmful air and water emissions were presumed.<sup>14</sup> The Plan did not contain information about data obtained from self monitoring. Consequently, information from the self- monitoring of “Himko” Ltd. was not included in NASEM.

#### *B. NPP “Kozloduy” Plc.*

We requested RIEW Vratsa to provide a paper copy of the approved self- monitoring plan of NPP “Kozloduy” Plc., as well as the results from the monitoring that should be given to NASEM. RIEW did not provide the self- monitoring plan, but information about the existence of accorded programs between the power plants and the competent environmental bodies, along with their capacity.

The self- monitoring plan of NPP “Kozloduy” encompasses monitoring of a depot for non-radioactive and production wastes, as well as monitoring of water emissions. The data are transmitted by eight local monitoring stations. The results are updated in one hour. The information is retranslated to the EEA.

Reference to the web sites of the Nuclear Regulatory Agency (NRA) and the EEA has proven that a National Automated System of Permanent Radiation Control was established in Bulgaria in 1997. In 2001, the unification between the National Automated System of Permanent Radiation Control and the Automated System of External Radiation Control of NPP “Kozloduy” was completed. Thus, the Unified Information System of Radiation Monitoring was created. The data obtained from the national System of Radiation Monitoring and prepared according to the relevant evaluations are published in a concise form in the quarterly and annual bulletins on the state of environment, accessible on the EEA web site.

#### *C. Water facilities in Sliven*

The case provided by the president of the Civil Association “Public Barometer”-Sliven is examined. The Association has been on alert for the last three years since there is no relevant information about the quality of the water, despite its high cost, after the water conduit was given for concession to private associations.

## **VI. Public participation.**

### **Legal framework**

#### **A. Common legal framework prescribing the public participation in the decision making related to environmental issues.**

Under the EPA, public participation and transparency of the decision making are major principles for the protection of the environment.

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<sup>14</sup> It is noted in the plan that the measurement stations are approved by the RIEW Vratsa and are along the prescriptions of art.12 of Order No 6 for the order and way of measurement of harmful air emissions.

### **1. Direct public participation in the decision-making.**

The sessions of the National Assembly are open under the decree of article 82 of the Constitution of Republic of Bulgaria. The second sentence of the decree prescribes that some sessions could be closed under a decision of the Assembly. Almost the same is the decree of article 28, paragraph 1 of the Local Self-government and Administration Act (LSGAA), under which the sessions of the municipal council and its committees are open. Both decrees have the same weakness. The presumptions for a closed session decision are vaguely stated, without any reference to the types of interests it might be meant to protect. A National Assembly Regulation decrees that the sessions of the permanent commissions,<sup>15</sup> which discuss legislative projects and statutes, are open. It presumes that some sessions of the National Assembly are broadcasted on the national TV or radio.

### **2. Public participation in the legislation.**

The new article 2 of the Legislation Act, enacted December 18, 2003, obliges the competent bodies to inform the entities which are obliged or limited under a newly adopted act since they could file suggestions or objections during a period of time no shorter than a month. The Organizational Regulation of the Council of Ministers contains the same article, which does not oblige the ministers but gives them the capacity to organize public debate or discussion on the development of a bill or legislation of public interest.

### **3. Public participation in the adoption of administrative regulations.**

Such kind of public participation is stipulated only in the Energy Act, under which the State Commission on Energy Regulation is created. One of the obligations of the Commission is the organization of public debate on the preparation of common administrative acts, related to energy issues of public concern.

## **B. Public participation in policies, strategies, plans, or programs related to environmental issues. Environmental Assessment.**

Public participation in the approval of a plan or program that would have an impact on the environment is granted under the EPA as the citizens' right to take part in public debates on the possible environmental consequences of an implemented plan or program (art. 81, par. 1). These plans and programs undergo an environmental assessment simultaneously with their preparation or approval by state institutions. The competent bodies, whose evaluation completes the environmental assessment, are the Minister of the Environment and Water or the head of the respective RIEW. The evaluation is issued on the basis of an environmental assessment report, developed by registered experts. The prescription under the EPA, which does not foresee environmental assessment of plans and projects connected with the national defense and security, is amazing.

*The Regulations for the preparation of environmental assessment*, adopted by the Council of Ministers on 24 June 2004, stipulate the procedure in details. Under the Regulations, the environmental assessment is ever obligatory<sup>16</sup> for certain plans and

<sup>15</sup> In the current National Assembly the permanent commissions are 21 - art. 17, par. 2 Regulations for the organization and activity of the National Assembly.

<sup>16</sup> The plans and programs, which are legally bound to undergo an environmental assessment, are prescribed under article 85, par. 1 of the EPA. They are described in details in Appendix No 1 of

programs. In all other cases, an assessment by the competent bodies is completed.

The citizens take part in the **public consultations**, which the executor of the plan or the project is obliged to organize. The consultations should provide access to information about the project, as well as a forum for the citizens to give their standpoints. In the meanwhile, the results from the consultations should be included in the environmental assessment report, in order to be taken into account for the final evaluation given by the Minister and the head of the respective RIEW.

Besides the consultations, **public debate** on the environmental assessment report is another provision for public participation. Such a debate could be prescribed by law or could be organized on the basis of more than two negative public standpoints or alternative suggestions, which have been included in the report or have been expressed during the consultations. *The Regulations* contain detailed description of the order by which a public debate should be organized. The results from the debate are included in a written record, to which the written standpoints and suggestions should be attached.

### **C. Public participation in the decision making related to the construction of equipment or initiation of activity that might affect the environment.**

Public participation in the approval of projects that might affect the environment is guaranteed under the EPA. People have the right to take part in discussions about the environmental impact assessment (EIA), which is done for investment projects for construction, activities, technology or their change. The EIA is obligatory in cases of investment proposals under Appendix No1, as well as proposals for trans-border environmental impact under Appendix No1 to article 2 of the *Convention for the environmental impact assessment in trans-border context*. The assessment of the investment project is completed by the decision of the competent body, which is, like for the environmental assessment, the Minister or the head of the respective RIEW. The decision is taken on the basis of a **report** on the EIA and is obligatory to the investor of the project. Similarly, as in the environmental assessment, investment projects related to the national defense or security do not undergo environmental impact assessment. The EPA, however, contains a provision for cases when the EIA is not done. These are special cases when the investment projects are approved under a law prescription and procedure that stipulates a similar assessment and the **provision of public access to information**. *The Regulations for the preparation of an environmental impact assessment of investment projects for construction, activities, or technology*, adopted by the Council of Ministers on 07 March 2003, give detailed provisions for that.

Public participation is legally guaranteed by two components of the procedure. **First**, these are the consultations with the competent bodies and the affected community, organized by the investor, before and during the development of the report on the EIA. **Second** is the participation in the public debate on the already prepared report on the EIA.

#### **Disclosure of the discussion results.**

An official appointed by the municipal mayor, in whose territory the session is

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the Regulations.

conducted, kept the record, which is prescribed by the Provision for the public discussion. The investor is legally bound to provide not only the record and all statements to the competent body, but also its own opinion statement on the suggestions, comments, and objections resulted in the course of the discussion. In case of the emergence of other written proposals for the investment, the Provision gives the freedom to the investor to amend the report on the EIA upon its judgment. If such an amendment is carried out, new public debate should be initiated.

## **Cases**

### *A. Destruction of the engines of missiles SS-23 (obsolete armament of the Bulgarian Army), the village of Gabrovnitsa.*

In the summer of 2002, the implementation of the Memorandum, adopted by the National Assembly, for the destruction of the 11 components of the three missile types SS-23, *Scud*, and *Frog*, which used to be part of the armament of the Bulgarian Army, was initiated. Ten of the components were destroyed at the venue nearby the village of Zmeyovo, Stara Zagora. Only the hard fuel engines of the missiles SS-23 were not destroyed. The Bulgarian Telegraph Agency disclosed a “Message from the expert group at the Bulgarian Academy of Science (BAS) and the University of Chemical Technology and Metallurgy” on 12 August 2002. The message was signed by the president of BAS, Dr. Ivan Yuhnovski and expressed the scholars’ disapproval of the methods of destruction of the missile engines. They stressed that burning as a means of destruction had been long rejected in the USA and was not acceptable in Bulgaria either. The experts stated their apprehensions about the negative health and environmental consequences the particular method would bring.

The citizens wanted a public discussion on the BAS prepared report on the environmental impact assessment (EIA). The state, however, represented by the Ministry of the Defense (MD) classified the report under the Protection of Classified Information Act (PCIA). The Ministry of the Environment and Water did not take a firm stance. Mass public protests began. More than a year struggle for access to the classified BAS report and a number of requests to the MOSW and the MD about the level of danger for the population followed. The environmentalists did not give up to seek and impart relevant information, stirring up the public debate for a whole year. As a result of these initiatives, the engines of the missiles were exported to Novaki, Slovakia, where the Slovak missiles SS-23 had been destroyed.

### *B. Construction of PP “Belene”*

The investigations about the second Power Plant in Bulgaria started in the beginning of the 70s. The site near Belene on the coast of the Danube River was considered as most favorable. In 1992, the construction was frozen. The reasons for the discontinuation were economic. In December 2002, the Council of Ministers decided that the construction of the power plant should be resumed.

On 27 January 2004, a Notifying letter in terms of the construction of PP “Belene” was published on the web site of the National Electric Company (NEC). NEC was pointed as the investor of the construction project. In March 2004, the web sites of NEC and the MOSW announced that the report on the EIA was prepared and sessions for its public discussion were appointed. Public discussions were held in Pleven,

Belene, Nikopol, Svishtov, and Sofia. According to the ecologists, however, the current report on the EIA of PP “Belene” did not give any guarantees for its total safety. The procedure for the election of a firm to develop the EIA was flawed since it was carried out in violation of the Public Procurement Act and the EPA. No evidence for the minimal environmental impact of the implemented project had been included in the report. Moreover, no investigation of the risk of accidents and possible thermal pollutions of the Danube River had been conducted. The potential risk of the seismically unstable region had not been considered either.

As a result of a filed request to the Council of Ministers (CM) by National Movement “Ekoglasnost”-Montana, a paper copy of a recorded decision of the CM was obtained. The decision from 29 April 2004 announced the approval of the report of the Minister of Energy for the construction of PP “Belene” and the agreement over the construction of the PP “Belene”, even before the closing of the public debate on the issue. The decision was appealed before the Supreme Administrative Court as it had been taken in violation of the provisions of the Safe Usage of the Atomic Energy Act.

Issue 26 of “BANKER” newspaper from 3 July 2004 contained an article with the following headline: The PP “Belene” Project Became ‘Confidential’.” According to the articles, the government had classified the project and its access was limited. Mark: top secret was put on it under the Protection of Classified Information Act (PCIA). The whole project information was transferred on electronic holders. Only the Minister of Energy, the Minister of Economics, and the Minister of Finance, who were assigned to lead the negotiations with the investor candidates, had access to the disks. At a secret session of the CM in June, the government had adopted the plan for the construction of the second Bulgarian power plant. Certain dates and terms had been also determined.

At the present, procedures for the appointment of a financial consultant and an architect, announced by NEC under the Public Procurement Act, take place. Related to that process of “no transparency,” as defined by some of the candidates, was the last public scandal on the PP “Belene” project, covered by the media in the beginning of September 2004.

The debate on the construction of PP “Belene” continues since the scarce information provided by the government brings more vagueness and uncertainty about the project. The first court hearing of the case against the CM decision for the construction of the PP lies ahead.

## **VII. Access to justice.**

The right of all to the access to justice was initiated under the EPA in 1991 as a preventive mechanism targeting the administrative inaction, unlawful actions, and even concealing information. The current EPA, adopted in 2001, presumes judicial control over the denials to information access and over the decisions about the environmental impact assessment (EIA).

Under the Bulgarian legislation, the expenses for the lawsuit, like the paid fees, salaries for officials and lawyers, are to be covered after the enactment of the court judgment, i.e. after the final conclusion of the regular instances. The State fees are not high, however.

Generally, the condition of the “legal interest,” i.e. the extent to which the appealed administrative act affects one of the sides, is not applied as a constraint, though there are exemptions. The right to appeal is facilitated by the lack of strict rules that determine the content of the appeal and the lack of requirements for the thorough elicitation in it or later before the court instance of the legal arguments. The court is obliged to review whether all five conditions for the legality of the appealed administrative act are observed. It has the power to repeal or claim the administrative act null and void without the presence of an argument in support of the above, if it finds a reason for that.

In Bulgaria, particular divisions that deal exclusively with administrative justice exist in the regional courts. They administer justice independently and objectively. Furthermore, the Supreme Administrative Court was founded in 1997, which is especially remarkable in its practices. It has distinguished itself as an authority. The confidence in its work is high. The number of the appeals before it increases annually. It has developed a tradition of access to all archived documents. The key documents for each case are accessible on the Internet and the public can get informed about publicly interested cases.

The most serious problem before the access to justice is that the court decisions are not efficiently implemented. In the cases of information denial, it is most common that the guilty institution does not respect the court decision and does not undertake any initiative to provide access to information.

## **VIII. Efforts for the capacity building of the administration and the society.**

### **1. Conditions for free association.**

The freedom of association is guaranteed by article 44 of the Bulgarian Constitution. The procedure of the registration of non-profit associations is described in details in the Non-profit Legal Entities Act (NPLEA). Associations and foundations are subject to registration in the regional court, according to their locality. Non-profit entities, working in the public interest, are subject to registration in a special Central Register at the Ministry of Justice. 3300 associations and foundations, 300 out of which are environmental NGOs, have been registered at the Ministry of Justice up to now.

Under article 4 of the NPLEA, the state **could** encourage and support only organizations registered at the Central register for non-profit activity. The state could provide some tax, credit, customs, and financial concessions, prescribed by law. In fact, the only relief for the legal entities of non-profit activity is stipulated in the Local tax Act, under which these entities are free from taxes over donations.

Article 73 of the EPA provides that allocations for the implementation of priority environmental projects and activities, included in national environmental strategies and programs, are administered annually from the state budget. Under the provision of article 74 of the EPA, the municipal budgets also stipulate money for annual initiation of environmental projects and activities upon the suggestions of the municipality mayors.

### **2. Efforts for the capacity building of the administration to provide access to environmental information.**



The EPA obliges the Ministry of the Environment and Water to define by order the structure and resources, containing environmental information, used by the MOSW and its subordinate bodies. The description of these sources is published on the web site of MOEW.

Under the APIA, the head of every administrative structure is obliged to appoint an official or a team to receive the requests for access to information.

At the end of 2002, such officials are appointed in 66% of the institutions in the country. Most often, these officials perform several tasks—work as clerks, speakers, secretaries, lawyers, or do other administrative services. Very small number (9.1%) of these employees has taken independent decisions upon the received requests so far. This condition hampers the quick and effective provision of not only requested information, but also when it is provided on one's own initiative.

Four orders of the Minister of the Environment and Water from 2003 determine the special internal order for the provision of environmental information at MOSW. Under these orders, the officials at the Front Office Department file all the requests. They redirect the requests, according to the type of information asked, toward the relevant directorates, divisions. The MOSW possesses an information center with permanent Internet access for outside visitors. Thus the citizens have the opportunity to obtain environmental information.

In EEA, orders for internal activities have been adopted in 2004 to regulate the access to environmental information.

### **3. Education of state administrative officials.**

According to the State Official Act, the national budget allows for money allocations for the increase of the professional quality of the institution employees. The Institute for Public Administration and European Integration (IPAEI) was established for the purpose.

During the last year the IPAEI has included the right of access to information and its exemptions as a topic of several educational seminars for the administration. Lecturers from AIP participated in six of the organized seminars, where over 200 state officials were trained.

In the Ministry of Environment and Water, workshops and consultation trainings have been organized to increase the capacity of the officials to provide access to information. State officials take part in training sessions, organized by NGOs, concerning the access to information.

### **4. State officials' handbooks.**

In the MOEW's web page "A guideline for the implementation of the Aarhus Convention" has been published. It provides the necessary information concerning the access to information issues, public participation in decision making and access to justice,

In 2001, AIP issued a handbook for the local administration: “How to apply the Access to Public Information Act.” The handbook was published by the Local Self-government Reform Foundation.

In 2004, as part of the regional project “Freedom of information – a public interest issue,” with the leading influence of Article 19, AIP translated and issued a state officials handbook – “Freedom of information.”

### **5. School environment education.**

The need for introducing ecological education was considered at the beginning of the educational reform in 2000. Order No2 from May 18, 2000 by the Minister of Education and Science prescribed the inclusion of basic ecology topics in the educational program. Ecology education is both obligatory and profiled in the school curriculum from first to twelfth grade. Textbooks, approved by the MES, are used for the education purposes.

### **6. Increasing the citizen capacity.**

In the MOEW’s<sup>17</sup> web page “A guideline for the implementation of the Aarhus convention” is published. In 2003, AIP published and distributed a handbook: “How to get access to environmental information”, also accessible through AIP’s web page. In 2004, the Regional Environmental Center for Central and Eastern Europe distributed an adapted guideline for the implementation of the Aarhus Convention, published by the UN Economic Commission for Europe in 2000.

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<sup>17</sup> [http://www.moew.government.bg/recent\\_doc/aarhus/naruchnik\\_prilaganeArCon.doc](http://www.moew.government.bg/recent_doc/aarhus/naruchnik_prilaganeArCon.doc)