ENVIRONMENT AND HUMAN RIGHTS

OKOLJE IN ČLOVEKOVE PRAVICE

Collection of Contributions
of the 4th International Conference
ENVIRONMENT AND HUMAN RIGHTS
**PUBLIC PARTICIPATION IN ENVIRONMENTAL MATTERS**
Ljubljana 2017

Zbornik prispevkov
4. mednarodne konference
OKOLJE IN ČLOVEKOVE PRAVICE
**SODELOVANJE JAVNOSTI V OKOLJSKIH ZADEVAH**
Ljubljana 2017

REPUBLIKA SLOVENIJA
VARUH ČLOVEKOVIH PRAVIC

Zbornik prispevkov
4. mednarodne konference
OKOLJE IN ČLOVEKOVE PRAVICE
**SODELOVANJE JAVNOSTI V OKOLJSKIH ZADEVAH**
Ljubljana, 2017

Collection of Written Contributions
4th International Conference on the
ENVIRONMENT AND HUMAN RIGHTS
**PUBLIC PARTICIPATION IN ENVIRONMENTAL MATTERS,**
Ljubljana 2017

# TABLE OF CONTENTS





# KAZALO

# CONFERENCE PROGRAMME

**ENVIRONMENT AND HUMAN RIGHTS**

**4TH CONFERENCE**
**PUBLIC PARTICIPATION IN ENVIRONMENTAL MATTERS**
**LJUBLJANA, 15. 9. 2017**

REPUBLIC OF SLOVENIA
HUMAN RIGHTS OMBUDSMAN

| | |
|---|---|
| **8.00–8.55** | **Registration** |
| **9.00–9.40** | **Opening speeches:**<br>• **Vlasta Nussdorfer**, Ombudsman, Slovenia<br>• **Zoran Janković**, Mayor of the City Municipality of Ljubljana<br>• **Nataša Kovač**, Secretary-General, Office of the President of the Republic of Slovenia<br>• **Irena Majcen**, Minister of the Environment and Spatial Planning<br>• **Josef Nejedly**, Representative of the European Human Rights Ombudsmen |
| **9.40–10.40** | **Ombudsman contributions: presentation of experiences and findings in the field of environment and human rights** (led by Deputy Ombudsman dr. Kornelija Marzel)<br>• **dr. Kornelija Marzel**, Deputy Ombudsman, Slovenia<br>• **dr. Jasminka Džumhur**, Ombudsman, Bosnia and Herzegovina<br>• **Hilmi Jashari**, Ombudsman, Kosovo[1]<br>• **dr. Ljubinko Mitrović**, Ombudsman, Bosnia and Herzegovina |
| **10.40–10.50** | **Discussion** |
| **10.50–11.10** | **Break** |
| **11.10–12.30** | **Ombudsman contributions: presentation of experiences and findings in the field of environment and human rights**<br>• **Idzet Memeti**, Ombudsman, Macedonia<br>• **Olja Jovičić**, Secretary General of Ombudsman, Serbia<br>• **Petar Ivezić**, Deputy Ombudsman, Montenegro<br>• **Lidija Lukina Kezić**, Deputy Ombudsman, Croatia |
| **12.30–12.50** | **Discussion** |
| **12.50–13.05** | **Signing of the Declaration of Cooperation of Ombudsmen in the field of environment and human rights** |

[1] This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.



# PROGRAM KONFERENCE

**OKOLJE IN ČLOVEKOVE PRAVICE**

**3. KONFERENCA:**
**SODELOVANJE JAVNOSTI V OKOLJSKIH ZADEVAH**
LJUBLJANA, 15. 9. 2017

REPUBLIKA SLOVENIJA
VARUH ČLOVEKOVIH PRAVIC

| | |
|---|---|
| **8.00–8.55** | **Prijava udeležencev** |
| **9.00–9.40** | **Uvodni nagovori**<br>• **Vlasta Nussdorfer**, varuhinja človekovih pravic<br>• **Zoran Janković**, župan Mestne občine Ljubljana<br>• **Nataša Kovač**, generalna sekretarka, Urad predsednika Republike Slovenije<br>• **Irena Majcen**, ministrica za okolje in prostor<br>• **Josef Nejedly**, predstavnik Evropskega varuha človekovih pravic |
| **9.40–10.40** | **Prispevki ombudsmanov s predstavitvijo izkušenj in ugotovitev na področju okolja in človekovih pravic** (vodi namestnica varuhinje dr. Kornelija Marzel)<br>• **dr. Kornelija Marzel**, namestnica varuhinje človekovih pravic, Slovenija<br>• **dr. Jasminka Džumhur**, ombudsmanka, Bosna in Hercegovina<br>• **Hilmi Jashari**, ombudsman, Kosovo[1]<br>• **dr. Ljubinko Mitrović**, ombudsman, Bosna in Hercegovina |
| **10.40–10.50** | **Razprava** |
| **10.50–11.10** | **Odmor** |
| **11.10–12.30** | **Prispevki ombudsmanov s predstavitvijo izkušenj in ugotovitev na področju okolja in človekovih pravic**<br>• **Idzet Memeti**, ombudsman, Makedonija<br>• **Olja Jovičić**, generalna sekretarka Ombudsmana, Srbija<br>• **Petar Ivezić**, namestnik ombudsmana, Črna gora<br>• **Lidija Lukina Kezić**, namestnica ombudsmanke, Hrvaška |
| **12.30–12.50** | **Razprava** |
| **12.50–13.05** | **Podpis Deklaracije o sodelovanju ombudsmanov na področju okolja in človekovih pravic** |

[1] To poimenovanje ne posega v stališča glede statusa ter je v skladu z RVSZN 1244(1999) in mnenjem Meddržavnega sodišča o razglasitvi neodvisnosti Kosova.

**14.05–15.10** **Participant contributions** (led by Deputy Ombudsman dr. Kornelija Marzel)
- **Martina Ocepek**, Director of the Ombudsman's Expert Service of the Republic of Slovenia, and **Jožica Hanžel**, Ombudsman's Adviser: The right to public participation
- **mag. Tanja Bolte and Teja Baloh**, Ministry of the Environment and Spatial Planning of the Republic of Slovenia: Experiences and challenges of the Ministry of the Environment and Spatial Planning regarding public participation in the adoption of environmental regulations
- **Uroš Macerl**, President, and **mag. Anja Ovnik Brglez**, Eko Krog Society: Participation of civil society in environmental matters: The public as an "unnecessary bureaucratic obstacle"
- **Natalija Drnovšek**, Ministry of Public Administration of the Republic of Slovenia, Service for Transparency, Integrity and the Political System: "The fateful 30 days" or permanent public participation for sustainable development

**15.10–15.30** **Discussion**

**15.30–15.40** **Break**

**15.40–16.30** **Participant contributions**
(led by the Director of the Ombudsman's Expert Service Martina Ocepek)
- **Goran Forbici**, Director of the Centre for Information Service, Cooperation and Development of NGOs: Cooperation of civil society in drafting (environmental) regulations–experiences and challenges
- **mag. Samo Hribar Milič**, General Director of the Chamber of Commerce and Industry of Slovenia: The right to be informed and duty to communicate
- **Marko Peterlin**, Director of the Institute for Spatial Policies: Prerequisites for successful public participation in spatial planning

**16.30–17.00** **Discussion**

**17:00** **Conference conclusions**

**The conference was organized by the Ombudsman of the Republic of Slovenia under the patronage of the President of the Republic of Slovenia Borut Pahor.**



**14.05–15.10** **Prispevki udeležencev** (vodi namestnica varuhinje dr. Kornelija Marzel)
- **Martina Ocepek**, direktorica strokovne službe Varuha človekovih pravic Republike Slovenije in **Jožica Hanžel**, svetovalka Varuha: *Izvotljena pravica do sodelovanja javnosti*
- **mag. Tanja Bolte**, generalna direktorica Direktorata za okolje, Ministrstvo za okolje in prostor Republike Slovenije in **Teja Baloh,** Ministrstvo za okolje in prostor: *Izkušnje in izzivi Ministrstva za okolje in prostor na področju sodelovanja javnosti pri sprejemanju okoljskih predpisov*
- **Uroš Macerl**, predsednik, in **mag. Anja Ovnik Brglez**, društvo Eko krog: Sodelovanje civilne družbe v okoljskih zadevah: *Javnost kot »nepotrebna birokratska ovira«*
- **Natalija Drnovšek**, Ministrstvo za javno upravo Republike Slovenije, Služba za transparentnost, integriteto in politični sistem: *Usodnih 30 dni ali trajno sodelovanje javnosti za trajnostni razvoj*

**15.10–15.30** **Razprava**

**15.30–15.40** **Odmor**

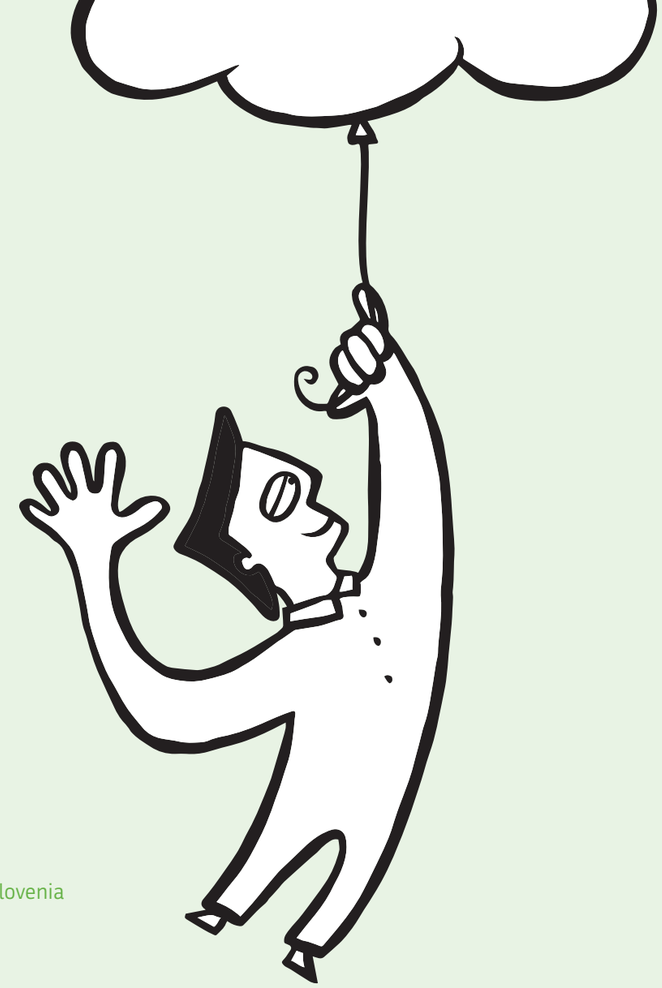
**15.40–16.30** **Prispevki udeležencev**
(vodi direktorica strokovne službe Varuha Martina Ocepek)
- **Goran Forbici**, direktor Centra za informiranje, sodelovanje in razvoj nevladnih organizacij: *Sodelovanje civilne družbe pri pripravi (okoljskih) predpisov – izkušnje in izzivi*
- **mag. Samo Hribar Milič**, generalni direktor Gospodarske zbornice Slovenije: *Pravica do obveščenosti in dolžnost komuniciranja*
- **Marko Peterlin**, direktor Inštituta za politike prostora: *Pogoji za uspešno sodelovanje javnosti v urejanju prostora*

**16.40–17.00** **Razprava**

**17.00** **Sklepi konference**

**Konferenca je potekala v organizaciji Varuha človekovih pravic Republike Slovenije in pod pokroviteljstvom predsednika Republike Slovenije Boruta Pahorja.**

# I. OMBUDSMAN'S INTRODUCTION



**Vlasta Nussdorfer**
Human Rights Ombudsman of the Republic of Slovenia

Ladies and Gentlemen,

Throughout all the years of its existence, the Ombudsman has been persistently pointing out the importance of the right to a healthy living environment and consequently the right to human dignity and the right to private and family life. Every year, the Ombudsman deals with some 130 cases from this field and so far we have organised over sixty meetings with civil society representatives from the field of the environment and spatial planning (associations, civil initiatives, and non-governmental organisations). The meetings were held at the Ombudsman's office in Ljubljana or in the field. The participants of these meetings often discussed issues of their participation in the drafting of regulations and concrete decisions involving the environment and spatial planning. It was also for this reason that the Office of the Human Rights Ombudsman of the Republic of Slovenia (Ombudsman) had been considering for some time to organise another international conference on the environment and human rights. The Ombudsman organised the first such conference titled Environment and Human Rights back in 2007 in the National Assembly, the second in 2010 in Brdo, and the third in the National Council in 2013 when we focused our attention on issues concerning the state's responsibility for the rehabilitation of the polluted environment. **The fourth international conference on the Environment and Human Rights: Public Participation in Environmental Matters took place on 15 September 2017 in the Estates Hall of Ljubljana Castle.** The conference mainly focused on the issues of public participation in environmental matters, with an emphasis on the adoption of environmental regulations.

Conference participants focused on various aspects of public participation and emphasised that in practice this participation is often merely formal without consideration of substantive comments of stakeholders or the sensible inclusion of the findings and recommendations of civil society groups and non-governmental organisations. A high-quality examination of the content of the draft regulation is often impossible, which is in contravention of the Aarhus Convention, does not satisfy the provisions of the Resolution on Legislative Regulation, and is also in conflict with the Instructions on Public Participation in Adopting Regulations that Could Significantly Affect the Environment. Among more than one hundred conference participants almost one half were representatives of non-governmental organisations, civil initiatives, and local communities.



# I. UVOD VARUHINJE

**Vlasta Nussdorfer,**
varuhinja človekovih pravic

Spoštovane in spoštovani,

Varuh vsa leta svojega delovanja vztrajno opozarja na pravico do zdravega življenjskega okolja in posledično na pravico do človeškega dostojanstva ter družinskega in osebnega življenja.

Vsako leto obravnavamo približno 130 zadev s tega področja in doslej smo organizirali čez šestdeset srečanj s predstavniki civilne družbe s področja okolja in prostora (sodelujejo društva, civilne pobude in nevladne organizacije). Srečanja so potekala na sedežu Varuha v Ljubljani ali na terenu. Na teh srečanjih so prisotni pogosto obravnavali vprašanja njihovega sodelovanja v postopkih priprave predpisov in konkretnih odločitev s področja okolja in urejanja prostora. Tudi zato je dalj časa zorela misel, da v organizaciji Varuha človekovih pravic Republike Slovenije (Varuh) znova pripravimo mednarodno konferenco na temo okolja in človekovih pravic. Prvo tovrstno konferenco z naslovom Okolje in človekove pravice je Varuh organiziral že leta 2007 v državnem zboru, drugo leta 2010 na Brdu in tretjo v državnem svetu leta 2013, ko smo pozornost namenili vprašanjem odgovornosti države za sanacijo onesnaženega okolja. **Četrto mednarodno konferenco Okolje in človekove pravice: Sodelovanje javnosti v okoljskih zadevah smo v 15. septembra 2017 organizirali v stanovski dvorani na Ljubljanskem gradu.** Osrednjo pozornost smo namenili vprašanjem sodelovanja javnosti v okoljskih zadevah, s poudarkom na sprejemanju okoljskih predpisov.

Udeleženci konference so izpostavili različne vidike sodelovanja javnosti in poudarili, da je njeno sodelovanje v praksi pogosto le formalno, brez upoštevanja vsebinskih pripomb deležnikov ter smiselnega vključevanja ugotovitev in priporočil civilnodružbenih skupin in nevladnih organizacij, večkrat je onemogočena kakovostna obravnava vsebine osnutka predpisa, kar je v nasprotju z Aarhuško konvencijo, ne zadošča določilom Resolucije o normativni dejavnosti in je tudi v neskladju z Navodilom o postopku sodelovanja javnosti pri sprejemanju predpisov, ki lahko pomembneje vplivajo na okolje. Na konferenci je bila od več kot sto sodelujočih skoraj polovica predstavnikov nevladnih organizacij, civilnih pobud in predstavnikov lokalnih skupnosti.

Numerous alarming initiatives and questions concerning the environment are also being received by the Office of the President of the Republic of Slovenia, as emphasised by Secretary General **Nataša Kovač**. Deputy Mayor of Ljubljana, **Aleš Čerin**, who spoke instead of the Mayor Zoran Janković as representative of the European Green Capital for 2016 addressing the participants on behalf of the Municipality of Ljubljana, also emphasised the importance of education for the protection of the environment, which Ljubljana starts as soon as kindergarten and primary school.

Representative of the European Ombudsman **Josef Nejedly** emphasised that the institution, which he represents, is also faced with initiatives by civil society which often reports of hindered access to documents containing environmental information. The public wishes to be informed, as this is the only way to present its arguments in the process.

Minister of the Environment and Spatial Planning **Irena Majcen** announced that the ongoing legislative amendments will provide an appropriate legislative basis for the professional and the interested public to be able to obtain information on legislative acts relating to the environment, and to subsequently, in terms of its interest, be included in the process. For this purpose, they have been developing information systems, which will provide a better overview of the procedures and the adopted acts.

At the beginning of the morning session, Deputy Human Rights Ombudsman **dr. Kornelija Marzel** explained that the public has the right to participate in environmental matters as accessory participants and that in such cases non-governmental organisations, which act in the public interest, have equal rights as the parties to the proceedings. The problem is however that this status is difficult to obtain. The competent authorities often try to sidestep the public as regards its right to receive environmental information when the public wishes to participate in the drafting of regulations. The dilemma whether the public has the right to participate in environmental matters therefore does not exist. This right also originates in legislative bases, it is an expression of good administration and the democratic social order, as further emphasised by the Deputy Ombudsman.

Public participation in environmental matters was also the subject of speeches held by guests from former Yugoslav republics, **dr. Jasminka Džumhur** and **dr. Ljubinko Mitrović**, Ombudsmen of Bosnia and Herzegovina, **Hilmi Jashari**, Ombudsman of Kosovo, **Idzet Memeti**, Ombudsman of the Republic of Macedonia, **Olja Jovičić**, Secretary General of the Institution of the Ombudsman of Serbia, **Petar Ivezić**, Deputy Ombudsman of Montenegro, and **Lidija Lukina Kezić**, Deputy Ombudsman of Croatia.

The situation concerning public participation in the drafting of regulations is at different levels in these countries. They all however recognise and acknowledge its importance, as it represents the basis for adopting high-quality and effective regulations.

At the conference, the Human Rights Ombudsmen of Bosnia and Herzegovina, Croatia, Montenegro, Kosovo, the Republic of Macedonia, Slovenia, and Serbia also signed the **Declaration on Cooperation of Ombudsmen in the Areas of the Environment and Human Rights.** We set up a network so as to establish closer cooperation and



Številne zaskrbljene pobude in vprašanja s področja okolja prejemajo tudi v Uradu predsednika Republike Slovenije, je poudarila generalna sekretarka **Nataša Kovač**. Ljubljanski podžupan **Aleš Čerin**, ki je kot predstavnik zelene prestolnice Evrope 2016 in namesto župana Zorana Jankovića nagovoril zbrane v imenu Mestne občine Ljubljana, je med drugim posebej poudaril vzgojo za varovanje okolja, ki jo v Ljubljani začenjajo že v vrtcu in osnovni šoli.

Predstavnik Evropskega varuha človekovih pravic **Josef Nejedly** je poudaril, da se tudi v instituciji, ki jo zastopa, srečujejo s pobudami civilne družbe, ki pogosto poroča o oviranem dostopu do dokumentov z okoljskimi informacijami. Javnost želi biti obveščena, saj lahko v postopkih samo tako nastopa s svojimi argumenti.

Ministrica za okolje in prostor **Irena Majcen** je napovedala, da bodo spremembe zakonodaje, ki so še v postopku, omogočile ustrezno normativno podlago, da bosta lahko strokovna in zainteresirana javnost dobili informacije o aktih, ki se nanašajo na okolje, ter se nato glede na interes vključili v postopke. V ta namen tudi razvijajo informacijske sisteme, ki bodo omogočali boljši pregled nad postopki in sprejetimi akti.

Na začetku dopoldanskega sklopa konference je namestnica varuhinje človekovih pravic **dr. Kornelija Marzel** pojasnila, da lahko javnost v okoljskih zadevah sodeluje kot stranski udeleženec, tako imajo na primer nevladne organizacije, ki delujejo v javnem interesu, enake pravice kot stranke v postopku. A težava je, ker je ta status težko pridobiti. Pristojni organi večkrat poskušajo tudi izigrati javnost pri pravici do vpogleda v okoljske informacije in ko želi javnost sodelovati pri pripravi predpisov. Dileme, ali ima javnost pravico sodelovati v okoljskih zadevah, torej ni. To izhaja tudi iz normativnih podlag, je izraz dobrega upravljanja in demokratične družbene ureditve, je še poudarila namestnica varuhinje.

O sodelovanju javnosti v okoljskih zadevah so govorili tudi gostje iz nekdanjih jugoslovanskih republik, **dr. Jasminka Džumhur** in **dr. Ljubinko Mitrović**, ombudsmana Bosne in Hercegovine, **Hilmi Jashari**, ombudsman Kosova, **Idzet Memeti**, ombudsman Makedonije, **Olja Jovičić**, generalna sekretarka Ombudsmana Srbije, **Petar Ivezić**, namestnik ombudsmana Črne gore, in **Lidija Lukina Kezić**, namestnica ombudsmanke Hrvaške.

Stanje sodelovanja javnosti pri pripravi predpisov je v omenjenih državah na različnih ravneh. Vse pa prepoznavajo in priznavajo njegov pomen, saj pomeni izhodišče za sprejetje kakovostnih in učinkovitih predpisov.

Varuhi človekovih pravic Bosne in Hercegovine, Hrvaške, Črne gore, Kosova, Makedonije, Slovenije in Srbije smo na konferenci podpisali tudi **Deklaracijo o sodelovanju na področju okolja in človekovih pravic**. S tem smo ustanovili mrežo, katere namen je vzpostaviti tesnejše medsebojno sodelovanje, izmenjavo znanj in dobrih praks, nadaljnji razvoj oblik odzivanja ombudsmanov na področju okolja in podporo pri izvajanju poslanstva ombudsmanov na tem področju. Prvo leto bo mreži predsedovala Slovenija, sodelovanje pa se bo razvijalo v okviru rednih letnih srečanj, konferenc ali sestankov predstavnikov mreže, tematskih srečanj, skupnih obiskov degradiranih območij, izmenjave znanj in vedenj ter dokumentov, informacij in poročil. V deklaraciji smo med drugim poudarili, da je pravica do zdravega življenjskega okolja ena izmed temeljnih človekovih pravic (tretje generacije), za uresničevanje katere si morajo s sprejetjem sistemskih ukrepov prizadevati vse države, pri tem pa so vprašanja varnega, zdravega in sprejemljivega okolja tesno povezana s stanjem v soseščini posameznih držav ter v čezmejnem in globalnem okolju.

**Martina Ocepek**, direktorica strokovne službe Varuha, in **Jožica Hanžel**, svetovalka Varuha, sta v svojem prispevku govorili o izvotljeni pravici do sodelovanja javnosti. Med drugim sta poudarili, da je veljavna ureditev dobra in zadostna podlaga za odprt in pregleden sistem sodelovanja javnosti pri sprejemanju okoljskih predpisov, vendar Varuh ugotavlja, da je v praksi izvajanje večkrat pomanjkljivo, zato sta predstavili tudi nekatere rešitve. Martina Ocepek je med drugim poudarila pomen kakovostno pripravljenega predpisa, saj je v tem primeru njegovo izvajanje lažje in hitrejše, sprotno seznanjanje javnosti o fazah priprave pa zmanjšuje morebitna nasprotovanja javnosti. Jožica Hanžel pa je predstavila Analizo izvajanja 34.a člena Zakona o varstvu okolja v Republiki Sloveniji na lokalni ravni, ki jo je Varuh opravil prvič leta 2010 in ponovil leta 2017.

**Mag. Tanja Bolte**, generalna direktorica Direktorata za okolje na Ministrstvu za okolje in prostor, in **Teja Baloh** z istega ministrstva sta predstavili izkušnje in izzive ministrstva na področju sodelovanja javnosti pri sprejemanju okoljskih predpisov. **Natalija Drnovšek** iz Službe za transparentnost, integriteto in politični sistem pri Ministrstvu za javno upravo je razčlenila in prikazala pogoje za trajno sodelovanje javnosti za trajnostni razvoj.

exchange of knowledge and good practices, to further develop forms of Ombudsmen's responses in the area of the environment, and to provide mutual support in fulfilling the mission of the Ombudsmen in this respect. The first year, the presiding state will be Slovenia while cooperation will be developed through regular annual forums, conferences or meetings of representatives, topic-oriented meetings, joint visits to degraded areas, and exchange of knowledge, findings, documents, information and reports. The Declaration also emphasises that the right to a healthy living environment is a fundamental human right (third generation) and that all states should strive to adopt systemic measures to exercise them and that the issues of a safe, healthy, and sound environment are closely related to the situation in the state's neighbourhood as well as to the transboundary and global context.

**Martina Ocepek**, Director of the Expert Service of the Human Rights Ombudsman, and **Jožica Hanžel**, Advisor to the Human Rights Ombudsman, spoke of the hollow right to public participation. They emphasised that the valid regulation provides solid and sufficient basis for an open and transparent system of public participation in the adoption of environmental regulations, however the Ombudsman has established quite frequent deficiencies in the actual practical implementation and they therefore presented individual solutions. Ms Ocepek also emphasised the importance of a high-quality regulation, as its implementation is consequently easier and faster, while regularly informing the public about the individual phases of the preparation reduces potential opposition. Advisor **Jožica Hanžel** presented an analysis of the implementation of the provisions of Article 34a of the Environmental Protection Act in the Republic of Slovenia at local level, which the Ombudsman implemented for the first time in 2010 and then again in 2017.

**Mag. Tanja Bolte,** Director General of the Environment Directorate at the Ministry of the Environment and Spatial Planning and **Teja Baloh** from the same ministry presented the experience and challenges of the ministry as regards public participation in the adoption of environmental regulations. **Natalija Drnovšek** from the Service for Transparency, Integrity and the Political System with the Ministry of Public Administration analysed and presented the conditions for permanent public participation for sustainable development.

**Uroš Macerl,** the President of the Eko krog association and his colleague **mag. Anja Ovnik Brglez** spoke of their experience with participation in environmental matters and came to the conclusion that we are still in the phase where officials see the public as an "unneeded bureaucratic obstacle". **Goran Forbici**, Director of the Centre for Information Service, Cooperation and Development of NGOs (CNVOS), provided concrete data on the experience and challenges in Slovenia in this field. For several years, CNVOS has been monitoring the realisation of the Resolution on Legislative Regulation, which is one of the bases for public participation in decision-making. **Mag. Samo Hribar Milič**, General Manager of the Slovenian Chamber of Commerce and Industry spoke of the right of the public to be informed and the obligation of authorities to communicate and finally the Director of the Institute for Spatial Policies **Marko Peterlin** also presented the conditions for successful public participation in spatial planning.

The rich and diverse discussion included the active participation of representatives of non-governmental organisations, national and local authorities, and other participants who presented concrete experience, good practices, problems, and thoughts on their participation in proceedings. They were fairly critical towards the work of the Ministry of the Environment and Spatial Planning.

We also invited ambassadors of other countries to attend the event. Representatives of Albania, Croatia, Ireland, Italy, Kosovo, Hungary, Germany, the Netherlands, Poland, Romania, and Venezuela responded to our invitation.

At the end of the conference, as the Human Rights Ombudsman and conference host, I proposed to adopt the final conclusions of the conference, which the participants confirmed with unambiguous approval. We publish them at the end of this publication.

I wish to thank all conference participants for their cooperation and their cogent papers which are published in this publication. I also wish to assure you that the Ombudsman will continue with its endeavours in the implementation of the right to a healthy living environment and all its closely related human rights. I wish the newly set up Network of Human Rights Ombudsmen for the Environment and Human Rights good cooperation and a successful exchange of experience and good practices in this field of their work.




**Uroš Macerl**, predsednik društva Eko krog, in njegova kolegica **mag. Anja Ovnik Brglez** sta govorila o svojih izkušnjah pri sodelovanju v okoljskih zadevah in menila, da smo še vedno v fazi, ko je javnost za uradnike »nepotrebna birokratska ovira«. Izkušnje in izzive v Sloveniji na tem področju pa je s konkretnimi podatki podkrepil tudi direktor Centra za informiranje, sodelovanje in razvoj nevladnih organizacij (CNVOS) **Goran Forbici**. CNVOS že več let spremlja uresničevanje Resolucije o normativni dejavnosti, ki je ena od podlag sodelovanja javnosti pri sprejemanju odločitev. **Mag. Samo Hribar Milič**, generalni direktor Gospodarske zbornice Slovenije, je govoril o pravici javnosti do obveščenosti in dolžnosti organov, da komunicirajo, direktor Inštituta za politike prostora **Marko Peterlin** pa je za konec predstavil pogoje za uspešno sodelovanje javnosti na področju urejanja prostora.

V zelo bogati in raznovrstni razpravi so bili aktivni tudi predstavniki nevladnih organizacij, državnih in lokalnih organov in drugi udeleženci, ki so predstavili konkretne izkušnje, dobre prakse, probleme in razmišljanja o svojem sodelovanju v postopkih. Bili so precej kritični do dela Ministrstva za okolje in prostor.

Na dogodek smo povabili tudi veleposlanike tujih držav. Odzvali so se predstavniki Albanije, Hrvaške, Irske, Italije, Kosova, Madžarske, Nemčije, Nizozemske, Poljske, Romunije in Venezuele.

Ob koncu konference sem kot varuhinja človekovih pravic, gostiteljica konference, predlagala sprejetje sklepov, ki so jih udeleženci potrdili z nedvoumnim odobravanjem. Objavljamo jih na koncu te publikacije.

Vsem udeležencem konference se zahvaljujem za sodelovanje in tehtne prispevke, ki jih objavljamo v tej publikaciji. Obenem zagotavljam, da bo Varuh nadaljeval prizadevanja za uveljavljanje pravice do zdravega življenjskega okolja in vseh človekovih pravic, ki so s to pravico tesno povezane. Novoustanovljeni mreži varuhov človekovih pravic na področju okolja in človekovih pravic želim dobro medsebojno sodelovanje ter uspešno izmenjavo izkušenj in dobrih praks na tem področju dela varuhov.

# II. OPENING SPEECHES

**Zoran Janković**
Mayor of the City Municipality of Ljubljana

## A Clean Environment, the Basis for High-Quality Living

The enjoyment of a clean, tidy and healthy environment is a fundamental human right, which Ljubljana observes unconditionally. Our main task is to ensure a high-quality life for all generations of citizens in a tidy, clean, green, safe, open, and supportive city, where every individual is respected and where we know how and are able to live together in diversity.

A decade ago, with the adoption of the Vision of Ljubljana 2025, the city embarked on the path of sustainable development, on which we persist and which is showing exceptional results. During this time, life in our city has changed fundamentally. The first notable change is that of the city centre, which is dedicated to pedestrians and cyclists and as such also open to the diverse social and cultural pulse. This is however not the only change in our city of Ljubljana.

In the last decade, we have realised more than 1,800 projects from different fields of life. Each was designed and realised keeping in mind a high-quality and dignified life of our citizens. We are aware that the City Municipality of Ljubljana and its Mayor are a service for the citizens, which has to be professional, fast, friendly and focus on their needs, as they deserve a high-quality and fulfilling life in all stages of life.

I am very pleased and proud that the citizens themselves have also changed their attitude towards our city. They feel the change in the quality of their life everyday and respond positively to our projects. They are aware that they can actively participate in the shaping of our lives in our beautiful city. We look forward to their participation, numerous initiatives and proposals, as their opinions and responses, as well as criticism, are exceptionally useful and provide a good basis for the planning of future projects.

Our work and our results also resonate abroad. We have received numerous awards and recognitions, including the prestigious title of European Green Capital for 2016. This title is of exceptional importance to us, as the Commission wrote in its explanatory note that Ljubljana has made huge strides towards quality of life in a short time frame, thus confirming our long-standing work, which focuses on every resident of our beautiful city. This title also means a lot to me, personally, as it has a strong mark of solidarity and humanity. It reminds us that we have to hand over our environment to the generations that come after us in at least as preserved a condition as we have it now.

We also need to mention another project, which will substantially improve the quality of life of our residents in the coming years, and which will also see to the preservation of a clean and green environment. In mid-August, the European Commission approved the funding of a major project of upgrading of the sewage network in Ljubljana and the neighbouring municipalities of Vodice and Medvode, which will include the expansion of the sewage network in these three municipalities and the upgrading of the Ljubljana Central Wastewater Treatment Plant. This project represents an excellent example of horizontal cooperation between three mayors and vertical cooperation with the Minister of the Environment and Spatial Planning and the Minister of Development, Strategic Projects and Cohesion. It represents a best practice example of how combined efforts, knowledge, cooperation, and above all focusing on the needs of our citizens enable us to see to the assurance of fundamental human rights, with public utility services in their living environment undoubtedly being part of them. In the next two years, this project will



# II. POZDRAVNI GOVORI

**Zoran Janković,**
župan Mestne občine Ljubljana

## Čisto okolje, temelj za kakovostno življenje

Živeti v čistem, urejenem in zdravem okolju je osnovna človekova pravica, ki jo v Ljubljani brezpogojno spoštujemo. Naša osnovna naloga je zagotoviti kakovostno življenje vseh generacij meščank in meščanov v urejenem, čistem, zelenem, varnem, odprtem in solidarnem mestu, v katerem spoštujemo vsakega posameznika in kjer v različnosti zmoremo in znamo živeti skupaj.

Ljubljana je pred desetletjem s sprejetjem Vizije razvoja mesta do leta 2025 stopila na pot trajnostnega razvoja, pri kateri vztrajamo in kaže izjemne rezultate. Življenje v našem mestu se je v tem obdobju temeljito spremenilo. Na prvi pogled je najopaznejša sprememba mestnega središča, ki smo ga namenili pešcem in kolesarjem, s tem pa odprli pestremu družabnemu in kulturnemu utripu. Vendar to še zdaleč ni edina sprememba v naši Ljubljani.

V zadnjih desetih letih smo izpeljali več kot 1.800 projektov z različnih področij življenja. Prav vsak izmed njih je bil zasnovan in izpeljan z mislijo na kakovostno in spoštovanja vredno življenje naših prebivalcev. Zavedamo se namreč, da je Mestna občina Ljubljana z županom na čelu servis meščankam in meščanom, ki mora biti strokoven, hiter, prijazen ter usmerjen k njihovim potrebam, saj si zaslužijo živeti kakovostno in polno življenje v vseh obdobjih življenja.

Zelo vesel in ponosen sem, da so v tem času odnos do našega mesta spremenili tudi meščanke in meščani sami. Ti v vsakdanjem življenju občutijo spremembe v kakovosti svojega bivanja, zato se pozitivno odzivajo na naše projekte, ob zavedanju, da lahko tudi sami aktivno soustvarjajo življenje v našem prelepem mestu. Veselimo se njihovega sodelovanja, številnih pobud in predlogov, saj so njihova mnenja in odzivi ter kritike za nas izjemno koristni in so dobra osnova za načrtovanje vseh nadaljnjih projektov.

Naše delo in rezultati odmevajo tudi v tujini, prejeli smo številne nagrade in priznanja, vključno s prestižnim nazivom Zelena prestolnica Evrope 2016. Ta naziv je za nas izjemnega pomena, saj je komisija v obrazložitvi zapisala, da smo v Ljubljani v najkrajšem času naredili največ tehtnih sprememb v kakovosti življenja, in tako potrdila naše dolgoletno delo, v središču katerega je misel na prav vsakega prebivalca našega prelepega mesta. Meni osebno ta naziv veliko pomeni tudi zato, ker ima močan solidarnosten in human pečat. Opominja nas namreč, da moramo okolje predati generacijam, ki prihajajo za nami, v vsaj tako ohranjenem stanju, kot ga imamo mi.

Še en velik projekt moram omeniti, ki bo v prihodnjih letih temeljito izboljšal kakovost življenja naših prebivalcev, hkrati pa bomo z njim poskrbeli za ohranitev čistega in zelenega okolja. Sredi avgusta je Evropska komisija odobrila sofinanciranje velikega projekta nadgradnje kanalizacijskega omrežja v Ljubljani ter v sosednjih občinah Vodice in Medvode, v okviru katerega bomo razširili kanalizacijsko omrežje v omenjenih treh občinah ter nadgradili centralno čistilno napravo Ljubljana. Projekt je izjemen primer odličnega horizontalnega sodelovanja med tremi župani ter vertikalnega sodelovanja z ministricama za okolje in prostor ter za razvoj, strateške projekte in kohezijo, poleg tega je to primer dobre prakse, kako znamo s skupnimi močmi, znanjem, sodelovanjem, predvsem pa z osredotočenostjo na potrebe naših prebivalcev poskrbeti za zagotovitev osnovnih človekovih pravic, kar komunalna opremljenost okolja, v katerem živijo, zagotovo je. V Ljubljani bomo v naslednjih dveh letih v okviru tega projekta stopnjo priključenosti na kanalizacijo zvišali na kar 98 %, kar je izjemen uspeh. Naj samo ponazorim – pred desetimi leti je bila ta stopnja le 68 %.

allow us to increase the degree of connection to the sewage system to 98%, which is an exceptional result. Allow me to illustrate—ten years ago, this degree stood at only 68%.

This project proves what I have been saying all along—that all cities across the world should develop in a way which follows sustainable development principles, which are embodied by the European Green Capital title. Only cooperation and common goals will allow us to ensure a good future for all; a future where human rights, including the right to live in a clean, healthy and tidy environment, will be so strongly ingrained in the consciousness of all that we will be aware of them every step we take and in all areas of life. Ljubljana remains a safe, open and healthy city, where we respect diversity and live together and are friendly to people of different sexual orientation and gender identity. Our work will continue to focus on our citizens and on providing a fulfilling life in harmony with nature.



Ta projekt dokazuje prav to, kar sam vseskozi trdim – da bi se morala vsa mesta na svetu razvijati po načelih trajnostnega razvoja, kar potrjuje naziv za zeleno prestolnico Evrope. Namreč, samo s sodelovanjem in skupnimi cilji lahko zagotovimo lepo prihodnost vsem; prihodnost, v kateri bodo človekove pravice, med njimi zagotovo tudi pravica do življenja v čistem, zdravem in urejenem okolju, tako trdno uveljavljene v zavesti vseh nas, da se jih bomo zavedali na vsakem koraku in na vseh področjih življenja. Ljubljana ostaja varno, odprto in zdravo mesto, v katerem spoštujemo različnost in živimo skupaj, predvsem pa smo prijazni ljudem različnih spolnih usmerjenosti in spolnih identitet. Naše delo bo še naprej usmerjeno k našim meščankam in meščanom ter zagotovitvi polnega življenja v sozvočju z naravo.

Opening Address of Deputy Mayor of the City Municipality of Ljubljana, Aleš Čerin
(in the absence of Zoran Janković, Mayor of the City Municipality of Ljubljana)

## Aleš Čerin

Deputy Mayor of the City Municipality of Ljubljana

I wish you all a lovely day, especially the organiser, Human Rights Ombudsman of the Republic of Slovenia Vlasta Nussdorfer, Human Rights Ombudsmen from across Europe, Deputy European Ombudsman, Minister of the Environment and Spatial Planning Irena Majcen, Secretary General of the Office of the President of the Republic of Slovenia Nataša Kovač, and all participants, including city councillors and Head of the Department for Environmental Protection of the City of Ljubljana Nataša Jazbinšek Sršen.

I hope that Ms Jazbinšek Sršen will have the opportunity at this conference to speak of Ljubljana's achievements in environmental protection. Personally, I will provide only a few important details in this opening address.

The activity of the current city leaders, who have been active for the 11th year, has always focused on the same areas as the subject of today's conference on the Environment and Human Rights.

As regards environmental protection, Ljubljana has adopted a long-term strategy with numerous concrete activities and measures. Consequently, the quality of water has been continually improving, the same as air quality, which is especially exacting given the city's basin position. Special emphasis needs to be placed on transport policy and numerous implemented measures, as transport is a major air pollutant in Ljubljana.

All these endeavours were crowned with the European Green Capital title, as we have heard today, which Ljubljana received for the year 2016 and which we proudly carry today, tomorrow and in years to come. This is the highest possible recognition that a city can receive in sustainable development. Ljubljana received it for its significant transformation over a period of time. We did not compete for the title for the title itself, even though it truly is a prestigious title, but for the title to encourage every resident and guest of Ljubljana to protect the environment.



Nagovor podžupan Mestne občine Ljubljana Aleša Čerina
v odsotnosti Zorana Jankovića, župana Mestne občine Ljubljana

## Aleš Čerin,

podžupan Mestne občine Ljubljana

Lepi dan vsem, posebej organizatorki, varuhinji človekovih pravic RS, gospe Vlasti Nussdorfer, varuhom človekovih pravic širom Evrope, z namestnikom evropskega varuha na čelu, ministrici za okolje in prostor Ireni Majcen, generalni sekretarki Urada predsednika RS Nataši Kovač in vsem drugim udeležencem, med drugimi tudi mestnim svetnikom in ljubljanski načelnici za varstvo okolja Nataši Jazbinšek Seršen.

Upam, da bo imela gospa Nataša Jazbinšek Seršen priložnost, da na tej konferenci govori o dosežkih Ljubljane na področju varstva okolja, saj bom sam v tem kratkem pozdravu podal samo nekaj pomembnih poudarkov.

Delovanje zdajšnjega mestnega vodstva, ki je v sedlu že 11 let, je vse skozi posebej usmerjeno na področja, ki so tema današnje konference Okolje in človekove pravice.

V Ljubljani smo za področje varstva okolja sprejeli dolgoročno strategijo s številnimi konkretnimi aktivnostmi in ukrepi. Zato se kakovost voda stalno izboljšuje in zraka, pri čemer je delovanje zaradi naše kotlinske lege še posebej zahtevno. Posebej pa izpostavljam prometno politiko in številne ukrepe, ki jih izvajamo, saj je prav promet v Ljubljani pomemben onesnaževalec zraka.

Krona vseh teh prizadevanj je bil danes že omenjeni naziv Zelena prestolnica Evrope, ki jo je Ljubljana prejela za leto 2016 in jo s ponosom nosimo danes, jutri in v naslednjih letih. To je najvišje priznanje, ki ga evropsko mesto lahko dobi na področju trajnostnega razvoja. Ljubljana ga je prejela, ker je v nekem časovnem obdobju naredila največje premike. Za ta naslov se nismo potegovali zaradi naslova, ki je resnično prestižen, ampak zaradi tega, da z njim spodbudimo vsakega prebivalca in gosta Ljubljane, da varuje okolje.

Varovanje okolja in z njim povezane človekove pravice so tek na dolge proge in rezultati niso vidni takoj. Lepo je spremljati, kako že otroke v vrtcu in učence v osnovni šoli vzgajamo in učimo o pomenu varovanja okolja.

Environmental protection and related human rights is a long-distance run and the results are not immediately evident. It is great to see how kindergarten and primary school children are being taught and educated on the importance of environmental protection.

Finally, allow me to emphasise that the human right associated with environmental protection is inherently linked to obligations and responsibilities and is but one hand of the same body. It is useless if people just demand their rights but at the same time neglect their obligations.

Over the last few years, the Republic of Slovenia, the European Union and the city itself have invested substantial funds in two important projects, RCERO Ljubljana—Regional Waste Management Centre and the cohesion project for the collection and treatment of wastewater in the area of the Ljubljansko Polje aquifer, which was adopted a month ago and which will allow us to increase the degree of connection to the sewage system in Ljubljana to close to 100 percent. However, these investments will not bring any long-term results if we are not aware that each of our activities has to be focused on protecting the environment.

I wish you a successful conference and welcome the setting up the network that you will establish today so as to improve the quality of the work in this field and congratulations on the occasion of today's national holiday.



Na koncu bi rad poudaril, da je človekova pravica na področju varstva okolja nujno povezana z dolžnostmi ali obveznostmi in je samo ena roka istega telesa. Nič nam namreč ne pomaga, če nekateri zahtevajo samo svoje pravice, zanemarjajo pa svoje obveznosti.

Republika Slovenija, Evropska unija in mesto smo v zadnjem obdobju vložili precejšnja sredstva v dva pomembna projekta, RCERO - Ljubljanski regijski center za ravnanje z odpadki ter pred enim mesecem sprejet kohezijski projekt odvajanja in čiščenja odpadnih voda na območju vodonosnika Ljubljanskega polja, ki bo v naslednjih letih delež kanalizacije v Ljubljani približal 100 odstotkom. Vendar nam vsa ta vlaganja dolgoročno ne bodo pomagala, če se prav vsak posameznik ne bo zavedal, da mora z vsako svojo aktivnostjo tudi varovati okolje.

Želim vam uspešno delo na konferenci, posebej pa pozdravljam ustanovitev mreže, ki jo boste danes stkali za boljše delo na tem področju, ter iskrene čestitke za slovenski državni praznik.

## Nataša Kovač

Secretary-General, Office of the President of the Republic of Slovenia

Human Rights Ombudsman,
Esteemed Guests,

Please allow me to extend a warm welcome on behalf of the President of the Republic of Slovenia, Mr Borut Pahor. Unfortunately, he is unable to attend the conference, as he is concluding the two-day 13 EU Presidents for Arraiolos Group meeting in Malta today. Please allow me to congratulate all on the occasion of today's national holiday celebrating the Day of Restoration of the Primorska Region to the Motherland.

It was with great pleasure that the President of the Republic of Slovenia accepted the patronage of today's conference. The fact that the realisation of the right to a healthy environment and public participation in the realisation of this right are among the most topical subjects of our everyday lives is not difficult to substantiate. In recent years, the President and his Office have been increasingly approached by individuals and groups expressing their concern with various measures, planned spatial developments, etc.

We have established that there is a great measure of distrust to be felt among civil society, non-governmental organisations, and individuals as regards the actions of state institutions when it comes to the protection of the right to a healthy environment.

This distrust most commonly derives from:

- inconsistent observance of regulations
- lack of harmonised and connected actions of various state and municipal institutions which should monitor the actions of various polluters
- insufficient inclusion of civil society in monitoring and
- poor or too late inclusion of civil society and the public in the drafting of regulations and decision making which affect our living environment.

The subject matter and today's discussion, which addresses these issues, are more than appropriate and welcome and we would like to see them contribute to a more appropriate protection of the fundamental right of each of us, the right to a healthy living environment.



## Nataša Kovač,

generalna sekretarka, Urad predsednika Republike Slovenije

Spoštovana varuhinja človekovih pravic,
spoštovani in cenjeni gostje,

dovolite mi, da vas prisrčno pozdravim v imenu predsednika republike Boruta Pahorja. Sam žal na konferenci ne more sodelovati, saj danes končuje dvodnevno mednarodno srečanje 13 predsednikov držav skupine Arraiolos, ki tokrat poteka na Malti. Tudi sam vsem iskreno čestitam ob današnjem državnem prazniku vrnitve Primorske matični domovini.

Predsednik republike je z velikim veseljem in zadovoljstvom sprejel pokroviteljstvo nad današnjo konferenco. Da sta uresničevanje pravice do zdravega življenjskega okolja in sodelovanje javnosti pri uresničevanju te pravice zagotovo med najaktualnejšimi temami našega vsakdana, ni težko utemeljiti. Tudi na predsednika republike in njegov urad se namreč v zadnjih letih vedno pogosteje obračajo posamezniki in skupine, ki so zaskrbljeni nad raznimi ukrepi, načrtovanimi posegi v prostor ipd.

Pri tem ugotavljamo, da je med civilno družbo, nevladnimi organizacijami in posamezniki še vedno mogoče zaznati veliko nezaupanja do ravnanja državnih institucij pri varovanju pravice do zdravega okolja.

To nezaupanje največkrat izhaja iz:

- nedoslednega spoštovanja predpisov,
- premalo usklajenega in povezanega ravnanja raznih državnih in občinskih institucij, ki naj bi nadzorovale ravnanje onesnaževalcev okolja,
- pomanjkljivega vključevanja civilne družbe v monitoring in
- premajhnega ali nepravočasnega vključevanja civilne družbe in javnosti v pripravo predpisov in sprejemanje odločitev, ki vplivajo na naše življenjsko okolje.

Zato sta izbira teme in današnja razprava, ki ta vprašanja odpira, več kot primerni in dobrodošli in želimo si, da bi prispevali k ustreznejšemu varovanju temeljne pravice vsakega izmed nas, pravice do zdravega življenjskega okolja.

## Irena Majcen

Minister, Ministry of the Environment and Spatial Planning of the Republic of Slovenia

Mr President, representative of the European Ombudsman, Mr Mayor, representatives of state authorities, municipalities, civil society, Ombudsmen of former Yugoslav republics and other participants,

The esteemed company gathered here today in this hall attests to the importance of the work of our host and her colleagues, to how necessary and highly respected it is. Human rights and fundamental freedoms are the framework of humankind, where a transparent and inclusive procedure for the drafting of regulations represents its firmness.

For several years, the Ministry of the Environment and Spatial Planning has endeavoured for the Republic of Slovenia to successfully fulfil its commitments, which it assumed in 2004 with the ratification of the Aarhus Convention. The Convention stipulates the main elements for effective public participation in environmental decision-making, which have been successfully transposed into the Slovene legal order, however our work is not yet done. The ongoing legislative amendments will provide an appropriate legislative basis for both the professional and the interested public to be able to obtain information on the drafting of individual or general legislative acts relating to the environment, and to subsequently, in terms of its interest, be included in the process. As we believe that for the public to receive information early is of key importance, we have been developing information systems, which will, in addition to publications on the Ministry website or the websites of bodies within the Ministry and publication of regulations on the e-demokracija portal, provide a better overview of the procedures and the adopted acts. This mainly refers to the environmental information system and the spatial planning information system, which will not be a one-way medium. The public will be able to respond to the published information and get to know the competent dialogue partners. This establishes a system of thorough provision of information, substantiated impact and consensual solving of open issues.

Harmonising the interests of so many diverse publics as are for example gathered here today, might seem impossible at times, however we believe that by providing information and through understanding and dialogue, it can be done. Of course together, as these are interests that shape the framework of humankind—human rights and fundamental freedoms.



## Irena Majcen,

ministrica, Ministrstvo za okolje in prostor Republike Slovenije

Spoštovani gospod predsednik, predstavnik Evropskega varuha človekovih pravic, gospod župan, predstavniki državnih organov, občin, civilne družbe, ombudsmani držav nekdanje Jugoslavije in drugi udeleženci.

Tako cenjena družba, kot je danes zbrana v tej dvorani, priča o tem, da je delo naše današnje gostiteljice in njenih kolegov pomembno, potrebno in nadvse spoštovano. Človekove pravice in temeljne svoboščine ljudi so okvir človeštva, v katerem transparenten in vključujoč proces priprave predpisov predstavlja njegovo trdnost.

Ministrstvo za okolje in prostor si že več let prizadeva, da bi Republika Slovenija uspešno izpolnjevala zaveze, ki jih je sprejela leta 2004 z ratifikacijo Aarhuške konvencije. Ta konvencija namreč določa osnovne gradnike za učinkovito sodelovanje javnosti pri okoljskih odločitvah, ki smo jih uspešno prenesli v slovenski pravni red, a s tem naše delo še ni končano. Spremembe zakonodaje, ki so v teku, bodo nudile ustrezno normativno podlago, da bo tako strokovna kot zainteresirana javnost dobila informacije o pripravi posamičnih ali splošnih pravnih aktov, ki se nanašajo na okolje, ter se nato glede na interes vključila v postopke. Ker menimo, da je zgodnja informiranost javnosti ključnega pomena, razvijamo informacijske sisteme, ki bodo poleg objav na spletni strani ministrstva ali organov v sestavi ministrstva ter objav predpisov na e-demokraciji omogočali boljši pregled nad postopki in sprejetimi akti. Gre predvsem za informacijski sistem okolja in za prostorski informacijski sistem, ki pa ne bo zgolj enosmeren. Javnost se bo namreč lahko na objavljene informacije tudi odzivala in pri tem spoznavala pristojne sogovornike. S tem vzpostavljamo sistem temeljitega informiranja, argumentiranega vplivanja in sporazumnega reševanja odprtih vprašanj.

Usklajevanje interesov tako raznolikih javnosti, kot smo danes na primer tukaj, se zdi na trenutke nemogoče, a verjamemo, da z dostopom do informacij, razumevanjem in dialogom to lahko dosežemo. Skupaj seveda, saj gre za interese, ki tvorijo okvir človeštva – človekove pravice in temeljne svoboščine ljudi.

Verjamemo, da hodimo po pravi poti – poti h konstruktivni in objektivno argumentirani komunikaciji. Ta je v času porasta civilnih iniciativ še kako pomembna, zato poskušamo slediti njihovim potrebam, željam in tudi zahtevam. Strokovno in v dobro širši javnosti, saj smo v službi vseh državljank in državljanov. Da nas kljub nenehnim prizadevanjem po učinkovitem izvajanju Aarhuške konvencije, ki pomeni upoštevanje, razumevanje in vključevanje javnosti v pripravo predpisov s področja okolja in prostora, čaka še veliko dela, je jasno. Da pa obstaja v Sloveniji

We believe that we are on the right path—the path towards a constructive and objectively substantiated communication. At a time when the number of civil initiatives is on the rise, this is especially important and we try to follow their needs, desires and also demands. Professionally and for the good of the general public, as we serve all citizens. It is clear that despite continual efforts to effectively implement the Aarhus Convention, which means taking into account, understanding and including the public in the drafting of environmental and spatial planning regulations, we still have a lot of work to do. I am especially proud that Slovenia has such a highly involved Human Rights Ombudsman, who will even establish a network of Ombudsmen of former Yugoslav republics so as to ensure a continual exchange of best practices in the protection of human rights that relate to the environment. As a mother, I hope that her efforts will have the desired effect, beneficial to future generations. As the Minister, I believe that we can be of great assistance in this respect.

I wish you a successful conference and a pleasant stay in Slovenia. Thank you.



tako angažirana varuhinja človekovih pravic, ki bo celo vzpostavila mrežo ombudsmanov bivše Jugoslavije z namenom stalne izmenjave dobrih praks varovanja človekovih pravic na področju okolja, na to sem še posebej ponosna. Kot mati upam, da bo njen napor dosegel učinek, koristen za prihodnje generacije. Kot ministrica verjamem, da ji bomo pri tem lahko v veliko pomoč.

Želim vam uspešno konferenco in prijetno bivanje v Sloveniji. Hvala.

## Josef Nejedly[1]

Legal Officer with the European Ombudsman

Ladies and gentlemen, dear colleagues,

Let me first thank the Slovenian Ombudsman for having organised this conference and having invited me to address you on behalf of the European Ombudsman.

The topic of today's conference links three central concepts, which are at the heart of the Aarhus Convention[2]: the environment, human rights, and public participation.

The adoption of the Aarhus Convention was, without any doubt, a major achievement of the international community in the 20th century. It expresses the acknowledgement that the environment and public participation cannot be artificially separated from the protection of fundamental rights. Just as there can be no life without access to water or healthcare, there can be no adequate life without a healthy environment, no truly democratic government without informed citizens and, presumably, no healthy environment without citizen participation and control of government.

Citizens expect to be involved in matters concerning them, in particular their health and their environment, and to receive relevant information in a timely way. Lack of transparency and obstacles to participation contribute to citizen disaffection. At the same time, legal rules are only what people make of them in practice and, unfortunately, international law is often much more vulnerable than national law.

Therefore, it is important that ombudsmen and other similar control mechanisms remain vigilant and active in this area and help ensure that the noble aspirations of the Aarhus Convention are also an everyday reality. Thus, ombudsmen have an important role to play in winning citizens' trust and in strengthening the legitimacy of democratic governance.

[1] Legal Officer with the European Ombudsman. The views expressed in this contribution are expressed in a personal capacity and do not represent the official position of the European Ombudsman.
[2] Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters.



## Josef Nejedly,[1]

pravni svetovalec Evropskega varuha človekovih pravic

Gospe in gospodje, dragi kolegi,

najprej se zahvaljujem slovenskemu Varuhu človekovih pravic za organizacijo te konference in za vabilo, da spregovorim za vas v imenu Evropskega varuha človekovih pravic.

Tema današnje konference povezuje tri osrednje koncepte, ki so jedro Aarhuške konvencije[2]: okolje, človekove pravice in udeležba javnosti.

Sprejetje Aarhuške konvencije je bilo brez dvoma velik dosežek mednarodne skupnosti v 20. stoletju. Izraža priznanje, da okolja in udeležbe javnosti ni mogoče umetno ločiti od varstva temeljnih pravic. Tako kot ni življenja brez dostopa do vode ali zdravstvenega varstva, tudi ni ustreznega življenja brez zdravega okolja, ni resnično demokratičnega vladanja brez informiranih državljanov, niti ni, tako domnevamo, zdravega okolja brez udeležbe državljanov in nadzora vladnih organov.

Državljani pričakujejo, da bodo sodelovali pri zadevah, ki se nanašajo nanje, zlasti na njihovo zdravje in okolje, in da bodo pravočasno prejeli ustrezne informacije. Pomanjkanje preglednosti in ovire pri udeležbi povečujejo nezadovoljstvo državljanov. Sočasno so pravni predpisi koristni le toliko, kolikor jih ljudje uporabljajo v praksi, in mednarodno pravo je, na žalost, pogosto bolj ranljivo kot nacionalno pravo.

Zato je pomembno, da varuhi človekovih pravic in drugi podobni nadzorni mehanizmi ostanejo pozorni in dejavni na tem področju ter pomagajo zagotoviti, da so plemenite težnje Aarhuške konvencije tudi dejansko del realnega življenja. Tako imajo varuhi človekovih pravic pomembno vlogo pri pridobivanju zaupanja državljanov in krepitvi zakonitosti demokratičnega upravljanja.

Na podlagi naših izkušenj v uradu Evropskega varuha človekovih pravic bi rad razpravljal o nekaterih primerih, ki kažejo, kako lahko naredimo razliko. Še pred tem pa bom na kratko pojasnil ustavni okvir EU, ki je temelj dela

[1] Pravni strokovni sodelavec v uradu Evropskega varuha človekovih pravic. Mnenja v tem prispevku izražajo avtorjevo osebno mnenje, ne uradno stališče Evropskega varuha človekovih pravic.
[2] Aarhuška konvencija o dostopu do informacij, udeležbi javnosti pri odločanju in dostopu do pravnega varstva v okoljskih zadevah.

Based on our experience at the European Ombudsman's Office, I would like to discuss some examples that show how we can make a difference. But before doing that, let me briefly refer to the EU constitutional framework, which is the foundation for the work of the European Ombudsman. This framework is equally relevant at national level because the EU Charter of Fundamental Rights applies to Member States when they are implementing EU law.[3]

**I The EU constitutional framework**

The European Union is a community based on the rule of law, committed to the respect for fundamental rights ***including*** the right to a healthy environment, openness and the principles of participative democracy.

The EU Charter of Fundamental Rights (the 'Charter'), which has been binding since 1 December 2009, contains a number of provisions that are relevant for today's discussion:

- Article 37 of the Charter says that: "***A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union*** *and ensured in accordance with the principle of sustainable development.*"[4]
- Articles 2[5], 7[6] and 35[7] guarantee the **right to life**, **right to a private life** and **right to health**.
- Articles 41[8] and 42[9] guarantee the **right to good administration**, including the right to a reply[10] and the duty for the administration to reason its decisions, and the **right of access to documents**. Article 11[11] guarantees **freedom of expression** which includes freedom to receive and impart information.
- Article 43[12] and 47[13] guarantee the **right to complain to the European Ombudsman** and the **right to an effective remedy and a fair trial including legal aid**.

It is important to bear in mind that, although the EU itself has not yet joined the European Convention on Human Rights (the 'ECHR'), the rights set out in the Charter that correspond to the rights contained in the ECHR are to be

[3] Article 51(1) of the Charter provides: "*The provisions of this Charter are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the Treaties.*"

[4] Emphasis added.

[5] Article 2(1) reads as follows: "*Everyone has the right to life.*"

[6] Article 7 reads as follows: "*Everyone has the right to respect for his or her private and family life, home and communications.*"

[7] Article 35 reads as follows: "*Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices.* ***A high level of human health protection shall be ensured in the definition and implementation of all the Union's policies and activities.***" (emphasis added)

[8] Article 41 reads as follows:
"*1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union.*
*2. This right includes:*
*(a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;*
*(b) the right of every person to have* ***access to his or her file****, while respecting the legitimate interests of confidentiality and of professional and business secrecy;*
*(c) the obligation of the administration to give reasons for its decisions.*
*3. Every person has the right to have the Union make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.*
*4. Every person may write to the institutions of the Union in one of the languages of the Treaties and must* ***have an answer*** *in the same language.*" (emphasis added)

[9] Article 42 reads as follows: "*Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the institutions, bodies, offices and agencies of the Union, whatever their medium.*"

[10] See decision on complaint 947/2016/JN.

[11] Article 11(1) reads as follows: "*Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to* ***receive and impart information*** *and ideas without interference by public authority and regardless of frontiers.*" (emphasis added)

[12] Article 43 reads as follows: "*Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to refer to the European Ombudsman cases of maladministration in the activities of the institutions, bodies, offices or agencies of the Union, with the exception of the Court of Justice of the European Union acting in its judicial role.*"

[13] Article 47 reads as follows: "*Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an* ***effective remedy*** *before a tribunal in compliance with the conditions laid down in this Article.*
*Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.*
***Legal aid*** *shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure* ***effective access to justice****.*" (emphasis added)



Evropskega varuha človekovih pravic. Ta okvir je enako pomemben na nacionalni ravni, saj Listina EU o temeljnih pravicah velja za države članice, kadar izvajajo pravo EU.[3]

**I Ustavni okvir EU**

Evropska unija je skupnost, ki temelji na pravni državi, zavezana spoštovanju temeljnih pravic, ***vključno*** s pravico do zdravega okolja, odprtosti in načel participativne demokracije.

Listina EU o temeljnih pravicah (v nadaljevanju: Listina), ki je zavezujoča od 1. decembra 2009, vsebuje številne določbe, ki so pomembne za današnjo razpravo:

- Člen 37 Listine določa: »***V politike Unije je treba vključiti visoko raven varstva in izboljšanje kakovosti okolja****, ki se zagotavljata v skladu z načelom trajnostnega razvoja.*«[4]
- Členi 2[5], 7[6] in 35[7] zagotavljajo **pravico do življenja**, **pravico do zasebnega življenja** oziroma **pravico do zdravstvenega varstva**.
- Člena 41[8] in 42[9] zagotavljata pravico do dobrega upravljanja, vključno s pravico do odgovora[10] in obveznostjo uprave, da svoje odločitve obrazloži, oziroma pravico dostopa do dokumentov. Člen 11[11] zagotavlja svobodo izražanja, ki vključuje svobodo sprejemanja in širjenja vesti.
- Člena 43[12] in 47[13] zagotavljata **pravico do pritožbe evropskemu varuhu človekovih pravic oziroma pravico do učinkovitega pravnega sredstva in nepristranskega sodišča, vključno s pravno pomočjo.**

Pomembno je upoštevati, da čeprav se EU še ni pridružila Evropski konvenciji o človekovih pravicah (v nadaljevanju: EKČP), je treba pravice iz Listine, ki ustrezajo pravicam iz EKČP, razlagati enako, to je glede na sodno prakso Evropskega sodišča za človekove pravice (v nadaljevanju: ESČP).[14] ESČP je ustvarilo sodno prakso, ki je upoštevna.

V Pogodbi o Evropski uniji (v nadaljevanju: PEU) so še druge pomembne določbe, ki so upoštevne.

[3] Člen 51(1) Listine določa: »*Določbe te listine se uporabljajo za institucije, organe, urade in agencije Unije ob spoštovanju načela subsidiarnosti, za države članice pa samo, ko izvajajo pravo Unije. Zato spoštujejo pravice, upoštevajo načela in spodbujajo njihovo uporabo v skladu s svojimi pristojnostmi in ob spoštovanju meja pristojnosti Unije, ki so ji dodeljene v Pogodbah.*«

[4] Poudarek dodan.

[5] Člen 2(1) določa: »*Vsakdo ima pravico do življenja.*«

[6] Člen 7 določa: »*Vsakdo ima pravico do spoštovanja svojega zasebnega in družinskega življenja, stanovanja ter komunikacij.*«

[7] Člen 35 določa: »*Vsakdo ima pravico do preventivnega zdravstvenega varstva in do zdravniške oskrbe v skladu s pogoji, ki jih določajo nacionalne zakonodaje in običaji.* ***Pri opredeljevanju in izvajanju vseh politik in dejavnosti Unije se zagotavlja visoka raven varovanja zdravja ljudi.***« (Poudarek dodan.)

[8] Člen 41 določa:
»*1. Vsakdo ima pravico, da institucije, organi, uradi in agencije Unije njegove zadeve obravnavajo nepristransko, pravično in v razumnem roku.*
*2. Ta pravica vključuje predvsem:*
*(a) pravico vsake osebe, da se izjasni pred sprejetjem kakršnega koli posamičnega ukrepa, ki jo prizadene;*
*(b) pravico vsake osebe* ***do vpogleda v svoj spis*** *ob spoštovanju legitimnih interesov zaupnosti ter poklicne in poslovne tajnosti;*
*(c) obveznost uprave, da svoje odločitve obrazloži.*
*3. Vsakdo ima pravico, da mu Unija v skladu s splošnimi načeli, ki so skupna pravnim ureditvam držav članic, nadomesti kakršno koli škodo, ki so jo povzročile njene institucije ali njeni uslužbenci pri opravljanju svojih dolžnosti.*
*4. Vsakdo se lahko na institucije Unije obrne v enem od jezikov Pogodb in mora* ***prejeti odgovor*** *v istem jeziku.*« (Poudarek dodan.)

[9] Člen 42 določa: »*Vsak državljan Unije in vsaka fizična ali pravna oseba s prebivališčem ali statutarnim sedežem v eni od držav članic ima pravico dostopa do dokumentov institucij, organov, uradov in agencij Unije, ne glede na nosilec dokumenta.*«

[10] Glej sklep o pritožbi 947/2016/JN.

[11] Člen 11(1) določa: »*Vsakdo ima pravico do svobodnega izražanja. Ta pravica vključuje svobodo mnenja ter* ***sprejemanja in širjenja vesti*** *ali idej brez vmešavanja javnih organov in ne glede na državne meje.*« (Poudarek dodan.)

[12] Člen 43 določa: »*Vsak državljan Unije in vsaka fizična ali pravna oseba s prebivališčem ali statutarnim sedežem v eni od držav članic ima pravico, da se obrne na evropskega varuha človekovih pravic glede nepravilnosti pri dejavnostih institucij, organov, uradov ali agencij Unije, razen glede Sodišča Evropske unije pri opravljanju njegove sodne funkcije.*«

[13] Člen 47 določa: »*Vsakdo, ki so mu kršene pravice in svoboščine, zagotovljene s pravom Unije, ima pravico do* ***učinkovitega pravnega sredstva*** *pred sodiščem v skladu s pogoji, določenimi v tem členu.*
*Vsakdo ima pravico, da o njegovi zadevi pravično, javno in v razumnem roku odloča neodvisno, nepristransko in z zakonom predhodno ustanovljeno sodišče. Vsakdo ima možnost svetovanja, obrambe in zastopanja.*
*Osebam, ki nimajo zadostnih sredstev, se odobri* ***pravna pomoč****, kolikor je ta potrebna za* ***učinkovito*** *zagotovitev* ***dostopa do sodnega varstva****.*« (Poudarek dodan.)

[14] Člen 52(3) določa: »*Kolikor ta listina vsebuje pravice, ki ustrezajo pravicam, zagotovljenim z Evropsko konvencijo o varstvu človekovih pravic in temeljnih svoboščin, sta vsebina in obseg teh pravic enaka kot vsebina in obseg pravic, ki ju določa navedena konvencija. Ta določba ne preprečuje širšega varstva po pravu Unije.*«

interpreted in the same way, that is, in light of the case law of the European Court of Human Rights (the 'ECtHR').[14] The ECtHR has produced a body of case law which is of relevance.

There are other important provisions in the Treaty on European Union ('TEU') that are relevant.

The first provision in the TEU states: "*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***."[15]

Article 10(3) TEU goes further, stating that "[e]*very 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***."

Another important and relevant provision is Article 11 TEU:

"*1. The institutions shall, by appropriate means, give citizens and representative associations the* ***opportunity to make known and publicly exchange their views in all areas of Union action***.

*2. The institutions shall* ***maintain an open, transparent and regular dialogue*** *with representative associations and civil society.*

*3. The European Commission shall carry out* ***broad consultations*** *with parties concerned in order to ensure that the Union's actions are coherent and transparent.*"[16]

Let me now say a few words about the experience of the European Ombudsman with the implementation of the Aarhus Convention by the EU institutions.

**II The Aarhus Convention from the perspective of the European Ombudsman**

The European Community signed the Aarhus Convention on 25 June 1998 and approved it on 17 February 2005.[17] It also adopted several legislative measures to give effect to the Convention under EU law.[18]

The Aarhus Convention is based on three pillars: public access to environmental information, public participation in decision-making, and access to justice. Let me briefly address each pillar in light of the Ombudsman's experience.

[14] Article 52(3) reads as follows: "*In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.*"

[15] Article 1 TEU, emphasis added.

[16] Emphasis added.

[17] Council Decision of 17 February 2005 on the conclusion, on behalf of the European Community, of the Convention on access to information, public participation in decision-making and access to justice in environmental matters (2005/370/EC), OJ L 124, 17. 5. 2005, p. 1. Also see: https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XXVII-13&chapter=27&clang=_en

[18] Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC, OJ L 41, 14. 2. 2003, p. 26. Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC - Statement by the Commission, OJ L 156, 25.6.2003, p. 17. Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies, OJ L 264, 25. 9. 2006, p. 13.



Prva določba PEU se glasi: »*Ta pogodba označuje novo stopnjo v procesu oblikovanja vse tesnejše zveze med narodi Evrope, v kateri se* ***odločitve sprejemajo čim bolj javno in v kar najtesnejši povezavi z državljani.***«[15]

V členu 10(3) PEU pa je določeno, da ima »*[v]sak državljan* ***pravico sodelovati*** *v demokratičnem življenju Unije.* ***Odločitve se sprejemajo kar najbolj odprto in v kar najtesnejši povezavi z državljani.***«

Druga pomembna in upoštevna določba je člen 11 PEU:

»*1. Institucije dajejo državljanom in predstavniškim združenjem na ustrezen način* ***možnost izražanja in javne izmenjave mnenj glede vseh področij delovanja Unije***.

*2. Institucije* ***vzdržujejo odprt, pregleden in reden dialog*** *s predstavniškimi združenji in civilno družbo.*

*3. Evropska komisija izvaja* ***obsežna posvetovanja*** *z udeleženimi stranmi, da se zagotovi usklajenost in preglednost delovanja Unije.*«[16]

Naj povem nekaj besed o izkušnjah Evropskega varuha človekovih pravic, kako institucije EU izvajajo Aarhuško konvencijo.

**II Aarhuška konvencija z vidika Evropskega varuha človekovih pravic**

Evropska skupnost je Aarhuško konvencijo podpisala 25. junija 1998, odobrila pa jo je 17. februarja 2005.[17] Sprejela je tudi več zakonodajnih ukrepov za uveljavitev konvencije v skladu s pravom EU.[18]

Aarhuška konvencija temelji na treh stebrih: na javnem dostopu do informacij o okolju, udeležbi javnosti pri odločanju in dostopu do pravnega varstva. Poglejmo na kratko vsak steber glede na izkušnje Varuha človekovih pravic.

[15] Člen 1 PEU, poudarek dodan.

[16] Poudarek dodan.

[17] Sklep Sveta z dne 17. februarja 2005 o sklenitvi Konvencije o dostopu do informacij, udeležbi javnosti pri odločanju in dostopu do pravnega varstva v okoljskih zadevah, v imenu Evropske skupnosti (2005/370/ES), UL L 124, 17. 5. 2005, str. 1. Glej tudi: https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XXVII-13&chapter=27&clang=_en.

[18] Direktiva 2003/4/ES Evropskega parlamenta in Sveta z dne 28. januarja 2003 o dostopu javnosti do informacij o okolju in o razveljavitvi Direktive Sveta 90/313/EGS, UL L 41, 14. 2. 2003, str. 26. Direktiva 2003/35/ES Evropskega parlamenta in Sveta z dne 26. maja 2003 o sodelovanju javnosti pri sestavi nekaterih načrtov in programov v zvezi z okoljem in o spremembi direktiv Sveta 85/337/EGS in 96/61/ES glede sodelovanja javnosti in dostopa do sodišč – izjava Komisije, UL L 156, 25. 6. 2003, str. 17. Uredba (ES) št. 1367/2006 Evropskega parlamenta in Sveta z dne 6. septembra 2006 o uporabi določb Aarhuške konvencije o dostopu do informacij, udeležbi javnosti pri odločanju in dostopu do pravnega varstva v okoljskih zadevah v institucijah in organih Skupnosti, UL L 264, 25. 9. 2006, str. 13.

## 1 Access to information

Administrative transparency is one of the main areas of work for the European Ombudsman and it is also in this area that the Ombudsman has conducted the most inquiries concerning the Aarhus Convention.

Administrative transparency can be seen as representing an interest in itself. It gives practical effect to the **citizens' 'right to know'** which is particularly relevant in environmental matters. However, administrative transparency also needs to be seen as closely linked to the rule of law, democratic accountability and participatory democracy. **Without transparency, there can be no *effective* public participation and control of government.** Access to information and citizen participation are thus closely inter-related.

The right to information guaranteed by the Aarhus Convention has two dimensions: a proactive and a reactive one. Public authorities are required to both make information and documents available upon request and to actively collect and disseminate information.

### a) Reactive disclosure

The European Ombudsman has so far mainly dealt with complaints concerning rejections of requests for access to documents containing environmental information.

Several complaints concerned infringement proceedings. The Commission refused access to documents concerning the administrative stage of those proceedings (typically the letter of formal notice or the reasoned opinion, which are the main Commission documents addressed to the Member States during the pre-litigation stage).[19] The Ombudsman encouraged the release of documents but the Commission considered that disclosure would endanger mutual trust, which was essential for successfully concluding the procedures.

Other related inquiries concerned access to documents of the European Investment Bank (the 'EIB') and, specifically, its loan agreements/finance contracts with Member State authorities or third countries.[20] The EIB initially considered that, in accordance with its rules, those contracts were covered by professional secrecy governing banking relationships. Nevertheless, it advised the applicants who sought access to request the relevant documents directly from the national authorities concerned and said that it would not object to such disclosure. The Ombudsman encouraged the EIB to consult these authorities before deciding on a request for access also to avoid any language barriers between the applicant and the national authority.

### b) Proactive disclosure

The Ombudsman also led an own-initiative inquiry concerning how the EIB proactively makes available environmental information. During the inquiry, the EIB stated that it was committed to setting up a public register in which it would publish relevant environmental information. The Ombudsman encouraged the EIB to also make clear the type of environmental information to be included in the register. Interestingly, the EIB also decided to publish on its website the environmental parts of its loan agreements/finance contracts, that is, the standard wording used in its templates as well as any specific wording used in specific agreements.[21]

[19] Complaints 443/2008/JMA, 1861/2009/(JF)AN, 1947/2010/PB, 2207/2010/PB. See also joined complaints 271/2000/(IJH)JMA and 277/2000/(IJH)JMA (compliance reports prepared by an independent consultant).
[20] Complaint 948/2006/BU, complaint 1807/2006/MHZ, complaint 2145/2009/RT, own initiative inquiry OI/3/2013.
[21] See decision closing own initiative inquiry OI/3/2013, 25 June 2014, in particular para. 19-29, 39-47.



## 1 Dostop do informacij

Preglednost uprave je eno izmed glavnih področij dela Evropskega varuha človekovih pravic in prav na tem področju je Varuh človekovih pravic opravil največ poizvedb v zvezi z Aarhuško konvencijo.

Preglednost uprave se lahko šteje za reprezentativnost samega interesa. V praksi vpliva na **pravico državljanov do seznanjenosti**, kar je še posebej pomembno v okoljskih zadevah. Vendar je treba preglednost uprave razumeti tudi kot tesno povezano s pravno državo, demokratično odgovornostjo in participativno demokracijo. **Brez preglednosti ni *učinkovite* udeležbe javnosti niti nadzora vladnih organov.** Dostop do informacij in udeležba državljanov sta tako tesno povezana.

Pravica do informacij, ki jo zagotavlja Aarhuška konvencija, ima dve razsežnosti: proaktivno in reaktivno. Javni organi morajo na zahtevo dati na voljo informacije in dokumente ter dejavno zbirati in razširjati informacije.

### a) Reaktivno razkritje

Evropski varuh človekovih pravic je do zdaj obravnaval predvsem pritožbe v zvezi z zavrnitvijo prošenj za dostop do dokumentov, ki vsebujejo okoljske informacije.

Številne pritožbe so se nanašale na postopke zaradi neizpolnitve obveznosti. Komisija je zavrnila dostop do dokumentov v zvezi s predhodno fazo teh postopkov (navadno dopis z uradnim opominom ali obrazloženim mnenjem, ki je glavni dokument Komisije, naslovljen na države članice v predhodni fazi).[19] Varuh človekovih pravic je spodbujal izdajo dokumentov, vendar je Komisija menila, da bi razkritje ogrozilo vzajemno zaupanje, kar je bilo ključno za uspešno končanje postopkov.

Druge povezane poizvedbe so se nanašale na dostop do dokumentov Evropske investicijske banke (v nadaljevanju: EIB), zlasti na njene posojilne pogodbe/finančne pogodbe z organi držav članic ali tretjimi državami.[20] EIB je na podlagi svojih pravil sprva menila, da za navedene pogodbe velja poslovna skrivnost, tako kot sicer za bančne odnose. Kljub temu je prosilcem, ki so zaprosili za dostop, svetovala, naj ustrezne dokumente zahtevajo neposredno od zadevnih nacionalnih organov, in pri tem menila, da ne bo oporekala takemu razkritju. Varuh človekovih pravic je EIB spodbudil, naj se posvetuje s temi organi, preden odloči o zahtevku za dostop, da bi se preprečile tudi morebitne jezikovne ovire med prosilcem in nacionalnim organom.

### b) Proaktivno razkritje

Varuh človekovih pravic je opravil tudi preiskavo na lastno pobudo o tem, kako EIB proaktivno daje na voljo okoljske informacije. EIB je med preiskavo navedla, da se je zavezala k vzpostavitvi javnega registra, v katerem bi objavila ustrezne okoljske informacije. Varuh človekovih pravic je EIB spodbudil, naj jasno opredeli vrsto okoljskih informacij, ki jih je treba vključiti v register. Zanimivo je, da se je tudi EIB odločila, da na svojem spletišču objavi informacije v zvezi z okoljem iz svojih posojilnih pogodb/finančnih pogodb, in sicer standardno besedilo, uporabljeno v njenih predlogah, in vse drugo specifično besedilo, uporabljeno v specifičnih sporazumih.[21]

[19] Pritožbe 443/2008/JMA, 1861/2009/(JF)AN, 1947/2010/PB in 2207/2010/PB. Glej tudi združene pritožbe 271/2000/(IJH)JMA in 277/2000/(IJH)JMA (poročila o upoštevanju predpisov je pripravil neodvisni svetovalec).
[20] Pritožbe 948/2006/BU, 1807/2006/MHZ in 2145/2009/RT ter preiskava na lastno pobudo OI/3/2013.
[21] Glej sklep, s katerim se je končala preiskava na lastno pobudo OI/3/2013 z dne 25. junija 2014, zlasti odstavke 19–29 in 39–47.

**Based on the Ombudsman's experience so far, what change, if any, does the Aarhus Convention make as regards requests for access to documents?**

First, the Aarhus Convention and the EU Regulation implementing the Convention reinforce the public interest in the disclosure of environment-related documents. This could, in some cases, lead to the disclosure of more information. This is particularly true for information concerning emissions.[22]

Second, as regards documents related to ongoing investigations, the Aarhus Convention appears to encourage disclosure in most cases, except criminal and disciplinary proceedings. In the EU context, this could possibly affect other types of procedures such as trade investigations[23], which the Aarhus Convention does not specifically mention.

## 2 Public participation in decision-making

The Ombudsman has repeatedly stressed the importance of public participation in decision-making, including in the Aarhus context. In line with the Aarhus Convention, the Ombudsman's position has been that the EU institutions and bodies must ensure that the public can participate ***fully and effectively in practice***.

Probably the most relevant case in this context concerned the alleged lack of public consultation by the European Commission when it was drawing up a list of energy infrastructure projects to be given priority for funding.[24] The complainant considered that the Commission should have held meetings at local level and should have put notices in local newspapers. The Ombudsman considered that the consultation organised by the Commission was sufficient because there would still be public consultations at local level in the context of the planning permission process. There was therefore no need for the Commission to replicate the extensive public consultations that had to take place at local level before any project could be started.

However, the Ombudsman encouraged the Commission, which had published the relevant information on its websites and ensured that it would also be published on the website of national environmental authorities, to consider using more dynamic means of making its public consultations known to the public such as through **social media**. The Ombudsman appreciated that the Commission held several meetings with stakeholders and encouraged its use of other **interactive means of sharing information** in the future. However, the Ombudsman criticised the Commission for having published the relevant list of projects in English only and invited it to ensure that the relevant documents are **available in all EU official languages**.[25]

The Ombudsman argued that Article 1 TEU requires that "*EU institutions make adequate information available to the public, in good time, relating to the policies and decisions they intend to adopt, and creates the appropriate opportunities for the public to make their views known in relation to these proposed policies and decisions*".

The Ombudsman emphasised that compliance with Article 1 TEU is "*particularly important in relation to policies and decisions that may impact on the environment.*" She explained that: "*First, the* ***protection and improvement of the environment is a central pillar of the EU****. Second,* ***the effective protection and improvement of the environment requires the input of citizens throughout the EU, who are often the best placed to identify threats to the environment***."[26]

[22] See decision on complaint 863/2012/(RA)FOR, 21 May 2014, concerning access to a document containing the EIB's global greenhouse gases footprint assessment methodology, para. 32 and 41, and decision on complaint 119/2015/PHP, 4 November 2015, concerning access to documents concerning the Trans-Atlantic Trade and Investment Partnership, para. 28-31.
[23] See, in particular, recommendation in complaints 803/2012/TN and 369/2013/TN concerning the investigation of an allegedly irregular shipment of live bluefin tuna, 29 June 2015, para. 88-90, 99.
[24] Complaint 240/2014/FOR.
[25] A similar language issue arose in another public consultation: see complaint 640/2011/AN.
[26] Emphasis added.



**Na podlagi dosedanjih izkušenj Varuha človekovih pravic, katero spremembo, če sploh katero, uvaja Aarhuška konvencija v zvezi z zahtevami za dostop do dokumentov?**

Prvič, Aarhuška konvencija in uredba EU o izvajanju Konvencije krepita javni interes za razkritje dokumentov, ki se nanašajo na okolje. To bi lahko v nekaterih primerih vodilo do razkritja več informacij. To še posebej velja za informacije o izpustih.[22]

Drugič, v zvezi z dokumenti, povezanimi s potekajočimi preiskavami, se zdi, da Aarhuška konvencija v večini primerov spodbuja razkritje, razen v kazenskih in disciplinskih postopkih. V okviru EU bi to lahko vplivalo na druge vrste postopkov, kot so trgovinske preiskave[23], ki v Aarhuški konvenciji niso posebej omenjene.

## 2 Udeležba javnosti pri odločanju

Varuh človekovih pravic je večkrat poudaril pomen udeležbe javnosti pri odločanju, tudi v kontekstu Aarhuške konvencije. V skladu z Aarhuško konvencijo Varuh človekovih pravic meni, da morajo institucije in organi EU zagotoviti, da javnost lahko ***v praksi v celoti in učinkovito sodeluje***.

Verjetno najpomembnejši primer v tem kontekstu se je nanašal na domnevno pomanjkanje javnega posvetovanja, pri čemer Evropska komisija ni izvedla tega posvetovanja, ko je pripravila seznam projektov energetske infrastrukture, ki imajo prednost pri financiranju.[24] Pritožnik je menil, da bi morala Komisija izvesti sestanke na lokalni ravni in objaviti zadevna obvestila v lokalnih časopisih. Varuh človekovih pravic je menil, da je bilo posvetovanje, ki ga je organizirala Komisija, zadostno, saj bodo na lokalni ravni še dodatna javna posvetovanja v okviru postopka za pridobitev lokacijskega dovoljenja. Zato Komisiji ni bilo treba ponoviti obsežnih javnih posvetovanj, ki bi jih bilo treba opraviti na lokalni ravni, preden bi se lahko začel kateri koli projekt.

Vendar je Varuh človekovih pravic Komisijo, ki je ustrezne informacije objavila na svojih spletiščih in zagotovila, da bodo objavljene tudi na spletišču nacionalnih organov s področja okolja, spodbudil, naj premisli o uporabi bolj dinamičnih načinov, s katerimi bi javnost bolje seznanila s svojimi javnimi posvetovanji, na primer prek **družbenih medijev**. Varuh človekovih pravic je pozdravil, da je Komisija izvedla več sestankov z zainteresiranimi stranmi in spodbudila uporabo drugih **interaktivnih sredstev za izmenjavo informacij** v prihodnje. Ob tem je Komisiji izrekel kritiko, ker je zadevni seznam projektov objavila le v angleščini, in jo pozval, naj zagotovi, da so ustrezni dokumenti **na voljo v vseh uradnih jezikih EU**.[25]

Varuh človekovih pravic je trdil, da se po členu 1 PEU zahteva, da »*institucije EU dajo javnosti pravočasno na voljo ustrezne informacije v zvezi s politikami in odločitvami, ki jih nameravajo sprejeti, poleg tega ustvarijo ustrezne priložnosti, da lahko javnost izrazi svoje mnenje v zvezi s temi predlaganimi politikami in odločitvami*«.

Poudaril je, da je skladnost s členom 1 PEU »*še posebej pomembna v zvezi s politikami in odločitvami, ki lahko vplivajo na okolje.*« Varuhinja je pojasnila: »*Prvič,* ***varstvo in izboljšanje okolja tvorita glavni steber EU****. Drugič,* ***učinkovito varstvo in izboljšanje okolja zahtevata vložek državljanov po vsej EU, ki so pogosto najprimernejši za prepoznavanje groženj za okolje***.«[26]

[22] Glej sklep o pritožbi 863/2012/(RA)FOR z dne 21. maja 2014 v zvezi z dostopom do dokumentov, v katerih je navedena metodologija EIB za oceno globalnega odtisa toplogrednih plinov, odstavka 32 in 41, in sklep o pritožbi 119/2015/PHP z dne 4. novembra 2015 v zvezi z dostopom do dokumentov o čezatlantski trgovini in investicijskem partnerstvu, odstavki 28–31.
[23] Glej zlasti priporočilo v zvezi s pritožbama 803/2012/TN in 369/2013/TN glede preiskave domnevno nezakonite pošiljke živega modroplavutega tuna z dne 29. junija 2015, odstavki 88–90 in 99.
[24] Pritožba 240/2014/FOR.
[25] Podobna jezikovna zadeva je bila v središču še enega javnega posvetovanja: glej pritožbo 640/2011/AN.
[26] Poudarek dodan.

The Ombudsman further emphasised the importance of citizen participation for informing the European Commission of possible infringements of EU law[27]. The Ombudsman insisted that the Commission should inform the public of the reasons for its decision on the infringement complaint, including the decision to include the complaint into an ongoing infringement procedure, as well as keeping the complainants informed of any developments in the procedure.[28]

**3 Access to justice**

The Ombudsman has not yet carried out any inquiries concerning access to justice strictly speaking. In this context, it is important to note that the Ombudsman's mandate covers only administrative issues, and not legislative and judicial activities.[29] Moreover, the Ombudsman is an external remedy, but she does not have the authority to issue binding decisions or injunctions.

However, the Ombudsman's mandate is also to help citizens as regards the handling of their administrative appeals (internal remedies). This includes administrative appeals challenging the rejection of a request for access to documents. The Ombudsman has also dealt with a complaint concerning the procedural handling of a request for review under Article 10 of the Aarhus Regulation.[30]

Furthermore, the Ombudsman ensures that the EU institutions inform the public of available remedies. In accordance with Article 19[31] of the European Code of Good of Administrative Behaviour, which was proposed by the European Ombudsman, this information should include the available judicial remedies, as well as the right to complain to the European Ombudsman. The Ombudsman carried out one inquiry on this issue in the context of the Aarhus Convention.[32]

**Conclusion**

We at the European Ombudsman's Office look forward to working together with you in the future, in the framework of the European Network of Ombudsmen, in particular by conducting parallel inquiries into environmental matters covered by EU law. In fact, the European Ombudsman recently launched a parallel strategic initiative[33] concerning environmental inspections in the context of Regulation 1005/2009[34] on substances that deplete the ozone layer. This is a good example of an area where our working together at EU and Member State level can help achieve a lot for citizens and the environment.

[27] Decision on complaint 443/2008/JMA, 24 July 2009, para. 21.

[28] Decision on complaint 443/2008/JMA, para. 24, and decision on complaint 49/2011/AN, 17 November 2011, para. 33-42.

[29] Article 228 of the Treaty on the Functioning of the European Union provides: "*A European Ombudsman, elected by the European Parliament, shall be empowered to receive complaints from any citizen of the Union or any natural or legal person residing or having its registered office in a Member State concerning instances of* ***maladministration*** *in the activities of the Union institutions, bodies, offices or agencies,* ***with the exception of the Court of Justice of the European Union acting in its judicial role****. He or she shall examine such complaints and report on them.*" (emphasis added)

[30] Complaint 695/2011/DK.

[31] Article 19 of the European Code of Good Administrative Behaviour reads as follows: "*1. A decision of the institution which may adversely affect the rights or interests of a private person shall contain an indication of the appeal possibilities available for challenging the decision. It shall in particular indicate the nature of the remedies, the bodies before which they can be exercised, and the time-limits for exercising them. 2. Decisions shall in particular refer to the possibility of judicial proceedings and complaints to the Ombudsman under the conditions specified in, respectively, Articles 263 and 228 of the Treaty on the Functioning of the European Union.*"

[32] Decision on complaint 948/2006/BU, 28 September 2007, para. 2.1-2.5.

[33] SI 7/2017/JN

[34] OJ L 286, 31.10. 2009, p.1.



Varuh človekovih pravic je poleg tega poudaril pomen udeležbe državljanov pri obveščanju Evropske komisije o morebitnih kršitvah prava EU.[27] Varuh človekovih pravic je vztrajal, da bi morala Komisija obvestiti javnost o razlogih za svojo odločitev o pritožbi glede kršitve, to velja tudi za odločitev, da se pritožba vključi v tekoči postopek za ugotavljanje kršitev, in obveščanje pritožnikov o vsem dogajanju v sklopu postopka.[28]

**3 Dostop do pravnega varstva**

Varuh človekovih pravic pravzaprav še ni izvedel nobene poizvedbe v zvezi z dostopom do pravnega sredstva. V zvezi s tem je pomembno opozoriti, da je Varuh človekovih pravic pristojen le za upravna vprašanja, ne za zakonodajne in sodne aktivnosti.[29] Poleg tega je Varuh človekovih pravic zunanje sredstvo ukrep, vendar varuhinja nima pooblastil za izdajanje zavezujočih sklepov ali prepovedi.

Vendar je Varuh človekovih pravic pristojen tudi za pomoč državljanom v zvezi z obravnavo njihovih upravnih pritožb (notranja pravna sredstva). To vključuje upravne pritožbe zoper zavrnitev zahteve za dostop do dokumentov. Varuh človekovih pravic je obravnaval tudi pritožbo v zvezi s postopkovnim obravnavanjem zahteve za pregled v skladu s členom 10 Aarhuške uredbe.[30]

Poleg tega Varuh človekovih pravic zagotavlja, da institucije EU javnost obveščajo o razpoložljivih pravnih sredstvih. V skladu s členom 19[31] Evropskega kodeksa dobrega ravnanja javnih uslužbencev, ki ga je predlagal Evropski varuh človekovih pravic, bi morale te informacije vključevati razpoložljiva pravna sredstva in pravico do pritožbe pri Evropskem varuhu človekovih pravic. Varuh človekovih pravic je v okviru Aarhuške konvencije opravil eno poizvedbo o tem vprašanju.[32]

**Sklep**

V uradu Evropskega varuha človekovih pravic se veselimo prihodnjega sodelovanja z vami v okviru Evropske mreže varuhov človekovih pravic, zlasti z izvajanjem vzporednih preiskav v okoljskih zadevah, ki jih zajema pravo EU. Evropski varuh človekovih pravic je pred kratkim dejansko začel vzporedno strateško pobudo[33] v zvezi z okoljskimi inšpekcijskimi pregledi na podlagi Uredbe (ES) št. 1005/2009[34] o snoveh, ki tanjšajo ozonski plašč. To je dober primer področja, na katerem lahko naša skupna prizadevanja na ravni EU in na ravni držav članic pomagajo doseči veliko za državljane in okolje.

[27] Sklep o pritožbi 443/2008/JMA z dne 24. julija 2009, odstavek 21.

[28] Sklep o pritožbi 443/2008/JMA, odstavek 24, in sklep o pritožbi 49/2011/AN z dne 17. novembra 2011, odstavki 33–42.

[29] Člen 228 Pogodbe o delovanju Evropske unije določa: »*Evropski parlament izvoli evropskega varuha človekovih pravic, ki je pooblaščen za sprejemanje pritožb državljanov Unije ali fizičnih ali pravnih oseb s prebivališčem ali statutarnim sedežem v eni od držav članic glede* ***nepravilnosti*** *pri dejavnostih institucij, organov, uradov ali agencij Unije* ***razen Sodišča Evropske unije pri opravljanju njegove sodne funkcije****. Te pritožbe preuči in o njih pripravi poročilo.*« (Poudarek dodan.)

[30] Pritožba 695/2011/DK.

[31] Člen 19 Evropskega kodeksa dobrega ravnanja javnih uslužbencev določa:
»*1. Vsak sklep institucije, ki lahko negativno vpliva na pravice ali interese fizične ali pravne osebe, vsebuje navedbo možnosti pritožbe, ki ji je na voljo za izpodbijanje sklepa. Še posebej se navede narava pravnih sredstev, organi, pred katerimi se lahko le-ta uporabijo ter rok za njihovo uporabo.*
*2. V sklepu se še posebej navede možnost sodnega postopka in pritožbe varuhu človekovih pravic pod pogoji, določenimi v členih 263 in 228 Pogodbe o delovanju Evropske unije.*«

[32] Sklep o pritožbi 948/2006/BU z dne 28. septembra 2007, odstavki 2.1–2.5.

[33] SI 7/2017/JN.

[34] UL L 286, 31. 10. 2009, str. 1.

**dr. Kornelija Marzel**
Deputy Human Rights Ombudsman
(kornelija.marzel@varuh-rs.si)

# The Significance of the Public for the Respect of Human Rights and for Achieving Legitimacy of Decisions in Environmental Matters, the Perspective of the Human Rights Ombudsman of the Republic of Slovenia

**Abstract**

*The Public Administration Development Strategy 2015–2020, which the Government of the Republic of Slovenia adopted in 2015, originates from the aim of modernising public administration. The Strategy pursues the common objective of boosting economic growth along with the work of the public administration, making it flexible, responsive, transparent, professional, socially responsible, and in accordance with the principles of good management. Such actions, which are expected from the authorities by individuals, civil society, and business entities, are also an expression of our democratic social order.*

*Even though there are minimal process standards for the rights of parties and the public to participate in environmental matters, in addition to rules, principles and, cautionary measures which have been put in place for their enforcement, the Human Rights Ombudsman of the Republic of Slovenia nevertheless establishes violations of human rights in this field. These violations, which are often the result of illegal actions of public administration authorities, lead to non-legitimate decisions and mistrust for the work of the state.*





**dr. Kornelija Marzel,**
namestnica varuhinje človekovih pravic
(kornelija.marzel@varuh-rs.si)

# Pomen javnosti za spoštovanje človekovih pravic ter za doseganje legitimnosti odločitev v okoljskih zadevah, vidik Varuha človekovih pravic Republike Slovenije

**Povzetek**

*Strategija razvoja javne uprave 2015–2020, ki jo je Vlada Republike Slovenije sprejela leta 2015, izhaja iz smotra posodobitve javne uprave. Strategija sledi skupnemu cilju pospeševati gospodarsko rast tudi z delom javne uprave, ki bo fleksibilno, odzivno, pregledno, strokovno, družbeno odgovorno in skladno načelom dobrega upravljanja. Takšno ravnanje, ki ga od oblasti pričakujemo posamezniki, civilna družba in poslovni subjekti, je tudi izraz naše demokratične družbene ureditve.*

*Čeprav obstajajo minimalni procesni standardi pravic strank in javnosti za sodelovanje v okoljskih zadevah, pravila, načela in kavtele za njihovo uveljavljanje, Varuh človekovih pravic Republike Slovenije na tem področju ugotavlja kršitve človekovih pravic. Te kršitve, ki so velikokrat posledica nezakonitega ravnanja organov javne uprave, vodijo do nelegitimnih odločitev in nezaupanja v delo države.*

*V prispevku avtorica na podlagi iz teoretičnih izhodišč in praktičnih izkušenj obrazloži pomen vključenosti javnosti v okoljske zadeve.*

*In the article, the author derives from theoretical starting points and practical experience to explain the importance of public participation in environmental matters.*

## 1 Introduction

A successful and effective public administration is of key importance for the development of the state and its welfare. Public and economic entities have to operate so as to achieve a common objective, to increase the state's competitive ability while also ensuring the values of the democratic social order. It is for this reason that the Government of the Republic of Slovenia (Government) recognised the need to modernise public administration as early as in 1997. It predominantly emphasised the service role of the state, the protection of the rights of individuals in their relationship with the administration, and a transparent public administration. The mentioned changes and the reform of the public administration however did not follow a strategic government document but were in a way facilitated by the circumstances surrounding Slovenia's accession to the European Union. The first strategic document of this kind was adopted by the Government in 2003, i.e. The Public Administration Development Strategy 2003–2005, which highlighted the following objectives: democratic, open, effective, fast, and user-friendly services and the achieving of success, effectiveness, and justice. A new strategy was formed only in 2015, when the Government adopted the Public Administration Development Strategy 2015–2020, which emphasised the postulates of public administration organisation, which shall follow: the rule of law, professionalism, transparency, integrity, corruption prevention, responsiveness, user-orientation, inclusion, effectiveness, economic efficiency, and responsibility.

The democratic legal order, which originates from the Constitution of the Republic of Slovenia (Constitution), is based on the participation of all interest groups and citizens in decision-making processes. This is stipulated by international conventions, the EU legislation, the Government's strategic documents and followed by individual acts and other rules and regulations adopted in the independent Republic of Slovenia. In such a manner, good management does not ensure only the legality but also the legitimacy of the adopted decisions, which in turn leads to good administration, which respects human rights and freedoms and enables the prevalence of the service nature of power and the transformation of legal power to legitimate power.

## 2 The public and environmental matters

The right to a healthy living environment is one of the fundamental human rights. Even though our Constitution does not define it in the Human Rights and Fundamental Freedoms chapter but in the Economic and Social Relations chapter, this does not in any way negate its nature of a human right and the associated guarantees of it being ensured and controlled and of sanctions in the event of violations. The mentioned right is not bound to an individual, but explicitly emphasises the aspect of solidarity. It is precisely due to this characteristic that the right to a healthy living environment is associated with the human rights of dignity and health, with the latter signifying the assuring of the highest possible healthcare for all.

Article 72 of the Constitution stipulates: *"Everyone has the right in accordance with the law to a healthy living environment. The state shall promote a healthy living environment. To this end, the conditions and manner in which economic and other activities are pursued shall be established by law. The law shall establish under which conditions and to what extent a person who has damaged the living environment is obliged to provide compensation. The protection of animals from cruelty shall be regulated by law."*

This provision gives the state the concern and responsibility for a healthy living environment. The state may adopt only such regulations and measures which maintain balance in nature.

A healthy living environment is one of the key conditions for ensuring the health of every individual. As health is our fundamental value, people are very sensitive to the suitability, appropriateness, and prudence of the decisions adopted by the state and authorities on eventual interventions into space, which might significantly alter the quality of life and affect our health. Public participation in environmental matters represents an essential element of democratic decision-making, while at the same time ensuring legitimacy and acceptability of decisions from the viewpoint of social justification. This field is regulated by a number of rules and regulations. Article 43 of the General Administrative Procedure Act (ZUP), under the Parties chapter, stipulates that the right to participate in



## 1 Uvod

Uspešno in učinkovito delo javne uprave je ključno za razvoj države in za njeno blaginjo. Javnopravni in gospodarski subjekti morajo namreč delovati za dosego skupnega cilja, za izboljšanje konkurenčne sposobnosti države ob sočasnem zagotavljanju vrednot demokratične družbene ureditve. Prav zaradi omenjenega je Vlada Republike Slovenije (vlada) že leta 1997 prepoznala nujno potrebo posodobiti javno upravo; med drugimi so bili poudarjeni predvsem servisna vloga države, varstvo pravic posameznikov v odnosu do uprave ter odprto in pregledno delovanje uprave. Omenjene spremembe in reforma javne uprave niso sledili morebitnemu strateškemu dokumentu vlade, ampak so bili na neki način spodbujeni z okoliščinami priključevanja Slovenije Evropski uniji. Prvi tovrstni strateški dokument je vlada sprejela leta 2003, to je bila Strategija razvoja javnega sektorja 2003–2005, v kateri so bili osvetljeni naslednji cilji: demokratično, odprto, učinkovito, hitro in uporabnikom prijazno opravljanje storitev ter doseganje uspešnosti, učinkovitosti in pravičnosti. Nova strategija je nato nastala šele leta 2015, ko je vlada sprejela Strategijo razvoja javne uprave 2015–2020 z izpostavljenimi predpostavkami organiziranja dela uprave, da bo sledila zakonitosti, profesionalnosti, preglednosti, integriteti, preprečevanju korupcije, odzivnosti, usmerjenosti k uporabniku, vključenosti, uspešnosti in ekonomičnosti ter k odgovornosti.

Demokratična pravna ureditev, ki izvira iz Ustave Republike Slovenije (ustava), temelji na sodelovanju vseh interesnih skupin in državljanov v procesih odločanja. Tako je opredeljeno v mednarodnih konvencijah, zakonodaji Evropske unije, strateških aktih vlade, temu sledijo posamezni zakoni in drugi predpisi, sprejeti v samostojni Republiki Sloveniji. Tako z dobrim upravljanjem ne zagotavljamo le zakonitosti, ampak tudi legitimnost sprejetih odločitev, kar vse skupaj vodi k dobri upravi, v okviru katere se spoštujejo človekove pravice in svoboščine in omogoča prevlado servisne narave oblasti ter preobrazbo zakonite oblasti v legitimno.

## 2 Javnost in okoljske zadeve

Pravica do zdravega življenjskega okolja je ena izmed temeljnih človekovih pravic. Čeprav v naši ustavi ni opredeljena v poglavju Človekove pravice in temeljne svoboščine, ampak v poglavju Gospodarska in socialna razmerja, ji to v ničemer ne odreka narave človekove pravice ter s tem povezanih jamstev njenega zagotavljanja, nadzora in sankcioniranja v primeru kršitev. Omenjena pravica ni vezana na osebnost posameznika, temveč je pri njej izrazito poudarjen solidarnosti vidik. Prav zaradi te značilnosti pravico do zdravega življenjskega okolja povezujemo s človekovima pravicama do dostojanstva in do zdravja; zadnjenavedena pomeni zagotavljanje najvišjega dosegljivega zdravstvenega varstva za vse ljudi.

72. člen ustave določa: »*Vsakdo ima v skladu z zakonom pravico do zdravega življenjskega okolja. Država skrbi za zdravo življenjsko okolje. V ta namen zakon določa pogoje in načine za opravljanje gospodarskih in drugih dejavnosti. Zakon določa, ob katerih pogojih in v kakšnem obsegu je povzročitelj škode v življenjskem okolju dolžan poravnati škodo. Varstvo živali pred mučenjem ureja zakon.*«

S to določbo sta državi naloženi skrb in odgovornost za zdravo življenjsko okolje. Država lahko sprejema le takšne predpise in ukrepe, da se ohranja ravnovesje v naravi.

Zdravo življenjsko okolje je eden izmed ključnih pogojev za zagotavljanje zdravja vsakega posameznika. Ker je zdravje naša temeljna vrednota, smo ljudje izredno občutljivi glede ustreznosti, primernosti in premišljenosti odločitev države ter oblasti o morebitnih posegih v okolje, s katerimi se lahko pomembno spremeni bivanjska kakovost in vpliva na naše zdravje. Sodelovanje javnosti v okoljskih zadevah je poglaviten dejavnik demokratičnega odločanja in hkrati zagotavlja legitimnost ter tako sprejemljivost odločitve z vidika družbene opravičenosti. Navedeno področje ureja več predpisov. Tako Zakon o splošnem upravnem postopku (ZUP) v poglavju Stranka v 43. členu določa, da ima pravico do udeležbe v postopku (poleg strank upravnega postopka) tudi stranski udeleženec, ki izkaže pravni interes. V skladu z omenjenim členom lahko v postopkih odločanja po Zakonu o varstvu okolja (ZVO-1) in Zakonu o ohranjanju narave (ZON) poleg drugih morebitnih stranskih udeležencev v vseh upravnih in sodnih postopkih sodelujejo nevladne organizacije, ki delujejo v javnem interesu. V tem primeru imajo nevladne organizacije zelo podoben položaj kot stranke v postopkih. Drugače pa je sodelovanje splošne javnosti v okoljskih zadevah urejeno predvsem v ZVO-1 (tako na primer 34.a člen ureja sodelovanje javnosti pri sprejemanju predpisov, 43. člen ureja sodelovanje javnosti v postopku celovite presoje vplivov na okolje, podobno še drugi členi), z Navodilom ministra za okolje in prostor o postopku sodelovanja javnosti pri sprejemanju predpisov, ki lahko pomembneje

a proceeding shall also pertain to an accessory participant (in addition to parties to the administrative proceedings) who demonstrates legal interest. In accordance with the this article, decision-making proceedings under the Environmental Protection Act (ZVO-1) and the Nature Conservation Act (ZON) are also open for participation, in addition to eventual other accessory participants in this capacity in all administrative and judicial proceedings, to non-governmental organisations acting in the public interest. In such a case, non-governmental organisations hold a very similar position as do parties to the proceedings. Public participation in environmental matters is mostly governed by the ZVO-1 (Article 34a for example governs public participation in decision-making, Article 43 governs public participation in the environmental assessment procedure, and similar is governed by other articles), the Instructions by the Minister of the Environment and Spatial Planning on Public Participation in Adopting Regulations that Could Significantly Affect the Environment, the Aarhus Convention, the Access to Public Information Act, the Rules of Procedure of the Government of the Republic of Slovenia, the Instructions for the Implementation of the Rules of Procedure of the Government of the Republic of Slovenia, and by the Resolution on Legislative Regulation (ReNDej), which is also observed by the work methods of the National Assembly of the Republic of Slovenia. Within this context, we cannot ignore the judicial practice of the European Court of Human Rights and of national courts.

There are numerous rules, regulations, opinions, and decisions that have been adopted on public participation in environmental matters. The question however remains if they are appropriate or if they are being abused in practice and we are therefore facing the abuse of the right to public participation in environmental matters, as evident from the findings of the Human Rights Ombudsman of the Republic of Slovenia (Ombudsman) presented below.

**3 Findings, opinions, and recommendations of the Human Rights Ombudsman of the Republic of Slovenia**

For several years, the Ombudsman has been pointing out the importance of citizen participation in decision-making. This has been directly pointed out already in the 2001 Annual Report and in subsequent annual reports of the Ombudsman. In the 2006 Annual Report, we wrote about public participation in the drafting of regulations as being a democratic standard, which leads to familiarity with regulations, their acceptance, and consequently to a more effective governing of a specific field. We believed that public participation in the drafting of regulations has to be comprehensively regulated by an act. Consequently, in 2009 the National Assembly adopted ReNDej, which includes minimum recommendations on public participation in the drafting of regulations, which should take from 30 to 60 days and be implemented in a manner ensuring the response of the interested expert and general public, and the informing of the broader community.

As regards public participation in environmental matters, we need to emphasise the Ombudsman's findings, viewpoints, and recommendations over the course of the last ten years. As mentioned before, the ZVO-1 grants non-governmental organisations (NGO), which act in the public interest, and other persons, who show a legal interest (personal interest directly supported by an act), the right to participate in environmental decision-making as accessory participants (with equal rights as the parties to the proceedings).

An example of a lengthy attempt to become a party to the proceedings is evident from the case of DOPPS-BirdLife Slovenia (DOPPS), which submitted its application to have recognised the status of an accessory participant in the process of issuing the environmental permit to the Volovja reber wind farm in 2004. It took DOPPS three years to be granted the status of an accessory participant to the proceedings. The Slovenian Environment Agency (ARSO) issued three decisions refusing DOPPS' right to participate in the proceedings. The Ministry of the Environment and Spatial Planning (MOP) annulled these decisions pursuant to the instructions issued by the Administrative Court.

While studying the initiatives and the general problems, we also established problems with providing information to organisations holding the status of an NGO, which act in the public interest, as regards public disclosures, into which they may enter pursuant to the ZVO-1. The provision of information is of key importance and we have therefore backed up the proposal by NGO on additional information on public announcements of procedures into which they may enter.

We have further dealt with cases when the public was excluded from decision-making on an environmental permit due to the determination of the influence area and the definition of the device. These circumstances meant



vplivajo na okolje, ter z Aarhuško konvencijo, Zakonom o dostopu do informacij javnega značaja, Poslovnikom Vlade Republike Slovenije, Navodilom za izvajanje Poslovnika Vlade RS ter Resolucijo o normativni dejavnosti (ReNDej), temu pa sledi tudi način dela v Državnem zboru Republike Slovenije (državni zbor). Prav zagotovo v tem okviru ni mogoče prezreti sodne prakse Evropskega sodišča za človekove pravice in nacionalnih sodišč.

Prepisov, pravil, mnenj in sprejetih odločitev o vključevanju javnosti v okoljske zadeve je precej, vprašanje pa je, ali so ti ustrezni ali pa gre v praksi morebiti le za njihovo izigravanje in s tem za t. i. zlorabo pravice javnosti do sodelovanja v okoljskih zadevah, kot izhaja iz ugotovitev Varuha človekovih pravic Republike Slovenije (Varuh) v nadaljevanju.

**3 Varuhove ugotovitve, mnenja in priporočila**

Varuh že več let opozarja na pomen sodelovanja državljanov v postopkih sprejemanja predpisov. Tako smo na to posredno opozorili že v letnem poročilu za leto 2001 in nato v Varuhovih naslednjih letnih poročilih. V letnem poročilu za leto 2006 smo pisali o sodelovanju javnosti v postopku priprave predpisov kot o demokratičnem standardu, ki vodi k seznanjenosti s predpisom, k njegovi sprejetosti in posledično k učinkovitejšemu urejanju zadevnega področja. Menili smo, je treba sodelovanje javnosti v postopkih priprave predpisov celovito urediti s posameznim zakonom. Posledično je državni zbor leta 2009 sprejel ReNDej, ki vsebuje minimalna priporočila za sodelovanje javnosti pri pripravi predpisov, to naj traja praviloma od 30 do 60 dni in naj se izvede na način, da bo zagotavljal odziv zainteresirane javnosti, strokovne in laične, ter obveščenost širše skupnosti.

Glede sodelovanja javnosti v okoljskih zadevah velja izpostaviti Varuhove ugotovitve, stališča in priporočila v preteklih desetih letih. Skladno z ZVO-1 lahko kot stranski udeleženci (z enakimi pravicami kot stranke) v postopkih odločanja o okoljskih zadevah sodelujejo nevladne organizacije (NVO), ki delujejo v javnem interesu, in druge osebe, ki izkažejo pravni interes (neposredno na zakon oprto osebno korist).

Primer dolgotrajnega poskusa vstopa v postopek je Društvo za opazovanje ptic Slovenija (DOPPS), ki je leta 2004 podalo vlogo za priznanje statusa stranskega udeleženca v postopku izdaje okoljevarstvenega soglasja za vetrne elektrarne Volovja reber. Po treh letih si je DOPPS končno pridobil status stranskega udeleženca v postopku.

that the public, whose living environment and health were significantly affected by the issued environmental permit and who might have participated in the proceedings as an accessory participant, was excluded from the proceedings. The ZVO-1 and the Aarhus Convention were sidestepped, which the Ombudsman sees as unacceptable.

As regards the general public, we have been pointing out the violations of Article 34a of the ZVO-1 for years. In 2012, violations of this article were established in the acceptance of comments and opinions on the Draft Act Amending the Environmental Protection Act and the Draft Act Amending the Water Act. The competent Ministry gave an only four-day deadline for providing comments to the draft acts, which is in contravention of the ZVO-1 and the Aarhus Convention. The Ombudsman managed to get the deadline prolonged.

In 2014, the same happened with the Draft Decree Amending the Decree on Limit Values for Environment Noise Indicators. At our intervention, the Ministry of the Environment and Spatial Planning prolonged the deadline for providing comments and opinions to the mentioned draft. The situation with this draft was the same in 2016, however the matter was resolved. A very recent example is that of the adoption of the ZVO-2 in 2017. The draft regulation was published on the website of the Ministry of the Environment and Spatial Planning, but was not prepared in accordance with the Rules of Procedure of the Government of the Republic of Slovenia or ReNDej and as such did not pursue the purpose of the publication. The Ombudsman therefore supported the NGO and asked the competent Ministry to prolong the deadline and provide explanations for its actions, of which the Government was also informed.

Furthermore, the Ombudsman emphasises that competent authorities often try to sidestep the public as regards its right to receive environmental information, which is however always public in accordance with the ZVO-1 and as such cannot be determined as business or other secrets under the Access to Public Information Act (ZDIJZ).

**Conclusion**

Spatial projects have a significant impact on the quality of life, of both current and future generations. It is therefore just to take appropriate precautionary measures and to affect the environment in a manner not endangering the rights of future generations. They did not grant us this mandate and our actions have to avoid any kind of reproach that we are only looking after capital. Public participation in environmental matters is therefore the basis of democracy and of a just power, which acts in the public interest, in the interest of people and the community, and which adopts decisions on spatial projects with deliberate and responsible weighing of different arguments, all in a manner that respects human rights and freedoms.

In light of the circumstances surrounding today's way of life, environmental pollution has often exceeded the critical limit, also due to inappropriate projects. This endangers our right to a healthy living environment and the same applies to our successors. It is therefore inappropriate to ask if and when the public has the right to participate in environmental matters. The public's right to participate in environment matters originates in legislative bases. It is an expression of good administration, a minimum process standard, and the guarantee for the respect of the human right to a health living environment today and in the future. There are no indulgences. After all, we are dealing with a fundamental human right and value—OUR HEALTH!



Agencija Republike Slovenije za okolje je DOPPS namreč trikrat s sklepom zavrnila pravico sodelovati v postopku. Omenjene sklepe je Ministrstvo za okolje in prostor (MOP) po navodilu Upravnega sodišča razveljavilo.

Pri proučevanju pobud in splošne problematike smo težave odkrili tudi pri obveščanju organizacij s statusom NVO, ki delujejo v javnem interesu, o javnih razgrnitvah, v katere lahko vstopajo na podlagi ZVO-1. Ključno je obveščanje, zato smo podprli predlog NVO o dodatnem obveščanju glede javnih objav postopkov, v katere lahko stopajo.

Obravnavali smo tudi probleme, v okviru katerih je bila javnost izločena iz postopka odločanja o okoljevarstvenem dovoljenju zaradi določitve vplivnega območja in opredelitve naprave. Tako je bila zaradi teh okoliščin izključena iz postopka tista javnost, na katere bivalno okolje in zdravje izdano okoljevarstveno dovoljenje močno vpliva in ki bi v nasprotnem primeru v postopku lahko sodelovala kot stranski udeleženec. Pri tem se nista upoštevala ne ZVO-1 ne Aarhuška konvencija, kar po Varuhovem mnenju ni dopustno.

Glede splošne javnosti že več let opozarjamo na kršitve 34.a člena ZVO-1. Leta 2012 smo kršitve navedenega člena ugotovili pri sprejemanju pripomb in mnenj na osnutek Zakona o spremembah in dopolnitvah Zakona o varstvu okolja ter na osnutek Zakona o spremembah in dopolnitvah Zakona o vodah. Pristojno ministrstvo je določilo le štiridnevni rok za predložitev pripomb na osnutek, kar je v nasprotju z ZVO-1 in Aarhuško konvencijo. Varuh je dosegel podaljšanje roka.

Leta 2014 smo na enak primer naleteli pri osnutku sprememb Uredbe o mejnih vrednostih kazalcev hrupa v okolju. MOP je na naše posredovanje podaljšalo rok za dajanje mnenj in pripomb na osnutek. Pri omenjenem osnutku se je zadeva ponovila v letu 2016 in bila pozitivno rešena. Zelo sveže pa je sprejemanje ZVO-2 v letu 2017. Osnutek predpisa je bil objavljen na spletnih straneh MOP, ni pripravljen po poslovniku vlade in po ReNDej, tudi ne sledi namenu objave, zato je Varuh podprl NVO in od MOP terjal podaljšanje roka ter obrazložitev takšnega ravnanja, s čimer smo seznanili tudi vlado.

Poleg tega Varuh izpostavlja še ugotovitev, da pristojni organi oblasti večkrat poskušajo izigrati javnost glede pravice do vpogleda v okoljske informacije, ki pa so po ZVO-1 vedno javne, in se zato ne morejo določiti kot poslovne ali druge skrivnosti po Zakonu o dostopu do informacij javnega značaja (ZDIJZ).

**Sklep**

Posegi v okolje pomembno vplivajo na kakovost življenja, tako sedanjih kot prihodnjih generacij. Zato je pravično, da sprejmemo ustrezne previdnostne ukrepe in v okolje posegamo tako, da s tem ne ogrožamo pravic prihodnjih rodov. Ti nam tega mandata niso podelili, zato se moramo pri svojem ravnanju izogniti morebitnim očitkom, da upoštevamo le koristi kapitala. Sodelovanje javnosti v okoljskih zadevah je torej temelj demokratičnosti in pravične oblasti, ki deluje v javnem interesu, v interesu ljudi in skupnosti ter ob premišljenem in odgovornem tehtanju argumentov sprejema odločitve o okoljskih posegih, vse pa na način, da pri tem spoštuje človekove pravice in svoboščine.

V okoliščinah današnjega življenja je onesnaženost okolja tudi zaradi neprimernih posegov že večkrat presegla kritično mejo. S tem je ogrožena naša pravica do zdravega življenjskega okolja. Enako velja tudi za naše naslednike. Zato se je neumestno spraševati, ali in kdaj ima javnost pravico sodelovati v okoljskih zadevah. Pravica sodelovanja javnosti v okoljskih zadevah izhaja iz normativnih podlag, je izraz dobrega upravljanja, minimalni procesni standard in jamstvo spoštovanja človekovih pravice do zdravega življenjskega okolja danes in v prihodnosti. Odpustkov ni, gre vendarle za temeljno človekovo pravico in vrednoto – ZA ZDRAVJE!

Martina Ocepek


## Martina Ocepek

Director of the Expert Service of the Human Rights Ombudsman of the Republic of Slovenia
(MOcepek@Varuh-rs.si) and

## Jožica Hanžel

Advisor to the Human Rights Ombudsman
(Jozica.Hanzel@Varuh-rs.si)


# The Hollow Right to Public Participation

**Environmental protection—a constitutional category**

As early as in the General Provisions, the Constitution of the Republic of Slovenia (hereinafter the Constitution) stipulates that the state has to provide for the preservation of natural wealth and cultural heritage and create opportunities for the harmonious development of society and culture in Slovenia. Article 8 imposes the responsibility upon the state that its laws and other regulations have to comply with generally accepted principles of international law and with treaties that are binding on Slovenia. Ratified and published treaties are applied directly.

Article 72 of the Constitution stipulates the right to a healthy living environment:
*"Everyone has the right in accordance with the law to a healthy living environment.*

*The state shall promote a healthy living environment. To this end, the conditions and manner in which economic and other activities are pursued shall be established by law.*

*The law shall establish under which conditions and to what extent a person who has damaged the living environment is obliged to provide compensation. The protection of animals from cruelty shall be regulated by law."*

The right to a healthy living environment is placed in the third chapter of the Constitution, which governs economic and social relations, and not in the second chapter which governs human rights and fundamental freedoms. Human rights and fundamental freedoms are realised directly on the basis of the Constitution. The manner in which



Jožica Hanžel


## Martina Ocepek,

direktorica strokovne službe Varuha človekovih pravic Republike Slovenije
(MOcepek@Varuh-rs.si) in

## Jožica Hanžel,

svetovalka Varuha
(Jozica.Hanzel@Varuh-rs.si)


# Izvotljena pravica do sodelovanja javnosti

**Varstvo okolja – ustavna kategorija**

Ustava Republike Slovenije (v nadaljevanju: ustava) državi že v splošnih določbah nalaga skrb za ohranjanje naravnega bogastva in kulturne dediščine ter da ustvarja možnosti za skladen civilizacijski in kulturni razvoj Slovenije. V 8. členu pa državi nalaga dolžnost, da morajo biti zakoni in drugi predpisi v skladu s splošno veljavnimi načeli mednarodnega prava in mednarodnimi pogodbami, ki obvezujejo Slovenijo. Ratificirane in objavljene mednarodne pogodbe se uporabljajo neposredno.

Ustava v 72. členu opredeljuje pravico do zdravega življenjskega okolja:
»*Vsakdo ima v skladu z zakonom pravico do zdravega življenjskega okolja.*

*Država skrbi za zdravo življenjsko okolje. V ta namen zakon določa pogoje in načine za opravljanje gospodarskih in drugih dejavnosti.*

*Zakon določa, ob katerih pogojih in v kakšnem obsegu je povzročitelj škode v življenjskem okolju dolžan poravnati škodo. Varstvo živali pred mučenjem ureja zakon.*«

Pravica do zdravega življenjskega okolja je uvrščena v tretje poglavje ustave, ki ureja gospodarska in socialna razmerja, in ne v drugo poglavje, ki ureja človekove pravice in temeljne svoboščine. Človekove pravice in temeljne svoboščine se uresničujejo neposredno na podlagi ustave. Z zakonom je mogoče predpisati način uresničevanja

human rights and fundamental freedoms are exercised may be regulated by law whenever the Constitution so provides or where this is necessary due to the particular nature of an individual right or freedom.

The Constitutional Court of the Republic of Slovenia (hereinafter the Constitutional Court) has already defined the right to a healthy living environment as a right that enjoys the same protection as the rights stipulated in the chapter on human rights (Decision no. Up-88/94 of 31/05/1996, Odl US 5, 201). However, the appellant did not demonstrate the violation of this right in the constitutional complaint, as they substantiated the violation of this right only with the standpoint that they have a general active legitimacy in procedures relating to environmental protection.

In case number U-I-30/92, the Constitutional Court did not consider or discuss the right to a healthy living environment as a human right, which Constitutional Judge Matevž Krivic, in a separate opinion on that decision, defined as controversial. The right to a healthy living environment is also associated with the right to healthcare and consequently the right to health.

Pursuant to the first and second paragraphs of Article 72 of the Constitution, everyone has the right to a healthy living environment. The state provides for a healthy living environment and is given an active role in protecting the environment and maintaining natural balance. To this end, the conditions and manner in which economic and other activities are pursued is established by law. The state is therefore bound to legally regulate the content and extent of the right to a healthy environment, to legally regulate the conditions for performing economic activities, and to legally determine the conditions and extent for providing compensation for damaging the living environment. The right to a healthy living environment is protected by standards that apply to the construction of facilities and by standards or norms that ensure that there are no such excessive impacts on the environment that would endanger human health. The suspension of legislative regulation would therefore be unconstitutional. However, this does not mean that the state ensures the existence of such an environment but only that it adopts legislative and other measures in this field, such as for example the conditions and manner in which economic and other activities are pursued.

There are of course also other constitutional provisions which are significant for the protection of the environment, such as the provision on the environmental function of property (Article 67), expropriation (Article 69), public good and natural resources (Article 70), protection of land (Article 71), protection of the natural and cultural heritage (Article 73), and on the limitations of free enterprise (Article 74).

**The right to a healthy living environment as a human right**

The European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter the ECHR) does not specifically define the right to a healthy living environment, however this does not mean that the ECHR does not offer any protection in such cases. The European Court of Human Rights has namely repeatedly decided that in cases when the state does not protect the right of its citizens to live in a healthy and protected environment, it violates Article 8 of the ECHR. This article stipulates the right to respect for private and family life. This also happened in case number 67021/01 Tătar v. Romania of 27/01/2009, which is interesting from several points of view. The Court examined the case from the perspective of violation of Article 8 of the ECHR. It emphasised that pollution can interfere with a person's private and family life and that the state has a duty to ensure the protection of its citizens by regulating the authorising, setting up, operating, safety, and monitoring of industrial activities, especially activities that are dangerous to the environment and human health. Furthermore, it pointed out the state's duty to guarantee the right of citizens to access environmental information and to participate in environmental matters. The Court also established a violation of the precautionary principle, as the state had allowed the company which managed the mine to continue its industrial operations in this location even though the Romanian authorities had conducted an impact assessment in 1993, which identified risks, while Romania did not adopt suitable measures that would prevent pollution. In its decision, the Court also cited the broader international legal context and judicial practice of other international courts, including as regards the precautionary principle. It also referred to the Declaration of the United Nations Conference on the Human Environment adopted in Stockholm in 1972, the Rio Declaration from 1992, the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters from 1998 (which Romania had ratified in 2000), EU directives, and the practice of the International Court of Justice and the Court of Justice



človekovih pravic in temeljnih svoboščin, kadar tako določa ustava, ali če je to nujno zaradi narave posamezne pravice ali svoboščine.

Ustavno sodišče Republike Slovenije (v nadaljevanju: Ustavno sodišče) je že opredelilo pravico do zdravega življenjskega okolja kot pravico, ki ima enako varstvo kot pravice, navedene v poglavju o človekovih pravicah (sklep št. Up-88/94 z dne 31. 5. 1996, Odl US 5, 201). Vendar pritožnik z navedbami v ustavni pritožbi njene kršitve ni izkazal, saj poseg vanjo utemeljuje le s stališčem, da ima splošno aktivno legitimacijo v postopkih s področja varstva okolja.

Ustavno sodišče v zadevi U-I-30/92 pravice do zdravega življenjskega okolja ni štelo oziroma obravnavalo kot človekovo pravico, kar je v ločenem mnenju k tej odločitvi takratni ustavni sodnik Matevž Krivic opredelil kot sporno. S pravico do zdravega življenjskega okolja je povezana tudi pravica do zdravstvenega varstva in tako posledično tudi pravica do zdravja.

Na podlagi prvega in drugega odstavka 72. člena ustave ima v skladu z zakonom vsakdo pravico do zdravega življenjskega okolja. Država skrbi za zdravo življenjsko okolje, dana ji je aktivna vloga v zvezi z varstvom okolja in ohranjanjem naravnega ravnovesja. V ta namen zakon določi pogoje in načine za opravljanje gospodarskih in drugih dejavnosti. Država mora torej z zakonom urediti vsebino in obseg pravice do zdravega življenjskega okolja, pogoje za opravljanje gospodarskih dejavnosti ter pogoje in obseg za poravnavo škode, ki jo oseba povzroči v življenjskem okolju. Pravica do zdravega okolja se varuje s standardi, ki veljajo za gradnjo objektov, in s standardi oziroma normami, ki zagotavljajo, da se ne ustvarijo takšni vplivi na okolje, ki bi bili tako čezmerni, da bi ogrožali zdravje ljudi. Opustitev normativnega urejanja bi bila torej neustavna. Vendar to ne pomeni, da država zagotavlja obstoj takega okolja, temveč le, da sprejema normativne in druge ukrepe na tem področju, na primer pogoje in način opravljanja gospodarskih in drugih dejavnosti.

Za varstvo okolja so pomembne tudi druge ustavne določbe, na primer o ekološki funkciji lastnine (67. člen), razlastitvi (69. člen), javnem dobru in naravnih bogastvih (70. člen), varstvu zemljišč (71. člen), varstvu naravne in kulturne dediščine (73. člen) in omejitvah svobodne gospodarske pobude (74. člen).

**Pravica do zdravega življenjskega okolja kot človekova pravica**

Evropska konvencija o varstvu človekovih pravic in temeljnih svoboščin (v nadaljevanju EKČP) ne opredeljuje posebej pravice do zdravega življenjskega okolja, to pa ne pomeni, da v takih primerih ne ponuja nobene zaščite. Evropsko sodišče za človekove pravice je namreč že večkrat odločilo, da kadar država ne zaščiti pravice svojih prebivalcev do življenja v zdravem in zavarovanem okolju, krši 8. člen EKČP. Ta člen določa pravico do spoštovanja zasebnega in družinskega življenja. Tako je bilo tudi v zadevi 67021/01, Tătar proti Romuniji, z dne 27. 1. 2009, ki je zanimiva in pomembna z več vidikov. Sodišče je zadevo obravnavalo z vidika 8. člena EKČP. Poudarilo je, da je onesnaževanje lahko poseg v posameznikovo zasebno in družinsko življenje in da je država svoje državljane pred takimi posegi dolžna zaščititi z izvajanjem nadzora nad dovoljevanjem, vzpostavljanjem, izvajanjem in varnostjo industrijskih dejavnosti, zlasti še, če gre za dejavnosti, ki so lahko nevarne za okolje in človekovo zdravje. Opozorilo je tudi na obvezo države, da prebivalcem zagotovi dostop do okoljskih podatkov in sodelovanja v okoljskih zadevah. Ugotovilo je tudi kršitev previdnostnega načela, saj je država dopustila, da družba, ki je upravljala rudnik, svojo dejavnost na tej lokaciji nemoteno še naprej opravlja, čeprav so pristojni romunski organi pred tem leta 1993 izvedli oceno tveganja, pri čemer je bilo ugotovljeno, da zatrjevana nevarnost obstaja, ukrepov, ki bi zadovoljivo preprečevali onesnaževanje, pa Romunija ni sprejela. Sodišče se je v sodbi sklicevalo tudi na širši mednarodnopravni kontekst in na sodno prakso drugih mednarodnih sodišč, tudi glede previdnostnega načela. Pri tem se je sklicevalo tudi na Sklepno deklaracijo konference Združenih narodov o okolju, sprejeto v Stockholmu leta 1972, Deklaracijo iz Ria iz leta 1992, Aarhuško konvencijo o dostopu do informacij, udeležbi javnosti pri odločanju in dostopu do pravnega varstva v okoljskih zadevah iz leta 1998 (Romunija jo je ratificirala leta 2000), direktivi Evropske unije ter prakso Meddržavnega sodišča in tedanjega Sodišča Evropskih skupnosti. Sodišče je presodilo, da Romunija ni zadovoljivo ocenila potencialne nevarnosti dejavnosti podjetja in ni zadovoljivo zaščitila pravice lokalnih posameznikov do zdravega in varnega okolja, kar je kršitev 8. člena EKČP.

Pravica do zdravega okolja spada med človekove pravice t. i. tretje generacije, ki izhajajo iz zavesti solidarnosti, soodvisnosti in povezanosti vsega človeštva. Pravice tretje generacije, ki se v mednarodnih dokumentih uveljavljajo ali oblikujejo šele v zadnjih letih, so še pravica do politične, ekonomske, socialne in kulturne samoodločbe, pravica

of the European Communities. The Court found that Romanian authorities had failed to assess the risks that the company's activity might entail, and to take suitable measures in order to protect the rights of local residents to a healthy and protected environment, which is a violation of Article 8 of the ECHR.

The right to a healthy environment is a so-called third-generation human right. These rights derive from the solidarity, interdependence, and connectedness of mankind. Third-generation rights, which have only recently started finding their way into international documents or are just emerging, also include: the right to political, economic, social, and cultural self-determination, the right to economic and social development, the right to participate in and benefit from the common heritage of mankind, the right to peace, the right to a healthy and sustainable environment, and the right to humanitarian disaster relief. Even though these rights are only just being formed, in the future they should be formed as legally binding rights. This was also the case with the so-called human rights of the first and second generation. First-generation human rights, such as inviolability of human life, bodily integrity, prohibition of torture, freedom of movement, etc. as well as the rights from the social, economic, and cultural field, which comprise second-generation human rights, have been legally supported only with the adoption of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (hereinafter the Covenant). Neither of the Covenants specify the right to a healthy living environment and sustainable development.

The second paragraph of Article 1 of the Covenant gives all peoples the right to freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

In the first paragraph of Article 2 State Parties to the Covenant undertake to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of their available resources, with a view to achieving progressively the full realisation of the rights recognised in this Covenant by all appropriate means, including particularly the adoption of legislative measures. These two provisions might perhaps indicate the enforcement of the right to a healthy living environment.

The right to a clean and healthy environment has however been recognised in the Stockholm Declaration on the Human Environment: *"Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations."*

The environment as a human right was first seriously discussed at the world conference on the environment, which was held in Rio de Janeiro in 1992. This conference saw the gathering of the largest number of world leaders in history, whose reputation and influence supported the endeavours of the global community to start enforcing the principles of sustainable development. The main aim of the conference was to achieve international consensus on the most pressing environmental issues.

At the Plenary Session of the European Parliament, which was held on 12 December 2007 in Strasbourg, the presidents of three EU institutions, Jose Socrates, President of the Council of the European Union, Jose Manuel Barroso, President of the European Commission, and Hans-Gert Pöttering, President of the European Parliament, ceremoniously signed the Charter of Fundamental Rights of the European Union. The Charter of Fundamental Rights of the European Union uniformly regulates all fundamental rights at EU level: political, civic, economic, social, and cultural rights. It practically relates to all areas of life. Article 37 in the Solidarity Chapter of the Charter of Fundamental Rights of the European Union stipulates that a high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.

**Legal bases for public participation in environmental matters**

When speaking of the assurance or realisation of the right to a healthy living environment, we cannot but mention the Aarhus Convention, which represents an exceptional achievement in environmental democracy, environmental protection, and the assurance of human rights and their protection. By ensuring public participation in



do ekonomskega in socialnega razvoja, pravica do soudeležbe in koriščenja skupne dediščine človeštva, pravica do miru, pravica do zdravega in trajnostnega okolja in pravica do humanitarne pomoči ob nesrečah. Čeprav se omenjene pravice šele oblikujejo, pa bi bilo nujno, da bi se v prihodnosti oblikovale kot pravno zavezujoče. Tako je bilo tudi s tako imenovanimi človekovimi pravicami prve in druge generacije. Človekove pravice prve generacije, kot so nedotakljivost človekovega življenja, telesa, prepoved mučenja, svoboda gibanja itd., in človekove pravice druge generacije s socialnega, ekonomskega in kulturnega področja so bile namreč pravno podprte šele z Mednarodnim paktom o državljanskih in političnih pravicah oziroma Mednarodnim paktom o ekonomskih, socialnih in kulturnih pravicah (v nadaljevanju: pakt). V nobenem od obeh navedenih aktov pravica do zdravega življenjskega okolja in trajnostni razvoj nista navedena.

Drugi odstavek 1. člena pakta daje vsem narodom pravico, da svobodno razpolagajo s svojimi naravnimi bogastvi in viri, kar pa ne sme biti v škodo obveznostim, ki izvirajo iz mednarodnega ekonomskega sodelovanja, ki temelji na načelu vzajemne koristi in na mednarodnem pravu. Noben narod ne sme biti v nobenem primeru prikrajšan za svoja lastna sredstva za obstoj.

V prvem odstavku 2. člena pakta pa se pogodbenice zavezujejo, da bo država sama ter z mednarodno pomočjo in sodelovanjem, zlasti na ekonomskem in tehničnem področju, v največji mogoči meri izkoristila vire, s katerimi razpolaga, in z vsemi ustreznimi sredstvi, vštevši zlasti zakonodajne ukrepe, skrbela, da bi bilo postopoma doseženo polno uresničenje pravic, ki so priznane v tem paktu. Ti dve določbi bi lahko morebiti nakazovali k izpeljavi pravice do zdravega življenjskega okolja.

Človekova pravica do čistega in zdravega okolja je bila prepoznana v Stockholmski deklaraciji o človekovem okolju: »*Človek ima temeljno pravico do svobode, enakosti in do takšnih pogojev življenja v okolju, ki dopušča osebno dostojanstvo in razvoj osebnosti; človek ima dolžnost, da zaščiti in izboljša okolje za sedanje in bodoče generacije.*«

O okolju kot človekovi pravici se je resneje začelo govoriti na svetovni konferenci o okolju, ki je potekala leta 1992 v Rio de Janeiru. Na konferenci se je zbralo največ svetovnih voditeljev v zgodovini, ti so s svojim ugledom in vplivom podprli prizadevanja svetovne skupnosti, da bi se lotila uveljavljanja načel trajnostnega razvoja. Glavni cilj konference je bil doseči mednarodno soglasje o najbolj perečih svetovnih ekoloških problemih.

Predsedniki treh institucij, tedanje Evropske skupnosti, predsedujoči Svetu EU Jose Socrates, predsednik Evropske komisije Jose Manuel Barroso in predsednik Evropskega parlamenta Hans-Gert Pöttering, so 12. 12. 2007 v Strasbourgu med plenarnim zasedanjem Evropskega parlamenta slovesno podpisali Listino Evropske unije o temeljnih pravicah. Ta listina enotno ureja vse na ravni Unije veljavne temeljne pravice: politične, državljanske, gospodarske, socialne in kulturne. Nanaša se na vsa področja življenja. Listina v poglavju Solidarnost v 37. členu določa, da je treba v politike Unije vključiti visoko raven varstva in izboljšanje kakovosti okolja, ki se zagotavljata v skladu z načelom trajnostnega razvoja.

**Pravne podlage za sodelovanje javnosti v okoljskih zadevah**

V zvezi z zagotavljanjem oziroma uresničevanjem pravice do zdravega življenjskega okolja ne moremo prezreti Aarhuške konvencije, ki je izjemen dosežek na področju okoljske demokracije, varovanja okolja ter zagotavljanja človekovih pravic in njihove zaščite. Z zagotavljanjem sodelovanja javnosti v okoljskih zadevah se ne uresničuje le pravica do sodelovanja pri upravljanju javnih zadev (44. člen ustave), temveč tudi pravica do zdravega življenjskega okolja.

Aarhuška konvencija je bila sprejeta, da bi prispevali k varstvu pravice vsake osebe sedanjih in prihodnjih generacij, da živi v okolju, primernem za njeno zdravje in blaginjo, tako, da vsaka pogodbenica v skladu s to konvencijo zagotavlja pravico do dostopa do informacij, udeležbe javnosti pri odločanju in dostopa do pravnega varstva v okoljskih zadevah. Konvencija določa minimalne standarde, ki jih morajo države pogodbenice upoštevati pri zagotavljanju prej navedenih pravic. Iz sodbe Ustavnega sodišča RS št. U-I-386/06 pa izhaja, da bi se v delih, za katere bi se ugotovilo, da zakoni ne povzemajo Aarhuške konvencije, lahko sklicevali neposredno na konvencijo.

Velja omeniti tudi 15. člen Aarhuške konvencije, ki določa, da se na sestanku pogodbenic določijo možni nekonfliktni, nesodni in posvetovalni postopki za pregled skladnosti s to konvencijo. Ti postopki naj omogočajo ustrezno vključevanje javnosti in lahko zajemajo tudi možnost obravnavanja sporočil članov javnosti o zadevah, povezanih s

environmental matters, not only the right to participate in the management of public affairs is ensured (Article 44 of the Constitution), but also the right to a healthy living environment.

The Aarhus Convention has been adopted with the aim of contributing to the protection of the right of every person of present and future generations to live in an environment adequate to their health and well-being. To this end, each contracting state acts in accordance with the provisions of this Convention and ensures public access to environmental information, public participation in decision-making, and access to justice in environmental matters. The Convention stipulates the minimum standards that contracting states have to consider in ensuring these rights. Constitutional Court Decision No. U-I-386/06 shows that in parts, for which it was established that the laws do not reflect the Aarhus Convention, we can directly refer to the provisions of the Convention.

It needs to be said that Article 15 of the Aarhus Convention stipulates that the meeting of the parties shall establish optional arrangements of a non-confrontational, non-judicial and consultative nature for reviewing compliance with the provisions of this Convention. These arrangements shall allow for appropriate public involvement and may include the option of considering communications from members of the public on matters related to this Convention. In this sense, a Compliance Committee was set up. The rules of this Committee state that any natural or legal person (including non-governmental organisations) may bring communications that relate to the implementation of the Aarhus Convention before the Committee.

Article 8 of the Act Ratifying the Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters (the MKDIOZ) stipulates public participation in the drafting of executive regulations and other generally applicable legally binding rules. In accordance with this provision, the state shall strive to promote effective public participation at an appropriate stage, and while options are still open, to encourage effective public participation in the drafting of executive regulations of public authorities which may significantly affect the environment. For this purpose, time-frames sufficient for effective participation should be fixed, draft rules should be published or otherwise made publicly available, and the public should be given the opportunity to comment, directly or through representative consultative bodies. The result of the public participation shall be taken into account as far as possible. This is also evident from Item 19 of the reasoning of the Constitutional Court Decision No. U-I-406/06 of 29 March 2007, which states: *"In accordance with the MKDIOZ, the general purpose of public participation is that it is given the possibility to influence the selection of the proposed content. Environmental protection and spatial regulation are areas which affect all community members. Public participation does not only entail determining rules, but also requires that the authorities inform the interested public, enable its participation, and consider its opinion to a certain extent in reaching the final decision. Therefore, procedural rules for the inclusion of the public should be determined. ..."*

Slovenia implemented public participation in environmental matters in its legislation with the adoption of the Access to Public Information Act, the Environmental Protection Act, the Nature Conservation Act, etc. The Environmental Protection Act (hereinafter the ZVO-1) already implements public participation with its basic principles, i.e. in the principle of cooperation (Article 6) and the principle of publicity (Article 13). The latter stipulates that environmental information is public and that every person has the right to access environmental information in accordance with the law. The public has the right to participate in the procedures for adoption of regulations, policies, strategies, programmes, and plans concerning environmental protection in accordance with this Act. The public has the right to participate in the procedures concerning plans, programmes, and activities affecting the environment in other countries when they could affect the environment in the Republic of Slovenia, in accordance with this Act. The public has the right to participate in the procedures for issuing specific legal acts relating to activities affecting the environment, in accordance with this Act.

There are of course several other concrete provisions in the ZVO-1 which regulate public participation in environmental matters. Public participation is given concrete substance in Article 34a, which stipulates that the Ministry, other ministries, and the competent body of the local authority must allow the public the opportunity to familiarise itself with a draft regulation that can have a significant impact on the environment and give its opinion and submit comments thereon. Regulations that can have a significant impact on the environment include regulations issued in the field of environmental protection, nature conservation, and the management, use or protection of parts of the environment, including the management of genetically modified organisms, and also regulations the environmental impact of which has been identified by the drafting body during the adoption process. This of course means that the legislator is not referring only to regulations prepared by the Ministry of the Environment



to konvencijo. V tem smislu je bil ustanovljen odbor za skladnost. Po pravilih, po katerih deluje ta odbor, lahko vsaka fizična ali pravna oseba (tudi nevladne organizacije) pošlje sporočilo, ki se nanaša na izvajanje Aarhuške konvencije.

8. člen Zakona o ratifikaciji Konvencije o dostopu do informacij, udeležbi javnosti pri odločanju in dostopu do pravnega varstva v okoljskih zadevah (MKDIOZ) določa udeležbo javnosti pri pripravi izvršilnih predpisov ali splošnoveljavnih pravno obvezujočih normativnih aktov. Po tej določbi si mora država na ustrezni stopnji, in ko so možnosti še odprte, prizadevati spodbuditi učinkovito udeležbo javnosti pri pripravi izvršilnih predpisov organov javne oblasti, ki lahko pomembno vplivajo na okolje. V ta namen je treba določiti dovolj dolgo časovno obdobje za učinkovito udeležbo, objaviti osnutek akta ali ga kako drugače dati na razpolago javnosti in ji dati možnost, da neposredno ali po predstavniških svetovalnih telesih daje svoje pripombe. Izid udeležbe javnosti je treba čim bolj upoštevati. Navedeno izhaja tudi iz 19. točke obrazložitve odločbe Ustavnega sodišča št. U-I-406/06 z dne 29. 3. 2007, v kateri je to zapisalo: »*Splošni namen sodelovanja javnosti po MKDIOZ je, da se ji da možnost vplivanja na izbiro predlaganih vsebin. Varstvo okolja in urejanje prostora sta področji, ki zadevata vse člane družbe. Sodelovanje javnosti ne pomeni le določitve pravil, ampak terja od oblasti, da zainteresirano javnost informira, ji omogoča sodelovanje in prizna določeno težo njenega mnenja pri sprejemu končne odločitve. Zato je treba določiti procesna pravila za vključitev javnosti. /.../*«

Sodelovanje javnosti na področju okoljskih zadev je Slovenije prenesla v svojo zakonodajo s sprejetjem Zakona o dostopu do informacij javnega značaja, Zakona o varstvu okolja (v nadaljevanju: ZVO-1), Zakona o varstvu narave itd. ZVO-1 vsebuje sodelovanje javnosti že v splošnih načelih: v načelu sodelovanja (6. člen) in načelu javnosti (13. člen). Določa, da so okoljski podatki javni, da ima vsakdo pravico dostopa do okoljskih podatkov skladno z zakonom, da ima javnost pravico sodelovati v postopkih sprejemanja predpisov, politik, strategij, programov, planov in načrtov, ki se nanašajo na varstvo okolja skladno s tem zakonom. Javnost ima tudi pravico sodelovati v postopkih, ki se nanašajo na plane, programe in posege v okolje v drugih državah, ki bi lahko vplivali na okolje v Republiki Sloveniji, skladno s tem zakonom. Poleg tega ima pravico sodelovati v postopkih izdajanja konkretnih pravnih aktov, ki se nanašajo na posege v okolje, skladno s tem zakonom.

ZVO-1 ima seveda še več konkretnih določb, ki urejajo sodelovanje javnosti v okoljskih zadevah. Sodelovanje javnosti pri sprejemanju predpisov je konkretizirano v 34.a členu, ki določa, da morajo ministrstvo, druga ministrstva in pristojni organ samoupravne lokalne skupnosti v postopku sprejemanja predpisov, ki lahko pomembneje vplivajo na okolje, omogočiti javnosti seznanitev z osnutkom predpisa ter dajanje mnenj in pripomb. Za predpis, ki lahko pomembneje vpliva na okolje, se šteje predpis, izdan na področju varstva okolja, ohranjanja narave in upravljanja, rabe ali varstva delov okolja, vključno z ravnanjem z gensko spremenjenimi organizmi, ter drug predpis, za katerega je njegov pripravljavec v postopku sprejemanja ugotovil, da vpliva na okolje. To seveda pomeni, da je zakonodajalec predvidel ne le predpise, ki jih pripravlja Ministrstvo za okolje in prostor (v nadaljevanju: MOP), temveč tudi druga ministrstva. Organ iz prvega odstavka 34.a člena z javnim naznanilom v svetovnem spletu obvesti javnost o kraju, kjer je osnutek predpisa dostopen, načinu in času dajanja mnenj in pripomb. Javnost ima pravico vpogleda in možnost dajanja mnenj in pripomb na osnutek predpisa v trajanju najmanj 30 dni, pri čemer se ta rok lahko skrajša na 14 dni, če gre za manj pomembne spremembe predpisov iz drugega odstavka tega člena. Organ iz prvega odstavka tega člena prouči mnenja in pripombe javnosti in jih v primeru sprejemljivosti na primeren način upošteva pri pripravi predpisa, v svetovnem spletu pa objavi obrazloženo stališče, v katerem se opredeli do mnenja in pripomb javnosti ter navede razloge za upoštevanje oziroma njihovo neupoštevanje pri pripravi predpisa. Določbe prejšnjih odstavkov se ne uporabljajo za predpise, kadar je za njihovo sprejetje z drugimi zakoni že predpisano sodelovanje javnosti.

Navedena določba je posledica odločitve Ustavnega sodišča in je bila uvedena v ZVO-1 z novelo zakona leta 2008. Ustavno sodišče je v svoji odločbi št. U-I-386/06 odločilo, da je Zakon o ohranjanju narave (Ur. l. RS, št. 56/99, 31/2000 – popr., 119/02, 41/04 in 96/04 – ur. p. b.) v neskladju z ustavo, ker ne ureja sodelovanja javnosti v postopkih priprave podzakonskih aktov, ki se izdajajo na podlagi prvega odstavka 26. člena in prvega odstavka 81. člena tega zakona. Sodišče je odločilo še, da mora zakonodajalec ugotovljeno neskladje odpraviti v treh mesecih od objave te odločbe v Uradnem listu RS.

Navedena odločba o ugotovitvi neskladnosti zakona z ustavo se nanaša na nepopolno izvajanje Aarhuške konvencije, in sicer njenega 8. člena. Ta člen vsebuje zahtevo o sodelovanju javnosti v postopkih sprejemanja izvršilnih predpisov in drugih splošno veljavnih pravno zavezujočih pravil organov javne oblasti, ki lahko pomembno vplivajo

and Spatial Planning (hereinafter the MOP) but also other ministries. The body referred to in the first paragraph of Article 34a informs the public, by means of a public announcement on the World Wide Web, of the location in which the draft regulation is accessible and the method and time of submitting opinions and comments. The public has the right to inspect the draft regulation and the opportunity to give opinions and comments for at least 30 days, whereby this deadline may be shortened to 14 days if these are less significant amendments to regulations. The body referred to in the first paragraph of this Article studies the opinions and comments of the public and, in so far as they are acceptable, incorporates them appropriately into the drafting of the regulation. Furthermore, it publishes on the Internet a reasoned position in which it states its views with regard to the opinions and comments of the public and its reasons for incorporating them or not in the drafting of the regulation. The provisions of the preceding paragraphs do not apply to regulations where, for their adoption, the participation of the public is already prescribed by other laws.

This provision resulted from Constitutional Court Decision No. U-I-386/06 and was added to the ZVO-1 with the amendment in 2008. In its Decision No. U-I-386/06, the Constitutional Court ruled that the Nature Conservation Act (Official Gazette of the RS, No. 56/99, 31/2000—amended, 119/02, 41/04 and 96/04—official consolidated text) was inconsistent with the Constitution, as it does not regulate public participation in the drafting of regulations determined in the first paragraph of Article 26 and the first paragraph of Article 81. The Court further determined that the legislator had to remedy this inconsistency within three months after publication of the Decision in the Official Gazette of the RS.

The Decision on the inconsistency of the Act with the Constitution relates to the incomplete implementation of the Aarhus Convention, i.e. Article 8 of the Convention. Article 8 stipulates public participation in the adoption of executive regulations and other generally applicable legally binding rules that may have a significant effect on the environment. The systemic nature of the Environmental Protection Act makes it the most appropriate act for regulating public participation in the adoption of regulations that may have a significant effect on the environment.

The MOP also regulates the procedures of drafting regulations and other documents with internal acts. The MOP website, for example, provides the Instructions on Public Participation in Adopting Regulations that Could Significantly Affect the Environment, which were issued by the Minister of the Environment in 2008. From the date of the entry into force of these Instructions, the drafting of regulations under these Instructions no longer follows the provisions of the Instructions on the Drafting of General and Other Documents at the Ministry of the Environment and Spatial Planning No. 0202-2211/98 of 29/09/1998, which refer to the participation of the interested public in the drafting of regulations.

On 19 November 2009, the National Assembly adopted the Resolution on Legislative Regulation. This Resolution represents the commitment of each Government that it shall, when drafting regulations and policies, follow the principles of better drafting of regulations: performing impact assessments of regulations (on the environment, economy, social services, finances, administration, etc.), reducing or eliminating administrative burdens, simplifying procedures, and implementing consultations with the public.

The awareness of the importance of public participation is already reflected in the operating principles of the public administration and specific regulations, and especially in the provisions of the Resolution on Legislative Regulation, which are implemented through amendments to the Rules of Procedure of the Government of the Republic of Slovenia and the Instructions No. 10 issued by the Secretary-General of the Government.

Under the guidelines for cooperation with the expert and other interested public, the following principles have to be considered:

- the principle of timeliness: timely informing of the public (expert, interested, and target public) and ensuring reasonable time periods for cooperation (review of the materials, preparation of proposals, comments, and opinions);
- the principle of openness: facilitating the transmission of comments, suggestions, and opinions at the earliest possible stage of decision preparation;
- the principle of availability: availability of materials and expert groundwork used in the preparation of the decisions;
- the principle of responsiveness: informing the participants about the reasons for the regard or disregard of their comments, suggestions, and opinions;



na okolje. Zaradi sistemske narave Zakona o varstvu okolja je bil torej najprimernejši predpis za ureditev sodelovanja javnosti pri sprejemanju predpisov, ki lahko pomembno vplivajo na okolje, prav ta zakon.

MOP tudi z nekaterimi internimi akti ureja postopke priprave predpisov in drugih aktov. Tako je na primer na njegovi spletni strani objavljeno Navodilo o postopku sodelovanja javnosti pri sprejemanju predpisov, ki lahko pomembneje vplivajo na okolje, ki ga je minister za okolje izdal leta 2008. Za pripravo predpisov po tem navodilu se tako ne uporabljajo tiste določbe Navodila o postopku priprave splošnih aktov in drugih dokumentov na Ministrstvu za okolje in prostor (št. 0202-2211/98 z dne 29. 9. 1998), ki se nanašajo na sodelovanje zainteresirane javnosti pri pripravi predpisov.

Državni zbor je 19. 11. 2009 sprejel Resolucijo o normativni dejavnosti. Resolucija pomeni zavezo vsake vlade, da bo pri pripravi predpisov in politik sledila načelom boljše priprave predpisov: izvajanje presoj posledic predpisov (za okolje, gospodarstvo, socialo, finance, administracijo itd.), odprava administrativnih ovir in zmanjšanje administrativnih bremen, poenostavitev zakonodaje in izvedba posvetovanj z javnostjo.

Zavedanje o pomenu sodelovanja z javnostjo odseva že v načelih delovanja javne uprave in nekaterih predpisih ter še posebej v določbah Resolucije o normativni dejavnosti, ki se izvajajo s spremembami Poslovnika Vlade Republike Slovenije in Navodila generalnega sekretarja Vlade št. 10.

Smernice za sodelovanje s strokovno in drugimi zainteresiranimi javnostmi nalagajo upoštevanje načel:

- načelo pravočasnosti: pravočasno obveščanje javnosti (strokovne, zainteresirane ali ciljne javnosti) in zagotavljanje razumnega časa za sodelovanje (pregled gradiv, pripravo predlogov, pripomb in mnenj);
- načelo odprtosti: omogočanje predložitve pripomb in predlogov in mnenj v čim zgodnejši fazi priprave odločitev;
- načelo dostopnosti: dostopnost gradiv in strokovnih podlag, uporabljenih v pripravi odločitev;
- načelo odzivnosti: obveščanje sodelujočih o razlogih za upoštevanje ali neupoštevanje njihovih pripomb, predlogov in mnenj;
- načelo transparentnosti: zagotavljanje transparentnosti postopka s predstavitvijo vsebine urejanja ter ravni in postopka sprejemanja odločitev, načina in rokov sodelovanja, pripomb in predlogov in mnenj vseh udeležencev;
- načelo sledljivosti: zagotavljanje transparentnosti prejema in upoštevanja predlogov, pripomb in mnenj kakor tudi gradiv, nastalih v samem procesu sodelovanja (npr. zapisnikov), ter njihova dostopnost.

Minimalni standardi vključevanja javnosti:

- sodelovanje javnosti pri pripravi predpisov naj traja praviloma od 30 do 60 dni; izjema so predlogi predpisov, pri katerih sodelovanje po naravi stvari ni mogoče (na primer: nujni postopki, državni proračun);
- pripravi naj se ustrezno gradivo, ki vsebuje povzetek vsebine s strokovnimi podlagami, ključna vprašanja in cilje;
- po končanem postopku sodelovanja naj se pripravi poročilo o sodelovanju s predstavitvijo vpliva na rešitve v predlogu predpisa;
- poziv k sodelovanju naj se izvede na način, ki bo zagotovil odziv ciljnih skupin in strokovnih javnosti ter obveščenost najširše javnosti; oblikujejo naj se seznami subjektov, katerih sodelovanje pri pripravi predpisov določa zakon, in subjektov, ki se ukvarjajo s področjem, zaradi kontinuiranega sodelovanja in obveščanja.

Na podlagi navedenih resolucije in navodila morajo pripravljavci zakonov že ob pripravi predlogov zakonov predložiti še osnutek podzakonskega predpisa kot del gradiva. Predlog zakona ni končno besedilo zakona, saj bo ta po vložitvi v parlamentarni postopek in po sprejetju amandmajev v Državnem zboru RS spremenjen in dopolnjen, zato je kot del gradiva predloga zakona mogoče priložiti le osnutek, in ne predlog podzakonskega predpisa. Postopek za sprejetje predloga podzakonskega predpisa se razlikuje od postopka za sprejetje predloga zakona, saj ga izda vlada ali pristojni minister.

Varuh človekovih pravic Republike Slovenije je ob obravnavi pobud ugotovil in vlado ob konkretnem primeru opozoril, da v zakonodajnih postopkih niso vselej spoštovane določbe omenjenih resolucije in poslovnika, po katerih se zahteva, da so zakonskemu predlogu predloženi tudi osnutki podzakonskih aktov, ki jih predlog predvideva. Predlagali smo, naj vlada pripravi celovito analizo te problematike in sprejme ustrezne ukrepe, da bodo podzakonski akti pravočasno pripravljeni in uveljavljeni. Generalnemu sekretariatu vlade pa smo priporočili, naj skupaj s Službo

- the principle of transparency: ensuring the transparency of the process by presenting the regulation content, as well as the decision adopting levels and procedure, the manners and time frames of cooperation, comments, suggestions, and opinions of all the participants;
- the principle of traceability: ensuring transparency when receiving and considering suggestions, comments, and opinions, as well as materials, resulting from the cooperation process itself (e.g. minutes), and their availability.

Minimum standards for including the public:
- public participation in the drafting of regulations should take from 30 to 60 days; an exception are the proposals of regulations where cooperation is not possible due to the nature of matters (e.g.: urgent procedures, state budget);
- adequate material should be prepared that contains a summary of the content with expert groundwork, key issues, and objectives;
- after the completed cooperation process, a report on the cooperation with the presentation of the impact on the solutions in the proposed regulation should be prepared;
- a call for cooperation has to be carried out in a way that ensures the response of target groups and expert public, as well as the informing of the general public; lists of subjects should be elaborated, cooperation of which in the preparation of regulations is laid down by the law, and of subjects that are engaged in the respective field due to continuous cooperation and communication.

Pursuant to the Resolution on Legislative Regulation and the Instructions for the Implementation of the Rules of Procedure of the Government of the Republic of Slovenia, the body preparing the draft act has to submit the draft implementing regulation as part of the material when preparing draft acts. The draft act is not the final text of the act, as it is amended after submission for parliamentary procedure and adoption of amendments in the National Assembly. Therefore, only a draft may be submitted and not a proposal for an implementing regulation. The procedure for the adoption of a proposal of an implementing regulation also differs from the procedure for the adoption of a draft act, as it is issued by the Government of the Republic of Slovenia (hereinafter the Government) or the competent minister.

When studying concrete initiatives, the Human Rights Ombudsman of the Republic of Slovenia (hereinafter the Ombudsman) established and pointed out to the Government when coming across a concrete case that legislative procedures do not always observe the provisions of the Resolution on Legislative Regulation and the Government's Rules of Procedure, which require that every draft act is always accompanied by draft implementing regulations that the draft act foresees. We have proposed that the Government prepares a comprehensive analysis of the issue and adopts appropriate measures for implementing regulations to be prepared and enforced on time. We recommended to the Secretariat-General of the Government to work with the Government's Office of Legislation to see to greater care in the reviewing of texts of draft acts also as regards compliance with the provisions of Article 8b. of the Rules of Procedure. At the recommendation of the Ombudsman to see to greater care in the reviewing of acts as regards compliance with the provisions of Article 8b of the Government's Rules of Procedure, the Secretariat-General and the Government's Office of Legislation issued new Instructions for the Implementation of the Rules of Procedure of the Government.

The valid regulation provides solid and sufficient basis for an open and transparent system of public participation in the adoption of environmental regulations. We can even say that the field of environmental protection is actually the field which is formally and legally the most open to public participation, which should also mean a complete enforcement of the principle of openness of public administration. However, we have established quite frequent deficiencies in the actual practical implementation.



Vlade RS za zakonodajo poskrbi za večjo skrbnost pri pregledu besedil predlogov zakonov tudi glede izpolnjevanja zahteve iz 8.b člena Poslovnika vlade. Generalni sekretariat je skupaj s Službo Vlade RS za zakonodajo, na podlagi Varuhovih priporočil, naj poskrbi za večjo skrbnost pri pregledu zakonov glede izpolnjevanja zahtev iz 8.b člena Poslovnika, izdal novo navodilo za izvajanje navedenega poslovnika.

Veljavna ureditev daje dobro in zadostno podlago za odprt in transparenten sistem sodelovanja javnosti pri sprejemanju okoljskih predpisov. Lahko celo trdimo, da je prav področje varstva okolja tisto področje, ki je formalnopravno najbolj odprto za sodelovanje javnosti, kar bi moralo pomeniti tudi polno uveljavitev načela odprtosti delovanja uprave. Ugotavljamo pa, da je v praksi izvajanje večkrat pomanjkljivo.

**Analiza izvajanja 34.a člena Zakona o varstvu okolja na lokalni ravni**

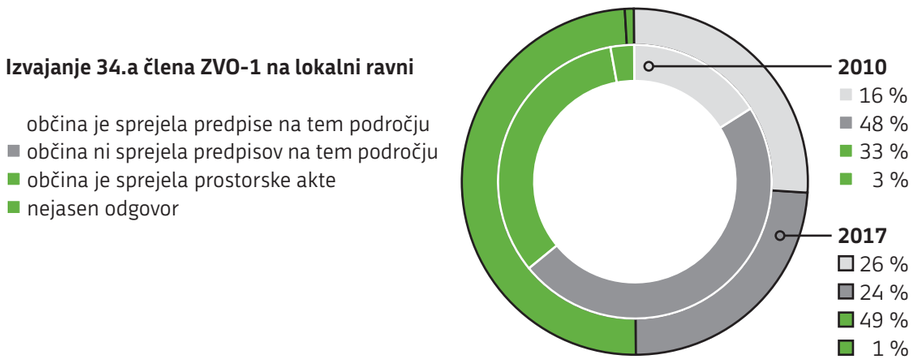
Varuh je za ugotavljanje stanja v skladu s svojimi pristojnostmi leta 2010 izvedel analizo izvajanja 34.a člena ZVO-1 na lokalni ravni. Analiza je takrat pokazala zanimive izsledke, zato smo se jo po sedmih letih odločili ponoviti. Tako smo vsem 212 občinam v Republiki Sloveniji poslali poizvedbo z istimi vprašanji kot leta 2010.

Obravnavani 34.a člen ZVO-1 je v veljavi od 26. 7. 2008 in predpisuje sodelovanje javnosti pri sprejemanju predpisov, ki lahko pomembneje vplivajo na okolje, in sicer da je treba javnosti omogočiti seznanitev z osnutkom predpisa, dajanje mnenj in pripomb ter se do teh opredeliti. V analizi smo upoštevali vse odgovore, ki smo jih prejeli vključno še en mesec po postavljenem roku. Do tega dne je na Varuhovo poizvedbo odgovorilo 135 občin, v analizo leta 2010 pa je bilo vključenih 126 odgovorov občin.

Občine lahko, enako kot že v analizi leta 2010, glede na njihove odgovore razdelimo v tri skupine:
1. občine, ki so od sprememb ZVO v letu 2008 sprejele predpise, ki lahko pomembneje vplivajo na okolje: 35 občin ali 25,93 % (leta 2010: 15,90 %),
2. občine, ki od sprememb ZVO v letu 2008 niso sprejele predpisov, ki lahko pomembneje vplivajo na okolje: 32 občin ali 23,70 % (leta 2010: 48,40 %),
3. občine, ki so v svojih odgovorih poslale podatke o sodelovanju javnosti v postopkih sprejemanja prostorskih aktov: 67 občin ali 49,63 % (leta 2010: 33,30 %).

Ena občina je poslala nejasen odgovor in ga ni mogoče uvrstiti v nobeno izmed skupin. Leta 2010 so bili nejasni trije odgovori občin.

**Graf:** Rezultati analize izvajanja 34.a člena Zakona o varstvu okolja na lokalni ravni v letih 2010 in 2017




Ob primerjavi rezultatov med letoma 2010 in 2017 ugotovimo, da se je stanje zmerno izboljšalo, saj je bilo leta 2017 med občinami, ki so od leta 2008 sprejele predpise, ki lahko pomembneje vplivajo na okolje, za 10 % občin več kot leta 2010. Leta 2010 jih je natanko polovica (50 %) od tistih, ki so sprejele tovrstne predpise, izvedla vse postopke v

**Analysis of the implementation of the provisions of Article 34a of the Environmental Protection Act at local level**

So as to establish compliance in line with its jurisdictions, in 2010 the Ombudsman implemented an analysis of the implementation of the provisions of Article 34a of the ZVO-1 at local level. The analysis has provided interesting findings and seven years later we have decided to repeat it. We sent an inquiry to all 212 municipalities in the Republic of Slovenia with the same questions as in 2010.

The discussed Article 34a of the ZVO-1 has been in force since 26/07/2008 and, as mentioned before, stipulates public participation in the adoption of regulations that can have a significant impact on the environment, i.e. that the public has to be given the opportunity to familiarise itself with the draft regulation and give its opinion and submit comments thereon and receive the authority's standpoint on the matter.

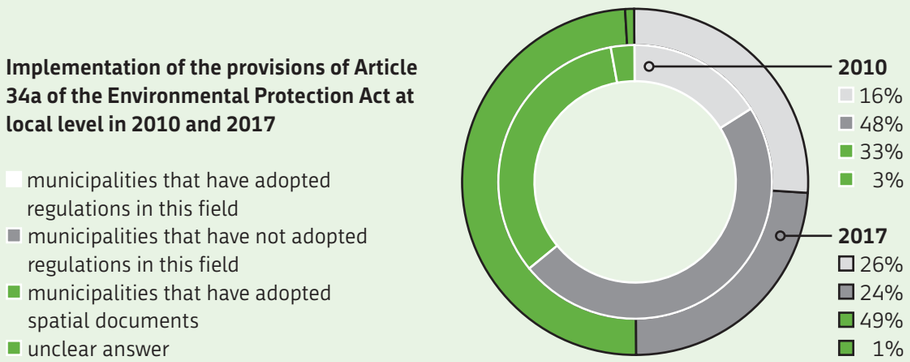
The analysis considered all answers that were received up to one month after the set deadline. By that date, 135 municipalities had answered the Ombudsman's questions, while in 2010 the answers of 126 municipalities were considered.

The same as in the 2010 analysis, the municipalities can be classified into three groups as regards their answers:

1. municipalities that have adopted regulations that can have a significant impact on the environment since the amendments to the ZVO in 2008: 35 municipalities or 25.93% (in 2010 15.90%),
2. municipalities that have not adopted regulations that can have a significant impact on the environment since the amendments to the ZVO in 2008: 32 municipalities or 23.70% (in 2010 48.40%),
3. municipalities whose answers provided information on public participation in the procedures of adopting spatial documents: 67 municipalities or 49.63% (in 2010 33.30%).

One municipality provided an unclear answer and cannot be classified into any of the groups. In 2010, three municipalities provided unclear answers.

**Chart:** Results of the analysis of implementation of the provisions of Article 34a of the Environmental Protection Act at local level in 2010 and 2017




Comparing the 2010 and 2017 results, we can see that the situation has slightly improved, as in 2017 there were 10% more municipalities than in 2010 which have adopted regulations that can have a significant impact on the environment since 2008. In 2010, exactly one half (50%) of municipalities that had adopted such regulations had implemented all procedures in accordance with Article 34a of the ZVO, while in 2017 65% of municipalities (23 of 35 municipalities) correctly implemented all procedures. The remaining 35% have done so only partially, in most cases the standpoint on the opinions and proposals was not published online.

Compared to 2010, almost 25% fewer municipalities answered that they had not adopted regulations that could have a significant impact on the environment. A part of this may be contributed to the increase in the share of



skladu s 34.a členom ZVO, leta 2017 pa je pravilno izvedlo vse postopke 65 % občin (23 od 35 občin), preostalih 35 % je to storilo le deloma, v večini primerov na spletu niso bila objavljena stališča do mnenj in predlogov.

V primerjavi z letom 2010 je v letu 2017 skoraj 25 % manj občin odgovorilo, da niso sprejele predpisov, ki bi lahko pomembneje vplivali na okolje. Del tega gre pripisati povečanju deleža tistih občin, ki so na tem področju sprejele predpise, preostali del pa je tudi v tokratnih odgovorih navedel podatke o sodelovanju javnosti v postopkih sprejemanja prostorskih aktov. Ob tem pojasnjujemo, da seveda lahko tudi prostorski akti z načrtovanimi ureditvami pomembno vplivajo na okolje, vendar postopkov sodelovanja javnosti pri sprejemanju teh ne ureja ZVO-1, temveč Zakon o prostorskem načrtovanju (ZPNačrt).

V skupini občin, ki so v svojih odgovorih poslale podatke o postopkih sprejemanja prostorskih aktov, je bilo v letu 2017 glede na leto 2010 največje povečanje, in sicer za kar 16,33 %. Vendar velja pri tem dodati, da je kar nekaj občin v tokratnih odgovorih navedlo, da se ti postopki vodijo po drugem predpisu, iz česar izhaja, da poznajo razliko med vodenjem postopkov po ZVO-1 in ZPNačrt.

Glede na vse navedeno lahko ugotovimo, da so končne ugotovitve tokratne analize še vedno precej podobne tistim iz leta 2010, in sicer:

- občine še vedno malo izkoriščajo možnost, ki jih imajo glede urejanja okoljske problematike, saj jih je le dobra četrtina od leta 2008 sprejela predpise na področju, ki ga pokriva ZVO. S tem si same zapirajo možnosti reguliranja pritiskov na okolje;
- občine še vedno slabo poznajo zakonske določbe glede sodelovanja javnosti v postopkih sprejemanja predpisov, ki lahko pomembneje vplivajo na okolje, saj jih je skoraj polovica na Varuhovo poizvedbo odgovarjala o postopkih sprejemanja prostorskih aktov, pri čemer jih je le nekaj navedlo, da se zavedajo, da se ti postopki vodijo po drugem predpisu;
- izmed občin, ki so na tem področju od sprememb ZVO sprejele predpise, jih je le 65 % (kar je za 15 % več kot leta 2010) pravilno izvedlo vse v 34.a členu ZVO-1 predpisane določbe;
- tudi v tokratni analizi iz odgovorov občin, ki so odgovarjale o postopkih sprejemanja prostorskih aktov, izhaja dobro poznavanje postopkov sodelovanja javnosti na področju prostorskega načrtovanja. Občine vodijo te postopke v skladu z ZPNačrt.

V vseh skupinah občin, tako med tistimi, ki so od leta 2008 sprejemale predpise, ki lahko pomembneje vplivajo na okolje, kot med tistimi, ki tega niso storile, velja izpostaviti primere dobre prakse. Iz odgovorov, prejetih v tokratni analizi, namreč izhaja, da čedalje več občin v svoj statut ali poslovnik zapisuje, da je treba vse predpise in splošne akte, ki se sprejemajo, predhodno javno objaviti in predstaviti način možnosti dajanja mnenj in pripomb. S takšno prakso so nas seznanile občine Gorenja vas - Poljane, Grad, Komenda, Luče, Mestna občina Ljubljana, Miklavž na Dravskem polju in Železniki. To vsekakor pozdravljamo in izpostavljamo kot primer dobre prakse.

Z rezultati opravljene analize bo Varuh seznanil Službo za lokalno samoupravo, ki deluje v okviru Ministrstva za javno upravo. Rezultate bomo poslali tudi združenjema občin, ki za občine opravljata tudi naloge izobraževanja, strokovne podpore in informiranja, to sta Skupnost občin Slovenije in Združenje občin Slovenije.

**Varuhove ugotovitve na področju sodelovanja javnosti pri sprejemanju okoljskih predpisov**

V skladu z načelom spodbujanja, ki ga opredeljuje ZVO-1, država in občina spodbujata ozaveščanje, obveščanje in izobraževanje o varstvu okolja. To so torej naloge države in občine, kot jima jih nalaga zakon. Okoljsko ozaveščanje oziroma krepitev zavesti o lastni odgovornosti spada med pomembne ukrepe za doseganje ciljev trajnostnega razvoja. V skladu z načelom spodbujanja je država dolžna tudi aktivno delovati na področju izobraževanja o varstvu okolja. Tako lahko zagotovi enako stopnjo dostopnosti podatkov, ki morajo biti kakovostni in pravočasni za vse prebivalce.

Glede na to, da so naravno okolje in njegove sestavine postali čedalje bolj cenjena vrednota, je treba omenjeno miselnost spodbujati in razviti učinkovit družbenopolitični sistem, kjer bo imel okoljsko ozaveščen posameznik vidno vlogo pri sprejemanju odločitev. Prihodnost temelji na razvijanju okoljske miselnosti z okoljskim izobraževanjem in ukrepi, s katerimi spreminjamo vedenje ljudi in dosežemo celovit razvoj okoljske zavesti.

municipalities that have adopted regulations in this field, while the remaining share this year again provided information on public participation in the procedures of adopting spatial planning documents. It needs to be said that spatial planning documents with the planned spatial arrangements can have a significant impact on the environment, however public participation in the adoption of these documents is not governed by the ZVO-1 but the Spatial Planning Act (the ZPNačrt).

Compared to 2010, the group of municipalities whose answers provided information on the procedures of adopting spatial planning documents saw the largest increase in 2017, i.e. by 16.33%. It needs to be added that there were quite a few municipalities this year whose answers stated that these procedures are managed under a different regulation, which means that they are familiar with the difference of managing procedures under the ZVO-1 and the ZPNačrt.

In light of the above, it can be said that the final findings of this year's analysis are still rather similar to those from 2010, i.e.:

- Municipalities still do not sufficiently use the possibilities that are available with regard to managing environmental issues, as since 2008 only slightly more than one quarter adopted regulations from the field covered by the ZVO. This way, they are themselves closing their possibilities of regulating environmental pressures.
- Municipalities are still not sufficiently familiar with the legislative provisions governing public participation in adopting regulations that could significantly affect the environment, as in answer to the Ombudsman's inquiry, almost one half spoke about the procedures of adopting spatial planning documents, whereby only a few stated that they are aware that these procedures are governed by another regulation.
- Among the municipalities that have adopted regulations in this field since amendments to the ZVO entered into force, only 65% (which is 15% more than in 2010) correctly implemented all the provisions of Article 34a of the ZVO-1.
- This year's analysis of the municipalities' answers on the procedures of adoption of spatial planning documents again shows familiarity with public participation procedures in spatial planning. Municipalities manage these procedures in line with the provisions of the ZPNačrt.

For all categories of municipalities, those which had adopted regulations that could have a significant impact on the environment since 2008 and those which did not, best practice examples need to be emphasised. The answers that we received in the course of this year's analysis show that the number of municipalities which have included the provision that all regulations or general documents that are being adopted have to be previously published and the opportunity to give opinions and comments has to be presented into their statutes or rules of procedure is growing. We have learned of this practice from the municipalities of Gorenja vas-Poljane, Grad, Komenda, Luče, City Municipality of Ljubljana, Miklavž na Dravskem polju and Železniki. This is very welcome and emphasised as a best practice example.

The Ombudsman will present the results of the analysis to the Office for Local Self-Government, which operates in the context of the Ministry of Public Administration. The results will also be communicated to both associations of municipalities, which provide training, expert support and information to municipalities, i.e. the Association of Municipalities and Towns of Slovenia and the Association of Municipalities of Slovenia.

**The findings of the Ombudsman as regards public participation in the adoption of environmental regulations**

In accordance with the principle of incentives stipulated by the ZVO-1, the state and municipalities are encouraged to raise awareness, information, and education about environmental protection. These are the tasks of the state and municipalities stipulated by the law. Environmental awareness or the strengthening of awareness of own responsibility are part of the important measures for achieving the objectives of sustainable development. In accordance with the principle of incentives, the state has to be active in the field of education about environmental protection. In this way, it can ensure equal accessibility of information, which has to be of a high quality and provided on time to all citizens.

As the natural environment and its components have become a highly appreciated value, this mindset has to be facilitated, while we need to develop an effective socio-political system where an environmentally conscious



Varuh je že leta 2010 okrepil sodelovanje s civilno družbo. Ker je Varuh ugotovil, da odnos države do civilne družbe ni takšen, kot bi moral biti, oziroma je potreben spremenjen odnos, je okrepil sodelovanje s civilno družbo tudi na področju okolja in prostora. Varuh tako že več let enkrat na mesec organizira tematska srečanja, enkrat na sedežu, drugič na terenu. Srečanja so predhodno najavljena na Varuhovi spletni strani, posameznim NVO, ki so predhodno izrazile željo, pošljemo tudi pisna vabila. Ta srečanja se bodo nadaljevala, saj menimo, da ima civilna družba posebno vlogo pri varovanju človekovih pravic.

Zavedamo se, kako pomembno je graditi medsebojno zaupanje s spoštovanjem, upoštevanjem stroke in izogibanjem tistim zahtevam politike, ki v želji po všečnosti zagovarjajo nestrokovne rešitve. Avtoriteta državne oblasti ni zadosten razlog za sprejemanje odločitev mimo stroke in civilne družbe. Ugotovimo lahko, da je sodelovanje javnosti v praksi velikokrat le formalno in navidezno, pristojni organi oblasti lahko tako formalno legitimirajo svoje odločitve na področju okolja, ker poskrbijo za zakonitost izvedenega postopka sodelovanja javnosti, vsebinskemu upoštevanju pripomb pa se velikokrat izognejo. Nujno bi bilo, da država s svojim ravnanjem izkaže spoštovanje javnosti in civilni družbi pri njenem vztrajnem zavzemanju za sprejemanje takšnih odločitev, ki bodo prispevale k zdravemu okolju, ter v ta namen zagotavlja njeno pravočasno vključitev v procese odločanja, jih opremi s kakovostnimi informacijami in zagotovi zadostna finančna sredstva za njeno delovanje.

Pri odnosu Varuha in civilne družbe ne gre za odnos odvetnika in prizadetega. Varuh ni zastopnik oziroma zagovornik civilne družbe, temveč po svoji presoji in v okviru pooblastil skrbi za upoštevanje in uresničevanje pravic in svoboščin v vseh družbenih sferah. Varuh si v vlogi nekakšnega posrednika prizadeva za učinkovit odnos med civilno družbo in nosilci oblasti.

Veljavna okoljska zakonodaja zaradi svoje obsežnosti, kompleksnosti, tudi neusklajenosti med predpisi pogosto slabega izvajanja in neučinkovitega nadzora ustvarja primanjkljaj pri izvajanju, ki otežuje delovanje pravne države in povzroča nezaupanje v njeno delovanje. Zato je še toliko bolj pomembno zagotoviti vključevanje javnosti v najzgodnejših fazah priprave predpisov, saj omogoča javnim oblastem, da pri sprejemanju odločitev pridobijo širši krog informacij, perspektiv in potencialnih rešitev, kar izboljšuje kakovost sprejetih odločitev. Sočasno takšna pravica tudi povečuje javno zaupanje v institucije oblasti, zvišuje raven demokracije v družbi in krepi vlogo in pomen civilne družbe. Javnost se lahko s sprotnim vključevanjem v pripravo predpisa bolj poistoveti z državno upravo in oblastjo, kot če predpisi nastajajo brez sodelovanja s širšo javnostjo. In ne nazadnje, sodelovanje tudi poveča učinkovitost izvajanja sprejetih predpisov, saj nekdo, ki lahko sodeluje pri pripravi predpisa, prej in učinkoviteje uresničuje predpis. Vključitev v pripravo predpisa pomembno zmanjšuje možnosti primanjkljaja pri izvajanju kot svojevrstnega problema sodobne državne uprave.

Primeri iz prakse pa še vedno kažejo, da zadeve nemalokrat potekajo drugače. Center za informiranje, sodelovanje in razvoj nevladnih organizacij je v sedmih letih naštel več kot 1.500 kršitev Resolucije o normativni dejavnosti, ki predvideva vsaj 30-dnevno posvetovanje z javnostjo pri pripravi predpisov. Od 10. 7. do 17. 7. 2017 je bila Resolucija o normativni dejavnosti kršena devetkrat.

Na tiskovni konferenci junija 2017 je 66 okoljskih nevladnih organizacij in civilnih pobud vlado pozvalo, naj s civilno družbo vzpostavi konstruktiven dialog, učinkovit nadzor nad onesnaževalci in odgovornost državnih institucij. Prepričani so, da so številni konflikti nastali in nastajajo po nepotrebnem in bi se jim na tak način lahko izognili. Med drugim so na vlado naslovili zahtevo, naj začne v zgodnji fazi vključevati civilno družbo, torej že takrat, ko se pripravljajo podlage, in potem v nadaljnjih postopkih sprejemanja strategij, predpisov, umeščanja v prostor in presoj vplivov na okolje. Sodelovanje mora biti konstruktivno in odzivno, cilj pa najboljši možen rezultat.

Tudi Varuh že dlje časa opozarja na potrebo po zgodnjem vključevanju javnosti pri sprejemanju okoljskih predpisov, tako na načelni ravni kot v konkretnih zadevah. Ne gre pozabiti tudi srečanj s civilno družbo in posvetov: novembra 2007 je Varuh v sodelovanju z Umanotero, Slovensko fundacijo za trajnostni razvoj, organiziral posvet Okolje in človekove pravice, maja 2010 je organiziral 2. konferenco Okolje in človekove pravice, sodeloval je v projektu Zdravje za Zasavje, novembra 2013 pa je v sodelovanju z Državnim svetom Republike Slovenije organiziral še posvet Okolje in človekove pravice III: Odgovornost države za sanacijo onesnaženega okolja.

Omenimo le še nekaj zadnjih primerov, ki jih je obravnaval Varuh. Med njimi je primer roka za javno razpravo o objavljenem osnutku Uredbe o spremembah Uredbe o mejnih vrednostih kazalcev hrupa v okolju (v nadaljevanju: uredba). Varuh je v omenjenem primeru leta 2016 obravnaval več pobud, v katerih so pobudniki MOP pozvali k

individual will play a visible role in the adoption of decisions. The future is based on developing an environmental mindset through environmental education and campaigns, which are aimed at changing human behaviour and achieving a comprehensive development of environmental awareness.

The Ombudsman strengthened its cooperation with civil society back in 2010. As the Ombudsman established that the relationship of the state towards civil society is not as it should be or that this relationship needs to change, it also strengthened its cooperation with civil society in the fields of environment and spatial planning. For several years, the Ombudsman has been organising monthly thematic meetings, alternately at the head office and in the field. The meetings are announced in advance on the Ombudsman's website and individual NGOs, which have expressed the desire to cooperate, are also sent written invitations. These meetings will continue, as we believe that civil society plays a special role in the protection of human rights.

We are aware of the importance of building mutual trust through respect, consideration of the professional standards, and avoidance of those political requirements which speak in favour of an unprofessional solution for reasons of complaisance. The power of state authority is not a sufficient reason for adopting decisions that ignore professional standards and civil society. We can see that public participation is often merely formal and apparent in practice and competent authorities can formally legitimise their environmental decisions as they see to the legitimacy of the implemented procedure of public participation but often avoid the consideration of comments. The state's actions should show respect for the public and civil society by persistently endeavouring to adopt decisions that contribute to a healthy environment and for this reason timely including them in decision-making processes, providing high-quality information, and ensuring sufficient financial resources for its actions.

When it comes to the relationship between the Ombudsman and civil society, we are not dealing with the relationship of a "lawyer" and the "affected party". The Ombudsman is not a representative or advocate of civil society but instead uses its judgement to see to, within its jurisdictions, the consideration for and realisation of the rights and freedoms in all social spheres. In the role of a kind of an intermediary, the institution of the Ombudsman strives for an effective relationship between civil society and the holders of power.

Due to its extensiveness, complexity, but also inconsistency between individual regulations, frequently poor implementation, and ineffective supervision, the valid environmental legislation creates an "implementation deficit", which impedes the operation of the rule of law and generates distrust of its activity.

It is therefore that more important to ensure public participation in the earliest phases of the drafting of regulations, as this enables public authorities to acquire a broad spectrum of information, perspectives, and potential solutions in the adoption of decisions, which in turn improves their quality. Furthermore, such a right also increases public trust in the institutions of power, raises the level of democracy in society, and strengthens the role and importance of civil society. Through ongoing participation in the drafting of a regulation, the public can better identify with state administration and authorities than if regulations are being drafted without the participation of the broader public. Ultimately, such participation also increases the effectiveness of implementation of the adopted regulations, as someone who can participate in the drafting of a regulation will realise it sooner and more effectively. Inclusion in the drafting of a regulation substantially decreases the possibilities of an implementation deficit as a special problem of the modern state administration.

Practical examples however still show that matters often run differently. In seven years, the Centre for Information Service, Cooperation and Development of NGOs (hereinafter the CNVOS) counted more than 1,500 violations of the Resolution on Legislative Regulation, which stipulates at least 30 days for consultations with the public on the drafting of regulations. From 10/07/2017 to 17/07/2017, the Resolution was violated 9 times.

At a press conference held in June 2017, 66 environmental non-governmental organisations and civil initiatives asked the Government of the Republic of Slovenia to establish a constructive dialogue with civil society, effective control over polluters, and the responsibility of state institutions. They are convinced that numerous conflicts arose and are arising unnecessarily and could in this way be avoided. They also asked the Government to start including civil society in the early phase, i.e. when groundwork is being prepared and later also in further procedures of adopting strategies, regulations, spatial planning, and environmental impact assessments. Participation has to be constructive and responsive and the objective should be the best possible result.



podaljšanju roka za javno razpravo o objavljenem osnutku Uredbe. Menili so, da je za javno razpravo neutemeljeno določen skrajšan rok 14 dni, ki je prekratek, saj gre za zelo pomembno spremembo okoljskih predpisov, posledice katere bi lahko pomembno poslabšale kakovost bivanja prebivalcev in ogrožale njihovo zdravje. Edino daljši rok za javno razpravo bi omogočil zainteresirani javnosti ustrezno možnost sodelovati in opredeliti se do predvidenih sprememb. Varuh je MOP pozval k obrazložitvi razlogov, na podlagi katerih je sprejelo odločitev o skrajšanem roku za javno razpravo o objavljenem osnutku uredbe.

MOP je v odgovoru obrazložilo, da so uporabili 14-dnevni skrajšani rok za javno razpravo, saj menijo, da osnutek predloga uredbe ne šteje za predpis, ki lahko pomembneje vpliva na okolje. Predpis naj bi namreč predvideval uvedbo nižjih vrednosti ravni hrupa zaradi obratovanja nekaterih virov hrupa, poleg tega gre z nomotehničnega vidika za manjše spremembe predpisa, saj se popravki nanašajo le na pet členov. Zato so upravičeno pričakovali, da bo imela javnost v predvidenem roku dovolj časa, da prouči zadevo in poda pripombe. Pojasnili so še, da je ne glede na navedena dejstva MOP v vmesnem času rok za dajanje mnenj in pripomb na osnutek uredbe, objavljen na spletni strani, podaljšal, da ne bi bila komur koli kršena katera koli pravica glede sodelovanja javnosti pri sprejemanju predpisov.

Varuh glede obrazložitev MOP dodaja, da morajo skladno s prvim odstavkom 34.a člena ZVO-1 ministrstva in pristojni organi samoupravne lokalne skupnosti v postopku sprejemanja predpisov, ki lahko pomembneje vplivajo na okolje, omogočiti javnosti seznanitev z osnutkom predpisa in dajanje mnenj in pripomb. Ob tem 34.a člen ZVO-1 jasno opredeljuje, kateri je tisti predpis, ki lahko pomembneje vpliva na okolje, in sicer se kot tak »šteje predpis, izdan na področju varstva okolja, ohranjanja narave in upravljanja, rabe ali varstva delov okolja, vključno z ravnanjem z gensko spremenjenimi organizmi, pa tudi drug predpis, za katerega je njegov pripravljavec v postopku sprejemanja ugotovil, da vpliva na okolje. Javnost ima pravico vpogleda in možnost dajanja mnenj in pripomb na osnutek predpisa v trajanju najmanj 30 dni, pri čemer se ta rok lahko skrajša na 14 dni, če gre za manj pomembne spremembe predpisov iz drugega odstavka tega člena«.

Omenjena zakonska določba torej omejuje pripravljavca pri presojanju, ali gre za manj pomembno spremembo predpisov. Prav zaradi zakonske domneve v 34.a členu ZVO-1 je treba subjektivno stališče pripravljavca v teh primerih pazljivo tehtati v razmerju do upravičenja javnosti seznaniti se z osnutkom predpisa in podati nanj mnenja ter pripombe. Varuh zato meni, da je skladno z normativnim namenom omenjenih določb ZVO-1 primerno skrajšati rok za vpogled in možnost dajanja mnenj ter pripomb le v skrajnih primerih. Ob upoštevanju osnovnega namena pravice javnosti sodelovati pri sprejemanju in spremembah predpisov, ki je predvsem zagotoviti javnosti sprejemljive vplivnosti sprememb predpisov na okolje, je tako to mogoče zaobiti le v primeru močnejšega pravnega interesa, dopustnega le v korist javnosti, kar je jasen namen 34.a člen ZVO-1. V nasprotnem primeru bi se lahko postavilo vprašanje morebitnega izigravanja 34.a člena ZVO-1.

Varuh je na podlagi vsega navedenega MOP podal predlog, naj v prihodnje pri objavi osnutka predpisa za morebitne pripombe javnosti kar najbolj zagotovi pravico do sodelovanja javnosti pri sprejemanju predpisov in tako dosledneje upošteva 34.a člen ZVO-1. Postopki spreminjanja okoljevarstvenih predpisov morajo biti premišljeni, odločitve o spremembah pa sprejete preudarno. Morebitne spremembe predpisov ne smejo omejevati ustavno zagotovljene pravice do zdravega življenjskega okolja, kar je mogoče utemeljeno in legitimno presojati le ob vsakokratnih pripombah in predlogih javnosti.

Leta 2017 je MOP že tretjič pripravilo spremembe omenjene uredbe oziroma tokrat kar novo uredbo. Tudi tokrat smo v zvezi s postopkom priprave nove uredbe prejeli kar nekaj pobud, ki so se v glavnem nanašale na dejstvo, da je MOP v javno razpravo poslalo osnutek uredbe, ki ni vključeval nobenih strokovnih podlag. Na MOP smo v zvezi z navedenim opravili poizvedbo in njihov odgovor je bil, da imajo sami dovolj strokovnega znanja, da so osnutek uredbe lahko pripravili sami. Zadevo še obravnavamo. Ne dvomimo o strokovnih kompetencah zaposlenih na MOP, vendar morajo biti strokovne podlage nesporno dostopne javnosti. To namreč pomeni uresničevanje določb tako Aarhuške konvencije kot vsaj načel dostopnosti in transparentnosti.

Drug še aktualen primer je osnutek novega Zakona o varstvu okolja; ZVO-2, ki ga je MOP dalo v javno obravnavo 10. 7. 2017, obravnava je bila odprta do 11. 9. 2017. V tem primeru je bilo na prvi pogled zadoščeno 34.a členu trenutno veljavnega ZVO-1, v skladu s katerim ima javnost pravico vpogleda in možnost dajanja mnenj in pripomb na osnutek predpisa v trajanju najmanj 30 dni, vendar le formalno. Ker gre za zelo obsežen zakon, ki je hkrati krovni na področju varovanja okolja, Varuh meni, da javna razgrnitev v času poletnih počitnic in še prvih nekaj dni novega šolskega leta,

For a while now, the Ombudsman has been pointing out the need for early inclusion of the public in the adoption of environmental regulations, both in principle and in concrete cases. We cannot overlook the meetings with civil society and consultations: in November 2007, the Ombudsman, in cooperation with Umanotera, The Slovenian Foundation for Sustainable Development, organised the Environment and Human Rights consultation; in May 2010, it organised the 2nd conference on the Environment and Human Rights; the Ombudsman participated in the Health for Zasavje project; and in November 2013, it organised the Environment and Human Rights III: Responsibility of the State for the Rehabilitation of the Polluted Environment consultation together with the National Council of the Republic of Slovenia.

Allow us to mention a few of the recent cases examined by the Ombudsman. These include the example of the deadline for public debate on the published Draft Decree Amending the Decree on Limit Values for Environment Noise Indicators (hereinafter the Decree). In 2016, the Ombudsman examined several initiatives concerning this case, in which the initiators asked the MOP to prolong the deadline for public debate on the published draft Decree. They believed that an unjustifiably shorter 14-day deadline had been determined for the public debate, which was too short, as this was a significant amendment of environmental regulations, whose consequences could significantly worsen the quality of life of citizens and endanger their health. Only a longer deadline for public debate could enable the interested public to participate and provide its standpoint on the foreseen amendments. The Ombudsman asked the MOP to explain its reasoning for the shorter deadline for public debate on the published draft Decree.

The MOP explained in its answer that the shorter 14-day deadline for public debate had been used as they believe that the draft Decree was not considered a regulation that could have a significant impact on the environment. The regulation foresaw the introduction of lower values of noise levels from the operation of individual noise sources, while from the viewpoint of the legislative drafting technique these were minor amendments referring only to five articles. They therefore justifiably expected the public to have sufficient time in the provided time frame to study the matter and provide comments. They further explained that regardless of these facts, the MOP had, in the interim time, prolonged the deadline for providing opinions and comments to the draft Decree published on the website so as not to violate any right of public participation in the adoption of regulations.

As regards the MOP's explanation, the Ombudsman adds that in accordance with the first paragraph of Article 34a of the ZVO-1, during the procedure of adopting regulations, ministries and the competent bodies of the local authority must allow the public the opportunity to familiarise itself with a draft regulation that can have a significant impact on the environment and give its opinion and submit comments thereon. Furthermore, Article 34a of the ZVO-1 clearly stipulates which regulation is considered to have a significant impact on the environment, i.e. "regulations issued in the field of environmental protection, nature conservation and the management, use or protection of parts of the environment, including the management of genetically modified organisms, and also regulations the environmental impact of which has been identified by the drafting body during the adoption process. The public has the right to inspect the draft regulation and the opportunity to give opinions and comments for at least 30 days, whereby this deadline may be shortened to 14 days if these are less significant amendments to regulations under the second paragraph of this Article." This provision therefore limits the regulation drafter in the assessment of whether the amendment is less significant. The legal presumption in Article 34a of the ZVO-1 is precisely the reason why subjective standpoints of drafters of regulations have to be carefully weighed in these cases with regard to the public's right to be informed of the draft regulation and provide its opinions and comments. It is therefore the Ombudsman's belief that in accordance with the legislative purpose of these provisions of the ZVO-1, deadlines for inspecting the regulation and giving opinions and comments should be shortened only in extreme cases. In consideration of the basic purpose of the right of public participation in the adoption and amendment of regulations, which is predominantly to ensure the public has an acceptable impact on environmental regulations, this can be avoided only in the event of a stronger legal interest, permissible only for the benefit of the public, which is the clear purpose of Article 34a of the ZVO-1. Otherwise, the question of eventual sidestepping of Article 34a of the ZVO-1 might arise.

In light of the above, the Ombudsman recommended to the MOP that in the future, when publishing a draft regulation for eventual comments provided by the public, it should strive to fully ensure the right to public participation in the adoption of regulations and thus more consistently observe Article 34a of the ZVO-1. The procedures of adopting environmental regulations have to be deliberate and the decisions on the amendments have to be adopted with prudence. Eventual amendments to regulations must not limit the constitutional right to a healthy



ni ustrezna in zadostna. ZVO-2 je tudi napisan na način, da si člani in poglavja, ki urejajo problematiko, ne sledijo v istem vrstnem redu kot v trenutno veljavnem ZVO-1, zato je spremembam zelo težko slediti. Glede na to, da osnutek ZVO-2, ki je bil dostopen na spletnih straneh MOP, vsebuje obrazložitev za spremembe zakona, ki obsega kar 338 členov, na eni sami strani, in ne po členih, lahko rečemo, da gre za primer izvotljene pravice do sodelovanja javnosti pri sprejemu okoljskih predpisov. Govorimo o goli pravici, brez za njen obstoj pomembne vsebine.

Zaradi vsega navedenega je Varuh MOP poslal mnenje, da ima javnost v obravnavanem primeru onemogočeno kakovostno obravnavo vsebine osnutka predpisa in zato je tako oteženo njeno sodelovanje pri pripravi novega predpisa. Varuh tudi meni, da objavljeni osnutek zakona ZVO-2 ne sledi namenu Aarhuške konvencije, niti ne ustreza Resoluciji o normativni dejavnosti in je v neskladju z Navodilom o postopku sodelovanja javnosti pri sprejemanju predpisov, ki lahko pomembneje vplivajo na okolje.

MOP smo zato predlagali, naj rok za predložitev pripomb in predlogov na osnutek ZVO-2 ustrezno podaljša. Predlagali smo še, naj osnutek dopolnijo z vsemi potrebnimi sestavinami, kar bo omogočalo kakovostno in učinkovito sodelovanje javnosti oziroma poskrbijo, da bo javnosti dejansko zagotovljena pravica od sodelovanja pri sprejemanju predpisov v skladu z veljavno ureditvijo, in ne le formalna zadostitev zakonskim določilom.

MOP se v postavljenem roku ni odzvalo na naš predlog, prav tako ni odgovoril na dopise posameznikov, civilnih pobud in nevladnih organizacij, ki so jim bili poslani že več kot mesec dni pred koncem javne obravnave. Šele po izteku roka za oddajo mnenj in pripomb na osnutek ZVO-2 nas je MOP seznanilo, da javne obravnave ne bodo podaljšali, saj menijo, da zato ni potrebe, ker je bil osnutek v javni obravnavi polna dva meseca.

Glede poletnega časa javne obravnave so svojo odločitev utemeljili s tem, da to ne more biti ovira za javno obravnavo, saj ni realno misliti, da je v tem času vsa javnost, ki jo sodelovanje pri pripravi predpisa zanima, ves čas na dopustu ali počitnicah. Glede Varuhovih pripomb na strukturo ZVO-2 so pojasnili, da je pripravljavec zakona popolnoma svoboden glede razvrstitve poglavij, vendar je kljub temu ohranil koncept veljavnega zakona, v največji možni meri pa tudi njegovo strukturo in s tem vrstni red poglavij. Zaradi nekaterih novih poglavij to ni bilo povsem mogoče, deloma pa so zasledovali tudi pomen posameznih poglavij in jih zato primerneje umestili.

Pojasnili so še, da so glede javne obravnave osnutka ZVO-2 upoštevali Poslovnik Vlade Republike Slovenije (v nadaljevanju: poslovnik) in tudi Resolucijo o normativni dejavnosti (v nadaljevanju: ReNDej).

Vasruh ne more sprejeti pojasnil MOP, ne moremo pritrditi navedbi ministrstva, da je bil v konkretnem primeru upoštevan 9.a člen poslovnika. V skladu z drugo alinejo 9.a člena poslovnika mora namreč objavljeno gardivo vsebovati tudi povzetek vsebine s strokovnimi podlagami, ključna vprašanja in cilje. Obravnavani osnutek pa je imel razlago za 338 členov le na eni sami strani, strokovne podlage pa sploh niso bile objavljene. Enake zahteve ima v poglavju 2. (na katerega se v svojem odgovoru sklicuje tudi MOP) tudi ReNDej, ki v skladu z načelom dostopnosti prav tako predvideva dostop javnosti do gradiv in strokovnih podlag, uporabljenih v pripravi odločitev.

Varuh je nad odločitvojo MOP, da javne obravnave osnutka predpisa ne podaljša, razočaran in meni, da gre še za en primer, ko je bilo formalno javnosti omogočeno sodelovanje pri pripravi predpisa, dejansko pa je bilo to močno oteženo. Ne nazadnje kritično opozarjamo tudi na dejstvo, da vsem, ki so se v zvezi z obravnavano problematiko že več kot en mesec prej obračali na MOP, to vse do izteka roka javne obravnave ni sporočilo svoje odločitve o morebitnem podaljšanju javne obravnave, s čimer jih je prav tako vsaj deloma zavajalo in jih pučalo v pričakovanju pozitivne odločitve.

O načinu sprejemanja konkretnega zakona se je izrekla tudi Komisija za preprečevanje korupcije (v nadaljevanju: KPK), ki je opozorila, da je v postopku javne obravnave še en pomemben zakon, ki ji ni bil poslan v pregled, da bi ocenila morebitna korupcijska tveganja. KPK je že leta 2012 opozorila, da gre pri regulaciji okolja in prostora za korupcijsko izrazito izpostavljeno področje, na katerem deluje veliko zasebnih interesov in lobijev.

**Sklepi**

Varuh že leta ugotavlja, da se sistemske spremembe oziroma posegi v predpise s področja okolja in prostora izvajajo pogosto brez sodelovanja javnosti ali z njenim omejenim sodelovanjem. V svojih letnih poročilih tako večkrat

living environment, which can be justifiably and legitimately assessed only with respective comments and proposals provided by the public.

In 2017, the MOP prepared amendments to the mentioned Decree for the third time, or this time even a completely new Decree. We again received several initiatives concerning the drafting procedure. They mostly referred to the fact that the MOP provided the draft Decree for public debate without any expert groundwork. We enquired about this matter at the MOP and their answer was only that they have sufficient expertise themselves and had prepared the draft Decree themselves. We are still examining the matter. We do not doubt the professional competences of MOP employees, however expert groundwork unquestionably has to be accessible to the public. This means the realisation of the provisions of the Aarhus Convention as well as, at least, the provisions of accessibility and transparency.

Another current example is the draft of the new Environmental Protection Act (the ZVO-2), which the MOP submitted for public debate on 10/07/2017. The debate was open until 11/09/2017. It might seem that the provisions of Article 34a of the valid ZVO-1, which give the public the right to inspect and give opinions and comments to the draft regulation for a period of 30 days, might have been complied with, but this was merely formally done. As this Act is very extensive and at the same time also the umbrella act in environmental protection, it is the Ombudsman's opinion that a public unveiling during the summer holidays and for the first few days of the school year is not appropriate and sufficient. The ZVO-2 is also written so that the articles and chapters which govern a specific issue do not follow each other in the same order as in the currently valid ZVO-1, and changes are therefore difficult to follow. As the draft ZVO-2, which was available on the MOP website, contains the reasoning for the amendments to the Act, which stretches across 388 articles, on a single page and not according to articles, we can say that this is an example of the hollow right of public participation in the adoption of environmental regulations. We are speaking of a mere right without the content which is essential for its existence.

In light of the above, the Ombudsman provided its opinion that in the examined case the public does not have the possibility to engage in a high-quality examination of the content of the draft regulation and consequently its participation in the preparation of a new regulation is made difficult. The Ombudsman further believes that the draft ZVO-2 does not follow the purpose of the Aarhus Convention nor satisfy the provisions of the Resolution on Legislative Regulation, and is also in conflict with the Instructions on Public Participation in Adopting Regulations that Could Significantly Affect the Environment.

We therefore proposed to the MOP to correspondingly prolong the deadline for providing comments and proposals to the draft ZVO-2. We further proposed that the draft be completed with all the required components, which will enable high-quality and effective public participation or to ensure that the public is actually given the right to participate in the adoption of regulations in accordance with the valid regulation instead of merely formally meeting the legislative provisions.

The MOP did not respond to our proposal within the set deadline nor did it answer the letters sent in by individuals, civil initiatives, and non-governmental organisations, which had been sent more than a month prior to the conclusion of the public debate. Only once the deadline for providing opinions and comments to the draft ZVO-2 had expired, did MOP inform us that it would not prolong the public debate as they believe that there was no need to do so as the draft had been under public debate for a full two months.

As regards the summer months of public debate, the Ministry reasoned its decision stating that this could not be a hindrance to public debate as it is unrealistic to think that during this time all members of the public, who are interested in the drafting of the regulation, were on holiday or vacation. As regards the Ombudsman's comments to the structure of the ZVO-2, the Ministry explained that the drafter of the law had complete freedom in the sequencing of chapters but that it had nevertheless kept the concept of the valid law and to the greatest extent possible also its structure and consequently the order of the chapters. Due to individual completely new chapters this was not always possible, but they did partially pursue the purpose of individual chapters and therefore sequenced them more appropriately.

The Ministry further explained that as regards public debate of the draft ZVO-2, they had considered the Rules of Procedure of the Government of the Republic of Slovenia (hereinafter the Rules of Procedure) and the Resolution on Legislative Regulation (hereinafter the ReNDej).



izpostavlja to problematiko in konkretno ugotovljene kršitve pripravljavcev predpisov. Veliko je tudi očitkov zoper ustreznost obravnave in utemeljenost zavračanja pripomb, ki jih poda javnost. Temu ustrezno si Varuh že dolga leta prizadeva za uresničevanje pravice do zdravega življenjskega okolja v povezavi s pravico do prostega dostopa do okoljskih informacij in opozarja na pomembnost sodelovanja javnosti pri okoljskem odločanju.

Slovenija ima torej dobre pravne okvirje za sprejemanje transparentnih in kakovostnih predpisov, težava je upoštevanje teh v praksi. Vključevanje javnosti pripravljavcem predpisov lahko predstavlja tudi »težave«. Vendar za vse pomisleke in težave obstajajo rešitve in pravi pristopi, če je seveda pripravljenost za to. Odgovore za morebitna razmišljanja, da vključevanje javnosti pri sprejemanju predpisov povzroča večjo porabo finančnih sredstev, večjo administrativno obremenitev, večjo delovno obremenitev pripravljavcev predpisov, je mogoče najti v skrbnem načrtovanju dela in stroškov. Ker je izvajanje kakovostnejšega predpisa lažje in hitrejše, čas celotnega cikla (vključno z izvajanjem predpisa) ostaja enak, tako odpade tudi morebitno razmišljanje o tem, da sodelovanje javnosti podaljšuje čas priprave predpisa. Morebitna previsoka pričakovanja deležnikov je mogoče rešiti tako, da se jih ves čas seznanja s procesom (kaj se bo zgodilo s predlogi) in rezultatom (odzivno poročilo). Jasne in transparentne informacije potencialno nasprotovanje zmanjšujejo. Vpliv delnih interesov bo zmanjšan, če bodo vsi predlogi enakopravno pretehtani in redno objavljena odzivna poročila, delovanje pa razširjeno v kulturo in prakso odprtega delovanja, v kateri prevladuje razumevanje, da lahko sodelovanje javnosti vodi do kakovostnejših odločitev in večje legitimnosti odločanja. V ta namen je treba organe odločanja bolje usposobiti z veščinami, ki so potrebne za usmerjen proces sodelovanja z različnimi deležniki, ki bo v praksi zagotavljal doseganje omenjenih ciljev. Pogosto se srečujemo z navedbami, da niso zagotovljeni ustrezni odgovori na pripombe javnosti. Ne pričakuje se, da bodo vse pripombe in predlogi sprejeti in upoštevni, pričakuje pa se, da so vsi predlogi skrbno obravnavani in razlogi za (ne)sprejetje argumentirano obrazloženi. Le s takim načinom lahko zadostimo transparentnosti postopka in preprečimo izvotljenost pravice.

**Ali Slovenija res zgledno skrbi za uresničevanje pravice sodelovanja javnosti pri sprejemanju okoljskih predpisov?**

Odgovor na to vprašanje ni preprost, saj obstaja vtis, da sprejeti predpisi zagotavljajo uresničevanje te pravice. Vendar ugotavljamo, da država ravna večkrat tudi tako, da je ta pravica v svojem bistvu izvotljena. Namen naše predstavitve ni, da bi kritizirali lastno državo pri tujcih, temveč da bi udeležence opozorili, kaj vse lahko vpliva na to, da država kljub sprejeti zakonodaji v resnici ne izpolnjuje sprejetih obvez iz naslova pravice sodelovanja javnosti pri sprejemanju okoljskih predpisov, to pa posledično lahko pomeni tudi kršitev pravice do zdravega življenjskega okolja. Škoda, povzročena okolju, je nepopravljiva oziroma težko popravljiva. Tudi sprejetje predpisa, ureditve, ki vpliva na naše življenje in okolje, v katerem živimo, ima lahko trajne posledice. Zato je treba dobro ureditev na tem področju dosledno izvajati tudi v praksi in tako zagotoviti uveljavljenj načela odprtosti delovanja uprave.

*Nobena težava ni taka, da je ne bi mogli rešiti skupaj, le malo pa je takih, ki jih lahko rešimo sami.*
(Lyndon B. Johnson)

**Viri in literatura:**

22. Letno poročilo Varuha človekovih pravic Republike Slovenije za leto 2016.Evropska konvencija o varstvu človekovih pravic in temeljnih svoboščin, Uradni list RS (13. 6. 1994) MP, št. 7-41/1994 (RS 33/1994).

Greenpeace Slovenija: http://www.greenpeace.org/slovenia/si/Medijsko-sredisce/zadnje-objave/Okolje-je-naa-glavnica-ki-je-ne-dovolimo-zapraviti/.

Komisija za preprečevanje korupcije:
https://www.kpk-rs.si/sl/komisija/medijsko-sredisce/novice/08/2017/sprejemanje-zakonov-pod-krinko;
https://www.kpk-rs.si/upload/datoteke/0071-18-2012-1%20%20%20%20002(1).pdf.

Listina Evropske unije o temeljnih pravicah (Sklep Evropskega parlamenta z dne 29. 11. 2007 o odobritvi Listine Evropske unije o temeljnih pravicah v Evropskem parlamentu (2007/2218(ACI)).

Ministrstvo za javno upravo:
http://www.mju.gov.si/si/delovna_podrocja/boljse_zakonodajno_in_poslovno_okolje/;
http://www.mju.gov.si/fileadmin/mju.gov.si/pageuploads/SNO/Prirocnik-vkljucevanje_javnosti.pdf.

Navodilo o postopku priprave splošnih aktov in drugih dokumentov na Ministrstvu za okolje in prostor št. 020-2211/98 z dne 29. 9. 1998.

Navodilo o postopku sodelovanje javnosti pri sprejemanju predpisov, ki lahko pomembneje vplivajo na okolje, št. 0071-

The Ombudsman cannot accept the MOP's explanations. We cannot agree with the Ministry's statement that the provisions of Article 9a of the Rules of Procedure had been considered. In accordance with the second indent of Article 9a of the Rules of Procedure, the published material also has to include a summary of the content with expert groundwork, key questions and objectives. The examined draft provided an explanation for 338 articles on a single page, while no expert groundwork was published. The same stipulations can be found in Chapter 2 (to which the MOP also refers in its answer) of ReNDej, which, in accordance with the principle of availability, also foresees the public having access to the materials and expert groundwork used in the preparation of the decisions.

The Ombudsman is disappointed with the MOP's decision not to prolong the public debate of the draft regulation and believes that this is yet another example where the public had the formal possibility of participating in the preparation of a regulation, however this was made severely difficult. Finally, we critically point out the fact that the MOP failed to communicate its decision on the eventual prolongation of the public debate until the expiry of the deadline for the duration of the public debate to all who had referred to it more than a month beforehand, and in turn at least partially misled them and left them in anticipation of a positive decision.

The method of adopting this Act was also commented upon by the Commission for the Prevention of Corruption (hereinafter the PK), which pointed out that there was yet another important act in the procedure of public debate which it had not received for inspection in order to assess eventual corruption risks. Back in 2012, the KPK pointed out that regulation of the environment and space is a very corruption-exposed field, where numerous private interests and lobbies are active.

**Conclusions**

For years now, the Ombudsman has been establishing that systemic amendments or interventions in environmental and spatial regulations are often being implemented without public participation or with only limited participation. The Ombudsman has repeatedly emphasised this issue in its reports and the concretely established violations of regulation drafters. There are also numerous reproaches regarding appropriate consideration and justifiable grounds for disregarding public comments. Correspondingly, the Ombudsman has been striving for the realisation of the right to a healthy living environment with respect to the right to free access to environmental information for years and has been emphasising the importance of public participation in environmental decision-making.

Slovenia has got a good legal framework for adopting transparent and high-quality regulations. The problem is the lack of its consideration in practice. Public participation can cause "problems" to regulation drafters. However, there are solutions and the right approaches available for all hesitations and problems, if we are of course willing. The answers to the eventual questions of public participation in the adoption of regulations causing increased use of financial resources, greater administrative burdens, or more work for regulation drafters can be found in careful planning of work and costs. As the implementation of a higher-quality regulation is easier and faster, the time of the total cycle (including the implementation of the regulation) remains the same. This also eliminates thoughts of public participation prolonging the time it takes to prepare a regulation. Eventual too high expectations of stakeholders can be solved by continually informing them of the process (what will happen with the proposals) and the result (responsive report). Clear and transparent information reduces potential opposition. The influence of particular interests will be reduced if all proposals receive equal weight and responsive reports are published on time, while actions get expanded into the culture and practice of an open activity, where the understanding that public participation can lead to higher-quality decisions and greater legitimacy of decision-making prevails. For this reason, decision-making authorities have to receive better skills that are needed for a targeted process of cooperation with different stakeholders, which will ensure the practical achieving of these objectives. We are often faced with statements that appropriate answers to the public's comments are not provided. It is not expected that all comments and proposals are accepted and considered; it is however expected that all proposals receive careful consideration and that the reasons for incorporating them or not into the regulation are explained. This is the only way to ensure transparency of the procedure and prevent having a hollow right.



165/2008/2 z dne 5. 8. 2008.
Odločba Ustavnega sodišča Republike Slovenije št. U-I-386/06 z dne 13. 3. 2008.
Pličanič, S., 2003. Temelji ekološkega prava. Ljubljana, Cankarjeva založba.
Predlog Zakona o varuhu človekovih pravic. Poročevalec Državnega zbora RS, št. 1/1993, 25/1993, 37/1993., EPA 62.
Rakar, I., Tičar, B., Nekatera vprašanja upravnopravnega varstva okolja v Republiki Sloveniji, Varstvoslovje 13(1), 5–19.
Resolucija o normativni dejavnosti (Uradni list RS, št. 95/09).
Rovšek, J., 1994. Uvodna pojasnila k Zakonu o varuhu človekovih pravic. Varstvo človekovih pravic. Ljubljana, ČZ Uradni list RS.
Sklep Ustavnega sodišča Republike Slovenije št. Up-88/94 z dne 31. 5. 1996, OdlUS 5, 201.
Stockholmska deklaracija o človekovem okolju, sprejeta na Konferenci Združenih narodov o okolju v Stockholmu leta 1972.
Strojin, T. 1994. Osnove prava okolja. Ljubljana, ČZ Uradni list RS.
Šinkovec, J., 1994. Pravo okolja: Načela in mednarodnopravni prikaz. Ljubljana, ČZ Uradni list RS.
Šturm, L., 2002. Komentar Ustave Republike Slovenije, Fakulteta za podiplomske državne in evropske študije.
Zadeva Tătar proti Romuniji, št. 67021/01.
Zagorac, D., 2009. Pravica do zdravega okolja in obveščenosti, Pravna praksa, št. 9, letnik 2009.
Zakon o varstvu okolja – ZVO-1, (Uradni list RS, št. 39/06 – uradno prečiščeno besedilo, 49/06 – ZMetD, 66/06 – odl. US, 33/07 – ZPNačrt, 57/08 – ZFO-1A, 70/08, 108/09, 108/09 – ZPNačrt-A, 48/12, 57/12, 92/13, 56/15, 102/15 in 30/16).

**Does the state of Slovenia really exemplarily see to the realisation of the right of public participation in the adoption of environmental regulations?**

There is no easy answer to this question, as there is the impression that the adopted regulations ensure the realisation of this right. However, it has been established that the state often takes actions which result in this right becoming a hollow right. The purpose of our presentation is not to criticise our own state in the eyes of foreigners but to point out to the participants what can affect the state not really meeting its adopted obligations under the right of public participation in the adoption of environmental regulations despite the adopted laws, which can consequently also mean the violation of the right to a healthy living environment. Any damage done to the environment is irreversible or difficult to remedy. The adoption of a regulation or decree affects our lives and the environment in which we live and can have permanent consequences. This field therefore has to be well-regulated and the regulation consistently implemented also in practice, thus ensuring the enforcement of the principle of openness of public administration.

*"There are no problems we cannot solve together, and very few that we can solve by ourselves."*
(Lyndon B. Johnson)

**References:**


22. Letno poročilo Varuha človekovih pravic Republike Slovenije za leto 2016.

Evropska konvencija o varstvu človekovih pravic in temeljnih svoboščin, Uradni list RS (13. 6. 1994) MP, št. 7-41/1994 (RS 33/1994).

Greenpeace Slovenija:
http://www.greenpeace.org/slovenia/si/Medijsko-sredisce/zadnje-objave/Okolje-je-naa-glavnica-ki-je-ne-dovolimo-zapraviti/

Komisija za preprečevanje korupcije:
https://www.kpk-rs.si/sl/komisija/medijsko-sredisce/novice/08/2017/sprejemanje-zakonov-pod-krinko
https://www.kpk-rs.si/upload/datoteke/0071-18-2012-1%20%20%20%20002(1).pdf

Listina Evropske unije o temeljnih pravicah (Sklep Evropskega parlamenta z dne 29. 11. 2007 o odobritvi Listine Evropske unije o temeljnih pravicah v Evropskem parlamentu (2007/2218(ACI)).

Ministrstvo za javno upravo:
http://www.mju.gov.si/si/delovna_podrocja/boljse_zakonodajno_in_poslovno_okolje/
http://www.mju.gov.si/fileadmin/mju.gov.si/pageuploads/SNO/Prirocnik-vkljucevanje_javnosti.pdf

Navodilo o postopku priprave splošnih aktov in drugih dokumentov na Ministrstvu za okolje in prostor št. 020-2211/98 z dne 29. 9. 1998.

Navodilo o postopku sodelovanje javnosti pri sprejemanju predpisov, ki lahko pomembneje vplivajo na okolje, št. 0071-165/2008/2 z dne 5. 8. 2008.

Odločba Ustavnega sodišča Republike Slovenije št. U-I-386/06 z dne 13. 3. 2008.

Pličanič, S., 2003. Temelji ekološkega prava. Ljubljana, Cankarjeva založba.

Predlog Zakona o varuhu človekovih pravic. Poročevalec Državnega zbora RS, št. 1/1993, 25/1993, 37/1993., EPA 62.

Rakar, I., Tičar, B., Nekatera vprašanja upravnopravnega varstva okolja v Republiki Sloveniji, Varstvoslovje 13 (1), 5-19.

Resolucija o normativni dejavnosti (Uradni list RS, št. 95/09).

Rovšek, J., 1994. Uvodna pojasnila k Zakonu o varuhu človekovih pravic. Varstvo človekovih pravic. Ljubljana, ČZ Uradni list RS.

Sklep Ustavnega sodišča Republike Slovenije št. Up-88/94 z dne 31. 5. 1996, OdlUS 5, 201.

Stockholmska deklaracija o človekovem okolju, sprejeta na Konferenci Združenih narodovo okolju v Stockholmu 1972.

Strojin, T. 1994. Osnove prava okolja. Ljubljana, ČZ Uradni list RS.

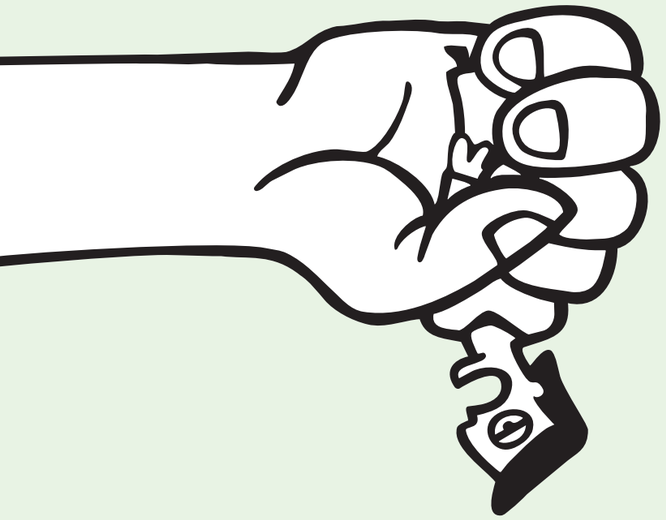
Šinkovec, J., 1994. Pravo okolja: Načela in mednarodnopravni prikaz. Ljubljana, ČZ Uradni list RS.

Šturm, L., 2002. Komentar Ustave republike Slovenije, Fakulteta za podiplomske državne in evropske študije.

Zadeva Tătar proti Romuniji, št. 67021/01.

Zagorac, D., 2009. Pravica do zdravega okolja in obveščenosti, Pravna praksa, št. 9, letnik 2009.

Zakon o varstvu okolja - ZVO-1, (Uradni list RS, št. 39/06 – uradno prečiščeno besedilo, 49/06 – ZMetD, 66/06 – odl. US, 33/07 – ZPNačrt, 57/08 – ZFO-1A, 70/08, 108/09, 108/09 – ZPNačrt-A, 48/12, 57/12, 92/13, 56/15, 102/15 in 30/16).

**mag. Tanja Bolte** and **Teja Baloh**
Ministry of the Environment and Spatial Planning of the Republic of Slovenia
(tanja.bolte@gov.si)
(teja.baloh@gov.si)

**Mag. Tanja Bolte** is the Director General of the Environment Directorate at the Ministry of the Environment and Spatial Planning. The Directorate covers the issues of waste, nature, environmental impact assessments, climate change, and ambient air quality.

**Teja Baloh, univ. dipl. pravnica,** is employed at the Ministry of the Environment and Spatial Planning in the Environment and Spatial System Service. She mostly focuses on the preparation of new regulatory solutions in spatial planning and construction legislation and the implementation of the Aarhus Convention.

## The Experience and Challenges of the Ministry of the Environment and Spatial Planning Concerning Public Participation in Environmental Decision-Making

For the last 20 years, public participation in environmental decision-making has been recognised as an important tool for achieving better public awareness of environmental protection and for a greater legitimacy of environmental decisions. As human beings are a part of the environment, these decisions undoubtedly concern us at least indirectly. Aspirations for participation in environmental matters are on the rise and are understandable, while economic and broader social demands for fast and effective decisions are growing increasingly stronger. Navigating the private and public or even different public interests therefore undoubtedly represents a challenge for modern environmental policy.



mag. Tanja Bolte

**mag. Tanja Bolte** in **Teja Baloh**
Ministrstvo za okolje in prostor Republike Slovenije
(tanja.bolte@gov.si)
(teja.baloh@gov.si)

**Mag. Tanja Bolte** je direktorica Direktorata za okolje na Ministrstvu za okolje in prostor. Direktorat pokriva vsebine, kot so odpadki, narava, presoje vplivov na okolje, podnebne spremembe, kakovost zunanjega zraka.

**Teja Baloh, univ. dipl. pravnica,** je zaposlena na Ministrstvu za okolje in prostor v Službi za sistem okolja in prostora. Ukvarja se predvsem s pripravo novih normativnih rešitev v prostorsko-gradbeni zakonodaji in izvajanjem Aarhuške konvencije.

## Izkušnje in izzivi Ministrstva za okolje in prostor na področju sodelovanja javnosti pri sprejemanju okoljskih predpisov

Sodelovanje javnosti pri sprejemanju okoljskih predpisov je zadnjih 20 let prepoznano kot pomembno sredstvo za doseganje boljšega zavedanja javnosti o varstvu okolja in za doseganje večje legitimnosti okoljskih odločitev. Ker smo ljudje del okolja, nas te odločitve nedvomno vsaj posredno zadevajo, zaradi česar so težnje po soodločanju v okoljskih zadevah čedalje večje in povsem razumljive, gospodarske in širše družbene zahteve po hitrih in učinkovitih odločitvah pa čedalje močnejše. Uspešno krmarjenje med zasebnimi in javnimi ali celo različnimi javnimi interesi je zato nedvomno izziv sodobne okoljske politike.

**Compliance of Slovene regulations with the Aarhus Convention**

The Republic of Slovenia ratified the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (hereinafter the Aarhus Convention), which was signed in Aarhus in 1998, in 2004. A year later, the Convention was approved by the European Union, as its objectives are fully in compliance with the objectives of the European environmental policy. The Convention covers three content groups: (1) access to environmental information, (2) public participation in environmental decisions, plans, programmes, and executive regulations, and (3) access to justice. In the Republic of Slovenia, the Aarhus Convention is being implemented as a ratified international treaty and through a number of European environmental regulations (mostly directives, especially the SEA and the EIA directives). As both an international treaty and a European directive usually require implementation in the internal legal order of a member state in order to be effective, this was done with the Environmental Protection Act and partly also through the Access to Public Information Act, the General Administrative Procedures Act, the Administrative Dispute Act, and others. In administrative or court proceedings held in the Republic of Slovenia, an individual cannot directly refer to individual provisions of an international treaty, unless this is a provision with direct effect, which includes a clear and unambiguous obligation that directly regulates the legal position of the individual (e.g. in its Judgement C-240/09 of 8 March 2011, the EU Court has already ruled that the provisions of Article 9(3) of the Aarhus Convention have no direct effect).

Article 34a of ZVO-1 stipulates public participation in environmental decision-making in accordance with the provisions of the Aarhus Convention. It namely applies to all executive implementing regulations and local community regulations, which may have a significant impact on the environment (but not to the drafting of environmental acts, as the Aarhus Convention does not apply to them). In these cases, the public has to have the possibility to inspect the draft regulation and provide opinions and comments for at least 30 days, whereby this deadline may be shortened to 14 days if these are less significant amendments to regulations. The authority is obliged to study the opinions and comments of the public and, in so far as they are acceptable, incorporate them appropriately into the drafting of the regulation. Furthermore, it shall publish a reasoned position in which it states its views with regard to the opinions and comments and provides its reasons for (not) incorporating them in the drafting of the regulation. ZVO-1 therefore stipulates the right for the public to inspect the material of the regulation and the manner of providing and studying comments, therefore being much more specific than the text of the Aarhus Convention. Article 8 of the Convention does not stipulate the deadline for providing comments (only that a timeframe sufficient for effective participation should be fixed) and the state may decide whether to collect comments directly from the public or through representative consultative bodies). In light of the above, the regulations of the Republic of Slovenia have enabled a favourable implementation of the provisions of the Aarhus Convention for the public.

The provision of Article 34a was included in ZVO-1 in 2009 pursuant to the decision of the Constitutional Court of the Republic of Slovenia in case no. U-I-386/06. Even before that, the ministry governing the environment prepared the Instructions on Public Participation in Adopting Regulations that Could Significantly Affect the Environment. ZVO-1 stipulates public participation in other documents, which represent environmental programmes and plans, in Articles 26 and 37, while public participation in the drafting of municipal and national spatial plans is regulated with the Spatial Planning Act and the Siting of Spatial Arrangements of National Importance Act. Furthermore, in 2009 the National Assembly adopted the Resolution on Legislative Regulation, which is a not a legally binding act but politically determines the obligation of the authorities that every regulation being drafted (not only environmental) will be submitted for public debate for at least 30 days. Similar is also stipulated by Article 9 of the Rules of Procedure of the Government for implementing regulations.

**The practical aspect of public participation at the Ministry of the Environment and Spatial Planning**

The Ministry of the Environment and Spatial Planning (hereinafter the MESP) is aware that the basis of effective public participation is timely and integral provision of information on the drafting of regulations to the public and civil society in general. For this purpose, regulations that are being prepared are published at the MESP website and the e-demokracija portal, together with information on how to provide comments. Where possible, preliminary opinions and comments of the professional and interested public are obtained (e.g. in the reviewing of the Spatial Development Strategy of Slovenia and spatial planning and construction legislation). As our society is often burdened by excessive regulations and diverse political pressure, regulations are accordingly often amended



**Skladnost slovenskih predpisov z Aarhuško konvencijo**

Republika Slovenija je leta 2004 ratificirala Konvencijo o dostopu do informacij, udeležbi javnosti pri odločanju in dostopu do pravnega varstva v okoljskih zadevah (v nadaljevanju: Aarhuška konvencija), ki je bila leta 1998 podpisana v Aarhusu. Leto pozneje jo je potrdila tudi Evropska unija, saj njeni cilji v celoti sledijo ciljem evropske okoljske politike. Konvencija zajema tri vsebinske sklope: (1) dostop do okoljskih informacij, (2) sodelovanje javnosti pri okoljskih odločitvah, načrtih, programih ter okoljskih izvršilnih predpisih ter (3) dostop do pravnega varstva. Aarhuška konvencija se v Republiki Sloveniji izvaja kot ratificirana mednarodna pogodba in prek sklopa evropskih okoljskih predpisov (večinoma direktiv, predvsem direktiv SEA in EIA). Ker je treba tako mednarodno pogodbo kot evropsko direktivo za učinkovito uporabo načeloma prenesti v notranji pravni red države, je bila ta izvedena predvsem z Zakonom o varstvu okolja, deloma pa tudi z Zakonom o dostopu do informacij javnega značaja, Zakonom o splošnem upravnem postopku, Zakonom o upravnem sporu in drugimi. Posameznik se tako na posamezne določbe mednarodne pogodbe ne more neposredno sklicevati v posamičnem upravnem ali sodnem postopku, ki poteka v Republiki Sloveniji, razen če gre za določbo z neposrednim učinkom, ki vsebuje jasno in nedvoumno obveznost, ki neposredno ureja pravni položaj posameznika (npr. v zadevi C-240/09 z dne 8. 3. 2011 je Sodišče EU že presodilo, da člen 9(3) Aarhuške konvencije nima neposrednega učinka).

ZVO-1 v 34.a členu določa sodelovanje javnosti pri sprejemanju okoljskih predpisov skladno z Aarhuško konvencijo. Velja namreč za vse podzakonske izvršilne predpise in za predpise lokalnih skupnosti, ki lahko pomembneje vplivajo na okolje (ne pa tudi za pripravo zakonov s področja okolja, saj Aarhuška konvencija zanje ne velja). V teh primerih je treba javnosti omogočiti seznanitev z osnutkom predpisa in dajanje mnenj in pripomb v najmanj 30 dneh, pri čemer se lahko ta rok skrajša na 14 dni, če gre za manj pomembne spremembe predpisov. Organ je dolžan pripombe javnosti pregledati, proučiti in jih v primeru njihove sprejemljivosti primerno upoštevati pri pripravi predpisa. Organ pri tem javno objavi tudi obrazloženo stališče, v katerem se opredeli do pripomb in navede razloge za njihovo (ne)upoštevanje. ZVO-1 tako določa pravice posameznikom do vpogleda v gradivo predpisa in način dajanja ter obravnave pripomb, pri čemer je precej bolj specifičen glede na Aarhuško konvencijo. Ta v 8. členu namreč ne določa dolžine roka za podajo pripomb (navedeno je dovolj dolgo obdobje za učinkovito udeležbo), država pa se lahko tudi odloči za možnost zbiranja pripomb neposredno od javnosti ali prek predstavniških svetovalnih teles. Glede na navedeno je Republika Slovenija normativno omogočila za javnost ugodno izvajanje Aarhuške konvencije.

Določba 34.a člena ZVO-1 je bila v zakon umeščena leta 2009 na podlagi odločitve Ustavnega sodišča RS v zadevi U-I-386/06. Že pred tem je ministrstvo, pristojno za okolje, pripravilo Navodilo o sodelovanju javnosti pri sprejemanju predpisov, ki lahko pomembneje vplivajo na okolje. Za druge akte, ki so programi in načrti ter se nanašajo na okolje, je v ZVO-1 opredeljeno sodelovanje javnosti v 26. in 37. členu, sodelovanje javnosti pri pripravi občinskih in državnih prostorskih načrtov pa je urejeno v Zakonu o prostorskem načrtovanju in Zakonu o umeščanju prostorskih ureditev državnega pomena v prostor. Poleg navedenega je Državni zbor RS leta 2009 sprejel Resolucijo o normativni dejavnosti, ki kot pravno nezavezujoč akt politično opredeljuje zavezo oblasti, da bo vsak predpis v pripravi (ne samo okoljski) dan v javno razpravo za najmanj 30 dni. Podobno opredeljuje Poslovnik Vlade RS v 9. členu za podzakonske akte.

**Praktičen vidik sodelovanja javnosti na Ministrstvu za okolje in prostor**

Na Ministrstvu za okolje in prostor (v nadaljevanju: MOP) se zavedamo, da je temelj učinkovitega sodelovanja javnosti pravočasno in celovito obveščanje javnosti in civilne družbe nasploh o postopkih priprave predpisov. V ta namen se predpisi v pripravi javno objavljajo na spletni strani MOP in na spletnem portalu e-demokracija, kjer je objavljena tudi informacija o načinu podajanja pripomb. Kadar je mogoče, se predhodno pridobivanje mnenj in predlogov strokovne in zainteresirane javnosti vseeno izvaja (npr. pri prenovi Strategije prostorskega razvoja Slovenije in prostorsko-gradbene zakonodaje). Ob naši velikokrat prenormirani družbi in številnih političnih pritiskih je temu primerno pogosto tudi število sprememb predpisov, naraščajoče število predpisov pa državni aparat ob nespremenjenih virih ohromi tako močno, da je priprava predpisov vedno podvržena časovnemu pritisku.

MOP si v zadnjem času intenzivno prizadeva za transparentno in vključujočo pripravo predpisov, kar se izkazuje pri vseh trenutnih normativnih spremembah Zakona o varstvu okolja, Zakona o urejanju prostora in Gradbenega zakona. Zakon o varstvu okolja je bil dan v javno razpravo za dva meseca, Zakon o urejanju prostora in Gradbeni

and the growing number of regulations, with unchanged resources, cripples the state apparatus to a degree that makes the drafting of regulations always subject to time constraints.

In recent years, the MESP has worked intensively on ensuring transparent and inclusive drafting of regulations, which is evident from all current regulatory amendments to the Environmental Protection Act, the Spatial Planning Act and the Construction Act. The Environmental Protection Act has just been released for public debate for two months, the Spatial Planning Act and the Construction Act were in public debate twice for more than 4 months and over 1,000 pages of public proposals and comments have been studied. All these Acts introduce new features in public participation, which we believe satisfactorily meet the needs of civil society for establishing early and effective dialogue between the public and the state.

The MESP recognises that it is often not so much a problem of inappropriate or lacking legal order but more a question of its implementation. When it comes to regulatory implementing regulations and the reproach (also by the Human Rights Ombudsman) on subjective and unjustified shortening of deadlines for public debate and provision of comments, we are dealing with the discretionary right of the drafter of the environmental regulation to decide on the significance of the regulation's impacts on the environment and therefore a possible shorter deadline. In this respect, the MESP points out the weak response of civil society regardless of the set deadline, as despite existing structural possibilities (e.g. obtaining the status of a non-governmental organisation, which acts in public interest in environmental protection), the latter is still rather poorly organised and probably too poorly funded to be able to become an effective dialogue partner in the regulation drafting process. The opinions and comments of the public on the draft regulations are often completely contradictory, unclearly formulated, prepared without knowledge of the system subject matter and as such cannot bring effective results. The instrument of public participation is therefore unfortunately often used to pursue individual private or neighbourly interests and abused so as to delay proceedings. In order to pursue the objectives of environmental protection and to protect the right of every individual to a healthy living environment, the MESP cannot allow this to happen. Public participation in decision-making in terms of content is therefore not realistically doable and is also not foreseen by the Aarhus Convention. Improvements to the organisation and professionalism of civil society on the other hand are doable and this is where the MESP sees a challenge and opportunity for improvements, in addition to individual currently running regulatory changes. The Non-Governmental Organisations Act is currently in the process of adoption and the already mentioned Environmental Protection Act and the Construction Act are planned to also regulate the activity of civil initiatives. It is much easier to implement constructive dialogue if the other dialogue partner is also an appropriately professionally qualified individual, who does not only stall the process of drafting a regulation but also searches for other appropriate possible solutions. This does not mean that the general public could not provide substantial comments, however the process can be implemented substantially more effectively if the voice of civil society is appropriately presented, especially if it advocates a broader social interest. The writing of and understanding of regulations requires specific legal and systemic knowledge of the subject. In all respects, public participation in the form of providing opinions and comments offers the drafters important information on the situation in the field, on the advantages and weaknesses of the current implementation of regulations, and provides a broader deliberation on possible alternative solutions.

**Challenges for the future**

A future challenge therefore remains how to improve public participation—either by training public civil servants in cooperation and communication with the public and on effective management of regulation drafting procedures, or by including specialised communication experts, or developing new communication approaches, which would serve as a bridge between the public and representatives of the authorities, or by providing greater support to non-governmental organisations, which would provide professional back up to other forms of action of the civil society, and finally also through a more deliberate planning of amendments to regulations and their integration in the legislative programme of the Government.



zakon pa sta bila v javni razpravi celo dvakrat za skupaj več kot štiri mesece, pri čemer je bilo obravnavanih več kot 1.000 strani predlogov in pripomb javnosti. Vsi omenjeni zakoni vpeljujejo novosti na področju sodelovanja javnosti, ki po našem mnenju zadovoljivo ustrezajo potrebam civilne družbe po vzpostavitvi zgodnjega in učinkovitega dialoga med javnostjo in državo.

Vsekakor na MOP prepoznavamo, da gre velikokrat ne toliko za problem neustreznega ali pomanjkljivega pravnega reda, ampak za vprašanje njegovega izvajanja. Glede podzakonskih predpisov in očitkov (tudi Varuha človekovih pravic) o subjektivnem in neupravičenem skrajšanju rokov za javno objavo in podajanje pripomb gre namreč za diskrecijo pripravljavca okoljskega predpisa, da odloči o pomembnosti vplivov predpisa na okolje in s tem o možnem skrajšanem roku. Pri tem MOP opozarja na slab odziv civilne družbe ne glede na postavljen rok, saj je ta kljub nekaterim strukturnim možnostim (npr. pridobitev statusa nevladne organizacije, ki deluje v javnem interesu na področju varstva okolja) še vedno dokaj neorganizirana in verjetno preslabo financirana, da bi lahko postala učinkovit sogovornik v postopku priprave predpisov. Mnenja in pripombe javnosti na osnutke predpisov so tako velikokrat povsem kontradiktorni, nejasno formulirani, pripravljeni brez poznavanja sistemske materije, zato ne morejo prinesti učinkovitega rezultata. Instrument sodelovanja javnosti se tako žal velikokrat uporablja za zasledovanje povsem zasebnih posamičnih ali sosedskih interesov ter zlorablja za zavlačevanje postopkov. Tega MOP zaradi zasledovanja ciljev varstva okolja in varovanja pravice vsakega posameznika do zdravega življenjskega okolja ne more dopustiti. Vsebinsko soodločanje javnosti zato ni realno izvedljivo niti ni predvideno v Aarhuški konvenciji. Sta pa izvedljivi večja organiziranost in strokovnost civilne družbe, v čemer vidi MOP izziv in priložnost za izboljšave, poleg nekaterih normativnih sprememb, ki že potekajo. V postopku sprejetja je tako novi Zakon o nevladnih organizacijah, že omenjena Zakon o varstvu okolja in Gradbeni zakon pa naj bi urejala tudi delovanje civilnih pobud. Konstruktiven dialog je namreč precej lažje izpeljati, če je na drugi strani ustrezno strokovno usposobljena oseba, ki ne samo zavira proces priprave predpisa, ampak tudi išče druge ustrezne možnosti rešitev. To ne pomeni, da splošna javnost ne bi mogla podajati tehtnih pripomb, vendarle lahko proces izpeljemo precej učinkoviteje, če je glas civilne družbe primerno predstavljen, sploh če zastopa neki širši družbeni interes. Pisanje in razumevanje predpisov namreč v vsakem primeru terjata pravno in sistemsko poznavanje tematike. Sodelovanje javnosti v obliki predložitve mnenj in predlogov pa v vsakem oziru daje pripravljavcem pomembne informacije o stanju na terenu, prednostnih in slabostih dosedanjega izvajanja predpisov ter širino razmišljanja o možnih alternativnih rešitvah.

**Izzivi za prihodnje obdobje**

Izziv za prihodnje tako ostaja, kako izboljšati izvajanje sodelovanja javnosti – z usposabljanjem javnih uslužbencev o sodelovanju in komunikaciji z javnostjo ter o učinkovitem vodenju postopkov priprave predpisov, s sodelovanjem specializiranih komunikacijskih strokovnjakov ali razvojem novih komunikacijskih pristopov, ki bi tvorili most med javnostjo in predstavniki oblasti, z večjo podporo nevladnim organizacijam, ki bi nudile strokovno podporo drugim oblikam delovanja civilne družbe, ne nazadnje pa lahko tudi z bolj premišljenim načrtovanjem sprememb predpisov in njihovem umeščanjem v normativni program dela vlade.

Uroš Macerl

**Uroš Macerl** and **mag. Anja Ovnik**
EKO KROG – Society for Nature Conservation and Environmental Protection

## Our Attempts at Participation in Environmental Matters

In 1998, the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention) was signed in the Danish city of Aarhus. It was heartily welcomed by environmentalists and non-governmental organisations. Their enthusiasm mostly stemmed from the fact that the Convention represented a new type of an international agreement, which connected environmental rights with human rights (Ogorelec Wagner, 2007). Less than two decades after its adoption, enthusiasm has dwindled and soon after it entered into force[1], numerous shortcomings became evident in practice, aspects that the Slovene arena has been pointing out for a while.

One of the pillars of the[2] Aarhus Convention foresees public participation in environmental decision-making. Through our operations, the Eko krog association has obtained experience with actual participation in concrete procedures of issuing environmental permits and with public participation in the adoption of environmental regulations.

### Public participation in environmental decision-making

When a legislative procedure is in progress, civil society has the possibility to submit substantive comments and proposals, i.e. usually during a public debate in the process of the preliminary regulatory impact analysis or in the phase of preparing decision-making material (Vernik, 2007). The main rules of public participation in the drafting of regulations are stipulated by the Resolution on Legislative Regulation[3], which was adopted by the National

[1] The Aarhus Convention entered into force on 30 October 2001, when it was ratified by 16 Member States. In Slovenia, the Convention was ratified in May 2004. However, the Aarhus Convention in principle cannot be applied directly, as it is realised with the contracting state adopting the required legislative, regulatory and other measures. Slovenia implemented the provisions of the Convention into its legislation predominantly through the adoption of the Access to Public Information Act, the Environmental Protection Act, the Nature Conservation Act, the Spatial Planning Act and the Siting of Spatial Arrangements of National Importance Act. As regards public participation in the drafting of regulations, the National Assembly adopted the Resolution on Legislative Regulation in 2009 (Vrbica, 2012).

[2] The Aarhus Convention is structured around three pillars: 1) access to environmental information, 2) public participation in environmental decision-making, and 3) access to legal remedies to protect the rights under the first two pillars.

[3] Resolution on Legislative Regulation (ReNDej), Official Gazette of the RS, No. 95/09.



mag. Anja Ovnik Brglez

**Uroš Macerl** in **mag. Anja Ovnik Brglez**
EKO KROG – društvo za naravovarstvo in okoljevarstvo

## Naši poskusi sodelovanja v okoljskih zadevah

Leta 1998 je bila v danskem mestu Aarhus podpisana Konvencija o dostopu do informacij, udeležbi javnosti pri odločanju in dostopu do pravnega varstva v okoljskih zadevah (t. i. Aarhuška konvencija), ki so jo okoljevarstveniki in nevladne organizacije toplo pozdravili. Njihovo navdušenje je izhajalo predvsem iz dejstva, da je bila konvencija nova vrsta mednarodnega dogovora, ki je povezal okoljske pravice s človekovimi pravicami (Ogorelec Wagner, 2007). Manj kot dve desetletji po njenem sprejetju je navdušenje skopnelo, že kmalu po njeni uveljavitvi[1] pa so se v praksi pokazale številne pomanjkljivosti, na katere se v Sloveniji opozarja že dlje časa.

Eden od stebrov[2] Aarhuške konvencije predvideva sodelovanje javnosti v postopkih odločanja, ki vplivajo na okolje. V društvu Eko krog smo med delovanjem pridobili izkušnje, kako se v praksi izvajata tako sodelovanje v konkretnih postopkih izdajanja okoljskih dovoljenj kot sodelovanje javnosti v postopkih sprejemanja okoljskih predpisov.

### Sodelovanje javnosti v postopkih sprejemanja okoljskih predpisov

Ko poteka zakonodajni postopek, ima civilna družba možnost dajati vsebinske pripombe in predloge na osnutke predpisov, tj. praviloma v javni razpravi v postopku predhodne analize učinkov predpisov oziroma v fazi priprave gradiv za odločanje (Vernik, 2007). Temeljna pravila sodelovanja javnosti pri pripravi predpisov določa Resolucija o normativni dejavnosti[3], ki jo je Državni zbor RS sprejel leta 2009, vendar ne gre za pravno zavezujoč akt. Sode-

[1] Aarhuška konvencija je začela veljati 30. oktobra 2001, ko jo je ratificiralo 16 držav. V Sloveniji je bila konvencija ratificirana maja 2004. Vendar Aarhuške konvencije načeloma ni mogoče uporabljati neposredno, ker se uresničuje tako, da država pogodbenica sprejme potrebne zakonodajne, ureditvene in druge ukrepe. Tako je Slovenija konvencijo prenesla v svojo zakonodajo predvsem s sprejetjem Zakona o dostopu do informacij javnega značaja, Zakona o varstvu okolja, Zakona o ohranjanju narave, Zakona o prostorskem načrtovanju in Zakona o umeščanju prostorskih ureditev državnega pomena v prostor, glede sodelovanja javnosti pri pripravi predpisov pa je Državni zbor RS leta 2009 sprejel Resolucijo o normativni dejavnosti (Vrbica, 2012).

[2] Aarhuška konvencija ima t. i. tri stebre: 1) prost dostop do informacij o okolju, 2) možnost sodelovanja v postopkih odločanja, ki vplivajo na okolje, in 3) prost dostop do pravnih sredstev za varstvo pravic prejšnjih dveh stebrov.

[3] Resolucija o normativni dejavnosti (ReNDej), Uradni list RS, št. 95/09.

Assembly in 2009, however this is not a legally binding act. Public participation is therefore given concrete form by individual acts[4], whereby the most important are the provisions of the Environmental Protection Act, whose fundamental principles stipulate that when adopting environmental policies, strategies, programmes and plans, the state and municipalities have to enable public participation. The Act specifically stipulates the requirement for public participation in the process of adopting regulations that can have a significant impact on the environment, both at state and local level (Article 34a).

The Resolution stipulates the guidelines for cooperation with the professional and other interested publics. When involving the public, specific principles[5] and minimum recommendations[6] thus have to be considered.

Throughout our operations, the Eko krog association has provided comments to several draft regulations. If we sum up our experience, we can say that the possibility of participation is generally merely formal. Namely, none of our comments was considered, the authority preparing the regulation did not declare itself on our arguments and we even witnessed a situation when the text of the draft proposal, to which we provided our comments, substantially differed from the final text (not related to the provided comments). Furthermore, usually minimal deadlines for providing comments or opinions are considered and these often expire during vacation days or holidays, which prevents reasonable time periods for cooperation (breach of the principle of timeliness under the Resolution on Legislative Regulation).

**Our practical examples**

**ZVO-1E**

On 7 June 2012, the Ministry of Agriculture and the Environment (MAE) published a draft amendment to the ZVO-1. The Eko krog association informed the Ministry of its comments on the discussed draft, with which the MAE wished to enable the prolongation of individual permits without verification of whether the devices or plants still meet environmental criteria.

The MAE published the draft on its website and gave a four-day deadline for the submission of opinions and comments! The Human Rights Ombudsman also reacted to the call of the MAE for the submission of comments, emphasising that "*pursuant to Article 34a of the Environmental Protection Act, the public has the right to inspect the draft regulation and the opportunity to give opinions and comments for at least 30 days. The Ombudsman believes that a four-day deadline for providing comments to a draft regulation, which can have a significant impact on the environment, is directly in contravention of the Environmental Protection Act and the Aarhus Convention.*" The Ombudsman requested explanations of this matter and proposed that the MAE ensure that the public will have the right to participate in the adoption of regulations in line with the applicable laws (Human Rights Ombudsman, 2012). Upon the Ombudsman's invitation, the deadline was prolonged to two weeks.

The Eko krog association also pointed out the disputably determined deadline and our substantive comments on the draft emphasised that the prolongation of environmental permits without verifying whether the devices or plants meet the stipulated operation conditions was in obvious contradiction of the legally stipulated principles of prevention and caution (Eko krog, 2012).

[4] Public participation is given concrete legal form by the Environmental Protection Act and the Nature Conservation Act and in spatial planning by the Spatial Planning Act (for municipal planning) and the Siting of Spatial Arrangements of National Importance Act (for national planning) (Vrbica, 2012).

[5] The principle of ***timeliness*** (timely informing of the public and ensuring reasonable time periods for cooperation), the principle of ***openness*** (facilitating the transmission of comments, suggestions, and opinions at the earliest possible stage of decision preparation), the principle of ***availability*** (availability of materials and expert groundwork used in the preparation of the decisions), the principle of ***responsiveness*** (informing the participants about the reasons for the regard or disregard of their comments, suggestions, and opinions), the principle of ***transparency*** (ensuring the transparency of the process by presenting the regulation content, as well as the decision adopting levels and procedure, the manners and time frames of cooperation, comments, suggestions, and opinions of all the participants), and the principle of ***traceability*** (ensuring transparency when receiving and considering suggestions, comments and opinions, as well as materials, and their availability).

[6] Public participation in drafting regulations should take from 30 to 60 days (an exception are the proposals of regulations where cooperation is not possible due to the nature of the matter);
Adequate material should be prepared that contains a summary of the content with expert groundwork, key issues, and objectives;
After the completed cooperation process, a report on the cooperation with the presentation of the impact on the solutions in the proposed regulation should be prepared;
A call for cooperation should be carried out in a way that ensures the response of target groups and expert public, as well as the informing of the general public.



lovanje javnosti tako konkretizirajo nekateri zakoni[4], pri čemer je najpomembnejši Zakon o varstvu okolja, ki že v temeljnih načelih določa, da morajo država in občine pri sprejemanju politik, strategij, programov in načrtov, ki se nanašajo na varstvo okolja, omogočiti sodelovanje javnosti. Posebej je določena zahteva po sodelovanju javnosti pri sprejemanju predpisov, ki lahko pomembneje vplivajo na okolje, tako na državni kot na lokalni ravni (34a. člen).

Resolucija predpisuje smernice za sodelovanje s strokovno in drugimi zainteresiranimi javnostmi. Pri vključevanju javnosti je treba tako upoštevati nekatera načela[5] in minimalna priporočila[6].

V društvu Eko krog smo pri svojem delovanju podali pripombe na več osnutkov predpisov. Če strnemo izkušnje, lahko zapišemo, da je možnost sodelovanja dana praviloma le formalno. Namreč, nobena izmed naših pripomb ni bila upoštevana, pripravljavec predpisa se do naših utemeljitev ni opredelil, poleg tega pa smo opazili, da se je besedilo osnutka predpisa, na katerega smo podali pripombe, pomembno razlikoval od končnega besedila (pri čemer to ni bilo povezano z danimi pripombami). Poleg tega se praviloma upoštevajo le minimalni roki za podajanje pripomb in mnenj, ki pogosto potečejo v času počitnic ali praznikov, s čimer je onemogočen razumen čas za sodelovanje (kršenje načela pravočasnosti po Resoluciji o normativni dejavnosti).

**Naši primeri iz prakse**

**ZVO-1E**

Ministrstvo za kmetijstvo in okolje (MKO) je 7. junija 2012 objavilo osnutek sprememb ZVO-1. Društvo Eko krog je na ministrstvo naslovilo pripombe na obravnavani osnutek, s katerim je MKO želelo omogočiti podaljšanje veljavnosti nekaterih izdanih dovoljenj brez preverjanja, ali naprave oziroma obrati še izpolnjujejo okoljska merila.

MKO je osnutek objavilo na svoji spletni strani, rok za predložitev mnenj in pripomb pa je bil določen na samo štiri dni! Na poziv MKO za oddajo pripomb se je odzvala tudi varuhinja človekovih pravic ter poudarila, da ima »*javnost ima v skladu 34.a členom Zakona o varstvu okolja pravico vpogleda in možnost dajanja mnenj in pripomb na osnutek predpisa v trajanju najmanj 30 dni. Varuh meni, da je štiridnevni rok za posredovanje pripomb na osnutek predpisa, ki lahko pomembneje vpliva na okolje, neposredno v nasprotju z Zakonom o varstvu okolja in tudi Aarhuško konvencijo*«. Varuhinja je zahtevala pojasnila v obravnavani zadevi in predlagala, naj MKO poskrbi, da bo javnosti zagotovljena pravica do sodelovanja pri sprejemanju predpisov v skladu z veljavno zakonodajo (Varuh človekovih pravic, 2012). Po pozivu varuhinje so rok podaljšali na dva tedna.

Tudi v Eko krogu smo opozorili na sporno določen rok, v vsebinskih pripombah na osnutek pa poudarili, da je podaljševanje okoljevarstvenih dovoljenj, ne da bi se pri tem preverjalo, ali naprave oziroma obrati izpolnjujejo predpisane pogoje za obratovanje, v očitnem nasprotju z uzakonjenimi načeli preventive in previdnosti (Eko krog, 2012).

[4] Sodelovanje javnosti zakonsko konkretizirajo predvsem Zakon o varstvu okolja, Zakon o ohranjanju narave, na področju prostorskega načrtovanja, Zakon o prostorskem načrtovanju (za občinsko načrtovanje) in Zakon o umeščanju objektov državnega pomena v prostor (za državno načrtovanje) (Vrbica, 2012).

[5] Načelo ***pravočasnosti*** (pravočasno obveščanje javnosti in zagotavljanje razumnega časa za sodelovanje), načelo ***odprtosti*** (dostopnost gradiv in strokovnih podlag, uporabljenih v pripravi odločitev), načelo ***dostopnosti*** (dostopnost gradiv in strokovnih podlag, uporabljenih v pripravi odločitev), načelo ***odzivnosti*** (obveščanje sodelujočih o razlogih za upoštevanje ali neupoštevanje njihovih pripomb, predlogov in mnenj), načelo ***transparentnosti*** (zagotavljanje transparentnosti postopka s predstavitvijo vsebine urejanja ter ravni in postopka sprejemanja odločitev, načina in rokov sodelovanja, pripomb in predlogov in mnenj vseh udeležencev) in načelo ***sledljivosti*** (zagotavljanje transparentnosti prejema in upoštevanja predlogov, pripomb, mnenj in gradiv ter njihova dostopnost).

[6] • Sodelovanje javnosti pri pripravi predpisov naj traja praviloma od 30 do 60 dni (izjema so predlogi predpisov, pri katerih sodelovanje po naravi stvari ni mogoče);
• pripravi naj se ustrezno gradivo, ki vsebuje povzetek vsebine s strokovnimi podlagami, ključna vprašanja in cilje;
• po končanem postopku sodelovanja naj se pripravi poročilo o sodelovanju s predstavitvijo vpliva na rešitve v predlogu predpisa;
• poziv k sodelovanju naj se izvede na način, ki bo zagotovil odziv ciljnih skupin in strokovnih javnosti ter obveščenost najširše javnosti.

### ZVO-1F

In January 2013, the Eko krog association provided its comments on the draft ZVO-1f amendment, which introduced individual significant changes. Our main concerns related to the provisions that newly foresaw the possibility of replacing emission limit values with other technical measures and the failure to consider the specifics of the environment when determining limit values, such as geographic characteristics of the area and the quality of the environment in the territory of the device.

ZVO-1F was further disputable due to one specific feature.[7] The new regulation—as was explicitly worded in the explanatory notes to the draft—was to solve the specific case of Lafarge Cement, which has still not obtained the environmental permit for its operation, even though it filed the application in 2006. The amendments should result in the completion of procedures in a relatively short time (foreseeably in no more than six months), which would allow the cement factory to operate and obtain permits for future development of the activity, while also relieving the state of the risk of the foreseen payment of the fine under the EU Court judgement.

Under the threat of a lawsuit, the European Union forced our country[8] to prepare a new amendment (ZVO-1G) to annul the already adopted amendments of ZVO-1F, which arose specifically for the needs of issuing an environmental permit to Lafarge Cement. Due to the need to adopt the Act as soon as possible, it was discussed under the fast track procedure and ZVO-1G also eliminated the irregularities that had been established by the Court of the European Union at the proposal of the European Commission.

### ZVO-1I

In September 2015, the Ministry of the Environment and Spatial Planning (MESP) presented the proposed amendments to the Environmental Protection Act (ZVO-1I). The Eko krog association opposed the MESP's proposals, as we believed them to be a new attempt to enable the operation of an industry which does not meet EU standards, while additionally reducing the impact of the concerned public when issuing environmental permits (Eko krog, 2015).

The Act was ratified by the National Assembly and in March 2016 the National Council unanimously adopted a suspensive veto. The same as numerous environmental organisations, the Councillors saw the amendment as inappropriate and sent the Act back to the National Assembly for reading.

The main stumbling block was the new provision that an environmental permit may also be issued to operators who do not achieve best available techniques (BAT) standards if the authority assesses that this presents substantial additional costs for the operator. As regards this provision, officials at the MESP asserted to the representatives of environmental organisations that the provision was being amended due to EU requirements. The Eko krog association obtained the opinion of the European Commission, which rebuts the MESP's claim, however the disputable regulation remained in the draft and in the Act, which the National Assembly again ratified (Eko krog, 2016).

### Decree on noise

In recent years, noise and the manner in which the state deals with this problem have become two pressing issues in Slovenia. A letter found its way to the public, **in which the Ministry of Infrastructure proposed changes to be made to limit noise values, so that the state would avoid the payment of compensation.** There are 180,000 people living along significant roads and rail lines in Slovenia, who are suffering from noise pollution, and in light of the existing case law in awarding compensation for noise exposure, compensation could reach EUR 200 million (Rečnik, 2017).

Several individuals and civil initiatives have recently contacted the Eko krog association regarding Operational Programmes for Noise Protection, which, according to the obtained information, are currently being implemented by the MESP. We communicated our comments and requests to the Ministry on their behalf.

Article 7 of the Decree on the assessment and management of environmental noise[9] requires the Ministry of the Environment to prepare operational programmes for noise protection. According to our sources, operational programmes for noise protection for the Ljubljana and Maribor agglomerations have never been prepared, even though they should have been implemented in 2008. As far as we know, the MESP has begun preparing operational

[7] Article 172 of ZVO-1F.
[8] Slovenia was facing a fine of EUR 1.6 million and daily penalty payments of EUR 9,000 until changes are implemented.
[9] Official Gazette of the RS, no. 121/04.



### ZVO-1F

Januarja 2013 smo v Eko krogu podali pripombe na osnutek novele ZVO-1F, ki je prinesel nekaj pomembnih sprememb. Naši glavni pomisleki so se nanašali na določbe, ki so po novem predvidele možnost nadomeščanja mejnih vrednosti izpustov z drugimi tehničnimi ukrepi in neupoštevanje značilnosti okolja pri določanju mejnih vrednosti, kot so geografske značilnosti območja in kakovost okolja na območju naprave.

ZVO-1F je bil sporen še zaradi ene posebnosti.[7] Z novo ureditvijo naj bi se – tako je bilo izrecno zapisano tudi v obrazložitvi osnutka – rešil poseben primer družbe Lafarge Cement, ki še vedno ni pridobila okoljevarstvenega dovoljenja za svoje obratovanje, čeprav je vlogo vložila že leta 2006. S spremembami naj bi bilo doseženo, da se postopek konča v razmeroma kratkem času (predvidoma največ šest mesecev), s čimer bi se cementarni omogočila obratovanje in pridobivanje dovoljenj za nadaljnji razvoj dejavnosti, hkrati pa bi se država razbremenila tveganja za predvideno plačilo kazni na podlagi sodbe Sodišča EU.

Evropska unija je našo državo pod grožnjo tožbe[8] prisilila, da je z novo novelo (ZVO-1G) izničila že sprejete spremembe ZVO-1F, ki so nastale posebej za potrebe izdaje okoljevarstvenega dovoljenja Lafarge Cementu. Zaradi potrebe po čimprejšnjem sprejetju je bil zakon obravnavan po nujnem postopku, ZVO-1G pa je odpravil nepravilnosti, ki jih je na predlog Evropske komisije ugotovilo Sodišče Evropske unije.

### ZVO-1I

Ministrstvo za okolje in prostor (MOP) je septembra 2015 predstavilo predlog sprememb Zakona o varstvu okolja (ZVO-1I). Eko krog je predlogom MOP nasprotoval, saj smo menili, da gre za nov poskus, kako omogočiti delovanje industriji, ki ne dosega standardov EU, pri čemer se še dodatno zmanjšuje vpliv prizadete javnosti ob izdajanju okoljevarstvenih dovoljenj (Eko krog, 2015).

Zakon je bil potrjen v Državnem zboru RS, nato pa je Državni svet marca 2016 soglasno sprejel odložilni veto. Svetniki so, tako kot številne okoljske organizacije, presodili, da novela zakona ni primerna, in zakon poslali v ponovno parlamentarno obravnavo.

Kamen spotike je bila predvsem nova določba, da se sme okoljevarstveno dovoljenje izdati tudi upravljavcu, ki ne dosega standardov najboljših dosegljivih tehnik (BAT), če organ presodi, da to zanj pomeni precejšnje stroške. Uradniki MOP so v zvezi s to določbo predstavnikom okoljskih organizacij zatrjevali, da se določba spreminja na zahtevo EU. V Eko krogu smo pridobili mnenje Evropske komisije, s katerim smo ovrgli trditev MOP, kljub temu je sporna ureditev ostala tako v osnutku kot zakonu, ki ga je Državni zbor RS znova potrdil (Eko krog, 2016).

### Uredba o hrupu

V zadnjem času sta v Sloveniji aktualni temi tudi hrup in način, kako se država loteva omenjene problematike. V javnost je namreč prišel dopis, **v katerem Ministrstvo za infrastrukturo predlaga spremembo mejnih vrednosti hrupa, da bi se država izognila izplačilu odškodnin**. V Sloveniji je namreč ob pomembnih cestah in železnicah s hrupom preobremenjenih kar 180.000 prebivalcev, odškodnine pa bi glede na obstoječo sodno prakso dosojanja odškodnin zaradi hrupa lahko dosegle 200 milijonov evrov (Rečnik, 2017).

Tudi na Eko krog se je v zadnjem času obrnilo več posameznikov in civilnih pobud v zvezi z operativnimi programi varstva pred hrupom, ki jih, po pridobljenih informacijah, v tem trenutku izvaja MOP. V njihovem imenu smo ministrstvu poslali pripombe in zahteve.

Uredba o ocenjevanju in urejanju hrupa v okolju[9] v 7. členu nalaga Ministrstvu za okolje obveznost izdelave operativnih programov varstva pred hrupom. Po naših virih operativna programa varstva pred hrupom za aglomeraciji Ljubljana in Maribor še nikoli nista bila pripravljena, čeprav bi ju morali začeti izvajati že leta 2008. Kolikor nam je znano, so na MOP vendarle začeli pripravljati operativne programe, med drugim tudi za omenjeni aglomeraciji, vendar v ustanovljenih delovnih skupinah ni nobenega predstavnika zainteresirane javnosti. Ministrstvo smo opozorili, da omenjena uredba v prilogi zahteva, da mora operativni program varstva pred hrupom vključevati tudi zapis organiziranih javnih predstavitev in posvetovanj, kar pomeni, da mora ministrstvo tovrstne posvete in predstavitve tudi organizirati.

[7] 172. člen ZVO-1F.
[8] Sloveniji je grozila kazen v višini 1,6 milijona evrov in 9.000 evrov dnevno kazni do sprejetja spremembe.
[9] Uradni list RS, št. 121/04.

programmes, including for the two mentioned agglomerations, however the established working groups do not have a single member who would be a representative of the interested public. We pointed out to the Ministry that the Annex to the mentioned Decree stipulates that an operational programme for noise protection should also include written records of the organised public presentations and consultations, which also means that the Ministry should organise such consultations and presentations.

We asked the MESP to comply with the provisions of the regulations relating to noise and urged them to immediately invite the interested public to participate in the preparation of the Operational Programme for Noise Protection and include it in the working group.

### ZVO-2

Recently, the Ministry presented the reviewed draft Environmental Protection Act (ZVO-2) to the public. The draft was released for public consultation during the summer holidays and the deadline for the submission of comments expires on 11 September 2017. The Eko krog association asked the MESP for an extension of the deadline for the submission of comments and opinions. Among the fundamental rules for public participation, the Aarhus Convention stipulates that reasonable time-frames should be ensured for the different phases, allowing sufficient time for informing the public and for the public to prepare and participate effectively during the environmental decision-making.

As the new ZVO-2 is undoubtedly a regulation which can have a significant impact on the environment, we anticipate that the proposer of the law will observe the provision of Article 34a of the currently valid ZVO-1 and study the opinions and comments of the public and, in so far as they are acceptable, it shall incorporate them appropriately into the drafting of the regulation. Furthermore, it shall publish on the Internet a reasoned position in which it states its views with regard to the opinions and comments of the public and its reasons for incorporating them or not in the drafting of the regulation (Article 34a, item 5).

The draft also introduces new features to public participation in environmental matters. Non-governmental organisations and associations which are active in the area of the environment would like to see the adoption of such a significant regulation to take place in dialogue with civil society and that the proposer include the interested public from the early phase of draft preparation.[10]

## Conclusion

In recent years, the level of environmental protection and the associated rights is decreasing.[11] In terms of regulations, public participation in environmental matters is rather well regulated in Slovenia, its practical application is however worse, as the possibility of participation is often provided only formally. We are reasonably concerned about what the new ZVO-2 will bring, how the Act will be adopted and about the attitude towards the comments that the public will provide on the draft. The Ministry should be reminded that—as emphasised by the Resolution on Legislative Regulation—the participation of a wide range of subjects in the preparation of the decisions represents a starting point for the adoption of high-quality and effective regulations, which in turn provides legitimacy of the adopted decisions. Finally, earlier and better cooperation with the public in the adoption of regulations could restore some public trust in the work of the state authorities which are competent for environmental protection and control over polluters.

**References:**


Eko krog (2012). *Pripombe na spremembo Zakona o varstvu okolja*. Retrieved on 10/07/2017 from http://www.ekokrog.org/2012/06/26/pripombe-na-spremembo-zvo/.

Eko krog (2013). *Pripombe na predlog ZVO-1F*. Retrieved on 10/07/2017 from http://www.ekokrog.org/2013/01/15/pripombe-na-predlog-zvo-1f/.

Eko krog (2015). P*oskus sprememb ZVO*. Retrieved on 10/07/2017 from http://www.ekokrog.org/2015/11/13/poskus-sprememb-zvo/.


[10] Unfortunately, this is not the established practice in Slovenia. Representatives of the Ministry will nevertheless take the time and present the new features introduced by the reviewed Act to the Chamber of Commerce and Industry of Slovenia; participation at the presentation and discussion is, however, allowed only to their members (GZS, 2017).

[11] Indulgences for polluters, permanent environmental permits, lowering of the quality of life (e.g. limit values for noise and soil pollutants), etc.



MOP smo pozvali k spoštovanju določb predpisov, ki se nanašajo na hrup, in zahtevali, naj zainteresirano javnost nemudoma povabi k sodelovanju pri pripravi operativnega programa varstva pred hrupom in jo vključi v delovno skupino.

### ZVO-2

Ministrstvo je pred kratkim javnosti predstavilo osnutek prenovljenega Zakona o varstvu okolja (ZVO-2). Osnutek je podalo v javno obravnavo v času poletnih počitnic, rok za predložitev pripomb pa je potekel 11. septembra 2017. V društvu Eko krog smo na MOP naslovili prošnjo za podaljšanje roka za predložitev pripomb in mnenj. Tudi Aarhuška konvencija med temeljnimi pravili za vključitev javnosti določa, da je treba zagotoviti ustrezno časovno obdobje za posamezne faze pri udeležbi javnosti, da je na voljo dovolj časa za obveščanje javnosti ter da se javnost lahko pripravi in učinkovito sodeluje pri okoljskem odločanju.

Ker gre pri novem ZVO-2 nedvomno za predpis, ki lahko pomembneje vpliva na okolje, pričakujemo, da bo predlagatelj zakona spoštoval 34.a člen veljavnega ZVO-1 ter mnenja in pripombe javnosti proučil, jih v primeru sprejemljivosti primerno upošteval pri pripravi predpisa, na svetovnem spletu pa objavil obrazloženo stališče, v katerem se bo opredelil do mnenj in pripomb javnosti ter navedel razloge za njihovo upoštevanje ali neupoštevanje pri pripravi predpisa (34.a člen, 5. točka).

Osnutek prinaša novosti tudi na področju sodelovanja javnosti v okoljskih zadevah. Nevladne organizacije in društva, ki delujemo na področju okolja, bi si želeli, da bi sprejemanje tako pomembnega predpisa potekalo v dialogu s civilno družbo in da bi predlagatelj zainteresirano javnost vključil že v zgodnejši fazi priprave osnutka.[10]

## Sklep

V zadnjih letih se ravni zaščite okolja in z njim povezanih pravic čedalje bolj znižujeta.[11] Sodelovanje javnosti v okoljskih zadevah je pri nas normativno precej dobro urejeno, slabše pa deluje v praksi, saj je možnost sodelovanja pogosto dana samo formalno. Upravičeno nas skrbi, kaj prinaša novi ZVO-2, kako se bo zakon sprejemal in kakšen bo odnos do pripomb, ki jih bo javnost podala na osnutek. Ministrstvo bi veljalo opomniti, da – kot je poudarjeno v Resoluciji o normativni dejavnosti – je sodelovanje čim širšega kroga subjektov pri pripravi odločitev izhodišče za sprejetje kakovostnih in učinkovitih predpisov, s tem pa se zagotavlja tudi legitimnost sprejetih odločitev. Ne nazadnje bi zgodnejše in boljše sodelovanje z javnostjo pri sprejemanju predpisov morebiti povrnilo tudi nekaj zaupanja javnosti v delo državnih organov, ki so pristojni za varovanje okolja in nadzor nad onesnaževalci.

**Viri:**


Eko krog (2012). *Pripombe na spremembo Zakona o varstvu okolja*. Pridobljeno 10. 7. 2017 s http://www.ekokrog.org/2012/06/26/pripombe-na-spremembo-zvo/.

Eko krog (2013). *Pripombe na predlog ZVO-1F*. Pridobljeno 10. 7. 2017 s http://www.ekokrog.org/2013/01/15/pripombe-na-predlog-zvo-1f/.

Eko krog (2015). P*oskus sprememb ZVO*. Pridobljeno 10. 7. 2017 s http://www.ekokrog.org/2015/11/13/poskus-sprememb-zvo/.

Eko krog (2016). *ZVO-1I v ponovnem postopku – brez zahtev EU*. Pridobljeno 10. 7. 2017 s http://www.ekokrog.org/2016/03/16/zvo-1i-v-ponovnem-postopku-brez-zahtev-eu/.

Gospodarska zbornica Slovenije (2017). *Predstavitev osnutka prenovljenega zakona o varstvu okolja*. Pridobljeno 25. 7. 2017 s https://www.gzs.si/skupne_naloge/varstvo_okolja.

Rečnik, Gorazd (2017). *200 milijonski prihranek na račun zdravja ljudi*. Pridobljeno 29. 7. 2017 s https://val202.rtvslo.si/2017/06/vroci-mikrofon-91/.

Ogorelec Wagner, Vida (2007). Aarhuška konvencija: od velikih pričakovanj do streznitve. *VARUH*, št. 11, str. 4.

Varuh človekovih pravic (2012). *Varuh zaskrbljen nad ravnanjem Ministrstva za kmetijstvo in okolje*. Pridobljeno 29. 7. 2017 s http://www.varuh-rs.si/medijsko-sredisce/sporocila-za-javnosti/novice/detajl/varuh-zaskrbljen-nad-ravnanjem-ministrstva-za-kmetijstvo-in-okolje/.

Vernik, Boštjan (2007). Sodelovanje pri sprejemanju odločitev. *VARUH*, št. 11, str. 5.

Vrbica, Senka (2012). *Aarhuška konvencija v teoriji in praksi*. Pridobljeno 10. 7. 2017 s http://www.planbzaslovenijo.si/upload/delavnica/aarhuska_konvencija/aarhuska-konvencija-gradivo.pdf.


[10] Žal v Sloveniji ni takšna praksa. Kljub temu si bodo predstavniki ministrstva vzeli čas in novosti, ki jih prinaša prenovljeni zakon, predstavili Gospodarski zbornici Slovenije – udeležba na predstavitvi in razpravi je dovoljena samo njihovim članom (GZS, 2017).

[11] Odpustki za onesnaževalce, trajna okoljevarstvena dovoljenja, zniževanje kakovosti bivanja (npr. mejne vrednosti za hrup in onesnažila v tleh) in drugo.

Eko krog (2016). *ZVO-1I v ponovnem postopku – brez zahtev EU.* Retrieved on 10/07/2017 from http://www.ekokrog.org/2016/03/16/zvo-1i-v-ponovnem-postopku-brez-zahtev-eu/.

Gospodarska zbornica Slovenije (2017). *Predstavitev osnutka prenovljenega zakona o varstvu okolja.* Retrieved on 25/07/2017 from https://www.gzs.si/skupne_naloge/varstvo_okolja.

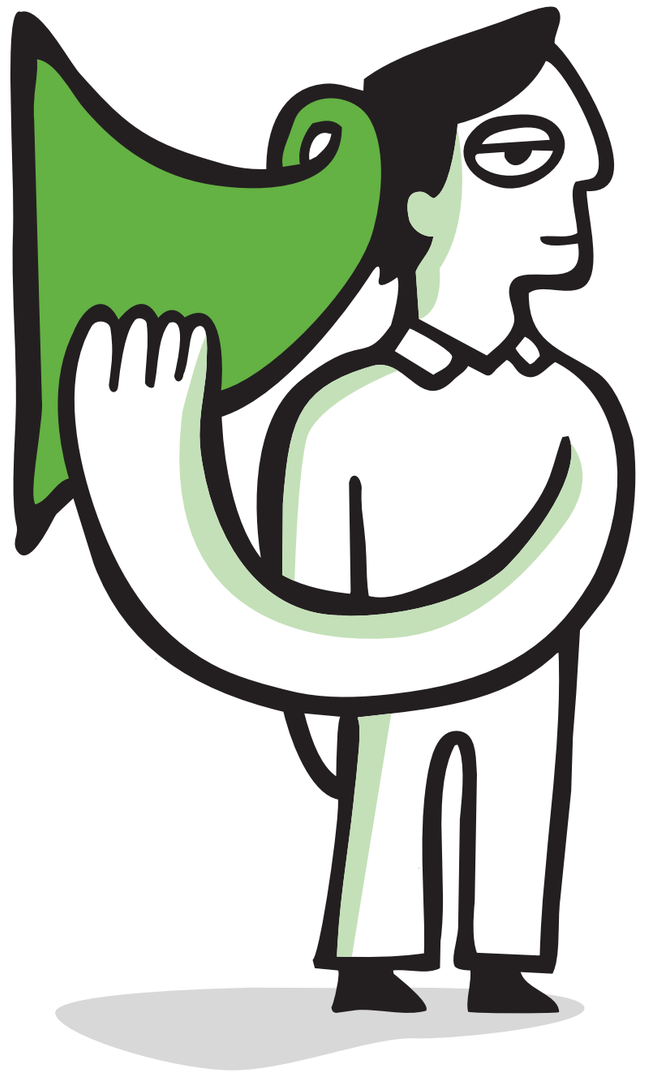
Rečnik, Gorazd (2017). *200 milijonski prihranek na račun zdravja ljudi.* Retrieved on 29/07/2017 from https://val202.rtvslo.si/2017/06/vroci-mikrofon-91/.

Ogorelec Wagner, Vida (2007). Aarhuška konvencija: od velikih pričakovanj do streznitve. *VARUH*, št. 11, str. 4.

Varuh človekovih pravic (2012). *Varuh zaskrbljen nad ravnanjem Ministrstva za kmetijstvo in okolje.* Retrieved on 29/07/2017 from http://www.varuh-rs.si/medijsko-sredisce/sporocila-za-javnosti/novice/detajl/varuh-zaskrbljen-nad-ravnanjem-ministrstva-za-kmetijstvo-in-okolje/.

Vernik, Boštjan (2007). Sodelovanje pri sprejemanju odločitev. *VARUH*, št.11, str. 5.

Vrbica, Senka (2012). *Aarhuška konvencija v teoriji in praksi.* Retrieved on 10/07/2017 from http://www.planbzaslovenijo.si/upload/delavnica/aarhuska_konvencija/aarhuska-konvencija-gradivo.pdf.



**Natalija Drnovšek**
Ministry of Public Administration,
Service for Transparency, Integrity and the Political System

*She graduated from the Ljubljana Faculty of Law in 1987 and passed the state bar exam in 1991. Her 30 years of experience in both the economy and the public sector cover the fields of law, entrepreneurship, human resource training, management and development, and participation in various projects. She has been working in transparency and integrity at the Ministry of Public Administration since 2015. Before that, she worked at the Commission for the Prevention of Corruption of the Republic of Slovenia from 2011, heading the Centre for the Prevention and Integrity of Public Service, where she monitored the issues surrounding environment and spatial planning from the viewpoint of integrity of the employees participating in environmental and spatial planning matters, from the viewpoint of transparency in the drafting and adoption of corresponding legislation, the possibility of public participation, and from the viewpoint of mandatory procedures of supervisory institutions and politics.*

## *The Fateful 30 Days or Permanent Public Participation for Sustainable Development*

As the Ministry of Public Administration is the competent ministry for the legal framework, which also determines when and in what way all other ministries have to enable public participation during the drafting of regulations, including environmental regulations, and correspondingly implement the results of such participation in the new or amended legislation, this paper focuses on a brief presentation of this framework and the presentation of the tools and activities that the MPA is developing in order to facilitate public participation.

*"The greatest threat to our environment is the belief that someone else will save it."*

*Robert Swan*
*environmentalist, polar explorer*



**Natalija Drnovšek,**
Ministrstvo za javno upravo
Služba za transparentnost, integriteto in politični sistem

*Leta 1987 je diplomirala na Pravni fakulteti v Ljubljani, leta 1991 je opravila državni pravniški izpit. Med njene 30-letne delovne izkušnje tako v gospodarstvu kot javnem sektorju se uvrščajo področja prava, podjetništva, usposabljanja in vodenja ter razvoja zaposlenih ter sodelovanje pri raznih projektih. Od leta 2015 je zaposlena na Ministrstvu za javno upravo na področju transparentnosti in integritete, pred tem je bila od leta 2011 zaposlena na Komisiji za preprečevanje korupcije Republike Slovenije kot vodja Centra za integriteto in preventivo, kjer je med drugimi zadevami problematiko okolja in prostora spremljala z vidika integritete zaposlenih, ki sodelujejo v zadevah okolja in prostora, z vidika transparentnosti priprave in sprejemanja zakonodaje tega področja, možnosti sodelovanja javnosti in z vidika dolžnega ravnanja nadzornih institucij in politike.*

## Usodnih 30 dni ali trajno sodelovanje javnosti za trajnostni razvoj

***»Največja nevarnost okolju je naše prepričanje, da ga bo rešil nekdo drug.«***
*(The greatest threat to our environment is the belief that someone else will save it.)*

*Robert Swan,*
*okoljevarstvenik, polarni raziskovalec*

## I The care and the responsibility for high-quality environmental regulations should be shared by the state and the public

The same as concern and responsibility for the quality level of legal acts represent an integral part of efforts for the successful operation and maintenance of the rule of law[1], concern and responsibility for the quality level of environmental regulations are also a component part of endeavours for achieving a balance between the three pillars of sustainable development: economic development, social development and environmental protection[2]. This balance can only be achieved through co-creation or participation of all types of publics that can contribute to the search for better solutions for the environment and consequently for us all. Only a healthy environment and the associated quality of water, air and food enable survival. Our present decisions affect future generations and as they cannot participate in these decisions and the consequences might affect them as well, the responsibility of us all when drafting environmental regulations should be that much greater and the regulations drafted with careful deliberation, comprehensively, transparently and of course with public participation. Only such a regulation will not require annual amendments and ensuring that it is complied with does not require the implementation of sanctions and numerous unfortunately unsuccessful measures by supervisory authorities and the dissatisfaction and distrust of the public. This is in line with the provisions of the Resolution on Legislative Regulation and the task of the currently ruling politics and drafters of regulations.

## II The state—concern and responsibility for high-quality regulations—establishing an environment for permanent public participation in the drafting of regulations

The Ministry of Public Administration (Ministry) is not directly involved in or responsible for the drafting of environmental regulations, as this is under the responsibility of the Ministry of the Environment and Spatial Planning. However, the Ministry is the competent ministry for the legal framework, which ensures minimum conditions and standards for a better legislation, more transparency, integrity, public participation and inclusion and the so-called legislative footprint, which have to be observed and enforced by all ministries. In this way, it plays a double role as the developer of the environment or tools that enable better legislation but is also itself bound to comply with and use them. Below is a presentation of the legal framework and other documents and tools with which the Ministry of Public Administration, in cooperation with various publics, creates an environment for high-quality regulations following the principle of: **"Participate, assess, improve"[3].**

### The year 2017 marks the eighth anniversary of the adoption of the Resolution on Legislative Regulation

The Resolution sets the guidelines and minimum standards of (various types of) public participation, including the recommendation that public participation in drafting regulations usually takes from 30 to 60 days. However, it needs to be said that it is essential to ensure permanent public participation from the earliest phases of drafting a regulation or assessing its impacts and merely formal observance of this deadline without other activities in which different publics should be included when drafting a regulation will not achieve the objectives pursued by the Resolution with public participation, especially objectives such as strengthening the rule of law, ensuring legal security, protecting human rights and fundamental freedoms, ensuring clarity, transparency, quality, and legal certainty of regulations, exercising civic participation. The same is established by Dr Albin Igličar in his article on the *Resolution of Legislative Regulation—the Unfulfilled Objectives of Slovene Politics*. He states that in this field, we are often satisfied with merely the formal and administrative aspect of these processes, which means that the required form is filled in without an in-depth and substantive analysis of comments provided at a public debate or the consequences of the proposed regulation.[4] He therefore believes that the counter of violations of the Resolution, which has been set up by the Centre for Information Service, Co-operation and Development of NGOs, is slightly misleading, as it monitors only the failure to observe the stipulated deadline and not also all other violations.

[1] Resolution on Legislative Regulation – http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO5516
[2] Sustainable Development, https://sl.wikipedia.org/wiki/Trajnostni_razvoj
[3] You too can contribute to better regulations (http://www.stopbirokraciji.si/spremembe-predpisov-boljsi-predpisi/vkljucevanje-javnosti/)
[4] https://www.dlib.si/stream/URN:NBN:SI:DOC-VKLDHX4J/390bc4c7-aac2-4bea-90e3-e52fbc61ce41/PDF



## Sistemski vidik vključenosti javnosti pri pripravi okoljskih predpisov ter o dejavnikih, ki vplivajo na te procese.

Glede na to, da je Ministrstvo za javno upravo resorno pristojno za pravni okvir, ki tudi vsem drugim ministrstvom določa, kdaj in kako morajo ob pripravi predpisov, torej tudi okoljskih, omogočiti sodelovanje javnosti in rezultate tega sodelovanja ustrezno vključiti v novo ali spremenjeno zakonodajo, se v prispevku osredotočamo predvsem na kratko predstavitev tega okvirja, orodij in aktivnosti, ki jih za pospeševanje vključevanja javnosti razvija Ministrstvo za javno upravo.

## I Skrb in odgovornost za kakovostne okoljske predpise si morata deliti država in javnost

Kot sta skrb in odgovornost za raven kakovosti pravnih predpisov sestavna dela prizadevanj za uspešno delovanje in ohranjanje pravne države[1], sta poleg tega skrb in odgovornost za raven kakovosti okoljskih predpisov sestavna dela prizadevanj za dosego ravnovesja med tremi stebri trajnostnega razvoja z gospodarskim razvojem, socialnim razvojem in varstvom okolja[2]. Ravnovesja, ki ga lahko dosežemo le s sooblikovanjem oziroma z vključitvijo vseh vrst javnosti, ki lahko prispevajo k iskanju boljših rešitev za okolje in s tem za nas vse. Preživetje nam omogoča le zdravo okolje in z njim povezana kakovost vode, zraka in hrane. Naše sedanje odločitve vplivajo tudi na prihodnje rodove, in ker ne morejo sodelovati pri naših odločitvah, posledice pa se bodo nanašale tudi na njih, bi morala biti odgovornost vseh pri pripravi okoljskih predpisov še toliko večja, predpisi pa pripravljeni premišljeno, celovito, transparentno in seveda v sodelovanju z javnostjo. Le tako pripravljen predpis ne bo potreboval vsakoletnih sprememb, zagotovitev njegovega spoštovanja pa ne uveljavljanja sankcij in nešteto žal velikokrat neuspešnih ukrepov nadzornih organov ter nezadovoljstva in nezaupanja javnosti. Navedeno je skladno z Resolucijo o normativni dejavnosti naloga vsakokratne politike in pripravljavcev predpisov.

## II DRŽAVA – SKRB in ODGOVORNOST ZA KAKOVOSTNE PREDPISE – vzpostavitev okolja za trajno sodelovanje javnosti pri pripravi predpisov

Ministrstvo za javno upravo (ministrstvo) ni neposredno vključeno v pripravo okoljskih predpisov in odgovorno za to, to je pristojnost Ministrstva za okolje in prostor. Je pa ministrstvo pristojno za normativni okvir, ki zagotavlja minimalne pogoje in standarde za boljšo zakonodajo, transparentnost, integriteto, sodelovanje in vključenost javnosti in t. i. zakonodajno sled, ki jo morajo spoštovati in uveljavljati vsa ministrstva. Tako je v dvojni vlogi kot razvijalec orodij, ki omogočajo boljšo zakonodajo, sočasno pa je tudi samo zavezano k njihovemu upoštevanju in uporabi. V nadaljevanju bodo predstavljeni normativni okvir in drugi dokumenti in orodja, s katerimi ministrstvo v sodelovanju z različnimi javnostmi ustvarja okolje za kakovostnejše predpise po načelu **Vključi, presodi, izboljšaj**[3].

### Leta 2017 osma obletnica sprejetja Resolucije o normativni dejavnosti

Resolucija postavlja smernice in minimalne standarde sodelovanja z (različnimi) javnostmi. Med njimi je tudi priporočilo, naj sodelovanje javnosti pri pripravi predpisov traja praviloma od 30 do 60 dni. Vendar je treba opozoriti, da je bistveno predvsem zagotoviti trajno sodelovanje javnosti že v najzgodnejši fazi priprave predpisa ali presoje njegovih učinkov, zato le formalno spoštovanje navedenega roka brez vseh drugih aktivnosti, v katere bi morale biti ob pripravi predpisa vključene različne javnosti ne bo doseglo ciljev, ki jih s sodelovanjem javnosti zasleduje resolucija. Še posebej ciljev, kot so krepitev pravne države, zagotavljanje pravne varnosti, varovanje človekovih pravic in temeljnih svoboščin, zagotavljanje jasnosti, preglednosti, kakovosti in določnosti predpisov ter uveljavljanje državljanske udeležbe. Enako v svojem znanstvenem članku *Resolucija o normativni dejavnosti neizpolnjeni cilji slovenske politike* ugotavlja dr. Albin Igličar, in sicer da se na tem področju prevečkrat zadovoljimo le s formalnim in administrativnim vidikom navedenih procesov in da to pomeni, da se le izpolni zahtevani obrazec, brez globlje in vsebinske analize bodisi pripomb iz javne razprave bodisi posledic predlaganega predpisa.[4] Na podlagi navedenega meni, da zato številčni kršitev resolucije, ki ga je vzpostavil Center nevladnih organizacij, nekoliko zavaja, saj spremlja le nespoštovanje prej navedenega roka, ne pa vseh drugih kršitev.

[1] Resolucija o normativni dejavnosti, http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO5516.
[2] Trajnostni razvoj, https://sl.wikipedia.org/wiki/Trajnostni_razvoj.
[3] Tudi vi lahko prispevate k boljšim predpisom (http://www.stopbirokraciji.si/spremembe-predpisov-boljsi-predpisi/vkljucevanje-javnosti/).
[4] https://www.dlib.si/stream/URN:NBN:SI:DOC-VKLDHX4J/390bc4c7-aac2-4bea-90e3-e52fbc61ce41/PDF.

**When speaking of integrity and transparency in the drafting of regulations, we speak of both the integrity (wholeness) of the procedure of adopting the regulation, when all phases of the procedure are included, when they are implemented professionally, to a high standard, transparently, and in cooperation with the public, and the integrity of the drafters of the regulation.**

### 1 Transparency of the procedure of drafting regulations as the key prerequisite condition for enabling public participation

For the public to be able to participate in the drafting of regulations as an informed and competent partner, it requires high-quality information. The public is informed of the planned amendments to statutory regulations via the Government Legislative Programme.[5] The Programme contains the list of proposed acts and other documents and the stipulated deadlines for their reading by the Government and the adoption by the National Assembly.

The legal obligation of publishing the proposals for the regulations online is also stipulated by Article 10 of ZDIJZ (Access to Public Information Act) and Article 7 of the Decree on the provision and re-use of public information, which stipulates that authorities shall publish proposals for regulations, programmes, strategies, and other documents on the World Wide Web so as to make the notice public and consult with the public and key stakeholders. The ministries publish proposals for regulations and other documents, which are published in the Official Gazette of the Republic of Slovenia, on the uniform e-demokracija national portal. The e-demokracija portal is the main communication tool for notifying the public of the fact that a regulation is being drafted, of the phase of the proposal and the foreseen adoption deadlines. Furthermore, e-demokracija enables website visitors to comment and provide proposals and to send them directly to the ministry which is competent for the preparation of the regulation.

### 2 The legislative footprint as the supervisory mechanism for including the public in the drafting of regulations in an integrity-based manner

It is important for the public to have the right to know who affects legislation. The purpose of the legislative footprint is to record all activities of all participants in the decision-making process as well as to disclose lobbying and the work methods of interest groups. Below is a presentation of the legislative framework for the introduction of the legislative footprint as a supervisory measure over the effects of various publics in the drafting of regulations.

#### 2.1 Integrity and Prevention of Corruption Act (ZIntPK), Lobbying

Lobbying is a form of public participation. Lobbying is legal if all three conditions are met cumulatively, i.e. non-public contact of a lobbyist with the lobbied person, aim to influence within the public sector, and lobbying on behalf of another. Exceptions to lobbying are public participation in matters pertaining to the strengthening of the rule of law, democracy, and the protection of human rights and fundamental freedoms. Lobbying is a completely legitimate and desired activity if it results in better solutions for all and provided that it takes place in accordance with law and ethical rules. It represents an important way of regulating the impact of the public on the drafting of regulations and the decisions of the public sector in a manner ensuring the public equal access to power. Therefore, every official and civil servant has to prepare a record of every contact that has the nature of lobbying and submit it to the Commission for the Prevention of Corruption.

#### Rules of Procedure of the Government of the Republic of Slovenia with Instruction No. 10

In accordance with the Rules of Procedure of the Government, Item 7 of the introduction of a draft act stipulates the "description of public participation in the drawing up of the proposed law", which also includes information on the list of participants, crucial opinions, proposals and comments from the public and the reasons for their eventual disregard. In accordance with its purpose, Item 7 predominantly relates to so-called public debate or comments provided in the context of a public debate. The material should also present the cooperation with associations of municipalities, assessment of consequences for individual fields and a summary of public participation in the drafting of the act. A significant element of the legislative footprint in the role of historical memory is also Article 9 of the Rules of Procedure, which stipulates that proposals addressed by various publics to the Government shall be examined and, if possible, taken into consideration in drawing up the next regulation.

[5] http://www.vlada.si/delo_vlade/program_dela_vlade/ .



**Pri integriteti in transparentnosti priprave predpisov mislimo tako na integriteto (celovitost) postopka sprejemanja predpisa, v katero so vključene vse faze postopka, izvedene strokovno, kakovostno, transparentno in v sodelovanju z javnostjo, kot na integriteto pripravljavcev predpisa.**

### 1 Transparentnost postopka priprave predpisov kot ključni pogoj za omogočanje sodelovanja javnosti

Da bi javnost lahko kot informirani in kompetentni partner sodelovala pri pripravi predpisov, potrebuje kakovostne informacije. Javnost se z načrtovanimi spremembami zakonskih predpisov seznani že prek Normativnega programa dela vlade.[5] V programu je seznam predlogov zakonov in drugih aktov ter so določeni postopki, roki za obravnavo na vladi ter za obravnavo in sprejetje v Državnem zboru RS.

Zakonsko obveznost spletne objave predlogov predpisov določata tudi 10. člen Zakona o dostopu do informacij javnega značaja in 7. člen Uredbe o posredovanju in ponovni uporabi informacij javnega značaja, ki določa, da morajo organi predloge predpisov, programov, strategij in drugih dokumentov poslati v svetovni splet z namenom javne objave ter posvetovanja z javnostmi in ključnimi deležniki. Ministrstva predloge predpisov in drugih aktov, ki se objavijo v Uradnem listu Republike Slovenije, objavijo na enotnem nacionalnem namenskem portalu e-demokracija. Portal e-demokracija je glavno komunikacijsko orodje za obveščanje javnosti o tem, da je posamezen predpis v postopku nastajanja, v kateri fazi postopka je predlog in kakšni so predvideni roki sprejetja. Poleg tega e-demokracija obiskovalcu omogoča komentiranje in pisanje predlogov ter pošiljanje teh neposredno na ministrstvo, ki je pristojno za pripravo predpisa.

### 2 Zakonodajna sled kot nadzorni mehanizem za integritetno vključevanje javnosti v pripravo predpisov

Pomembno je, da ima javnost pravico vedeti, kdo vpliva na zakonodajo. Namena zakonodajne sledi sta evidentirati celotno dejavnost vseh udeležencev v procesu zakonodajnega odločanja in razkritje lobiranja kot metode delovanja interesnih skupin. V nadaljevanju predstavljamo normativni okvir za uvajanje zakonodajne sledi kot ukrepa nadzora nad vplivi različnih javnosti pri pripravi predpisov.

#### 2.1 Zakon o integriteti in preprečevanju korupcije (ZIntPK) – Lobiranje

Oblika sodelovanja javnosti je tudi lobiranje. O zakonitem lobiranju govorimo, če so kumulativno izpolnjeni vsi trije pogoji, to so nejaven stik lobista in lobiranca, namen vplivanja v javnem sektorju in izvajanje lobiranja v interesu nekoga drugega. Izjema od lobiranja je sodelovanje javnosti v zadevah krepitve pravne države, demokracije ter varstva človekovih pravic in temeljnih svoboščin. Lobiranje je povsem legitimna in zaželena dejavnost, kolikor prinaša boljše rešitve v korist vseh in seveda, dokler poteka v skladu z zakonom in etičnimi pravili. Je pomembno področje reguliranja vplivov javnosti na pripravo predpisov in odločitev javnega sektorja, saj je javnosti zagotovljen enakopraven dostop do oblasti. Na podlagi navedenega mora vsak funkcionar in javni uslužbenec o vsakem stiku, ki ima naravo lobiranja, izdelati zapis in ga poslati Komisiji za preprečevanje korupcije.

#### Poslovnik Vlade RS z navodilom številka 10

Skladno s Poslovnikom Vlade RS gre v 7. točki uvoda predloga zakona za »Prikaz sodelovanja javnosti pri pripravi predloga zakona«, ki vsebuje med drugim tudi podatke o seznamu subjektov, ki so sodelovali, mnenja in predloge ter pripombe javnosti ter razloge za morebitno neupoštevanje. Navedena točka se skladno z namenom nanaša predvsem na t. i. javno razpravo oziroma pripombe, podane v okviru javne razprave. V gradivu morajo biti navedeni tudi sodelovanje z združenji občin, presoja posledic na posamezna področja in povzetek o sodelovanju javnosti pri pripravi predloga zakona. Za zakonodajno sled v vlogi zgodovinskega spomina je pomemben tudi 9. člen poslovnika, po katerem se na Vlado RS poslani predlogi različnih javnosti proučijo in po možnosti upoštevajo ob naslednji pripravi predpisa.

[5] http://www.vlada.si/delo_vlade/program_dela_vlade/.

**Rules of Procedure of the National Assembly of the Republic of Slovenia**

The recent amendments to the Rules of Procedure of the National Assembly are also a welcoming fact, as one of the main new features is the introductions of the so-called legislative footprint, which was also called upon by the Commission for the Prevention of Corruption. The draft act shall therefore also have to include information on whether external experts participated in the preparation of the act and the payment that they received.

**New Programme of Government Measures for Integrity and Transparency 2017-2019**

As regards the providing of information and public participation, the programme, inter alia, comprises the following measures:

- preparation of a modular tool for the drafting and traceability of regulations in accordance with the Resolution and for managing data on regulations;
- a tool for the assessment of effectiveness of regulations on the economy, which will be available to the public;
- preparation of an environment for establishing the legislative footprint shall also follow at local level;
- a system for monitoring administrative procedures at individual ministries and administrative units;
- transparency and optimisation of work in proceedings relating to the acquisition of building permits.

The Ministry also focuses a lot of its attention on the upgrading of applications and the shaping of other tools that enable public participation in the drafting of regulations in cooperation with local self-government and non-governmental organisations. The result is a number of different guidelines, manuals, brochures, and training programmes.[6]

Slovenia has a very good formal basis for public participation in the drafting of regulations, however, as has been established by the Human Rights Ombudsman for years and unfortunately also in its 2016 Annual Report, this is still not being implemented in practice or is being implemented only to a limited extent. As noted by the Ombudsman, there are numerous reproaches regarding appropriate consideration and justifiable grounds for disregarding public comments.

Today's circumstances are a painful reminder that the question whether the public will participate in environmental matters is no longer an issue, the issue is who else should participate.

Dr. Luka Omladič deliberates on ecological democracy and in terms of the participation of the entire environment, he speaks of the concept of ecological citizenship, which goes beyond the borders of humankind, where plants, animals, and the living environment are also considered citizens and where nature, in a green state, has its constitutional rights. The latter, i.e. the granting of reasonable constitutional rights to non-human beings and living environments too, would prevent their unlimited exploitation[7] and thus provide us and our posterity with the conditions to actually enjoy the right to a healthy environment.

**The solution is therefore simple but difficult. When it comes to attitude towards the environment, we should all first and foremost work on ourselves, which is of course much more difficult than pointing a finger at and waiting for someone else.**

[6] http://www.stopbirokraciji.si/spremembe-predpisov-boljsi-predpisi/vkljucevanje-javnosti/

[7] Blaž Mazi 12 Dec 2009 Dnevnik _ from the printed edition of Objektiv – Dr Luka Omladič, philosopher: V Koebenhavnu bi morali prebirati Kanta; Rousseauja in Marxa.



**Poslovnik Državnega zbora RS**

Pozdraviti gre nedavne spremembe Poslovnika Državnega zbora RS, ki kot eno ključnih novosti prinašajo uvedbo t. i. zakonodajne sledi, k čemur je pozvala tudi protikorupcijska komisija. Tako bo moral predlog zakona vključevati tudi podatek o tem, ali so pri pripravi zakona sodelovali zunanji strokovnjaki in kolikšno plačilo so za to prejeli.

**Program Vlade RS za krepitev integritete in transparentnosti 2017–2019**

Novi program glede informiranja in sodelovanja javnosti obsega med drugim:

- pripravo modularnega orodja za pripravo in sledljivost nastajanja predpisov skladno z resolucijo ter vodenje podatkov o predpisih,
- orodje za izvajanje presoje učinkovitosti predpisov na gospodarstvo, ki bo na voljo javnosti,
- pripravo okolja za vzpostavitev zakonodajne sledi tudi na lokalni ravni,
- sistem spremljanja reševanja upravnih postopkov pri ministrstvih in upravnih enotah,
- transparentnost in optimizacijo dela v zvezi s postopki pridobivanja gradbenih dovoljenj.

Ministrstvo precej aktivnosti namenja nadgradnji aplikacij in oblikovanju drugih orodij, ki omogočajo sodelovanje javnosti pri pripravi predpisov tudi v sodelovanju z lokalno samoupravo in nevladnimi organizacijami. Tako so nastale razne smernice, priročniki, brošure in programi usposabljanja.[6]

Slovenija ima formalno zelo dobro urejeno sodelovanje javnosti pri pripravi predpisov, a to se, kot že leta ugotavlja Varuh človekovih pravic, žal tudi v svojem letnem poročilu za leto 2016, v praksi še vedno ne izvaja ali se izvaja v omejenem obsegu. Kot ugotavlja, je veliko očitkov zoper ustreznost obravnave in utemeljenost zavračanja pripomb, ki jih poda javnost. Današnje okoliščine nas boleče opozarjajo, da ni več vprašanje, ali bo javnost vključena v okoljske zadeve, ampak kdo bi še moral biti.

Dr. Luka Omladič razmišlja o ekološki demokraciji, glede vključevanja celotnega okolja pa o konceptu ekološkega državljanstva, ki se širi prek meja človeške vrste, ko so državljani tudi rastline, živali in življenjska okolja ter ima v zeleni državi narava svoje ustavno zagotovljene pravice. Podelitev smiselnih ustavnih pravic tudi nečloveškim bitjem in življenjskim okoljem bi preprečilo njihovo neomejeno izkoriščanje[7] in s tem nam in zanamcem pogoje, da bi res živeli pravico do zdravega okolja.

**Rešitev je torej preprosta, a težka, pri odnosu do okolja mora namreč vsak začeti delati najprej in predvsem pri sebi in to je seveda veliko težje kot kazati in čakati na drugega.**

[6] http://www.stopbirokraciji.si/spremembe-predpisov-boljsi-predpisi/vkljucevanje-javnosti/.

[7] Blaž Mazi, 12. december 2009, Dnevnik, iz tiskane izdaje Objektiva, dr. Luka Omladič, filozof: V Koebenhavnu bi morali prebirati Kanta; Rousseauja in Marxa.

**Goran Forbici**
Director of the Centre for Information Service, Cooperation and Development of NGOs (CNVOS)

# Open Decision-Making in Cooperation with the Public

If I begin where one should not—at the end and the conclusion: there is nothing catastrophic to be said about public participation in the drafting of environmental regulations in Slovenia, however the situation is also not especially idyllic. The challenges in this regard are not individual but collective. More needs to be done about organisational culture, whereby we need to understand that it cannot be developed directly but only indirectly as a side effect. This requires a somewhat altered view and different measures from all stakeholders, from the government to the economic and civil society level.

I do not know if you are aware of the fact that at the moment Western Balkan countries are in the middle of adopting joint guidelines on public participation in the drafting of regulations. In one of the first rules, the authors perfectly captured what it is all about:

*"EMBEDDEDNESS INTO POLICY-MAKING PROCESS: Public participation needs to be firmly embedded in the policy-making process. Proactive engagement of stakeholders broadens the collection of data and evidence, fills data gaps and contributes to better examination and understanding of the benefits and costs of the proposed policy and legislative interventions. Public participation should therefore be an integral part of any regulatory impact assessment and evidence-based policy-making. Participatory processes should be consistently implemented in drafting of both primary and secondary legislation as well as in drafting of policies and strategic documents."*

If we take a look at how this works in Slovenia and start this makeshift study not with practical examples but with theory or regulations: when it comes to them, almost everything is in perfect order. The Resolution, the government handbook and guidelines all promote and recommend early and extensive inclusion. Even in terms of international comparison the Slovenian standard is very high.

However, how does this work in practice and specifically when it comes to the environment? As some of you may know, CNVOS regularly monitors one of the standards of public participation, i.e. how often is public debate implemented and how consistent are decision-makers as regards the stipulated 30-day period for such debates.



**Goran Forbici,**
direktor Centra nevladnih organizacij Slovenije (CNVOS)

# Odprto oblikovanje odločitev v sodelovanju z javnostjo

Če začnem, kjer naj se ne bi začelo – na koncu in pri sklepu: o sodelovanju javnosti pri pripravi okoljskih predpisov pri nas ni mogoče reči nič posebej katastrofičnega, stanje pa seveda ni niti posebej idilično. Izzivi pri tem niso individualni, ampak kolektivni. Več bo treba delati na organizacijski kulturi, pri čemer je najpomembnejše razumeti, da je ni mogoče razvijati neposredno, ampak samo po ovinku, kot stranski učinek. To verjetno od vseh nas deležnikov, od vladne do gospodarske in civilnodružbene ravni, zahteva nekoliko spremenjen pogled in drugačne ukrepe.

Ne vem, ali veste, ampak zahodnobalkanske države so prav sredi sprejemanja skupnih smernic o sodelovanju javnosti pri oblikovanju predpisov. In pri enem od prvih pravil so avtorji lepo zajeli, za kaj pravzaprav gre ali naj bi vsaj šlo:

»*EMBEDEDNESS INTO POLICY MAKING PROCESS: Public participation needs to be firmly embedded in the policy-making process. Proactive engagement of stakeholders broadens the collection of data and evidence, fills data gaps and contributes to better examination and understanding of the benefits and costs of the proposed policy and legislative interventions. Public participation should therefore be an integral part of any regulatory impact assessment and evidence-based policy-making. Participatory processes should be consistently implemented in drafting of both primary and secondary legislation as well as in drafting of policies and strategic documents.«*

Če preverimo, kako je s tem pri nas, in to provizorično raziskavo po šolsko začnemo ne pri praksi, temveč pri teoriji oziroma predpisih: v resnici je v njih skoraj vse v najlepšem redu. Resolucija, vladni priročnik in vladne smernice, vsi promovirajo in priporočajo najzgodnejše in globoko vključevanje. Tudi v mednarodni primerjavi je slovenski standard zelo visok.

Kako pa je v praksi nasploh in konkretno pri okolju? Kot morda nekateri veste, CNVOS redno spremlja enega od standardov vključevanja javnosti, tj. koliko se opravljajo javne razprave in kako dosledno se pri tem odločevalci držijo predpisanega 30-dnevnega roka zanje. Navkljub nedvomno pozitivnemu trendu stanje nikakor ni idilično, niti posebej lepo ne. Cerarjeva vlada je doslej obravnavala 1.440 predpisov, omenjenega pravila pa se je držala v

Despite an undoubtedly positive trend, the situation is far from idyllic; it is not even especially nice. So far, Miro Cerar's government has discussed 1,440 regulations and observed the mentioned stipulation only in 594 cases and disregarded it in 846 cases. The share of the failure to observe the rules, or, if you like, disregard for the word of the public in regulations which affect its life, stands at 59 per cent. That is the average value. Some ministries did better, others worse. The Ministry of the Environment was somewhere in the middle. From the 212 prepared regulations, they acted incorrectly 122 times (or 58%) and correctly 90 times (42%).

This is of course only one side of the story. From the viewpoint of close embeddedness of the public into the policy-making process it is perhaps even the least important one. Systematic inclusion should mean very early, deep, and broad inclusion. The regulatory and participating professionals are therefore of the same opinion that final public debates, when the wording of the regulation is virtually final and usually (as is right!) allows only cosmetic corrections, are in their nature not intended for a deep discussion of the chosen solutions, detailed calculation of their impacts and consequences, and the defining of eventual better alternatives. No, their main objective is to take the public temperature, check the public interest one last time, determine eventual conflicts, and set up support for and legitimacy of the draft. In short, it is not intended for discussion but for a final check. Final being the operative word. They should have been checked continually and much earlier on throughout the whole process. The same as everything else: discuss solutions, play with alternatives, etc. Only then can we speak of a true embeddedness of the public in policy-making and of a high culture of inclusion.

Unfortunately, with only a few rare exceptions (in the final term of office especially the Ministry of Public Administration and the Ministry of Justice), Slovenia ranks even worse here than when it comes to observing the 30-day public debate rule. Early inclusion is almost non-existent. And when it does exist, it is by no means systematic. It is more a matter of current political inspiration and pragmatism.

But let us not speak too broadly and in general—what is the situation like with the Ministry of the Environment? Judging from the current situation with Magna and the amendments to ZVO, not too rosy. Starting backwards: the new ZVO: all that my environmental non-government colleagues officially knew about it by 10 July when it was published, and I double checked that, was that it was being prepared. That's it. Nothing else. And when the information reached them unofficially, they reacted to it a year ago with proposals which they believed should have been included, amended, and added. And this is all that happened until the early days of July of this year. No response. Unfortunately, this was also not in the draft of the amended regulation, which deserves a separate discussion and follows bad trends, which were started by the Ministry of Labour, Family, Social Affairs and Equal Opportunities with the current Minister. The text that the public received for assessment can in no way be called a draft regulation. All that we received were new articles with a unilateral explanation. The Ministry of the Environment did not even explain what is new or different, even less so why it is new or different. A serious discussion therefore cannot be imagined, as the reader not only first has to painstakingly compare the existing and the proposed text but has to, once the differences are clear, also guess about the reasons. There is no worse recipe for a quality discussion. Guesswork can easily be wrong and it is human nature that we like to attribute bad intentions to the other party, so it quickly happens that we talk at cross purposes, or at least spend a lot of time to even agree on what we are talking about and which are the supposed reasons.

If the Ministry had had any serious intent of a discussion, they would have published a text substantiated by analyses and arguments. They would also have added questions for which they would like to hear the public's opinion. If neither are present, it is completely obvious that this is a spectacle where everything has already been decided and it is being published only and exclusively for protocol reasons. Why even hold a public debate? It is common sense that when you have already made a decision there is truly no point in wasting people's time with a discussion.

The case of Magna shows a similar situation. With all the activity and all acceptable and unacceptable pressures that had been exerted on non-governmental organisations which expressed their potential intent of filing a complaint, the Ministry cannot be attributed a particularly active role. The Ministry does bear some fault, but compared to all others, it is not really noteworthy. It is however symptomatic. While the Minister of the Environment very actively explained that appeal procedures take time and that the decision may well be drawn out into October or even November, we never once heard her explain what these same regulations say of the right to file a complaint and which is the (justifiable) reason that this right does not exist in this country.

It is usually here that internal conversations turn into a quest for culprits, who or what is to blame, whereby the "who" is a much more popular topic of discussion. Personally, I am not in favour of this approach. I find it much



le 594 primerih, v 846 pa ne. Delež nespoštovanja pravil ali če hočete: zanemarjanja besede javnosti pri predpisih, ki vplivajo na njeno življenje, je torej kar 59-odstoten. V povprečju. Nekateri resorji so se odrezali bolje, nekateri slabše. Ministrstvo za okolje (MOP) je kar v sredini. Od skupno 212 pripravljenih predpisov so napak ravnali 122-krat (oz. v 58 %), le 90-krat pa pravilno (42 %).

To je seveda le ena plat zgodbe. Z vidika tesne vpetosti sodelovanja javnosti v pripravo politik morda celo najmanj pomembna. Sistematično vključevati naj bi namreč pomenilo vključevati zelo zgodaj, zelo globoko in široko. Normativna in participativna stroka sta si zato enotni, da končne javne razprave, ko je besedilo predpisa tako rekoč končano in največkrat (pravilno!) dopušča samo še kozmetične popravke, že po naravi niso namenjene poglobljenemu preigravanju izbranih rešitev, podrobnemu izračunavanju njihovih vplivov in posledic ter opredelitvi morebitnih boljših alternativ, ampak je njihov glavni cilj izmeriti javno temperaturo, še zadnjič preveriti javni interes, opredeliti morebitne konflikte ter vzpostaviti podporo in legitimnost osnutka. Na kratko, ne gre za to, da bi razpravljali, ampak samo za to, da še zadnjič preverimo. Zadnjič, na tem je poudarek. Saj bi morali sproti preverjati že velikokrat prej v celotnem procesu. Tako kot tudi vse drugo: razpravljati o rešitvah, preigravati alternative itd. Šele potem bi lahko govorili o tem, da je javnost resnično vpeta v pripravo predpisov, in o visoki kulturi vključevanja.

Na žalost se v Sloveniji z nekaj res redkimi izjemami (v zadnjem mandatu predvsem MJU in MP) pri tem odrežemo še veliko slabše kot glede spoštovanja 30-dnevnih javnih razprav. Zgodnjega vključevanja skoraj ne poznamo. Kolikor ga pa že, to nikakor ni sistematično. Prej stvar trenutnega političnega navdiha in pragmatičnosti.

A da ne govorim preveč naokrog in na splošno – kako je s tem pri MOP? Sodeč po aktualnem dogajanju okoli Magne in aktualni prenovitvi ZVO, ne preveč bleščeče. Če grem od zadaj naprej: novi ZVO: vse, kar so, to sem dvakrat preveril, moji okoljevarstveni nevladniški kolegi do 10. julija, ko so ga objavili, o njem uradno vedeli, je to, da se pripravlja. Samo to. Pika. In ko je informacija neuradno pricurljala do njih, so se pred enim letom nanjo odzvali s predlogi, kaj bi bilo treba po njihovem mnenju vključiti, spremeniti in dodati. In pri tem je do začetka letošnjega julija tudi ostalo. Nobenega odziva. Na žalost niti v osnutku prenovljenega zakona.

Ta je tako ali tako vreden posebne obravnave in sledi slabim trendom, ki jih je pod sedanjo ministrico za socialo začelo MDDSZ. Kajti besedilu, ki nam je bilo javnosti dano v presojo, pri najboljši volji ni mogoče reči zakonski osnutek. V roke smo dobili potisnjene samo nove člene, z enostransko obrazložitvijo. MOP ni pojasnilo niti, kaj je novo ali drugače, kaj šele, zakaj je novo ali drugače. Resne razprave si tako preprosto ni mogoče zamisliti, saj ne samo, da bralca najprej čaka mukotrpno primerjanje obstoječega in napovedanega besedila, ampak mora, ko si le razjasni razlike, tudi ugibati o razlogih zanje. Ni slabšega recepta za kakovostno razpravo. Ugibanje je lahko hitro napačno, vsem pa nam je v naravi, da drugi strani radi pripišemo še slabe namene, zato se zelo hitro zgodi, da govorimo drug mimo drugega. Ali vsaj porabimo veliko časa, da se sploh sporazumemo, zakaj gre in kateri so domnevni razlogi.

Če bi MOP imelo resno voljo po razpravi, bi seveda objavilo z analizami in argumenti podloženo besedilo. In dodalo še vprašanja, do katerih bi želelo, da se javnost opredeli. Če ni ne enega ne drugega, je namreč popolnoma očitno, da gre za spektakel, v katerem je v resnici že vse odločeno, objavlja pa se samo in le zaradi protokola. Zakaj javno razpravo potem sploh imeti? Ker že zdrava pamet ve, da ko si se odločil, res nima smisla sebi, ljudem in bogu krasti časa z razpravo.

Magnin primer kaže podobno. MOP v celotnem dogajanju in pri vseh dopustnih in nedopustnih pritiskih na nevladnike, ki so izrazili potencialno namero o pritožbi, seveda ni mogoče pripisati kakšne posebno aktivne vloge. Nekaj malega je MOP res krivo, ampak v primerjavi z vsemi drugimi ni vredno omembe. Vseeno pa je simptomatično. Medtem ko je okoljska ministrica zelo aktivno pojasnjevala, da pritožbeni postopki trajajo in se bo odločitev zlahka zavlekla v oktober, če ne celo v november, pa je nismo niti enkrat slišali pojasniti, kaj taisti predpisi pravijo o pravici do pritožbe in s katerim (upravičenim) razlogom to pravico v tej državi imamo.

Običajno se na tem mestu interni pogovori prevesijo v opredeljevanje krivcev, kdo ali kaj je kriv, pri čemer je tisti »kdo« vsekakor mnogo bolj priljubljena tema za pogovor. Sam temu pristopu nisem pretirano naklonjen. Bolj smiselno se mi zdi pogledati, kaj bi si želeli, kje je razkorak in kako ga najlažje in najučinkoviteje premostiti. In predvsem, kateri so sistemske pomanjkljivosti in ukrepi. Tudi glede tega si je stroka enotna: na organizacijsko kulturo, pri čemer vanjo spada tudi kultura dialoga, je mogoče najuspešneje vplivati s posrednimi, in ne z neposrednimi

more sensible to take a look at what we would like, find the divide and see how to conquer it the most easily and effectively, and especially which are the systemic deficiencies and measures. Experts hold a unified view on that as well: organisational culture, with the culture of dialogue being a part of it, is most effectively influenced with indirect and not direct measures. We could say that we are dealing with an important side effect. It is in its nature that we can successfully affect it only indirectly.

Impact assessments are a regulatory tool which has been in use for years. Also in Slovenia, where the first steps in this respect were taken back in 2010 and even stipulated, but in practice we are still lagging behind. However, as this is a tool prescribed by the EU and the OECD, it is inevitable that we will soon start using it regularly. The Ministry of Public Administration is already conducting pilot implementations. A serious impact assessment is of course not possible without the participation of the external public. This is clear to all promoting and developing it.

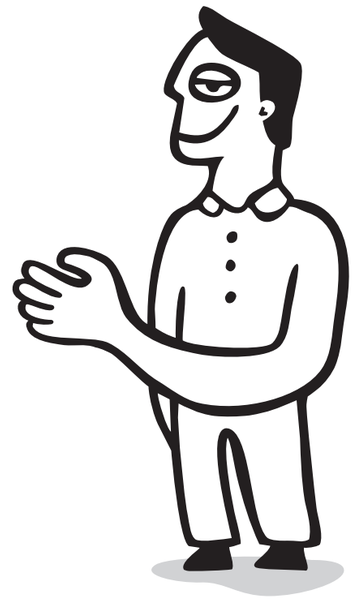
I believe this to be the key. When the administration will be required to show impact assessments of its legislative proposals, they will no longer see public participation as an unnecessary complication or delay (or at least not to such an extent) but as a tool which helps them fulfil a completely different task. Not as an obstacle but as an aid. The point of view will shift and participation will gain its applicable value. In other words, from this pragmatic perspective, even those, who might in general doubt a completely open shaping of decisions, can see the benefits of public participation. And this should in general be the case. Regardless of whether we are more or less democratic, none of us want bad (environmental) regulations and even less so negative (environmental) impacts. For years now, my and the CNVOS appeal to the government has therefore not been for more public participation but for more impact assessments!



ukrepi. Lahko bi rekli, da imamo opraviti s pomembnim stranskim učinkom. Po naravi nanjo lahko uspešno vplivamo samo po ovinku.

Presoja vplivov učinkov je eno od normativnih orodij, ki je že več let v trendu. Tudi pri nas, kjer smo prve korake na to temo začeli že leta 2010, jo celo predpisali, v praksi pa še ne prišli daleč. Ampak ker gre za orodje, katerega uporabo od nas zahtevata celo EU in OECD, je neizogibno, da ga bomo počasi začeli redno prakticirati. V okviru Ministrstva za javno upravo že potekajo tudi pilotna izvajanja. Resna presoja vplivov seveda ni mogoča brez sodelovanja zunanje javnosti. O tem so si jasni vsi, ki jo promovirajo in razvijajo.

In tukaj je po mojem mnenju ključ. Ko bo morala uprava pri zakonodaji na plano pokazati presojo vplivov svojih predlogov, v sodelovanju z javnostjo ne bo več (ali vsaj ne toliko več) videla nepotrebnega zapletanja in odlašanja, ampak orodje, ki jim pomaga izpolniti neko povsem drugo nalogo. Ne več kot oviro, ampak kot pomagalo. Zorni kot se bo preprosto spremenil in sodelovanje bo dobilo svojo uporabno vrednost. Drugače povedano, iz te pragmatične perspektive lahko tudi tisti, ki morda v splošnem dvomijo o popolnoma odprtem oblikovanju odločitev, v sodelovanju javnosti vidijo korist. In za to bi najbrž že nasploh moralo iti. Ne glede na to, ali smo malo manjši ali malo večji demokrati, si najbrž nobeden od nas ne želi slabih (okoljskih) predpisov, kaj šele negativnih (okoljskih) vplivov. Moj in naš, CNVOS, poziv vladi in upravi zato že nekaj let ni: več sodelovanja javnosti, ampak več presoje učinkov predpisov!



**mag. Samo Hribar Milič**
General Manager of the Chamber of Commerce and Industry of Slovenia

# The Right to Be Informed and the Obligation of Communication

The key question in Slovenia is probably not whether the public is sufficiently informed on environmental and other activities. There is probably too much information that surrounds us at every step. The Internet, television, radio, bulletins, brochures, information folders, etc. The key question is something else. Which information from the broad range that we are being served on a platter, is the right and accurate one? It is difficult to find one's bearings and figure out what is the right information and what is fake news, whether the other party is telling the truth or trying to mislead us. Too often, we are plagued by uncertainty and doubt.

Will Magna employ 400 or 3,000 people? Is the environmental legislation really bad for the environment and good only for the capital?

Sometimes, we witness the (too) slow reaction of official institutions, which additionally increases the fear in people.

Will the residents and the nature in the vicinity of Velenje suffer long-term consequences due to the fire at Kemis?  And what about the fire at the Ekosistemi waste processing plant in Zalog pri Novem mestu?

The distrust of the available news and data might trigger a defensive reaction in many people—it leads to opposition and rejection of a project and consequently even to the formation of various (civil) initiatives for the preparation of a more appropriate solution. This is what we are witnessing in Slovenia! Instead of implementing concrete projects and activities, various institutions and organisations are preparing substantiated answers to numerous and repetitive questions of worried individuals.



**mag. Samo Hribar Milič,**
generalni direktor Gospodarske zbornice Slovenije

# Pravica do obveščenosti in dolžnost komuniciranja

Ključno vprašanje v Sloveniji verjetno ni, ali so javnosti o aktivnostih s področja okolja, pa tudi širše, dovolj obveščene. Informacij, ki nas neprestano obkrožajo na vsakem koraku, je namreč kvečjemu preveč. Splet, televizija, radio, bilteni, brošure, zloženke, … Zato je ključno vprašanje drugo. Namreč, katera izmed široke palete informacij, prezentirane na pladnju, je res prava, je resnična. Posameznik se težko znajde in ugotovi, kaj je prava informacija in kaj t.i. »fake news«, ali nasprotnik govori resnico ali poskuša zavesti. Prepogosto se poraja negotovost in dvom.

Bo Magna zaposlila 400 ali 3000 delavcev? Je okoljska zakonodaja res slaba za okolje in dobra le za kapital?

Včasih pa smo priča (pre)počasnemu odzivanju uradnih institucij, ki strah med ljudmi le še povečuje.

Bodo občani in narava v okolici Velenja utrpeli dolgoročne posledice zaradi požara v Kemisu, ali ne?  Kaj pa po požaru v podružnici za predelavo odpadkov  Ekosistemom v Zalogu pri Novem mestu?

Nezaupanje v razpoložljive novice in podatke lahko pri marsikomu povzroči obrambno reakcijo – privede do nasprotovanja in zavračanja določenega projekta ter posledično morda celo do oblikovanja različnih (civilnih) iniciativ za pripravo ustreznejše rešitve. Temu smo priča v Sloveniji! In namesto, da bi se izvajali konkretni vsebinski projekti in aktivnosti, različne institucije in organizacije pripravljajo argumentirane odgovore na številna vedno ponavljajoča se vprašanja zaskrbljenih posameznikov.

**The right to be informed YES**

The public has the right to receive information of general social significance. There is no doubt about that. On the one hand, there is the right to be informed and on the other the obligation of communication, which poses numerous challenges to companies, organisations, and the authorities.

It is easy to write that significant information or information of public character has to be available to the public and the state may not conceal or limit its publication unless this is information whose protection from public insight is justified by constitutionally (and in terms of the Convention) acceptable exceptions.

**Being informed and the environment**

The situation is the same in the field of environmental protection. The EU is also a signatory to the United Nations Aarhus Convention, which includes a provision on access to environmental information, which grants citizens the right to inspect environmental information of public authorities—information on the state of the environment, implemented policies and measures, and human health and safety inasmuch as they may be affected by the state of the environment. The Convention furthermore grants citizens the right to participate in environmental decision-making. Public authorities have to enable the public and non-governmental organisations to express their opinion on project proposals concerning the environment and on environmental plans and programmes, and have to take eventual comments into consideration in their final decision, of which the public has to be informed. However, does this always work? Theory is one thing and practice (too) often another.

Good projects of public participation in decision-making are those where companies, together with representatives of public authorities and interested stakeholders, shape high-quality and long-term socially acceptable solutions, even if these perhaps substantially differ from the originally determined ideas.

Slovenia urgently requires a number of infrastructure projects, which have to be implemented transparently and wisely and include private and various European funds. And with less bureaucratic shilly-shallying. But there are problems.

**There are problems ...**

The case of Magna: The arrival of Magna in Slovenia is a good example of cooperation, which can also continue. This Canadian company is one of the strongest auto parts manufacturers. Slovenia on the other hand is one of the strongest countries in terms of the share of the auto parts industry, the share of developmental suppliers. Today, countries compete in acquiring jobs. Magna's move and announcement to (initially) offer a job to 400 people here, is an exceptional opportunity and an amazing promotion. And yet, there are problems. The last information coming from the media was that the complaints of non-governmental organisations to Magna's already obtained environmental protection consent could chase Magna out of Slovenia, as it had already acquired a partial building permit in Hungary for preparatory work, which means that construction work could start.

Where lies the problem? In the right of the citizens to be informed or in the obligation of Magna to communicate? Perhaps neither. More than 80% of the local population support the investment. I also cannot remember a single other (potential) investor who would have invested so much time and energy into communicating with the interested public. And yet, the last words have not yet been spoken. The question is whether individuals or individual groups are even ready to listen and accept the reasons provided by the other side. Or are they so sure that they are right and refuse to back down!? I do not dare to predict the final outcome.

The case of the Second Track: At the beginning of last year, the CCIS welcomed the decision to set up a project company, as we have always emphasised the necessity of constructing the Second Track of the Divača-Koper Railway Line, which we believe to be of strategic importance for Slovenia. The setting up of the 2TDK project company is an additional guarantee for a more transparent management of the investment. In this respect, the CCIS emphasised the need for an external audit of project value, so that taxpayers would not overpay. In mid-July, Slovenia filed the application with the IPE Blending call for applications for the construction of 7 tunnels on the



**Pravica do obveščenosti JA**

Javnost ima pravico do prejemanja informacij splošnega družbenega pomena, o tem ni dvoma. Na eni strani pravica do obveščenosti, na drugi strani dolžnost komuniciranja, ki pred podjetja, organizacije, pa tudi oblasti, postavlja številne izzive.

Enostavno je zapisati, da morajo biti za javnosti pomembne informacije oziroma informacije javnega značaja dostopne, država pa njihovega objavljanja ne sme prikrivati ali omejevati – seveda razen, če gre za informacije, katerih zaščita pred vpogledom javnosti je utemeljena z ustavno (tudi konvencijsko) sprejemljivimi izjemami.

**Obveščenost in okolje**

Za področje varstva okolje ni nič drugače. EU je tudi podpisnica Aarhuške konvencije Združenih narodov, ki vsebuje določbo o dostopu do okoljskih informacij, s katero imajo državljani pravico do vpogleda v okoljske informacije javnih organov – podatke o stanju okolja, izvedenih politikah in ukrepih ter zdravju in varnosti ljudi, če nanju lahko vpliva stanje okolja. Hkrati daje konvencija tega državljanom pravico do sodelovanja v odločanju, povezanim z okoljem. Javni organi morajo javnosti in nevladnim organizacijam omogočiti, da izrazijo svoje mnenje o predlogih projektov, ki zadevajo okolje, ter o okoljskih načrtih in programih, morebitne pripombe pa morajo nato upoštevati pri sprejemu končne odločitve, o kateri mora biti javnost obveščena. Vendar, ali to vedno uspeva? Teorija je eno, praksa pa (pre)pogosto drugo.

Dobri projekti vključevanja javnosti v odločanje so prav gotovo tisti, pri katerih podjetja skupaj s predstavniki javnih oblasti in zainteresiranimi deležniki oblikujejo kakovostne in dolgoročno družbeno sprejemljive rešitve, četudi se te morda precej razlikujejo od prvotno zastavljenih zamisli.

V Sloveniji nujno potrebujemo vrsto infrastrukturnih projektov, ki pa jih moramo izpeljati transparentno in pametno, z vključitvijo zasebnih sredstev in različnih evropskih virov. In z manj birokratskega mečkanja. A se zatika.

**Zatika se ...**

Primer Magne: Prihod Magne v Slovenijo predstavlja lep primer sodelovanja, ki se lahko tudi nadaljuje. Kanadsko podjetje je eno najmočnejših proizvajalcev avtomobilskih delov. Slovenija po drugi strani je ena najmočnejših držav po deležu industrije, ki se ukvarja z avtomobilskimi deli, po deležu razvojnih dobaviteljev. Danes države tekmujejo za to, da pridobivajo delovna mesta. Zato je poteza Magne, da tukaj po napovedih zaposli (na začetku) okoli 400 oseb, izjemno velika priložnost in tudi izjemna promocija. In vendar se zatika. Nazadnje smo lahko v medijih javnega obveščanja brali, da bi pritožbe nevladnih organizacij na že pridobljeno okoljevarstveno soglasje utegnile Magno odgnati iz Slovenije, saj naj bi na Madžarskem pridobila delno gradbeno dovoljenje za pripravljalna dela, kar pomeni, da bi lahko že začeli s prvimi gradbenimi deli.

Kje se je zataknilo? Pri pravici do obveščenosti državljanov ali pri dolžnosti komuniciranja s strani Magne? Morda niti pri enem ne pri drugem. Prek 80 % občanov v okolici podpira naložbo. Tudi ne pomnim nobenega drugega (potencialnega) investitorja, ki bi toliko časa in energije vložil v komunikacijo z zainteresiranimi javnostmi. In še vseeno še ni bila izrečena zadnja beseda. Vprašanje je, ali so posamezniki oziroma nekatere skupine sploh pripravljene poslušati in sprejeti argumente nasprotne strani. Ali pa so zaverovane v lastni prav in od tega ne odstopajo!? Dokončnega razpleta si ne upam napovedati.

Primer 2. tira: V začetku lanskega leta smo na GZS pozdravili odločitev za ustanovitev projektnega podjetja, saj smo vseskozi poudarjali nujnost izgradnje II. tira Koper – Divača, ki je po našem prepričanju za Slovenijo strateškega pomena. Ustanovitev projektnega podjetja 2TDK predstavlja dodatno jamstvo za bolj pregledno in transparentno upravljanje naložbe. Ob tem smo na GZS izpostavljali potrebo po zunanji reviziji vrednosti projekta, da ga davkoplačevalci ne bi preplačali. Sredi julija je Slovenija oddala vlogo na IPE Blending razpis za gradnjo 7 tunelov na drugem tiru Divača–Koper in javnostim sporočila, da izvajanje aktivnosti na projektu izgradnje drugega tira teče po planu. Za namen komuniciranja in podajanja ažurnih informacij je poleg informiranja prek javnih nastopov

Divača-Koper Second Track and notified the public that the implementation of project activities for the construction of the second track was running according to schedule. In addition to providing information via public appearances of individual key decision-makers and through mass media, a special website has been set up to facilitate communication and provide current information where all interested parties can follow what is happening with the project.

What's next? There are still questions regarding the costs of the project, its financial construction and justification. Opponents of the Act on the Construction of the Second Track of the Divača–Koper Railway Line have submitted more than 48,000 signatures to the National Assembly calling for a referendum on the act. The members of the National Assembly have already set a date.

**What do these two examples teach us?**

If we wish to successfully conclude these two and other projects, we will have to find the right balance between the right of all stakeholders on the one hand to be informed and the obligation of communication of the investor, company, and state on the other. The one thing that can mean the decisive turnaround in communication differs from case to case or project. In some cases, an increased scope of (timely and up-to-date) information provided to the public often neutralises the negative opinions present in the general public, however only with the right reasons, which are based on concrete data/calculations and a more targeted providing of information. Messages have to be clear and comprehensive.

Undoubtedly, nothing is possible without increased trust in the key players. The actions of players who enjoy the public's trust make it easier to establish, maintain and increase the social acceptability of a project. This especially applies in the jungle of information and disinformation. In a debate between the right to be informed and the obligation to communicate, I would bet on the building or upgrading of trust. Trust between citizens, environmentalists, governmental and non-governmental organisations, social partners, etc. to implement strategic projects, which Slovenia needs if it wishes to become one of the most successful countries of the world.



posameznih ključnih odločevalcev ter prek medijev množičnega obveščanja vzpostavljena posebna spletna stran, kjer lahko vsi zainteresirani tekoče spremljajo, kaj se na projektu dogaja.

In kako naprej? Še vedno se pojavljajo vprašanja o stroških projekta, njegovi finančni konstrukciji in upravičenosti … Nasprotniki Zakona o 2. tiru za gradnjo železniške proge od Kopra do Divače so v DZ vložili več kot 48.000 podpisov državljanov, s katerim zahtevajo referendum o zakonu. Poslanci pa so zanj že določili datum.

**Kaj nas učita primera?**

Če želimo ta dva, pa tudi številne druge projekte, uspešno zaključiti, bo treba najti pravo razmerje med pravico do obveščenosti vseh deležnikov na eni in dolžnostjo komuniciranja investitorja, podjetja, države na drugi. Od posameznega primera oziroma projekta je odvisno, kaj je tisto, kar v komunikaciji lahko prinese odločilen zasuk. V določenih primerih povečanje obsega (pravočasnega in ažurnega) informiranja javnosti, pogosto nevtralizacija v širši javnosti prisotnih negativnih mnenj – vendar s pravimi argumenti, ki temeljijo na konkretnih podatkih/izračunih, pa tudi bolj ciljno usmerjeno obveščanje. Sporočila morajo biti jasna in celovita.

Prav gotovo pa v nobenem primeru ne bo šlo brez povečanja zaupanja v ključne akterje. Akterji, ki jim javnosti zaupajo, namreč s svojim delovanjem lažje vzpostavljajo, ohranjajo in povečujejo družbeno sprejemljivost projekta. Predvsem to velja v džungli informacij in dezinformacij. V diskusiji med pravico do obveščenosti in dolžnostjo komuniciranja bi stavil ravno na iz- oz. nadgradnjo zaupanja. Med državljani, okoljevarstveniki, vladnimi in nevladnimi organizacijami, socialnimi partnerji … za uspešno izvedbo strateških projektov, ki jih Slovenija potrebuje, če želi postati ena najuspešnejših držav na svetu.

**STOJAN HABJANIČ,**
President of the Moja Mura Association

# A Poorly Functioning System with Irresponsible Officials and Elected Decision-Makers

**How can civil initiatives and non-governmental organisations help ensure that the system works as it is meant to?**

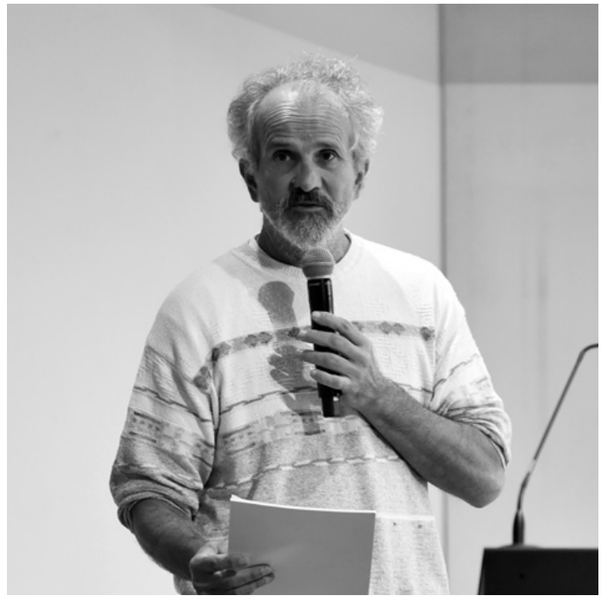
I, Stojan Habjanič, President of the Moja Mura Association of Societies for the preservation of the river and sustainable development, have come to do my civic and personal ethical duty. I came to speak to those present about our work, which is predominantly the consequence of poor and irresponsible actions of the competent institutions and the paid ex officio services and individuals. If we add the intentional misleading on the part of a state-owned company to this mix, in our case Dravske elektrarne, we soon have sufficient reasons for organising a civil initiative. In our case, we are predominantly dealing with a reaction to the lack of seriousness and to the misleading in the attempt to place the first of the foreseen 8 hydroelectric power plants on the Mura River. This procedure is currently in the phase of amendments to the national spatial plan (hereinafter the NSP) for the Hrastje Mota HPP.

I will limit my presentation to the mention of symptomatic anomalies of the system in two fields, i.e. the administrative procedure and the misleading by the investor.

As regards the first, these are only a few of the "gaffes" that we have witnessed:

- Non-compliance with the Environmental Protection Act, the Water Act, and the Nature Conservation Act as early as during the procedure for the award of the concession (the first step taken in 2005) with which the Government enabled the investor the consideration of energy utilisation of the Mura River. Hasn't the mandatory inclusion of the guidelines on the protection of waters and the guidelines on nature conservation even crossed their minds!?
- Ignoring accessory participants in the procedure for the Hrastje Mota HPP NSP.
- Ignoring accessory participants in the procedure of the National Renewable Energy Action Plan.





**STOJAN HABJANIČ,**
predsednik Zveze društev Moja Mura

# Slabo delujoč sistem z neodgovornimi uradniki in izvoljenimi odločevalci

**Kako s civilnimi pobudami in nevladnimi organizacijami doseči delovanje sistema, kot je ta zamišljen?**

Stojan Habjanič, predsednik Zveze društev za obvarovanje reke in sonaravni razvoj, sem prišel opravit svojo državljansko in osebno etično dolžnost. Prisotnim sem prišel povedat nekaj besed o našem delu, ki je posledica predvsem slabega in neodgovornega delovanja poklicanih institucij in po uradni dolžnosti plačanih služb in oseb. Če k temu dodamo še namerno zavajajoče delovanje podjetja v državni lasti, v našem primeru Dravskih elektrarn, hitro zberemo dovolj razlogov za nastanek civilne pobude. V našem primeru gre predvsem za odziv na neresnosti in zavajanje pri postopku poskusa umestitve prve od niza osmih hidroelektrarn na Muri. Aktualni postopek je trenutno v fazi spremembe državnega prostorskega načrta (v nadaljevanju: DPN) za hidroelektrarno Hrastje Mota.

Omejil se bom le na omembo simptomatičnih nepravilnosti v delovanju sistema na dveh področjih, to sta upravni postopek in investitorjevo zavajanje.

Pri prvem navajam le nekaj cvetk, ki smo jih spremljali:

- nespoštovanje Zakona o varstvu okolja, Zakona o vodah, Zakona o varstvu narave že pri podelitvi koncesije (prvi korak je bil storjen leta 2005), pri čemer je vlada z uredbo investitorju omogočila razmišljanje o energetski izrabi reke Mure. Na obvezno vključitev smernic o varovanju voda in smernic o varovanju narave niso niti pomislili!?;
- ignoriranje stranskih udeležencev v postopku za DPN za hidroelektrarno Hrastje Mota;
- ignoriranje stranskih udeležencev v postopku AN-OVE RS.

These two procedures have one thing in common: the institutions managing them (the Ministry of the Environment and Spatial Planning and the Ministry of Infrastructure) are not informing accessory participants about the activity surrounding the procedure or inviting them to participate even though this is stipulated by the legislation. What is more, even after receiving an official request to do so, they do not respond. They do not respond even after a repeated warning.

As regards the second topic, i.e. the misleading by the investor, I can say that perhaps some people truly think that the so-called communication with the public is thought of as a business skill. My vision of the matter is that we are dealing with a misleading of the public; the last thing on their minds is the providing of true experts facts.

So, how should we react to system anomalies?

In light of the awareness that we are dealing with serious and explicit manipulations and violations of the laws, the Constitution of the RS, a violation of human rights, sidestepping of the Aarhus Convention, sidestepping of the Espoo Convention, and consequently a potential destruction/degradation of the living environment of the citizens of the Republic of Slovenia, it is difficult to expect that people will not "rise up in revolt". In our case, we first organised an international network for the protection of the Mura River. We united people with the competent knowledge from 4 countries, i.e. Slovenia, Austria, Hungary, and Croatia and began a coordinated campaign. The next step was the result of an initiative put forward by numerous associations and people living along the Mura River who felt distressed upon hearing there were plans for constructing 8 HPP. We united into the Association of Societies for the preservation of the river and sustainable development called Moja Mura (My Mura). There were representatives of 19 associations at the founding in 2009. The intensive public actions in numerous fields, all so as to disseminate facts about the potential impacts of the construction of a chain of HPP on the natural and social environment in the region, have generated a growing network of supporters and participants. In the last two years, we have become known across the international arena and our current organisational structure is now both all-Slovenian and international. The http://www.amazon-of-europe.com/si/mura-novice/ website best illustrates the activity.

What do we need to do?

- We monitor and participate in all administrative proceedings associated with the danger of constructing hydroelectric power plants on the Mura River.
- We raise international awareness in the neighbouring countries in the spirit of the Espoo Convention, which stipulates a transboundary environmental impact assessment in the earliest planning phase, which the Slovenian Ministry of the Environment is unfortunately not taking seriously.
- We provide content to media of at least 4 countries.
- We provide information to all levels of professional and supervisory services, including up to the level of European institutions.

In light of the described situation and our extensive engagement, we inform all who should feel guilty about unconscientious, unethical, illegal, and nationally detrimental actions that:

- Civil society in Slovenia is exceptionally organised, highly professional, spiritually strong, and unstoppable.
- This situation is ironically the result of the lack of seriousness of all officials and decision-makers who encouraged us to set up a parallel system of supervision.
- We thank these same people that their ignorance and unconscientious work enable us to win in the courts.

As a final thought, I might add that today, NGOs and CI are the most noble part of the so-called active citizenship which defends what is stated in the constitutional document without having any material expectations. Non-governmental organisations and civil initiatives are a reflection of the "self-preservation reflex" of the people or society and as such the final stronghold that may not be overcome. Sensible politics would perceive that as a red light and stop to think where to go and lead the country in the future.

Civil initiatives and non-governmental organisations are an automatic corrector of anomalies of the poorly functioning system of social organisation and as such the cheapest creative co-generator of development.

Thank you, Human Rights Ombudsman, for perceiving us as such and be assured that you can COUNT ON US in the future too!



Za zadnjenavedena postopka je značilno, da instituciji, ki ju vodita (MOP in MZI) o dogajanju v okviru postopkov ne obveščata in nanje ne vabita stranskih udeležencev v postopku, čeprav to od njiju zahteva zakonodaja. Še več, ob uradnem pozivu, da naj to storita, se ne odzoveta. Ne odzoveta se niti ob ponovnem opozorilu.

Pri drugi temi, tj. investitorjevem zavajanju, lahko rečem, da nekateri morda res mislijo, da je t. i. komuniciranje z javnostjo mišljeno kot poslovna spretnost. Moje videnje tega je, da se počne predvsem zavajanje javnosti, še najmanj se posredujejo resnična strokovna dejstva.Kako se torej odzvati na sistemske nepravilnosti?

Ob zavedanju, da gre za resne in eksplicitne manipulacije ter za kršenje zakonov, Ustave RS in človekovih pravic, izigravanje Aarhuške konvencije in konvencije Espoo ter posledično za potencialno uničenje/degradacijo eksistenčnega okolja državljanov Slovenije, je težko pričakovati, da se ne zgodi ljudski upor. V našem primeru smo najprej organizirali mednarodno mrežo za obvarovanje reke Mure. Združili smo osebe kompetenčnih profilov iz štirih držav, tj. Slovenije, Avstrije, Madžarske in Hrvaške, in začeli koordinirano akcijo. Naslednji korak je bil posledica pobude številnih društev in ljudi iz krajev vzdolž Mure, ki so začutili stisko ob najavljenem namenu o gradnji osmih hidroelektrarn. Združili smo se v Zvezo društev za obvarovanje reke in sonaravni razvoj ob Muri – Moja Mura. Na ustanovnem dogodku leta 2009 so bili predstavniki 19 društev. Intenzivno delovanje v javnosti na številnih področjih zaradi širjenja dejstev o potencialnih vplivih gradnje verige hidroelektrarn na naravno in družbeno okolje v regiji je omogočilo čedalje širšo mrežo privržencev in sodelujočih. Tako smo v zadnjih dveh letih znani že v širšem mednarodnem okolju in taka je zdaj tudi naša organizacijska struktura; vseslovenska in mednarodna. Spletna stran http://www.amazon-of-europe.com/si/mura-novice/ je najboljša za ponazoritev dogajanja.

Kaj vse moramo početi?

- Sledimo upravnim postopkom vseh postopkov, ki so vezani na nevarnost gradnje hidroelektrarn na reki Muri in sodelujemo v teh postopkih.
- Skrbimo za mednarodno pozornost v sosednjih državah v duhu konvencije Espoo, ki narekuje čezmejno presojo vplivov na okolje v najzgodnejši fazi načrtovanja, česar slovensko ministrstvo za okolje žal ne jemlje resno.
- Z vsebinami oskrbujemo medije vsaj štirih držav.
- Informiramo vse ravni strokovnih in nadzornih služb, vključno do vrhovnih evropskih institucij.

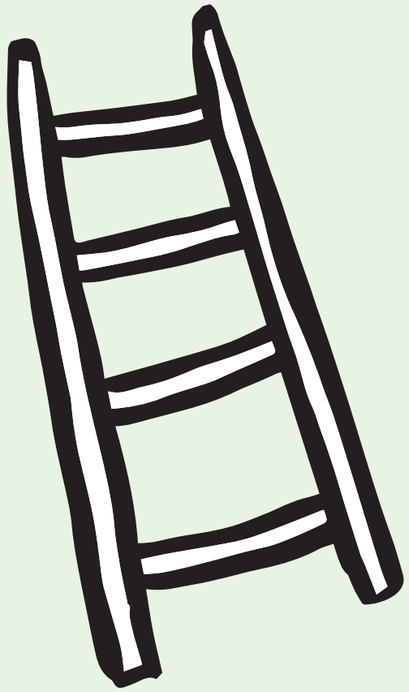
Na podlagi navedenega stanja in naše široko zastavljene angažiranosti sporočamo vsem, ki bi morali imeti slabo vest pri nevestnem, neetičnem, nezakonitem in nacionalno škodljivem delovanju, da:

- je civilna družba v Sloveniji odlično organizirana, strokovno usposobljena in duhovno močna ter neustavljiva,
- se lahko za doseženo stanje, ironično, zahvalimo vsem neresnim uradnikom in neresnim odločevalcem, ki so nas spodbudili k temu, da smo vzpostavili vzporedni sistem nadzora,
- se istim navedenim zahvaljujemo, ker z ignoranco in nevestnim delom omogočajo, da zmagujemo v postopkih na sodiščih.

Kot sklepne misli naj morda dodam, da so nevladne organizacije in civilne pobude v današnjem času najžlahtnejši del t. i. aktivnega državljanstva, ki brez materialnih pričakovanj brani to, kar je zapisano v ustavnem aktu. Nevladne organizacije in civilne pobude so odsev odziva samoohranitvenega refleksa naroda ali družbe in kot take krajni branik meje, prek katere se ne sme. Vsaka pametna politika bi to zaznala kot rdeči semafor in bi se zamislila, kod naj hodi in kam naj pelje državo v prihodnje.

Civilne pobude in nevladne organizacije so hkrati tudi samodelujoči korektor nepravilnosti v slabo delujočem sistemu družbene organiziranosti in kot take najcenejši ustvarjalni sotvorec razvoja.

Hvala, Varuh človekovih pravic, da nas kot take tudi prepoznavate, in sporočamo vam, da RAČUNAJTE NA NAS tudi v prihodnje!



**Dr. Jasminka Džumhur**
Human Rights Ombudsperson of Bosnia and Herzegovina

*Dr. Jasminka Džumhur is a Human Rights Ombudsperson of BIH and a legal expert with more than 30 years of experience in the field of judiciary, human rights and international relations. Since 2016 she has been a member and vice chair of the UN Committee on the Protection of the Rights of All Migrant Workers and Members of their Families. Over the period from 2010 to 2015, she was a member of the UN Working Group on Enforced or Involuntary Disappearances.*

## Environment and Human Rights: Participation of the General Public in Environmental Issues

As a holder of internationally recognised sovereignty and territorial integrity, Bosnia and Herzegovina is legally set up under the provisions of Annex IV of the Dayton Peace Accords, which constitutes the Constitution of Bosnia and Herzegovina. Article II of the BIH Constitution enshrines the highest standards of human rights, while the rights and freedoms guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols are directly applicable in BIH. These acts have priority over all other law. So established, the constitutional set-up of Bosnia and Herzegovina significantly limits the efficiency of human rights implementation. Complaints of the citizens filed to Ombudspersons of Bosnia and Herzegovina, in addition to the judgments of the Constitutional Court of BIH, and the judgments of the European Court of Human Rights, in particular in cases: Sjedić and Finci v. Bosnia and Herzegovina[1], Zornić v. BIH[2] and Pilav v. BIH[3] can serve as a proof of it. These specific cases include the failure to enjoy civil and political rights, i.e. the rights of the first generation, which raises the issue of the extent to which the established constitutional set-up can ensure the enjoyment of the rights of

[1] Applications nos. 27996/06 and 34836/06.
[2] Application no.3681/06.
[3] Application no. 41939/07.





**dr. Jasminka Džumhur,**
varuhinja človekovih pravic Bosne in Hercegovine

*Dr. **Jasminka Džumhur** je varuhinja človekovih pravic BiH in pravna strokovnjakinja z več kot 30-letnimi izkušnjami na področju sodstva, človekovih pravic in mednarodnih odnosov. Od leta 2016 je članica in podpredsednica Odbora ZN za zaščito pravic vseh delavcev migrantov in članov njihovih družin. V obdobju 2010–2015 je bila članica Delovne skupine ZN o prisilnih in neprostovoljnih izginotjih.*

## Okolje in človekove pravice: udeležba splošne javnosti v okoljskih zadevah

Bosna in Hercegovina je kot država z mednarodno priznano suverenostjo in ozemeljsko celovitostjo zakonito ustanovljena v skladu z določbami iz Priloge IV Daytonskega mirovnega sporazuma, ki je temelj ustave Bosne in Hercegovine. Člen II ustave BiH zagotavlja najvišje standarde človekovih pravic, pravice in svoboščine, ki so zagotovljene v evropski Konvenciji o varstvu človekovih pravic in temeljnih svoboščin in njenih protokolih, pa se v BiH uporabljajo neposredno. Ti akti imajo prednost pred vso drugo zakonodajo. Tako vzpostavljena ustavna ureditev Bosne in Hercegovine močno omejuje učinkovitost izvajanja človekovih pravic. To se je potrjuje tudi s pritožbami državljanov, predloženimi varuhu človekovih pravic Bosne in Hercegovine, ter sodbami ustavnega sodišča BiH in sodbami Evropskega sodišča za človekove pravice, zlasti v zadevah: Sjedić in Finci proti Bosni in Hercegovini[1], Zornić proti BiH[2] in Pilav proti BiH[3]. Te specifične zadeve zajemajo nezmožnost uresničevanja civilnih in političnih pravic, npr. pravic prve generacije, ki postavlja vprašanje, koliko lahko uveljavljena ustavna ureditev zagotavlja uresničevanje pravic tretje generacije, ki se nanašajo na skupne pravice družbe ali posameznikov, kot so pravica do trajnostnega razvoja, miru ali zdravega okolja.

[1] Pritožbi št. 27996/06 in 34836/06.
[2] Pritožba št.3681/06.
[3] Pritožba št.41939/07.

the third generation relating to the collective rights of the society or the people such as the right to sustainable development, peace or a healthy environment.

Article 3 of the BIH Constitution defines that all government functions and powers not explicitly entrusted to the BIH institutions by the Constitution belong to the entities, which, along with their administrative units, have an obligation to fully comply with the Constitution of BIH, while the general principles of international law constitute an integral part of Bosnia and Herzegovina's legal order and that of the entities. In the Federation of Bosnia and Herzegovina, the competence for the protection of the environment is a joint responsibility of the federal government and the governments of the cantons, while Article 3 of the Constitution of the Republika Srpska vests all the state-related functions and powers to this entity, except those explicitly transferred to the institutions of Bosnia and Herzegovina by its Constitution by its institutions.

The entities and the Brcko District of BIH have adopted their laws governing the environmental protection issue, where the "environment" is defined as  environmental constituents, certain systems, processes and environmental regulation. In addition to these laws, the entities and the Brcko District have also adopted a number of other regulations governing the rights of the third generation related to water, energy, air, fire protection, waste management, etc. There is a lack of comprehensive, expert analysis of compliance of legislation with international standards, primarily, the Arhus Convention, the UN Convention on Biological Diversity and the European Union Directives[4]. Incompleteness of the definition of the term environment leaves the space for arbitrary interpretations to a large degree. For instance, pursuant to the Environmental Protection Act of the Republic of Croatia "environment is the natural surroundings of organisms and their communities including man, which enables their existence and their further development: the air, water, soil, lithosphere, energy and material assets and cultural heritage as part of man-made surroundings, in their diversity and totality of mutual interaction". It is difficult to determine to which degree in Bosnia and Herzegovina the spirit of coexistence with nature, which would require relationships between man and nature to be regulated in sense of adapting the human needs to nature or nature to human needs, is guaranteed, given the absence of relevant indicators of citizens' involvement and participation in strategic documents drafting process and decision-making in this area.

As a result, the citizens address the Ombudsman seeking the protection of their rights, primarily in respect of the following issues:

- access to potable water and the preservation of water protection areas;
- air pollution;
- protection from noise exceeding the maximum permitted levels;
- carrying out business activities without a relevant permit or exceeding the permitted limits, which produce harmful effects such as noise, air and/or water pollution;
- unregulated landfills and inefficient waste management;
- illegal construction;
- inefficiency in work of inspection authorities;
- lack of access to information;
- unauthorised use of natural resources, without the approved concession agreement;
- inequality in the application of flood protection measures.

In most cases, the rights of the complainants are violated by a natural or a private legal person, which limits the actions of the Ombudsman as it has a mandate toward the public authorities. In such cases, the investigation is aimed at the establishment of responsibility of the competent authorities for their failure to act which led to human rights violations. The complainants often point out that physical or private legal entities carry out some business activities without a relevant permit or exceeding the permitted limits, thus producing harmful effects such as noise, and/or dust, or they fail to control waste and hazardous waters, endangering water protection areas, polluting the air, installing equipment with harmful radiation (telecom or mobile operators), etc. In these cases, the complainants turn to the Ombudsman having previously sought the protection of their rights from the competent inspection bodies. This is why the Ombudsman directs its investigation toward these bodies, due to the concern that inefficiency in the work of these inspection authorities can produce immense consequences. In their 2016 Annual Report on the results of the Ombudsman's activities, Ombudspersons emphasise that: "if the authorities are unable to ensure supervision over the implementation of the regulations, these regulations in any field are essentially with no effect. Irrespective of the eventual outcome of the inspection conducted following a report,

[4] The Water Framework Directive, Directive 2007/60/EC (EU Floods Directive) etc.



Člen III ustave BiH določa, da vse vladne funkcije in pooblastila, ki institucijam BiH niso izrecno dodeljeni z ustavo, pripadajo entitetama, ki sta skupaj s svojimi upravnimi enotami dolžni v celoti spoštovati ustavo BiH, splošna načela mednarodnega prava pa so sestavni del pravnega reda Bosne in Hercegovine in entitet. V Federaciji Bosne in Hercegovine je pristojnost za varstvo okolja skupna odgovornost zvezne vlade in vlad kantonov, člen 3 ustave Republike Srbske pa vse z državo povezane funkcije in pooblastila podeljuje tej entiteti, razen tistih, ki so jih institucije BiH na podlagi ustave izrecno podelile institucijam Bosne in Hercegovine.

Entiteti in distrikt Brčko BiH so sprejeli svoje zakone, ki urejajo vprašanje varstva okolja, pri čemer je »okolje« opredeljeno kot okoljske sestavine, nekateri sistemi, postopki in okoljska ureditev. Poleg navedenih zakonov so entiteti in distrikt Brčko sprejeli tudi številne druge predpise, ki urejajo pravice tretje generacije v zvezi z vodo, energijo, zrakom, varstvom pred požari, ravnanjem z odpadki idr. Ni pa celovite strokovne analize skladnosti zakonodaje z mednarodnimi standardi, predvsem z Aarhuško konvencijo, Konvencijo ZN o biološki raznovrstnosti in direktivami Evropske unije.[4] Nepopolnost opredelitve pojma okolje pušča zelo veliko možnosti za poljubne interpretacije. Na primer, v skladu z zakonom o varstvu okolja Republike Hrvaške je okolje naravno okolje organizmov in njihovih skupnosti, vključno s človekom, ter omogoča njihov obstoj in njihov nadaljnji razvoj: zrak, voda, tla, zemeljska skorja, energija in materialna sredstva ter kulturna dediščina kot del okolja, ki ga je ustvaril človek, vsi v svoji raznolikosti in skupnosti medsebojnega delovanja. Težko je določiti, koliko je v Bosni in Hercegovini zagotovljen duh sožitja z naravo, po katerem bi se razmerja med človekom in naravo urejala v smislu prilagajanja človeških potreb naravi ali narave človeškim potrebam, glede na to, da ni ustreznih kazalnikov vključenosti in udeležbe državljanov pri pripravi osnutkov strateških dokumentov in odločanju na tem področju.

Posledično se državljani za zaščito svojih pravic obrnejo na varuha človekovih pravic, zlasti glede vprašanj, kot so:

- dostop do pitne vode in ohranjanje vodovarstvenih območij,
- onesnaževanje zraka,
- zaščita pred hrupom, ki presega najvišje dovoljene ravni,
- opravljanje poslovne dejavnosti brez ustreznega dovoljenja ali tako, da to presega dovoljene meje, kar povzroča škodljive učinke, kot so obremenjevanje s hrupom ter onesnaženost zraka in/ali voda,
- nezakonita odlagališča in neučinkovito ravnanje z odpadki,
- nezakonita gradnja,
- neučinkovitost dela inšpekcijskih organov,
- pomanjkanje dostopa do informacij;
- nepooblaščena uporaba naravnih virov brez odobrenega koncesijskega sporazuma,
- neenakost pri uporabi ukrepov za varstvo pred poplavami.

V večini primerov pravice pritožnikov krši fizična oseba ali oseba zasebnega prava, kar omejuje ukrepanje varuha človekovih pravic, saj so njegova pooblastila omejena na javne organe. V takih primerih je preiskava namenjena ugotavljanju odgovornosti pristojnih organov zaradi njihovega neukrepanja, posledica česar je bilo kršenje človekovih pravic. Pritožniki pogosto poudarjajo, da fizične osebe ali osebe zasebnega prava opravljajo nekatere poslovne dejavnosti brez ustreznega dovoljenja ali tako, da presegajo dovoljene meje, s čimer povzročajo škodljive učinke, na primer obremenjevanje s hrupom in/ali prahom, ali pa ne nadzirajo odpadnih in nevarnih voda, ogrožajo vodovarstvena območja, onesnažujejo zrak, nameščajo opremo s škodljivim sevanjem (telekomunikacijski ali mobilni operaterji) itd. V teh primerih se pritožniki obrnejo na varuha človekovih pravic po tem, ko so najprej iskali varstvo svojih pravic pri pristojnih inšpekcijskih organih. Zato se varuh človekovih pravic pri svoji preiskavi osredotoča na zadevne organe, in sicer zaradi skrbi, da ima lahko neučinkovitost delovanja teh inšpekcijskih organov izjemno velike posledice. Varuh človekovih pravic je v svojem letnem poročilu o rezultatih dejavnosti varuha človekovih pravic za leto 2016 poudaril: Če organi ne morejo zagotoviti nadzora nad izvajanjem predpisov, ti predpisi na katerem koli področju pravzaprav nimajo nobenega učinka. Ne glede na potencialni rezultat inšpekcijskega pregleda, opravljenega na podlagi poročila, oziroma ali se bo v inšpekcijskem pregledu sploh razkrila kršitev, dejstvo, da se inšpekcijski pregled ne izvaja[5], pomeni kršitev in neizpolnjevanje pozitivnih obveznosti, ki jih je vlada prevzela, ne glede na to, ali te obveznosti izvirajo iz zakona in ustave ali temeljijo na številnih mednarodnih dokumentih.[6]

[4] Okvirna direktiva o vodah, Direktiva 2007/60/ES (direktiva EU o poplavah) idr.
[5] To se nanaša posebno na nezakonito gradnjo, saj občinski upravni organi na območjih, kjer se to dogaja, pogosto zaradi prenizkih plač ne morejo najeti strokovno usposobljenih inšpektorjev.
[6] Str. 33.

or whether the inspection reveals a violation, the fact that the inspection is not carried out[5] constitutes a violation and failure to execute positive obligations assumed by the government regardless of whether these obligations arise from the law and the constitution, or are based on a number of international documents"[6].

Processing of the registered complaints received by the Ombudsman in 2016 has shown that there is a need for a comprehensive analysis of the situation in the field of inspection oversight, which would include a review of, inter alia, staffing capability of inspection bodies, and the scope and form of organised training, in particular in the area of human rights.

It is also worth noting the existence of the institute of "legalisation" of illegal activity or an illegally constructed building after obtaining the necessary permits in cases when the inspection detects such illegal activity of a physical or a private legal entity resulting in deterioration of the environment. In this way, illegal actions are promoted, and the perpetrator is provided with a simpler and faster way of obtaining a licence, in particular given that in practice it rarely happens that such applications are refused. Another similar practice is that the inspection merely states that during an on-the-spot inspection visit no illegal activities of the reported entity could be established, which is regretful, in particular since the reported entity usually has prior information on the arrival of the inspection.

Another group of complaints relate to the failure to adopt or amend space arrangement or zoning plans, or its adoption following an urgent procedure, without adequate consultations with the citizens, or conducting such consultations in a purely formal manner. Complaints of the citizens in this area often indicate the lack of transparency of the relevant authorities, which ignore requests for access to information. In such cases, Ombudspersons act according to their mandate under the Law on Freedom of Access to Information.

Finally, there are complaints related to access to natural resources, including access to potable water. Mismanagement of public resources, although mostly entrusted to public companies, results in citizens being denied access to potable water. There is a similar situation with other natural resources such as stone, ore, or forest exploitation, where even minimum environmental standards are not respected. It is particularly interesting to note that gender balance is not ensured in the management of these public commodities and that women are excluded from these processes to a high degree.

The above observations indicate that Bosnia and Herzegovina as a state aspiring to become a member of the European Union should take a systemic approach to the environmental protection issue including respect of international standards and ensuring the full participation of citizens. The constitutional set-up must not be an impediment, especially having in mind the standpoint of the UN Human Rights Committee: "that the obligations under the Covenant are binding on the State party as a whole, and that all branches of the government and other public and governmental authorities at every level are in a position to engage the responsibility of the State party "[7].

[5] This particularly relates to illegal construction since the municipal administration authorities on the territories of which these phenomena take place often are not able to hire qualified inspectors due to the insufficient salaries.

[6] P. 33.

[7] Items 5 and 6 of the Concluding Observations of the Human rights Committee, Bosnia and Herzegovina Homepage – OHCHR - *www.ohchr.org › OHCHR › English › Countries › Europe and Central Asia Region Human Rights Committee Concluding observations (2017) CCPR/C/BIH/CO/3. Committee on …Concluding observations (2012) CRC/C/BIH/CO/2-4. Committee.*



Obdelava evidentiranih pritožb, ki jih je varuh človekovih pravic prejel leta 2016, je pokazala, da je treba izvesti celovito analizo stanja na področju inšpekcijskega nadzora, ki bi vključeval pregled, med drugim, kadrovskih zmogljivosti inšpekcijskih organov ter obseg in obliko organiziranega usposabljanja, zlasti na področju človekovih pravic.

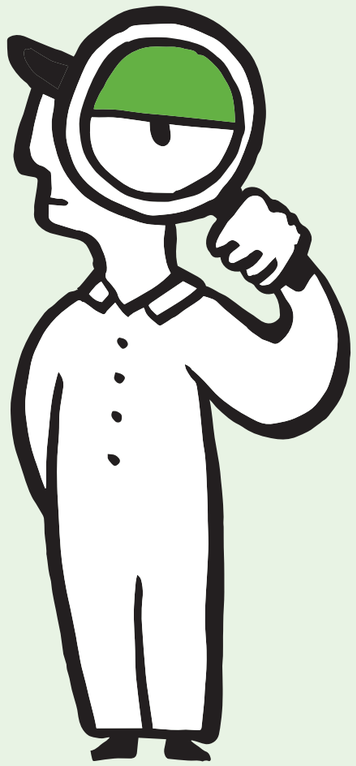
Treba je omeniti tudi obstoj inštituta »legalizacije« nezakonite dejavnosti ali nezakonito zgrajene stavbe po pridobitvi potrebnih dovoljenj, in sicer po tem, ko je inšpekcijski organ odkril tako nezakonito dejavnost fizične osebe ali osebe zasebnega prava, ki je povzročila degradacijo okolja. S tem se spodbujajo nezakonita dejanja, storilcu pa se omogoči preprostejši in hitrejši način pridobitve dovoljenja, zlasti ob upoštevanju, da se v praksi taki zahtevki le redko zavrnejo. Drug podoben primer iz prakse je, da je iz inšpekcijskega pregleda razvidno le, da med inšpekcijskim obiskom na kraju samem ni bilo mogoče ugotoviti nezakonitih dejavnosti prijavljenega subjekta, kar je obžalovanja vredno, zlasti ker je bil prijavljeni subjekt navadno predhodno obveščen o inšpekcijskem pregledu.

Druga skupina pritožb se nanaša na to, da se ne sprejmejo ali spremenijo prostorskoureditveni ali prostorskoizvedbeni načrti ali pa se sprejmejo po nujnem postopku, brez ustreznih posvetovanj z državljani ali pa z izključno formalno izvedbo takih posvetovanj. Pritožbe državljanov na tem področju pogosto kažejo na pomanjkanje preglednosti delovanja ustreznih organov, ki ne upoštevajo zahtevkov za dostop do informacij. V takih primerih varuh človekovih pravic ravna v skladu s svojim pooblastilom na podlagi zakona o dostopu do informacij.

In nazadnje, obstajajo pritožbe v zvezi z dostopom do naravnih virov, vključno z dostopom do pitne vode. Zaradi neustreznega upravljanja javnih sredstev, pri čemer je to večinoma zaupano javnim podjetjem, je državljanom onemogočen dostop do pitne vode. Podobno je z drugimi naravnimi viri, kot so kamen, ruda ali izkoriščanje gozdov, pri čemer se ne upoštevajo niti minimalni okoljski standardi. Pri tem je zlasti zanimivo, da pri upravljanju teh javnih dobrin ni zagotovljena uravnotežena zastopanost obeh spolov in da so ženske pretežno izključene iz teh procesov.

Zgornje ugotovitve kažejo, da bi morala Bosna in Hercegovina kot država, ki želi postati članica Evropske unije, sistematično reševati vprašanje varstva okolja, vključno s spoštovanjem mednarodnih standardov in zagotavljanjem polne udeležbe državljanov. Ustavna ureditev ne sme biti ovira, zlasti ob upoštevanju stališča Odbora ZN za človekove pravice, »da so obveznosti iz konvencije zavezujoče za državo pogodbenico kot celoto in da lahko vsaka veja oblasti ter drugi javni in vladni organi na vseh ravneh prevzamejo odgovornost države pogodbenice«[7].

[7] Točki 5 in 6 Sklepnih ugotovitev Odbora za človekove pravice, domača stran Bosne in Hercegovine – OHCHR – *www.ohchr.org › OHCHR › English (Angleško) › Countries (Države) › Europe and Central Asia Region Human Rights Committee Concluding observations (Sklepne ugotovitve Odbora za človekove pravice za Evropo in Srednjo Azijo)* (*2017*), CCPR/C/*BIH*/CO/3. *Sklepne ugotovitve* Odbora za … (2012) CRC/C/*BIH*/CO/2-4. Odbor.



## Hilmi Jashari

Ombudsperson of the Republic of Kosovo[1]

*Mr Hilmi Jashari was elected Ombudsperson of Kosovo in July 2015 by the Kosovo Assembly, for a five-year mandate. Born in 1969, Mr Jashari obtained a Law Degree from the Law Faculty of Prishtina University and has attended a wide range of different training in the field of law and human rights.*

*He has been working in the field of human rights since 1993 when was assigned as the Secretary of the Council for Protection of Human Rights and Freedoms in Obiliq, and since then he has made a special contribution to the human rights situation in Kosovo.*

*Mr Jashari has been part of the Ombudsperson Institution since 2000, starting as Investigator and continuing as the Director of Investigation Unit until 2004 when the Special Representative of Secretary-General of UN appointed Mr Jashari as the Kosovo Deputy Ombudsperson. Upon termination of the international mandate for Ombudsperson, he was appointed as Acting Ombudsperson of Kosovo by the Special Representative of Secretary-General of UN during the period 2006 2009, continuing as Deputy Ombudsperson of Kosovo. From 2010, he was assigned as Legal Manager with the local NGO Civil Rights Program Kosovo (CRP/K).*

*He was actively involved in coaching, as a lecturer in the field of human rights, conducted various investigations during 2010 2015 and was part of different groups for drafting legislation, and coordinator of different legislative initiatives and leading bodies of civil society.*

*He participated and was actively involved in representing the Institution at many events, as well as international and national conferences where he lectured on specific themes regarding human rights and freedoms and the Ombudsperson's role in democratic developments.*

*Mr Jashari is the author of a number of publications on human rights and the rule of law.*

[1] This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.



## Hilmi Jashari,

varuh človekovih pravic Republike Kosovo[1]

*Kosovski parlament je Hilmija Jasharija za varuha človekovih pravic Kosova izvolil julija 2015, in to za petletni mandat. Hilmi Jashari se je rodil leta 1969 in je na pravni univerzi v Prištini diplomiral iz prava, poleg tega se je udeležil številnih usposabljanj s področja prava in človekovih pravic.*

*S človekovimi pravicami se ukvarja od leta 1993, ko je bil izbran za sekretarja sveta za varstvo človekovih pravic in svoboščin v Obiliću, od tedaj se je posebej posvetil stanju na področju človekovih pravic na Kosovu.*

*Hilmi Jashari deluje pri Varuhu človekovih pravic od leta 2000, pri čemer je začel kot preiskovalec in nato deloval kot direktor preiskovalne enote do leta 2004, ko ga je posebni predstavnik generalnega sekretarja ZN imenoval za namestnika varuha človekovih pravic Kosova. Po poteku mednarodnega mandata za varuha človekovih pravic ga je posebni predstavnik generalnega sekretarja ZN imenoval za vršilca dolžnosti varuha človekovih pravic Kosova za obdobje 2006–2009, nato pa nadaljeval funkcijo namestnika varuha človekovih pravic Kosova. Od leta 2010 je delal kot vodja pravne službe v programu za človekove pravice Kosova v okviru lokalne nevladne organizacije.*

*Hilmi Jashari je avtor številnih objav o človekovih pravicah in pravni državi.*

[1] To poimenovanje ne posega v stališča glede statusa ter je v skladu z RVSZN 1244(1999) in mnenjem Meddržavnega sodišča o razglasitvi neodvisnosti Kosova.

# Public Participation in Environmental Matters in Kosovo

One of the values on which the Kosovo Republic Constitutional order is based is the protection of the environment. Moreover, Chapter II of the Constitution, within the scope of human rights and freedoms, in Article 52, titled "Responsibility for the Environment" foresees the right to a safe and healthy environment[2].

The Constitution, foreseeing everyone's responsibility, without exclusion, to protect the environment and biodiversity, at the same time obliges institutions of public authorities, to guarantee the possibility to each person to influence decisions, which are taken on the protection of the living environment. At the same time, this Article obliges institutions that in the course of decision making give due concern to environmental impact.

The legislation, which adjusts the field of the environment is well-aligned with international instruments. Even though the **Aarhus Convention** is not endorsed by our country, lawmakers were very watchful those three Convention principles: access to environmental information, public participation in decision-making and access to justice are integrated into the legislation which adjusts environmental issues.

The Ombudsperson Institution has continuously handled citizens' complaints as well as initiated *ex officio* cases, concerning the restriction of the right to a safe and healthy environment. The situation of this crucial right, with the crucial impact on other rights, has been reported in particular through Reports with Recommendations and Annual Reports.

Even though this field is well adjusted by domestic legislation, citizens of Kosovo Republic persistently face environmental problems that directly and indirectly impact their right to live in a safe and healthy environment. Protection of the environment is not still the country's priority. A proof of this situation is the allocation of only a small budget to the Ministry of Environment and Spatial Planning.

The right to a healthy environment is constantly breached by air, river and soil pollution, noise, segregation of agricultural land, the devastation of forest areas as well as uncontrolled discharges from heavy industries, with the main emphases in the area of the energy industry. Mismanagement of waste, illegal constructions, non-compliance with the basic principles of spatial planning, poor environmental information, and problems related to the public decision-making process, extensive judicial proceedings, etc. remain a great concern. During last year as well as early this year, Prishtina, the capital of Kosovo, many times reached the highest level of air pollution, exceeding many times the permitted norms, and according to the information obtained, it was listed within the most air-polluted places in the world.

Another problem is the infringement of the rights of the native population living in mining areas around the KEC – Kosovo Energy Corporation. Based on the information in possession of the Ombudsperson Institution, it results that KEC's arbitrary involvements and unrestrained discharges violate citizens' right to a safe and healthy environment, the right to privacy, the right to health, the right to safe water, the right to housing, etc.

The citizens' right to information concerning the environment is a precondition for successful participation of the public in decision-making processes. While the entire environmental legal framework involves and foresees the principle of the publics' right to access to environmental information, the Law on Access to Public Documents sets information related to the environment into the list of limited information. Despite a wide range of environmental laws, which recognise the right of access to information, in cases of requests for access to environmental information, institutional officials refer mostly to the Law on Access to Public Documents and reject requests without any legally grounded reason. The Ombudsperson's responses on this issue were various, through annual and Special Reports, through participation in public debates, media, etc.

[2] Constitution of the Republic of Kosovo, *Article 52, "*Responsibility for the Environment*", "1. Nature and biodiversity, environment and national inheritance are everyone's responsibility. 2. Everyone should be provided an opportunity to be heard by public institutions and have their opinions considered on issues that impact the environment in which they live. 3. The impact on the environment shall be considered by public institutions in their decision making processes".*



# Udeležba javnosti pri okoljskih zadevah na Kosovu

Ena izmed vrednot, na katerih temelji ustavni red Republike Kosovo, je varstvo okolja. Poleg tega je v poglavju II ustave, v okviru človekovih pravic in svoboščin, v členu 52 z naslovom Odgovornost za okolje predvidena pravica do varnega in zdravega okolja[2].

Poleg predvidene odgovornosti vseh posameznikov, brez izjem, v zvezi z varovanjem okolja in biotske raznovrstnosti ustava sočasno obvezuje institucije javnih organov, da vsakemu posamezniku zagotovijo možnost, da vpliva na odločitve, ki se sprejmejo na področju okolja, v katerem bivajo. Hkrati ta člen institucije obvezuje, da med odločanjem ustrezno pretehtajo vpliv na okolje.

Zakonodaja, ki obravnava okolje, je dobro usklajena z mednarodnimi instrumenti. Čeprav naša država ni potrdila **Aarhuške konvencije**, so bili zakonodajalci zelo pozorni, da so v zakonodajo, ki obravnava okoljska vprašanja, vključili tri temeljna načela konvencije, dostop do okoljskih informacij, udeležbo javnosti pri odločanju in dostop do pravnega varstva.

Varuh človekovih pravic je ob stalni obravnavi pritožb državljanov po uradni dolžnosti začel primere v zvezi z omejitvijo pravice do varnega in zdravega okolja. V poročilih, ki vsebujejo priporočila, in zlasti letnih poročilih je poročal o položaju v zvezi s to ključno pravico, s pomembnim učinkom na druge pravice.

Čeprav je to področje dobro usklajeno z domačo zakonodajo, se državljani Republike Kosovo stalno spoprijemajo z okoljskimi težavami, ki neposredno in posredno vplivajo na njihovo pravico do življenja v varnem in zdravem okolju. Varstvo okolja še vedno ni prednostna naloga države. To se potrjuje s tem, da je Ministrstvu za okolje in prostorsko načrtovanje dodeljen majhen proračun.

Pravica do zdravega okolja se nenehno krši z onesnaževanjem zraka, voda in tal, obremenjevanjem s hrupom, ločevanjem kmetijskih zemljišč, krčenje gozdnih površin in nezakoniti izpusti težkih industrij, pri čemer je to značilno predvsem za energetiko. Neustrezno ravnanje z odpadki, nezakonite gradnje, neskladnost z osnovnimi načeli prostorskega načrtovanja, malo okoljskih informacij, težave, povezane z javnim odločanjem, dolgotrajni sodni postopki ipd. še naprej vzbujajo veliko skrb. Lani in na začetku tega leta je Priština, glavno mesto Kosova, večkrat dosegla najvišjo stopnjo onesnaženosti zraka, pri čemer je večkrat presegla dovoljene meje, po razpoložljivih podatkih pa je uvrščena med najbolj onesnažena mesta na svetu.

Še ena težava je kršitev pravic domačega prebivalstva, ki živi na rudarskih območjih, okoli družbe KEK (energetsko podjetje Kosova). Na podlagi informacij, ki jih je pridobil Varuh človekovih pravic, je razvidno, da samovoljno delovanje in nezakoniti izpusti družbe KEK kršijo pravico državljanov do varnega in zdravega okolja, pravico do zasebnosti, pravico do zdravja, pravico do varne vode, pravico do stanovanja itd.

Pravica državljanov do okoljskih informacij je temeljni pogoj za uspešno udeležbo javnosti pri odločanju. Čeprav celotni pravni okvir s področja okolja zajema in predvideva načelo pravice javnosti do dostopa do okoljskih informacij, informacije, povezane z okoljem, po zakonu o dostopu do javnih dokumentov spadajo med informacije z omejenim dostopom. Kljub številnim okoljskim zakonom, po katerih se priznava pravica do dostopa do informacij, se uradniki v primerih zahtevkov za dostop do okoljskih informacij večinoma opirajo na zakon o dostopu do javnih dokumentov in zavračajo zahtevke brez kakršnega koli pravno utemeljenega razloga. Odzivi varuha človekovih pravic o tej zadevi so bili raznovrstni, s poročanjem v letnih in posebnih poročilih, sodelovanjem v javnih razpravah, medijih ipd.

Ustava Republike Kosovo, in sicer njen člen 52.2, javnim ustanovam ne dopušča manevrskega prostora, da bi se izognile odgovornosti, skladno s katero morajo vsakemu posamezniku zagotoviti možnost, da z aktivno udeležbo sodeluje pri odločanju javnih ustanov, na delo katerih se nanaša ta pravica.

[2] Ustava Republike Kosovo, *člen 52*, Odgovornost za okolje, *1. Za naravo in biotsko raznovrstnost ter okolje in nacionalno dediščino so odgovorni vsi posamezniki. 2. Vsem bi bilo treba dati priložnost, da jih slišijo javne institucije in da se obravnavajo njihova stališča o zadevah, ki vplivajo na okolje, v katerem živijo. 3. Javne institucije v svojih postopkih odločanja upoštevajo vpliv na okolje.*

The Constitution of the Republic of Kosovo, through Article 52.2, fails to leave any room for public institutions to evade the liability of guaranteeing to each person the opportunity that through active participation contributes to the decisions of the public institutions, which deal with this right.

Even though this procedural principle is clearly set out within the environmental laws and those that adjust the field of Spatial Planning, institutions' abiding by this procedure is more or less fragile. The impression is that public institutions at the local and central level that are responsible for organising public hearing process, strive to abide with the procedures and the process, but this is not done in a transparent manner and without publicity. The first step, which is the provision of information regarding the time and venue of the hearing session, is mainly done within not very accessible means for the public, through limited press information or sometimes published on the webpage of the concerned body.

Public hearings are usually attended by a small number of citizens due to failure to disseminate that information to the citizens as well as due to citizens' unwillingness to attend public hearing events, mainly because of the mistrust in the public institutions. Citizens' remarks often fall on deaf ears.

The minutes which should be factual documents of the appropriate phase for using the legal remedies often lack, or are compiled without any administrative criteria leaving aside the majority of remarks and data.

After the end of the public hearing phase, there is still a lack of information and transparency regarding the continuation and stage of the proceedings.

Decisions by the bodies are taken without giving due concern to the citizens' remarks and interests and sometimes either the issue is forgotten. Very often, citizens witness that proposed areas for green spaces, or recreational fields have turned into construction sites.

Despite citizens' disappointment with the decisions taken by the bodies dealing with environmental issues and which have an impact on their rights; they hardly ever decide to use their right to use legal remedies, mainly due to delays in court proceedings but also because of a lack of awareness of this right.

However, despite all these challenges, several initiatives taken by citizens have been noted, which have hindered[3], suspended[4], even altered the decisions of administrative bodies.

The Ombudsperson Institution has consistently reported on the issue to the Kosovo Assembly and has responded in special cases. The Constitutional Court of Kosovo, concerning a case known as "Fadil Hoxha and 59 others versus the Municipal Assembly of Prizren" was successfully resolved, where the complainants requested a constitutional review to the judgment of the Municipal Assembly of Prizren[5], through which alternation of a regulative plan was foreseen, from an existing green space to a high construction site. Noticing that no opportunity was given to the complainants to be heard, the Constitutional Court decided that there has been a violation of the right to public participation in decision-making, article 52.2 of the Constitution of the Republic of Kosovo.

The parties in this case, in the course of the use of legal remedies, addressed the Ombudsperson, who observing violations in the decision-making public participation process, addressed an urgent request to the Mayor of Prizren for setting interim measures, through which immediate suspension of any construction at that site was requested until the Ombudsperson reviewed the case entirely and until the Constitutional Court rendered a decision on the merits of the case.

The Ombudsperson Institution, apart from the fact that it has protected and continues to protect human rights and freedoms, has also foreseen its promotion as a strategic priority in 2017 2019. Being aware of the situation in the country, the staff of the Ombudsperson Institution are decisive that through different promotional campaigns to raise the awareness of different groups, through participation in environmental decision-making processes, can influence decisions of institutions that impact their interests and rights.

[3] Protocolar center "Germia".
[4] Street B, area Mati, Regulation plan of the Mati area, Case Valdet Osmani and others.
[5] Judgment No. 01/011-3257 of 30 April 2009 of the Municipal Assembly of Prizren.



Čeprav je to postopkovno načelo jasno opredeljeno v zakonih s področja okolja in zakonih, ki se nanašajo na prostorsko načrtovanje, je institucijsko spoštovanje tega postopka bolj ali manj krhko. Zdi se, da si javne ustanove na lokalni in centralni ravni, odgovorne za organizacijo javne obravnave, prizadevajo spoštovati postopke in celotni proces, vendar se to izvaja na nepregleden način in brez obveščanja javnosti. Prvi korak, tj. zagotavljanje informacij o času in kraju javne obravnave, se navadno izvede tako, da je javnosti manj dostopno, z malo informacijami v medijih ali včasih z objavo na spletni strani zadevnega organa.

Javnih obravnav se pogosto udeleži malo državljanov, in to zaradi neobveščanja javnosti o teh obravnavah in zaradi nepripravljenosti državljanov, da se udeležijo javnih obravnav, predvsem zaradi nezaupanja v javne ustanove. Pripombe državljanov so pogosto preslišane.

Zapisnik, ki bi moral biti dejanski dokument o zadevni fazi v zvezi z uporabo pravnih sredstev, je pogosto pomanjkljiv ali pa je sestavljen brez kakršnih koli upravnih meril, pri čemer je izpuščena večina pripomb in podatkov.

Po končani javni obravnavi še vedno ni dovolj informacij niti ni preglednosti v zvezi z nadaljevanjem in fazo postopkov.

Organi odločitve sprejemajo brez ustreznega upoštevanja pripomb in interesov državljanov, včasih celo po tem, ko se je na zadevo že pozabilo. Državljani se zelo pogosto srečajo s tem, da se predlagana območja za zelene površine ali rekreacijske površine spremenijo v gradbišča.

Kljub razočaranju državljanov z odločitvami organov, ki se ukvarjajo z okoljskimi vprašanji in ki vplivajo na njihove pravice, se državljani zelo redko odločijo, da bi izkoristili svojo pravico uporabe pravnih sredstev, in to predvsem zaradi zamud pri sodnih postopkih in tudi zato, ker niso seznanjeni s to pravico.

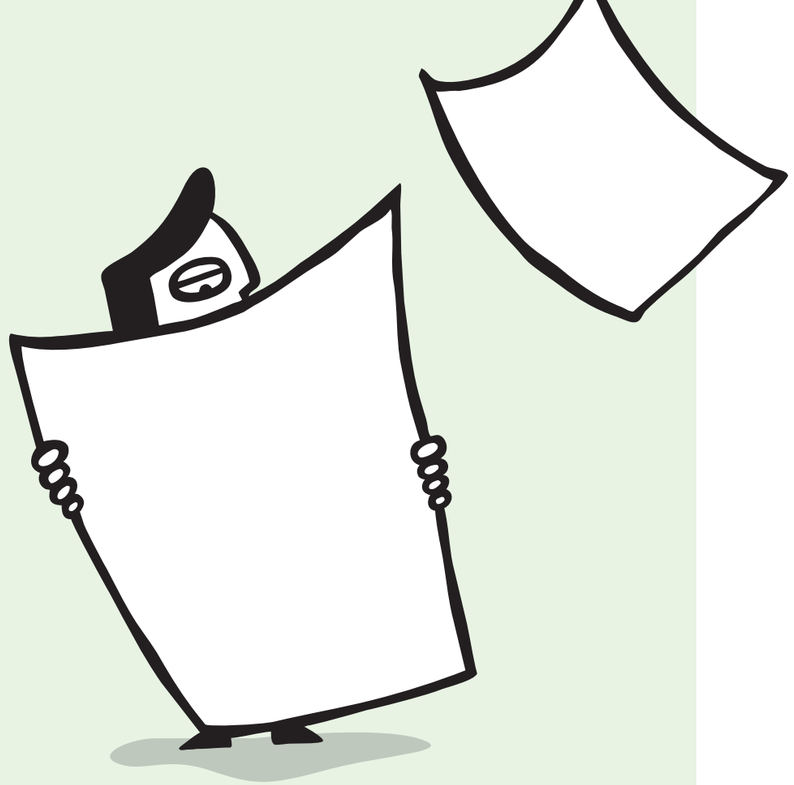
Ob vseh teh izzivih so bile vendarle upoštevane številne pobude državljanov, s katerimi se se odločitve upravnih organov preprečile[3], odložile[4] in celo spremenile.

Varuh človekovih pravic je o tej zadevi dosledno poročal kosovskemu parlamentu in se odzval v posebnih primerih. Ustavno sodišče Kosova je v zadevi, znani kot Fadil Hoxha in 59 drugih proti občinskemu svetu v Prizrenu, problem uspešno rešilo, pritožniki pa so zahtevali ustavno presojo odločitve občinskega sveta v Prizrenu[5], na podlagi katere je bila predvidena sprememba ureditvenega načrta z obstoječe zelene površine na gradbišče za visoke gradnje. Ustavno sodišče je ugotovilo, da pritožniki niso imeli možnosti, da bi bili slišani, in da je bila kršena pravica javnosti do udeležbe pri odločanju iz člena 52.2 Ustave Republike Kosovo.

Stranke v tej zadevi so se pri uporabi pravnih sredstev obrnile na Varuha človekovih pravic, ki je ugotovil kršitve glede udeležbe javnosti pri odločanju in na župana Prizrena naslovil nujni zahtevek za določitev začasnih ukrepov za takojšnjo začasno ustavitev kakršne koli gradnje na navedeni lokaciji, dokler Varuh človekovih pravic v celoti ne prouči zadeve in ustavno sodišče ne odloči o vsebini zadeve.

Varuh človekovih pravic ob tem, da je varoval in bo tudi v prihodnje varoval človekove pravice in svoboščine, tudi za obdobje 2017–2019 načrtuje spodbujanje teh pravic kot strateško prednostno nalogo. Osebje pri Varuhu človekovih pravic se zaveda stanja v državi in je odločeno, da bo z raznimi promocijskimi kampanjami izboljšal ozaveščenost različnih skupin, ki lahko z udeležbo pri odločanju v okoljskih zadevah vplivajo na odločitve institucij, ki vplivajo na njihove interese in pravice.

[3] Protokolarni center Germia.
[4] Ulica B, območje Mati, ureditveni načrt območja Mati, zadeva Valdet Osmani in drugi.
[5] Sklep občinskega sveta v Prizrenu št. 01/011-3257 z dne 30. aprila 2009.



**Dr. Ljubinko Mitrović**
Human Rights Ombudsperson of Bosnia and Herzegovina and a Full Professor at the Faculty of Legal Sciences of the Pan-European University APEIRON in Banja Luka

# Environmental protection in the criminal law of Bosnia and Herzegovina

Technical and technological development along with excessive use of energy sources and raw materials during the twentieth century and the beginning of the third millennium led to the situation that man's work had been replaced or supplemented by machines, appliances and various other devices made of metal, plastics or other materials, driven by different types of fuel originating from a variety of sources. The fact is that these energies made life easier, enriched and facilitated the daily life, but at the same time jeopardised it in a number of ways. A large number of automated and computerised machines, and the use of different, under certain conditions even hazardous sources of energy and raw materials, raised production power to an enormous level. On the other hand, however, these machines have the power to destroy or endanger life and the health of people and deteriorate man's living and working environment, and thus the basis of his existence, living and survival.

The use of nuclear, thermonuclear, electrical, solar, and other energy sources has allowed man to overcome vast distances on earth and make them accessible in a very short time, to penetrate into the depths of the earth or into space or the oceans, discovering ever more secrets of life, nature, things, as well as secrets of humanity. So, man discovered and mastered the use of such forces, created such resources, and found such technological procedures through which he became largely a master of nature, and thus his own destiny. However, these forces also include the danger of uncontrolled, improper, accidental or other negligent treatment and dissemination, and simultaneous destruction and damage of everything in front of them, thus posing an immediate danger to the environment or life and health of human beings.

The devastating and destructive power of energy, raw materials and resources used in all forms of production and research is not only intrinsic to its very nature and always possible to express itself, but it has also happened in reality as it can be seen from a number of examples from the far and recent past, through many industrial, chemical, oil and other accidents, which has led to ecological disasters of immeasurable proportions. Fires, floods,



**dr. Ljubinko Mitrović,**
varuh človekovih pravic Bosne in Hercegovine in redni profesor na pravni fakulteti vseevropske univerze APEIRON v Banjaluki

# Varstvo okolja v kazenski zakonodaji Bosne in Hercegovine

Tehnični in tehnološki razvoj sta skupaj s čezmerno rabo virov energije in surovin v dvajsetem stoletju in na začetku tretjega tisočletja pripeljala do tega, da so človeško delo zamenjali ali dopolnili stroji, naprave in razni drugi pripomočki, narejeni iz kovine, plastike ali drugih materialov, ki delujejo na različne vrste goriv, pridobljenih iz različnih virov. Te energije so olajšale življenje, ga obogatile in podpirajo vsakodnevno življenje, ob tem pa so ga na številne načine tudi ogrozile. Veliko avtomatiziranih in računalniško vodenih strojev in uporaba različnih, pod nekaterimi pogoji celo nevarnih virov energije in surovin sta moč proizvodnje dvignila na izjemno visoko raven. Pa drugi strani imajo te naprave moč, da uničijo ali ogrozijo zdravje in življenje ljudi ter poslabšajo človekovo življenjsko in delovno okolje ter s tem temelj njegovega obstoja, življenja in preživetja.

Uporaba jedrske, termonuklearne, električne in sončne energije ter drugih virov energije je človeku omogočila premagovanje ogromnih razdalj na Zemlji in jih naredila dostopne v zelo kratkem času, mu omogočila, da prodre v globine kopnega ali oceanov ali v razsežnost vesolja, odkriva vedno več skrivnosti življenja, narave, stvari in človeštva. Človek je odkril teh sile in obvladal njihovo uporabo, ustvaril te vire in iznašel tehnološke postopke, s katerimi je postal pretežni gospodar narave in s tem svoje usode. Te sile pa vključujejo tudi nevarnosti nenadzorovanega, nepravilnega, nenamernega ali drugačnega neustreznega ravnanja in razširjanja ter hkratnega uničenja in poškodovanja vsega okoli njih ter tako pomenijo neposredno nevarnost za okolje ali življenje in zdravje ljudi.

Pogubna in uničujoča moč energije, surovin in virov, ki se uporabljajo v vseh oblikah proizvodnje in raziskav, ni samo lastna njihovi naravi in se vedno lahko izrazi, temveč se je tudi že dejansko izrazila, kar je mogoče videti v številnih primerih iz bližnje in daljne preteklosti, v številnih industrijskih, kemijskih, naftnih in drugih nesrečah, ki so vodile v ekološke katastrofe neizmernih razsežnosti. Požari, poplave, eksplozije, poškodbe, zastrupitve, nesreče različnih vrst, velikosti in trajanja so pogosti pojavi, velikokrat s hudimi in katastrofalnimi posledicami za okolje, vključno s številnimi človeškimi žrtvami ali telesnimi poškodbami, ki ogrožajo ali so škodljivi za zdravje ter povzročijo ogromno materialno škodo zraku, vodi, tlom, rastlinstvu, živalstvu in drugim segmentom, ki skupaj tvorijo življenjsko okolje. To pa je druga, temna stran tehničnega in tehnološkega napredka v zadnjega pol stoletja.

explosions, injuries, poisonings, accidents of various kinds, size and duration are frequent occurrences, often with serious and catastrophic consequences to the environment including a large number of human casualties, bodily injuries, endangering or injuries to health and immense material damages to air, water, soil, flora, fauna and other segments jointly forming the living environment. This is the other, the dark side, and a tribute to the technical and technological progress of the last half century.

All constitutions in Bosnia and Herzegovina provide for the right to a healthy environment. In view of this constitutional provision, Bosnia and Herzegovina, or its entities, Republika Srpska and the Federation of Bosnia and Herzegovina, as well as the Brčko District of BIH have the obligation to regulate and ensure the protection of the environment, that is the system for environmental protection and improvement and to protect and encourage the rational use of natural goods with the aim of protecting and improving the quality and life of citizens, as well as protecting and restoring the environment. On the other hand, everyone, in accordance with the law, is obliged to protect and improve the environment within their capabilities. Finally, only the law regulates the protection, use, improvement and management of goods of general interest, as well as the payment of prescribed fees for the use of goods of general interest and urban construction land.

Of particular importance from the point of view of environmental protection[1] are the criminal laws of the Republika Srpska, the Federation of BIH and the Brčko District of BIH. These laws provide for a powerful and comprehensive system of so-called ecological offences2, or ecological crimes (as the most dangerous forms of these offences in terms of their importance, nature and character) with the aim of providing lawful, timely and efficient environmental protection in Bosnia and Herzegovina. Ecological crimes commonly referred to as ecological criminal acts are provided for in the criminal laws of the entities and the Criminal Code of the BD BIH, in a group of criminal offences against the environment, and some of them are also prescribed in a group of criminal offences against the general safety of people and property. The subject of protection in all these criminal offences is the environment or its individual segments (air, water, land, flora or fauna), although, not without reason, some legal theorists believe that the subject of the protection in the criminal offences against the environment is man's right to a healthy environment as one of the most important, fundamental or universal human rights.

Despite such wide-ranging normative framework for environmental protection, however, there are many cases in Bosnia and Herzegovina where different activities of physical and legal persons violate the rules or norms set out in these laws through the different activities of individuals and groups (sometimes even individual states) constituting the illegal, prohibited and punishable or delinquent behaviour or offence.

Bosnia and Herzegovina's criminal law envisages around twenty criminal offences against the environment for which are prescribed the most severe types of criminal sanctions, the most frequent ones being the following: 1) Pollution of the environment or environmental pollution; 2) Pollution of the environment by waste material or waste; 3) Endangering the environment by noise; 4) The illegal construction and commissioning of buildings and installations; 5) Pollution of food and water intended for human use or for feeding animals; 6) Non-compliance with regulations for the control of diseases of animals and plants; 7) Failure to comply with the decision on environmental protection measures; 8) Forest theft; 9) Deforestation; 10) Fire (forest) fires; 11) Unlawful (illegal) hunting and 12) Unlawful (illegal) fishing.

These incriminations are aimed at the protection of the environment, that is, the right of man to a healthy living environment (object to protection) as a precondition of the normal life of humans and animals.

The commitment of these criminal offences is related, as a rule, to the actions or failures departing from environmental protection rules (violation of the regulations in the area of so-called environmental law).

[1] Environmental protection includes all appropriate actions and measures aimed at the prevention of inflicting any danger, harm or pollution of the environment, reduction and repair of damage, and rehabilitation of all kinds of environmental pollution.

[2] Ecological offences constitute any unauthorised action in the area of management, preservation, improvement and protection of man's living and working environment in a wider and more immediate environment. There are several types of ecological offences depending on the extent and intensity of the impacts on the environment, the activities undertaken, the characteristics of the perpetrators and legal definitions of the certain actions set out in the relevant laws and by-laws of the general nature, as well as the types of prescribed sanctions. When it comes to the Federation of BIH, Republika Srpska and BD BIH, in the structure of ecological offences, regardless of their common characteristics, two types of criminal (ecological) offences can be distinguished: 1) criminal offences and 2) misdemeanours.



Vse ustanove v Bosni in Hercegovini zagotavljajo pravico do zdravega okolja. Glede na to ustavno določbo morajo Bosna in Hercegovina ali njene entitete, Republika Srbska in Federacija Bosne in Hercegovine ter distrikt Brčko v BiH urejati in zagotavljati varstvo okolja, tj. s sistemom za varstvo okolja in njegovo izboljšanje, ter zaščititi in spodbujati racionalno rabo naravnih dobrin zaradi varovanja in izboljšanja kakovosti življenja državljanov ter varstva in sanacije okolja. Po drugi strani mora vsakdo v skladu z zakonom varovati in izboljševati okolje v mejah svojih zmogljivosti. Nazadnje, le zakon ureja varstvo, rabo, izboljšanje in upravljanje dobrin v splošnem interesu ter plačilo predpisanih pristojbin za rabo dobrin v splošnem interesu in zemljišč za mestno gradnjo.

Z vidika varstva okolja[1] je kazenska zakonodaja Republike Srbske, Federacije Bosne in Hercegovine ter distrikta Brčko v BiH posebno pomembna. Ta zakonodaja je močan in celovit sistem tako imenovanih ekoloških prekrškov[2] ali ekoloških kaznivih dejanj (kot najnevarnejše oblike teh kaznivih dejanj glede na njihovo pomembnost, naravo in značilnosti), da se zagotovi zakonito, pravočasno in učinkovito varstvo okolja v Bosni in Hercegovini. Ekološki kriminal, običajno imenovan ekološka kazniva dejanja, je opredeljen v kazenski zakonodaji entitet in kazenskem zakoniku distrikta Brčko v BiH v skupini kaznivih dejanj zoper okolje, nekatera od njih pa so opredeljena v skupini kaznivih dejanj zoper splošno varnost ljudi in premoženja. Pri vseh teh kaznivih dejanjih je varovano okolje ali njegovi posamezni deli (zrak, voda, zemlja, rastlinstvo ali živalstvo), čeprav, in to ne brez razloga, nekateri pravni teoretiki menijo, da je pri teh kaznivih dejanjih zoper okolje varovana človekova pravica do zdravega okolja, kot ena od najpomembnejših, temeljnih ali splošnih človekovih pravic.

Kljub tako obsežnemu normativnemu okviru za varstvo okolja so v Bosni in Hercegovini številni primeri, v katerih se z raznimi aktivnostmi fizičnih in pravnih oseb kršijo predpisi ali normativi, določeni v tovrstnih zakonodajah, in to z raznimi nezakonitimi, prepovedanimi in kaznivimi ravnanji posameznikov in skupin (včasih celo posameznih držav) ali s hudodelskim ravnanjem ali prekrški.

Kazenska zakonodaja Bosne in Hercegovine predvideva približno dvajset kaznivih dejanj zoper okolje, za katera so predpisane najstrožje kazenske sankcije, med katerimi so najpogostejše: 1) onesnaževanje okolja ali okoljsko onesnaževanje, 2) onesnaženje okolja z odpadnim materialom ali odpadki, 3) obremenjevanje okolja s hrupom, 4) nezakonita gradnja ter začetek obratovanja objektov in naprav, 5) onesnaževanje hrane in vode za ljudi ali krme za živali, 6) neskladnost s predpisi za obvladovanje bolezni živali in rastlin, 7) neizpolnjevanje sklepa o okoljevarstvenih ukrepih, 8) gozdne kraje. 9) krčenje gozdov, 10) netenje (gozdnih) požarov, 11) nedovoljen (nezakonit) lov in 12) nedovoljen (nezakonit) ribolov.

Te obdolžitve so namenjene varstvu okolja, tj. pravici ljudi do zdravega življenjskega okolja (ki je predmet varstva) kot temeljnega pogoja za normalno življenje ljudi in živali.

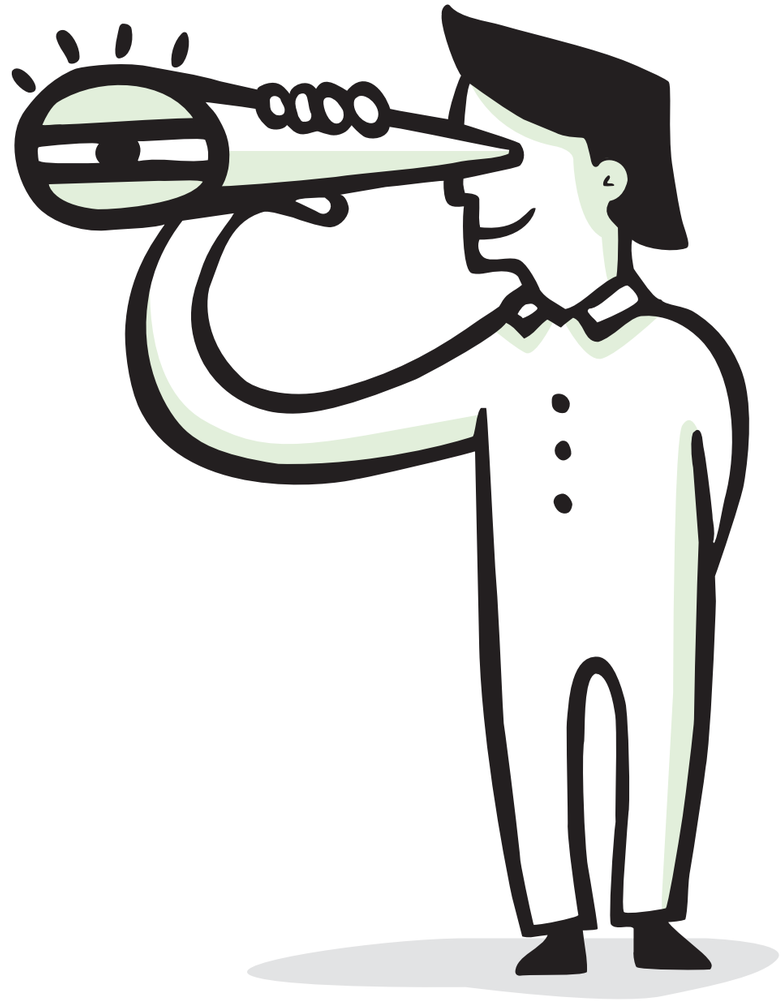
Izvedba teh kaznivih dejanj je praviloma povezana z dejanji ali opustitvijo dejanj v nasprotju s predpisi o varstvu okolja (kršitev predpisov na področju tako imenovanega okoljskega prava).

Splošna narava teh kaznivih dejanj je njihova posebna značilnost. Da bi v celoti razumeli vsebine in značilnosti narave teh kaznivih dejanj, je treba opraviti analizo druge nekazenske zakonodaje (tako imenovanega okoljskega prava). Storilec teh kaznivih dejanj je lahko katera koli oseba, ki velja za krivo, če je ugotovljeno naklepno dejanje (čeprav bi za nekatera kazniva dejanja zadostovala ugotovitev malomarnosti). Praviloma je posledica teh kaznivih dejanj kršitev ali ogrožanje dobrin ali okolja.

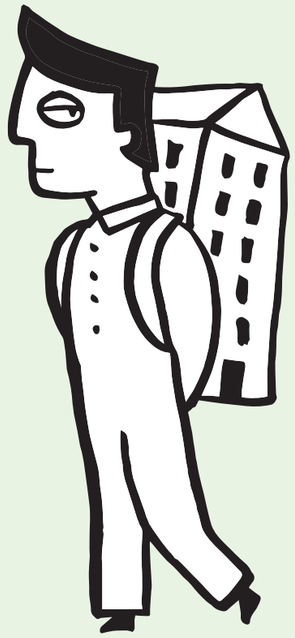
[1] Varstvo okolja zajema vsa primerna dejanja in ukrepe, namenjene preprečevanju izpostavljanja nevarnosti, škode ali onesnaževanja okolja, zmanjšanju in odpravi škode, ter sanacijo vseh vrst onesnaževanja okolja.

[2] Ekološka kazniva dejanja pomenijo vsa nepooblaščena dejanja pri upravljanju, ohranjanju, izboljševanju in varovanju človekovega življenjskega in delovnega okolja v širšem in bližnjem okolju. Obstaja več vrst ekoloških kaznivih dejanj glede na obseg in jakost vplivov na okolje, izvedene aktivnosti, značilnosti storilcev in pravne opredelitve nekaterih dejanj, opredeljenih v ustreznih zakonih in splošnih podzakonskih aktih, ter vrst predpisanih sankcij. V Federaciji Bosne in Hercegovine, Republiki Srbski in distriktu Brčko v BiH je v strukturi ekoloških kaznivih dejanj ne glede na njihove skupne značilnosti mogoče razlikovati dve vrsti kaznivih (ekoloških) dejanj: 1) kazniva dejanja in 2) kršitve dolžnega ravnanja.

Blanket disposition of these criminal offences is their special characteristic. Namely, in order to fully understand the content and characteristics of the nature of these crimes, it is necessary to carry out an analysis of other non-criminal legislation (so-called environmental law). The perpetrator of these criminal offences can be any person, who will be considered guilty if the presence of premeditation is established (although for some offences it would be sufficient to establish negligence). The consequence of these criminal offences is, as a rule, a violation or a threat to a good or the environment.



**Idzet Memeti**
Ombudsman of the Republic of Macedonia



# Presentation on the situation concerning waste disposal in the Republic of Macedonia

From the information obtained, we can conclude that 42 municipalities in the Republic of Macedonia use local landfills for the municipal and other type of non-hazardous waste, none of them possess integrated an environmental permit, i.e. meets the legal standards. Some 14 municipalities use regional landfills (all municipalities of the City of Skopje), and 11 mainly smaller rural municipalities, use local or regional landfills.

General practice is to collect non-sorted municipal and non-hazardous industrial waste, so as non-sorted, non-hazardous and hazardous waste fractions. The practice of waste disposal does not meet any technical or environmental standards. Most public enterprises for communal hygiene are faced with the shortage of funds due to a low rate of collection of receivables and / or the low price for services related to waste. Only 19 municipalities carry out sorting of waste, while the other municipalities still do not have such an opportunity. The recovery and recycling of municipal waste are very limited. The utilisation of material that can be recycled, such as metal, paper, plastics, car batteries and accumulators is performed by the informal sector. Scrap metals represent the biggest part of the materials collected for recycling, so are the fractions of paper and cardboard.

The solid waste generated in the Republic of Macedonia is mainly disposed of in landfills. The Drisla landfill serving the region of Skopje is the only landfill in the country with an integrated environmental permit, covering an area of approximately 76 hectares. Solid municipal and other type of non-hazardous waste are deposited in this landfill. Only 18 percent of the waste is recycled which is far below the standards. The other landfills for municipal and other types of non-hazardous waste are usually full, improperly constructed, maintained and operated, and do not meet the requirements and standards in respect to environmental protection and human health. The current situation of solid waste management in Macedonia can be characterised as sub-standard, insufficient and inefficient and hampered by serious deficiencies (such as lack of public awareness, non-implementation of the legislation), resulting in various dysfunctional systems and many other similar negative impacts upon the environment and human health. The situation, especially in smaller towns, is similar: the collected waste is simply



**Idzet Memeti,**
varuh človekovih pravic Republike Makedonije

# Predstavitev stanja o odstranjevanju odpadkov v Republiki Makedoniji

Na podlagi pridobljenih informacij lahko sklepamo, da 42 občin v Republiki Makedoniji uporablja lokalna odlagališča za komunalne in druge vrste nenevarnih odpadkov, nobeno med njimi pa nima enotnega okoljskega dovoljenja, tj. da izpolnjuje pravne standarde. 14 občin uporablja regionalna odlagališča (vse občine v Skopju), 11 predvsem manjših podeželskih občin pa uporablja lokalna ali regionalna odlagališča.

Splošno uveljavljeno je zbiranje nerazvrščenih komunalnih in nenevarnih industrijskih odpadkov, tako kot nerazvrščenih, nenevarnih in delov nevarnih odpadkov. Praksa odstranjevanja odpadkov ne izpolnjuje nobenih tehničnih ali okoljskih standardov. Večina javnih podjetij za komunalno higieno se spopada s pomanjkanjem sredstev, predvsem zaradi nizke stopnje zbranih terjatev in/ali nizke cene storitev, povezanih z odpadki. Le 19 občin odpadke razvršča, druge občine pa še nimajo take možnosti. Predelava in recikliranje komunalnih odpadkov sta zelo omejena. Material, ki ga je mogoče reciklirati, kot so kovina, papir, plastika, avtomobilske baterije in akumulatorji, uporablja neformalni sektor. Največji delež zbranih materialov za recikliranje zajemajo odpadne kovine, tako kot deli papirja in kartona.

Trdni odpadki, nastali v Republiki Makedoniji, se večinoma odlagajo na odlagališča. Odlagališče Drisla, ki se uporablja za regijo Skopja, je edino odlagališče v državi z enotnim okoljskim dovoljenjem in zajema območje, veliko približno 76 hektarjev. Na to odlagališče se odlagajo trdni komunalni odpadki in druge vrste nenevarnih odpadkov. Le 18 odstotkov odpadkov se reciklira, kar je precej pod standardi. Druga odlagališča za komunalne in druge vrste nenevarnih odpadkov so običajno polna, neustrezno zgrajena, vzdrževana in upravljana ter ne izpolnjujejo zahtev in standardov v zvezi z varstvom okolja in zdravjem ljudi. Zdajšnje stanje ravnanja s trdnimi odpadki v Makedoniji je mogoče označiti kot podstandardno, nezadostno in neučinkovito ter z resnimi pomanjkljivostmi (na primer pomanjkanje ozaveščenosti javnosti in neizvajanje zakonodaje), posledica pa so razni nedelujoči sistemi in številni drugi podobni negativni vplivi na okolje in zdravje ljudi. Podobno stanje je zlasti v manjših mestih, kjer se zbrani odpadki preprosto odvržejo na prostem na obrobju mesta, na pobočjih pod slemenom gora, ob cestah ali ob rekah

thrown onto open space on the outskirts of the town, on the slopes of the mountain ridge or along roadsides or riverbanks near the city. All the waste hereby including industrial garbage, medical waste and hazardous household waste is mixed and disposed of in one place. Once the empty location is full, the landfill is left as such (without proper closing) and another; new location is selected for that purpose.

From the field visits we conducted to several landfills, we got the impression that many of the municipalities do not pay any attention to the environment, but only deposit the waste in the most suitable location for that purpose. Most of the landfills are not fenced or marked.

Only in approximately 10 municipalities are there special departments and entities designated for waste management. In the others, this issue is covered by the municipal departments of Urban Planning and Communal Affairs or through the municipal utilities. The only transfer stations in the Republic of Macedonia are in Tetovo and Skopje.

The National Plan for Waste Management envisages closure of all existing landfills and their replacement with regional landfills constructed and operational according to the standards listed in the Landfill Directive. The existing municipal landfills and the illegal dumpsites (so-called "wild" landfills), continue to cause pollution, while the final costs for their cleaning and closure continue to increase on a daily basis. There are measures envisaged for the gradual closure of the existing landfills and gradual cleaning of the "wild" dumpsites based on the calculated environmental risk.

For many years in Macedonia, there has been unsuccessful construction of regional landfills. In fact, with the amendments to the Law on Waste Management, which entered into force in October 2012, the competencies in the management of municipal solid waste undertaken by the municipalities were covered. The substantial amendments to the Act are refer to the introduction of regional waste management i.e. the obligation of the municipalities to establish a regional centre for waste management which has to implement the decisions and regional policies in the field of waste management delegated by the inter-municipal board for waste management (whose members are the municipalities' mayors as founders of the regional centre). This regional management should establish and organise a regional system for waste management with emphasis on setting up a regional landfill for waste and / or other facilities and installations for treating the waste. It is necessary to intensify the work for setting up regional centres for waste management and in a very short period of time to implement the project for construction of a regional landfill in each region. Only in this way, would there be basic preconditions in place for the effective protection of the fundamental factors of the environment and the health of residents in the region. This would allow reduction of the amount of waste in the existing local landfill. In addition, the coverage of the territory by the system for municipal solid waste would increase significantly, which would remove the illegal landfills from the suburbs and villages.



blizu mesta. Vsi zadevni odpadki, med katerimi so industrijski odpadki, medicinski odpadki in nevarni gospodinjski odpadki, so pomešani in se odlagajo na enem mestu. Ko je sprva prazna lokacija polna, se odlagališče pusti, kot je (ne da bi ga ustrezno zaprli), za ta namen pa se izbere druga, nova lokacija.

Iz terenskih ogledov številnih odlagališč smo dobili vtis, da mnoge občine okolju ne namenjajo nikakršne pozornosti, ampak le odlagajo odpadke na najprimernejši lokaciji v ta namen. Številna odlagališča niso ograjena niti označena.

Le v približno desetih občinah se z ravnanjem z odpadki ukvarjajo posebne službe in subjekti. V drugih občinah se s tem vprašanjem ukvarjajo občinske službe za urbanistično načrtovanje in komunalne zadeve ali komunalne službe. Prenosne postaje v Republiki Makedoniji imata le Tetovo in Skopje.

Nacionalni načrt ravnanja z odpadki predvideva zaprtje vseh zdajšnjih odlagališč, zamenjala pa naj bi jih regionalna odlagališča, ki bi bila zgrajena in bi delovala v skladu s standardi iz direktive o odlagališčih. Zdajšnja komunalna odlagališča in nezakonita odlagališča (tako imenovana divja odlagališča) še naprej onesnažujejo okolje, končni stroški za njihovo čiščenje in zaprtje pa se še naprej dnevno višajo. Na podlagi izračunanega okoljskega tveganja so predvideni ukrepi za postopno zapiranje zdajšnjih odlagališč in postopno čiščenje divjih odlagališč.

V Makedoniji se že dolga leta neuspešno gradijo regionalna odlagališča. Pravzaprav so bile s spremembami zakona o ravnanju z odpadki, ki je začel veljati oktobra 2012, obravnavane pristojnosti ravnanja s komunalnimi trdnimi odpadki, ki ga izvajajo občine. Pomembne spremembe zakona se nanašajo na uvedbo regionalnega ravnanja z odpadki, tj. obveznost občin, da ustanovijo regionalni center za ravnanje z odpadki, ki mora izvajati odločitve in regionalne politike na področju ravnanja z odpadki, skladno s pooblastilom medobčinskega odbora za ravnanje z odpadki (člani tega odbora so župani občin, ki so v vlogi ustanoviteljev regionalnega centra). To regionalno ravnanje z odpadki mora vzpostaviti in organizirati regionalni sistem ravnanja z odpadki, pri čemer se poudarek nameni vzpostavitvi regionalnega odlagališča odpadkov in/ali drugih objektov in naprav za ravnanje z odpadki. Nujno je okrepiti delo za vzpostavitev regionalnih centrov za ravnanje z odpadki in v zelo kratkem času izvesti projekt gradnje regionalnega odlagališča v vsaki regiji. Le tako bodo izpolnjeni osnovni pogoji za učinkovito varstvo temeljnih dejavnikov okolja in zdravja prebivalcev v regiji. To bi omogočilo zmanjšanje količine odpadkov na zdajšnjem lokalnem odlagališču. Poleg tega bi se močno povečalo sistemsko upravljanje območja v zvezi s trdnimi komunalnimi odpadki in posledično bi se odpravila nezakonita odlagališča v predmestjih in vaseh.

**Olja Jovičić**[1]
Secretary-General of the Secretariat of the Protector of Citizens

# Public Participation in Environmental Matters and Experiences of the Protector of Citizens

The right to a healthy environment and timely and full information about the state of the environment is guaranteed by the Constitution of the Republic of Serbia[2], therefore providing additional legal protection and attaching greater significance to it. However, given that raising public awareness of the importance of environment and its protection is a long-term process, public participation in environmental decision-making and passing regulations in our country has not yet reached its full capacity.

### 1 Access to environmental information

Besides the constitutional norm which guarantees the right of every citizen to be informed about issues of public importance, thereby including the state of the environment as well[3], legal provision which closely regulates this right is contained in the Law on Environmental Protection[4], while access to this information is applied according to the Law on Free Access to Information of Public Importance[5].

The Protector of the Citizens of the Republic of Serbia, as an authority which controls the legality and regularity of work of administrative bodies[6], regarding the right to access to environmental information, questions the fulfilment of the general obligation of all state organs to "regularly, timely, fully and objectively inform the public on the state of the environment"[7].

The experience of the Protector of the Citizens, to date, on this issue, indicates that even though we have ratified relevant international conventions, as well as legally verified relevant standards, public authorities are not yet fully prepared to transparent and clearly introduce the public to all data relating to the state of the environment and public health as well.

As one of the examples, we could mention the procedure which the Protector of the Citizens started on its own initiative, regarding the outbreak of fire at the landfill in Vinca and the smoke which affected suburban settlements in the vicinity of Belgrade for over a month after the outbreak of the fire. From the current course of the procedure and reports received from the authorities, it could be concluded that, even though the Republic of Serbia ratified the Stockholm Convention on Persistent Organic Pollutants[8], the concentration of substances which are considered to be highly toxic and carcinogens, dioxins and furans, is not being measured, nor has the obligation of their measurement been explicitly declared by law[9]. This way, the public has been deprived of receiving complete

[1] As a member of work groups, she participated in making a number of draft laws, such as Law on Civil Procedure, Law on Administrative Procedure, Law on Property Restitution and Compensation, Law on Public Property, Law on Public Attorney's Office. She is the founder of the association "Counselling for the Fight against Violence", the first safe house in Belgrade and a member of the Victimology Association. In July 2016, she was appointed Secretary General of the Secretariat of the Protector of Citizens.
[2] Article 74 of the Constitution of the Republic of Serbia (Official Gazette of the Republic of Serbia, No. 98/2006).
[3] Article 51 of the Constitution of the Republic of Serbia (Official Gazette of the Republic of Serbia, No. 98/2006).
[4] Official Gazette of the Republic of Serbia, No. 135/2004, 36/2009, 36/2009 – other law, 72/2009 – other law, 43/2011 – Constitutional Court's decision and 14/2016.
[5] Official Gazette RS No. 120/04, 54/2007, 104/2009 and 36/2010.
[6] Article 17, paragraph 2 of the Law on the Protector of the Citizens (Official Gazette of the Republic of Serbia, No. 79/2005 and 54/2007).
[7] Article 78, paragraph 1 of the Law on the Environmental Protection (Official Gazette of the Republic of Serbia, No. 135/2004, 36/2009, 36/2009 – other law, 72/2009 – other law, 43/2011 – Constitutional Court's decision and 14/2016).
[8] Law on the Confirmation of the Stockholm Convention on Persistent Organic Pollutants (Official Gazette of the Republic of Serbia – International contracts, No. 42/2009).
[9] Law on Air Protection (Official Gazette of the Republic of Serbia, No. 36/2009 and 10/2013) and The Regulation on Monitoring Terms and Air Quality Requirements (Official Gazette of the Republic of Serbia, No. 11/2010, 75/2010 and 63/2013).



**Olja Jovičić,**[1]
generalna sekretarka v uradu varuha državljanov, Ombudsman Srbije

# Udeležba javnosti v okoljskih zadevah in izkušnje Varuha državljanov

Pravico do zdravega okolja ter pravočasnih in popolnih informacij o stanju okolja zagotavlja ustava Republike Srbije[2], ki s tem zagotavlja dodatno pravno varstvo in ji pripisuje večji pomen. Vendar ob tem, ko je čedalje večja ozaveščenost javnosti o pomenu okolja in varstvu okolja dolgoročni proces, udeležba javnosti pri odločanju o okoljskih zadevah in sprejemanju okoljske zakonodaje v naši državi še ni dosegla svojih polnih zmožnosti.

### 1 Dostop do okoljskih informacij

Poleg ustave, ki vsakemu državljanu zagotavlja pravico, da je seznanjen o zadevah javnega pomena, s tem pa tudi o stanju okolja[3], je pravna določba, ki podrobno ureja to pravico, v zakonu o varstvu okolja[4], dostop do teh informacij pa je mogoč skladno z zakonom o prostem dostopu do informacij javnega značaja[5].

[1] Kot članica delovnih skupin je sodelovala pri pripravi številnih osnutkov zakonov, na primer zakona o civilnem postopku, zakona o upravnem postopku, zakona o vračilu premoženja in odškodninah, zakona o javni lastnini in zakona o uradu javnega pravobranilca. Je ustanoviteljica združenja za svetovanje v boju proti nasilju, prve varne hiše v Beogradu in članica Viktimološkega društva. Julija 2016 je bila imenovana za generalno sekretarko urada varuha državljanov.
[2] 74. člen ustave Republike Srbije (Uradni list Republike Srbije, št. 98/2006).
[3] 51. člen ustave Republike Srbije (Uradni list Republike Srbije, št. 98/2006).
[4] Uradni list Republike Srbije, št. 135/2004, 36/2009, 36/2009 – druga zakonodaja, 72/2009 – druga zakonodaja, 43/2011 – odločitev ustavnega sodišča in 14/2016.
[5] Uradni list Republike Srbije, št. 120/04, 54/2007, 104/2009 in 36/2010.

information on the state of the environment and its impact on public health, contrary to the ratified Aarhus Convention[10], as well as to the Protocol to the Aarhus Convention[11].

This issue, at the same time, again highlighted a well-known fact that a low level of waste management is one of the largest environmental issues in the Republic of Serbia, and that in many municipalities, illegal landfills represent the main form of communal and other waste disposal, the cause of which is, inter alia, low level of awareness of the importance of the environment.

**2 Public participation in decision-making processes that affect the environment**

The right of public participation in decision-making processes includes participation in strategic environmental impact assessment procedure and impact assessment procedure of certain projects, in the procedure of issuing an integrated environmental pollution prevention and control permit, as well as in making and adopting air quality plans, waste management plans, action plans for environmental noise prevention, and the water pollution protection plan.[12]

The most common issue, which was brought up before the institution of the Protector of Citizens was public participation in the strategic environmental impact assessment procedure and the impact assessment procedure of certain projects. The conclusion from those procedures implies that authorities mainly and formally respect the obligation of informing the public, but they lack the will to reconsider their decisions in situations where circumstances have changed in such a way that there is a possibility that decisions could become disproportionate.

In the procedure conducted by the complaint of the townships of Radmilovac, which referred to planned construction of high voltage power lines on this location, the Protector of the Citizens established that responsible authorities had started the process of development and implementation of the power lines construction project in 2009, based on the planning document in 1987, when there were no objects in that area, and where in the meantime, residential buildings, local nursery and school have been built in proximity. Taking into account the new situation on the field, although the environmental impact assessment procedure was undertaken, whereby there were no opinions from interested organs and organisations, nor interested public, The Protector of the Citizens recommended that the responsible authorities reassess the environmental impact of this project, with complete information of the public, especially the interested public, in a transparent procedure and based on the actual situation on the field.[13]

The issue, which also appears in practice, is that the interested public often does not join public debates in impact assessment procedures, even though it was properly informed, and then, when implementation of the project begins, there is a resistance of the public. The main reason for this is rather the fact that the public is not aware enough of the importance of these assessment procedures in the planning phase, than that the public has been inadequately informed of holding a public debate.[14]

**3 Right to legal remedies in environmental matters**

The right to legal remedies in environmental matters, in general, implies protection in an administrative procedure before state authority and the right to file a report to environmental inspections. Ultimately, there is a possibility to initiate court proceedings in environmental matters (minor offence, civil and criminal).

Regarding the right to access information on public importance, considering that the procedure for exercising this right is provided according to the Law on Free Access to Information of Public Importance, legal protection

[10] Law on the Confirmation of the *Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters* (Official Gazette of the Republic of Serbia – International contracts, No. 38/2009).

[11] Law on the Confirmation of the Protocol on Pollutant Release and Transfer Registers to the Aarhus Convention (Official Gazette of the Republic of Serbia – International contracts, No. 8/2011).

[12] Article 81 of the Law on Environmental Protection (Official Gazette of the Republic of Serbia, No. 135/2004, 36/2009, 36/2009 – other law, 72/2009 – other law, 43/2011 – Constitutional Court's decision and 14/2016).

[13] Recommendation of the Protector of the Citizens No 6-9-1387/14 of November 12, 2014, http://www.ombudsman.rs/index.php/2012-02-07-14-03-33/3553-2014-11-14-13-22-09.

[14] Article 29, paragraph 1 of the Law on Environmental Impact Assessment (Official Gazette of the Republic of Serbia, No. 135/2004 and 36/2009).



Varuh državljanov Republike Srbije kot organ, ki nadzoruje zakonitost in pravilnost dela upravnih organov[6], v zvezi s pravico do dostopa do okoljskih informacij dvomi o izpolnjevanju splošne obveznosti vseh državnih organov, da ti »redno, pravočasno, celovito in objektivno seznanjajo javnost s stanjem okolja«[7].

Dozdajšnje izkušnje varuha državljanov s tega področja kažejo, da čeprav smo ratificirali zadevne mednarodne konvencije in pravno potrdili zadevne standarde, javni organi še niso povsem pripravljeni na pregledno in jasno seznanitev javnosti z vsemi podatki, ki se nanašajo na stanje okolja in javno zdravje.

Kot enega izmed primerov lahko omenimo postopek, ki ga je varuh državljanov začel na lastno pobudo in se je nanašal na izbruh požara na deponiji v Vinči in izpuste dima v predmestnih naseljih v okolici Beograda več kot en mesec po izbruhu požara. Iz sedanjega poteka postopka in poročil, ki so jih predložili organi, je bilo mogoče sklepati, da se, čeprav je Republika Srbija ratificirala Stockholmsko konvencijo o obstojnih organskih onesnaževalih[8], koncentracija snovi, za katere se šteje, da so zelo strupene in rakotvorne, dioksinov in furanov ni merila, niti ni obveznost za merjenje teh koncentracij jasno izražena v zakonodaji.[9] S tem je bila javnost prikrajšana za celovite informacije o stanju okolja in vplivu na javno zdravje, kar je v nasprotju z ratificirano Aarhuško konvencijo[10] in Protokolom k Aarhuški konvenciji[11].

To vprašanje je sočasno znova poudarilo dobro znano dejstvo, da je nizka raven ravnanja z odpadki ena izmed največjih okoljskih težav v Republiki Srbiji in da so v številnih občinah nezakonita odlagališča glavni način odlaganja komunalnih in drugih odpadkov, zaradi česar je med drugim majhna ozaveščenost javnosti o pomenu varstva okolja.

**2 Udeležba javnosti v postopkih odločanja, ki se nanašajo na okolje**

Pravica javnosti do udeležbe v postopkih odločanja zajema sodelovanje v strateškem postopku presoje vplivov na okolje in postopku presoje vplivov nekaterih projektov, v postopku izdaje celovitega dovoljenja za preprečevanje in nadzorovanje onesnaževanja okolja ter pri pripravi in sprejemanju načrtov za kakovost zraka, načrtov ravnanja z odpadki, akcijskih načrtov za preprečevanje okoljskega hrupa in načrta za preprečevanje onesnaževanja voda.[12]

Najpogostejše vprašanje, ki se je pojavilo pred ustanovitvijo varuha državljanov, je bilo udeležba javnosti v strateškem postopku presoje vplivov na okolje in postopku presoje vplivov nekaterih projektov. Končanje teh postopkov pomeni, da organi večinoma in formalno spoštujejo obveznost obveščanja javnosti, vendar nimajo želje, da bi znova pretehtali svoje odločitve v primerih, v katerih so se okoliščine tako spremenile, da je celo mogoče, da bi odločitve postale nesorazmerne.

Varuh državljanov je v postopku, izvedenem na podlagi pritožbe okrožja Radmilovac v zvezi z načrtovano gradnjo visokonapetostnih električnih vodov na tej lokaciji, ugotovil, da so pristojni organi postopek priprave in izvedbe projekta gradnje energetskih vodov leta 2009 začeli na podlagi prostorskega akta iz leta 1987, ko na tem območju ni bilo nobenih objektov, v vmesnem času pa so bili v bližini zgrajeni stanovanjski objekti ter lokalna vrtec in šola. Ob upoštevanju novih okoliščin na terenu, kljub izvedenemu postopku presoje vplivov na okolje, v sklopu katerega ni bilo mnenj zainteresiranih organov in organizacij niti zainteresirane javnosti, je varuh državljanov pristojnim organom priporočil, naj znova preverijo vpliv tega projekta na okolje, skupaj s celovitimi informacijami javnosti, zlasti zainteresirane javnosti, in to v preglednem postopku in na podlagi dejanskih razmer na terenu.[13]

[6] Drugi odstavek 17. člena zakona o varuhu državljanov (Uradni list Republike Srbije, št. 79/2005 in 54/2007).

[7] Prvi odstavek 78. člena zakona o varstvu okolja (Uradni list Republike Srbije, št. 135/2004, 36/2009, 36/2009 – druga zakonodaja, 72/2009 – druga zakonodaja, 43/2011 – odločitev ustavnega sodišča in 14/2016).

[8] Zakon o potrditvi Stockholmske konvencije o obstojnih organskih onesnaževalih (Uradni list Republike Srbije, mednarodne pogodbe, št. 42/2009).

[9] Zakon o varovanju zraka (Uradni list Republike Srbije, št. 36/2009 in 10/2013) in uredba o pogojih za spremljanje in zahtevah glede kakovosti zraka (Uradni list Republike Srbije, št. 11/2010, 75/2010 in 63/2013).

[10] Zakon o potrditvi Konvencije o dostopu do informacij, udeležbi javnosti pri odločanju in dostopu do pravnega varstva v okoljskih zadevah (Uradni list Republike Srbije, mednarodne pogodbe, št. 38/2009).

[11] Zakon o potrditvi protokola k Aarhuški konvenciji o registrih izpustov in prenosov onesnaževal (Uradni list Republike Srbije, mednarodne pogodbe, št. 8/2011).

[12] 81. člen zakona o varstvu okolja (Uradni list Republike Srbije, št. 135/2004, 36/2009, 36/2009 – druga zakonodaja, 72/2009 – druga zakonodaja, 43/2011 – odločitev ustavnega sodišča in 14/2016).

[13] Priporočilo varuha državljanov št. 6-9-1387/14 z dne 12. novembra 2014, http://www.ombudsman.rs/index.php/2012-02-07-14-03-33/3553-2014-11-14-13-22-09.

primarily implies the right to appeal to the Commission for Information of Public Importance and Personal Data Protection. The complete legal protection regarding public participation in environmental decision-making is stipulated in the Law on the Environmental Impact Assessment, considering that the interested public has the right of appeal against decisions made by the responsible authority in all stages of the assessment procedure.[15]

Based on to-date conducted procedures of controlling the legality and regularity of work, especially that of local inspections, to whom inspection supervision over the implementation of environmental provisions has been delegated, the Protector of the Citizens concludes that legal protection before inspections is incomplete, often ineffective and does not give expected results. Local inspectors, although authorised by law, often do not impose efficient measures on operators-pollutants, but tolerate the pollution, which represents the act of maladministration itself, and especially in situations when the pollution has been going on for many years. Simultaneously, deficiency in the present legal instruments also precludes efficient and rational control, especially in the field of environmental noise protection, unpleasant odours, the quality of construction materials and air quality in enclosed spaces.

As an example, we could mention the complaint of citizens of Backa Topola, which pointed to ten years of air pollution and pollution of the river Krivaja into which industrial pollutants dispose their waste. In the conducted procedure, the Protector of the Citizens recommended that the responsible inspection bodies consider imposing efficient sanctions on pollutants in the form of prohibition of discharging wastewater and eventually to order the temporary cessation of work, especially when it was determined that the discharged polluting substances exceeded the limit values of emissions prescribed by law.[16] Unfortunately, the responsible state organs have not yet shown willingness to use this legal authorisation in practice.

* * *

All above-mentioned segments and established deficiencies have one thing in common – lack of public and institutional awareness of the importance of the environment. Therefore, it is especially important to emphasise the importance of public participation in the adoption of environmental regulations as a starting point in implementing this constitutional right.

It could be said that the cooperation of state authorities and civil society organisations is more active, especially in the scope of the National Convention of Serbia on the European Union. However, in general, public participation in the adoption of regulations is still at a low level, as well as the effectiveness of public debates on which remarks and suggestions are made. In this respect, the necessity to improve their efficiency is apparent, above all, establishing a mutual trust relationship between state authorities and the public, with recognition that only this partnership can improve the legal frame in the field of the environment.

**In the** last year, in the procedure of harmonisation of legislation with legal acquisitions of the European Union, there has been noticeable strengthening of legislative activity in the field of environmental protection. This way, the normative framework has been established to improve existing solutions and provide more complete protection of the right of every person to a healthy environment, as well as to continue the accession negotiations and opening of Chapter 27 on the environment.

[15] Article 11, paragraph 1 and article 15, paragraph 1 of the Law on the Environmental Impact Assessment (Official Gazette of the Republic of Serbia, No. 135/2004 and 36/2009).

[16] Recommendation of the Protector of the Citizens No 6-27-2219/2014 of July 27, 2015, http://www.ombudsman.rs/index.php/2012-02-07-14-03-33/4269-2015-08-03-09-02-31.



V praksi se pojavlja še ena težava, in sicer da zainteresirana javnost pogosto ne sodeluje v javnih razpravah v postopkih presoje vplivov, čeprav je bila s tem pravilno seznanjena, ko pa se projekt začne izvajati, se javnost temu upira. Glavni razlog za to je predvsem to, da se javnost v fazi načrtovanja ne zaveda dovolj pomembnosti teh presoj, ne pa, da javnost ni ustrezno seznanjena z izvedbo javne razprave.[14]

**3 Pravica do pravnih sredstev v okoljskih zadevah**

Pravica do pravnih sredstev v okoljskih zadevah na splošno pomeni varstvo v upravnem postopku pred državnimi organi in pravico do predložitve poročila v zvezi z okoljskim pregledom. Poleg tega je mogoče začeti tudi sodne postopke v okoljskih zadevah (prekršek, civilni in kazenski).

V zvezi s pravico dostopa do informacij javnega značaja, glede na to, da se postopek za uresničevanje te pravice zagotavlja na podlagi zakona o prostem dostopu do informacij javnega značaja, pravna zaščita pomeni predvsem pravico do pritožbe komisiji za informacije javnega značaja in varstvo osebnih podatkov. Najbolj celovito pravno varstvo glede udeležbe javnosti pri odločanju o okolju je določeno v zakonu o presoji vplivov na okolje, saj ima zainteresirana javnost pravico do pritožbe zoper odločitve, ki jih sprejme pristojni organ, v vseh fazah postopka presoje.[15]

Na podlagi dosedanjih izvedenih postopkov nadzora zakonitosti in pravilnosti dela, zlasti dela lokalnih inšpekcijskih služb, na katere je bil prenesen inšpekcijski nadzor nad izvajanjem okoljskih določb, varuh državljanov ugotavlja, da je pravno varstvo pred inšpekcijskimi pregledi nepopolno in pogosto neučinkovito, poleg tega se ne dosegajo pričakovani rezultati. Lokalni inšpektorji, čeprav imajo zakonska pooblastila za to, povzročiteljem onesnaževal pogosto ne naložijo učinkovitih ukrepov, namesto tega dopuščajo onesnaženje, kar je že samo po sebi nepravilnost, še zlasti, kadar se onesnaževanje dogaja že več let. Ob tem tudi pomanjkanje veljavnih pravnih instrumentov preprečuje učinkovit in racionalen nadzor, zlasti na področju preprečevanja okoljskega hrupa, neprijetnih vonjav, kakovosti gradbenih materialov in kakovosti zraka v zaprtem prostoru.

Kot primer lahko omenimo pritožbo prebivalcev Bačke Topole, ki so opozorili na desetletno onesnaževanje zraka in onesnaževanje reke Krivaja, v katero industrijski onesnaževalci odlagajo odpadke. Varuh državljanov je v izvedenem postopku pristojnim inšpekcijskim organom priporočil, naj proučijo možnost uvedbe učinkovitih sankcij za onesnaževalce v obliki prepovedi izpusta odpadne vode in po potrebi odredijo začasno prekinitev delovanja, zlasti če je bilo ugotovljeno, da izpuščena onesnaževala presegajo mejne vrednosti emisij, predpisane z zakonom.[16] Na žalost pristojni državni organi še niso pokazali pripravljenosti za uporabo tega pravnega pooblastila v praksi.

* * *

Vsa zgoraj omenjena področja in ugotovljene pomanjkljivosti imajo skupno točko – pomanjkljivo ozaveščenost javnosti in institucij o pomenu okolja. Zato je še posebej pomembno poudariti pomen udeležbe javnosti pri sprejemanju okoljskih predpisov kot izhodišče za izvajanje te ustavne pravice.

Lahko bi rekli, da je sodelovanje državnih organov in organizacij civilne družbe aktivnejše, zlasti v sklopu nacionalne konvencije Srbije o Evropski uniji. Vendar je na splošno udeležba javnosti pri sprejemanju predpisov še vedno zelo majhna, tako kot učinkovitost javnih razprav, o katerih se podajajo pripombe in predlogi. V tem smislu je očitna potreba po izboljšanju njihove učinkovitosti, predvsem vzpostavitev medsebojnega zaupanja med državnimi organi in javnostjo, pri čemer se prizna, da bi le to partnerstvo lahko izboljšalo pravni okvir na področju okolja.

V preteklem letu je bila v postopku usklajevanja zakonodaje s prevzemanjem prava Evropske unije opazno okrepljena zakonodajna dejavnost na področju varstva okolja. Tako je bil vzpostavljen normativni okvir, da se izboljšajo zdajšnje rešitve in se zagotovi celovitejše varstvo pravice vsakega posameznika do zdravega okolja ter se nadaljujejo pristopna pogajanja in se odpre poglavje 27 o okolju.

[14] Prvi odstavek 29. člena zakona o presoji vplivov na okolje (Uradni list Republike Srbije, št. 135/2004 in 36/2009).

[15] Prvi odstavek 11. člena in prvi odstavek 15. člena zakona o presoji vplivov na okolje (Uradni list Republike Srbije, št. 135/2004 in 36/2009).

[16] Priporočilo varuha državljanov št. 6-27-2219/2014 z dne 27. julija 2015, http://www.ombudsman.rs/index.php/2012-02-07-14-03-33/4269-2015-08-03-09-02-31.

**Petar Ivezić**
Deputy Protector of Human Rights and Freedoms of Montenegro

# The Right to a Healthy Environment in Montenegro and the Role of the Ombudsman

Ladies and gentlemen, conference participants, and our host, please allow me to use this opportunity to thank you for the invitation to participate in this conference and for the support provided, both on behalf of the Protector of Human Rights and Freedoms of Montenegro and in my own name and to wish a successful meeting to all conference participants.

The right to a healthy environment has long been identified and recognised as one of the fundamental human rights.

Everyone has the right to a healthy environment but also the obligation to protect and improve the environment in accordance with the law and within the limits of their abilities. The failure to respect the rights associated with the protection of the environment and their violation pose a danger to the existence of existing plant and animal species and contribute to growing pollution and disturbances in natural factors which are of key importance for the quality of human life, finally also to an extent that significantly increases the risk to the existence of human beings, who are also the main cause of the problem.

So as to conserve nature and the environment as one of the core values of human dignity, Montenegro adopted the Declaration on the Ecological State of Montenegro in 1991, while the Constitutions from 1992 and 2007 have established the state's attitude towards the environment, which it has made one of its priorities, and its commitment to its conservation.

Article 23 of the Constitution of Montenegro stipulates that everyone shall have the right to a healthy environment, to receive timely and complete information on the status of the environment, to influence decision-making in issues of importance for the environment, and to legal protection of these rights. Everyone, the state in particular, shall be bound to preserve and improve the environment. Even though Article 59 of the Constitution of Montenegro



**Petar Ivezić,**
namestnik varuha človekovih pravic in svoboščin Črne gore

# Pravica do zdravega življenjskega okolja v Črni gori in vloga ombudsmana

Spoštovane dame in gospodje, udeleženci konference, spoštovana gostiteljica, dovolite mi, da se vam ob tej priložnosti zahvalim za povabilo k sodelovanju na tej konferenci in vso podporo tako v imenu varuha človekovih pravic in svoboščin Črne gore Šućka Bakovića kot v svojem imenu ter obenem zaželim uspešno delo vsem udeležencem konference.

Pravica do zdravega življenjskega okolja je že dolgo prepoznana in priznana kot ena izmed temeljnih človekovih pravic.

Vsakdo ima pravico do zdravega življenjskega okolja ter je v skladu z zakonom in v okviru svojih zmožnosti dolžan zaščititi in izboljšati življenjsko okolje. Nespoštovanje in kršenje pravic, ki se nanašajo na varovanje človekovega okolja, pomenita nevarnost za obstoj obstoječih rastlinskih in živalskih vrst ter pripomoreta k čedalje večjemu onesnaževanju in motnjam v naravnih dejavnikih, ki so ključni za kakovost življenja ljudi, navsezadnje v obsegu, ki močno poveča nevarnost za obstoj človeka, ki je pri vsem tem tudi glavni povzročitelj.

Za varstvo narave in človeškega življenjskega okolja kot ene izmed največjih vrednot človeškega dostojanstva je Črna gora leta 1991 sprejela deklaracijo o razglasitvi Črne gore kot ekološke države ter z ustavama iz let 1992 in 2007 vzpostavila državni odnos do življenjskega okolja, ki ga je uvrstila med svoje prednostne naloge, ob tem se je z njima posvetila njegovemu varovanju.

23. člen ustave Črne gore določa, da ima vsakdo pravico do zdravega življenjskega okolja, do pravočasnega in neomejenega obveščanja o stanju življenjskega okolja, do možnosti vplivanja na odločitve o vprašanjih, ki so pomembna za življenjsko okolje, in do pravne zaščite teh pravic ter da je vsakdo, še posebej država, dolžan varovati in izboljšati življenjsko okolje. Čeprav je svoboda podjetništva zagotovljena z 59. členom ustave Črne gore, se ta

guarantees the freedom of entrepreneurship, this freedom may be limited in order to protect human health, the environment, natural resources, cultural heritage or the security and defence of Montenegro.

The principles of conservation and improvement of the environment are stipulated by a set of laws relating to the environment. These are the Environmental Impact Assessment Act, the Strategic Environmental Impact Assessment Act, the Integrated Prevention and Pollution Control Act, the Noise Protection Act, the Waste Management Act, and the Spatial Planning and Construction Act, which have been harmonised with international standards and the provisions of the Aarhus Convention.

Montenegro has improved the legislative and the institutional framework of environmental protection, which has substantially, and in line with strict international standards, shaped the conditions for a more complete realisation of the right to a healthy environment. New legislative solutions have been adopted, which are harmonised with European standards and include key international law documents on noise protection, integrated prevention and pollution control, waste management, air protection and quality monitoring, use of and protection against chemicals, and environmental impact assessment with the main objective of our endeavours being harmonisation with EU regulations.

Montenegro has also ratified the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, which provides citizens the right to detailed information on the phenomena and activities that might impact the quality of the environment, human and animal health, and the right to participate in decision-making in the drafting of environmental plans and programmes. It further endeavours to raise citizens' awareness of environmental protection through media, workshops, conferences, round-table discussions, etc.

The Government of Montenegro has also adopted the National Strategy with Action Plan for the Transposition, Implementation and Enforcement of the EU Acquis on Environment and Climate Change 2016-2020. This Strategy was adopted so as to achieve a gradual and complete transposition of the EU acquis for Chapter 27: The environment and climate change in the legal order of Montenegro.

In Montenegro, environmental protection and the protection of human health from negative impacts of air pollution are very well harmonised with the EU acquis. We have also adopted the National Strategy with the Action Plan on Air Quality Management 2013-2016. The objective of adopting this strategy is to conserve and improve air quality and to avoid harmful consequences and prevent or reduce harmful consequences on human health and the environment.

The Ombudsman regularly monitors air quality in Montenegro, especially in the municipalities of Pljevlja, Nikšić, Bar, and Podgorica, where median daily concentrations of air pollutants are exceeded in the winter. Air quality is affected by residential heating systems, meteorological conditions, and the commutative action of continual emissions from industry and transport, whose status is also dependent on the onset of temperature inversions, which are accompanied by high atmospheric pressure, which leads to a high concentration of air pollutants at ground level. In this respect, he pointed out that in order to find a solution, immediate common measures are required by the national and local authorities in line with their competences, conservation plans have to be adopted including measures to rehabilitate the state of the environment in these municipalities, while the public has to be provided continual information on the achieved reduction of negative impacts on the environment and the analysis of implemented monitoring for all aspects of the environment.

Even though Montenegro has a good legislative and institutional framework for environmental protection, the insufficient ecological consciousness, lack of awareness of the citizens of their right to a healthy environment, the right to free access to information, the right to participate in environmental decision-making, and the right to judicial protection of these rights, we are often faced with cases of violation of the guaranteed right to a healthy environment.

From the beginning of the operation of the Office of the Protector of Human Rights and Freedoms of Montenegro, citizens have been submitting their complaints due to the endangerment of the right to a healthy environment, whereby they mostly emphasised that this right was endangered due to the construction and operation of commercial facilities, base stations for the mobile network, electricity lines (due to fear of excess radiation), noise and unpleasant smells of animal origin and too loud music and noise from catering facilities.



lahko omeji, če je to nujno za zaščito zdravja ljudi, življenjskega okolja, naravnih bogastev, kulturne dediščine ali varnosti in zaščite Črne gore.

Načela zaščite in izboljšanja življenjskega okolja so natančno določena v svežnju zakonov, ki se nanašajo na življenjsko okolje. To so zakon o presoji vpliva na življenjsko okolje, zakon o strateški presoji vpliva na življenjsko okolje, zakon o integriranem preprečevanju in nadzoru onesnaževanja življenjskega okolja, zakon o zaščiti pred hrupom v življenjskem okolju, zakon o ravnanju z odpadki ter zakon o načrtovanju prostora in gradnji objektov, ki so usklajeni z mednarodnimi standardi in z določili Aarhuške konvencije.

Črna gora je izboljšala normativni in institucionalni okvir varovanja življenjskega okolja, s čimer so se v pomembnem obsegu in na podlagi visokih mednarodnih standardov oblikovali pogoji za popolnejše uresničevanje pravice do zdravega življenjskega okolja. Sprejete so bile nove zakonske rešitve, ki so usklajene z evropskimi standardi in vključujejo ključne dokumente mednarodnega prava glede zaščite pred hrupom, integriranega preprečevanja in nadzora onesnaževanja, ravnanja z odpadki, zaščite zraka in spremljanja njegove kakovosti, uporabe in zaščite pred kemikalijami in presoje vpliva na življenjsko okolje, cilj prizadevanj pa je usklajenost s predpisi Evropske unije.

Črna gora je tudi ratificirala Konvencijo o dostopu do informacij, udeležbi javnosti pri odločanju in dostopu do pravnega varstva v okoljskih zadevah, ki državljanom zagotavlja pravico do natančnih informacij o pojavih in dejavnostih, ki bi lahko vplivale na kakovost življenjskega okolja, zdravje ljudi in živali, njihovo pravico da sodelujejo pri odločanju v pripravi načrtov in programov povezanih z življenjskim okoljem. Hkrati si prizadeva tudi za izboljšanje zavedanja državljanov glede varstva življenjskega okolja prek medijev, delavnic, konferenc, okroglih miz ipd.

Vlada Črne gore je sprejela nacionalno strategijo za prenos, implementacijo in izvajanje pravnega reda Evropske unije v področja življenjskega okolja in podnebnih sprememb z akcijskim načrtom 2016–2020. Ta strategija je bila sprejeta, da bi se dosegel postopen in popoln prenos celotnega pravnega reda Evropske unije za 27. poglavje: Življenjsko okolje in podnebne spremembe v pravni red Črne gore.

Področje varovanja življenjskega okolja in zdravja ljudi pred negativnimi vplivi onesnaževanja zraka je v Črni gori zelo dobro usklajeno s pravnim redom Evropske unije. Sprejeta je bila nacionalna strategija upravljanja kakovosti zraka z akcijskim načrtom 2013–2016. Cilj sprejetja te strategije je ohranjanje in izboljšanje kakovosti zraka ter izogibanje škodljivim posledicam in preprečevanje ali zmanjševanje škodljivih posledic za zdravje ljudi in življenjsko okolje.

Varuh redno spremlja kakovost zraka v Črni gori, še posebej v občinah Pljevlja, Nikšić in Bar ter v občini Podgorica, kjer so pozimi prekoračene srednje dnevne dovoljene koncentracije onesnaževal zraka. Na kakovost zraka vplivajo individualna kurišča, meteorološke razmere in skupno delovanje nenehnih izpustov iz industrije in prometa, katerih stanje je pogojeno tudi s pojavom temperaturnih inverzij, ki jih spremlja visok tlak v ozračju, kar privede do visoke koncentracije onesnaževal zraka v prizemnih plasteh ozračja. V skladu s tem je opozoril, da je treba za rešitev tega nujno nemudoma pristopiti k izvajanju skupnih ukrepov organov na državni in lokalni ravni v skladu s pristojnostmi, sprejeti načrt zaščite z ukrepi za sanacijo stanja življenjskega okolja v navedenih občinah ter redno obveščati javnost o doseženem zmanjšanju negativnih vplivov na življenjsko okolje in analizi izvedenih nadzorov vseh področij življenjskega okolja.

Vendar se, čeprav v Črni gori obstaja dober normativni in institucionalni okvir za zaščito življenjskega okolja, zaradi nezadostno razvite ekološke zavesti, nezadostne obveščenosti državljanov o pravici do zdravega življenjskega okolja, pravici do prostega dostopa do informacij, pravici do sodelovanja pri sprejemanju odločitev, ki se nanašajo na varstvo življenjskega okolja, in pravici do dostopa do pravnega varstva teh pravic, v praksi pojavljajo primeri kršitve zagotovljene pravice do zdravega življenjskega okolja.

Od začetka delovanja urada Varuha človekovih pravic in svoboščin se državljani nanj obračajo s pritožbami zaradi ogrožanja pravice do zdravega življenjskega okolja, pri čemer so predvsem poudarjali, da je ta pravica ogrožena zaradi gradnje in delovanja nekaterih gospodarskih objektov, postavljanja baznih postaj mobilne telefonije, električnih vodov (zaradi strahu pred čezmernim sevanjem), hrupa in neprijetnega vonja živalskega izvora ter preglasne glasbe in hrupa iz gostinskih lokalov.

In such cases, the Ombudsman contacted the competent authorities, local self-government authorities and competent inspectorates so that inspections would be implemented. They later informed us of the established situation and the measures adopted. The Office of the Ombudsman then adopted measures in line with its jurisdictions and on a case-to-case basis.

In his reports, the Ombudsman regularly notifies the Parliament of Montenegro, national authorities, self-government authorities, organisations, and the broader public of the established situation in procedures that were started due to individual complaints or at his own initiative in the context of the right to a healthy environment and of implemented measures in individual cases.

The Ombudsman points out the problems that occur due to inadequate actions by the competent authorities and offices in accordance with citizen demands, the failure to adopt legally foreseen measures for protecting citizens' rights to a healthy environment, with the problems stemming from illegal construction, municipal noise, which is mostly associated with too loud music coming from catering facilities located in residential buildings, especially in coastal towns during the tourist season but also in other towns across Montenegro throughout the year.

I wish to point out that we should all do everything in our power for a greater awareness of citizens regarding the conservation of a healthy environment for future generations. Once a month, let us not use our own motorised means of transport but instead use public transport or other alternative ecological means of transport, especially in larger cities.

Please allow me to conclude that a healthy mind in a healthy body can only exist in a healthy environment.



V takšnih primerih se je Varuh obrnil na pristojne državne organe in organe lokalne samouprave ter na pristojne inšpekcijske organe, da bi ti izvedli inšpekcijski nadzor. Ti so nas nato obvestili o ugotovljenem dejanskem stanju in sprejetih ukrepih. Glede na izid posameznega primera je Varuh nato sprejel ukrepe v skladu s svojimi pristojnostmi.

Varuh v svojih poročilih redno obvešča parlament Črne gore, državne organe, organe lokalne samouprave, organizacije in širšo javnost o ugotovljenem stanju v postopkih, začetih na podlagih posameznih pritožb in lastnih pobud, v okviru pravice do zdravega življenjskega okolja in o izvedenih ukrepih v konkretnih primerih.

Varuh je v okviru svojega delovanja opozarjal na težave, ki so se pojavile zaradi neprimernega ukrepanja pristojnih organov in služb v skladu z zahtevami državljanov, nesprejemanja zakonsko predvidenih ukrepov za zaščito pravice državljanov do zdravega življenjskega okolja, pri čemer so težave posledica nezakonite gradnje, komunalnega hrupa, ki je v večini primerov nastal zaradi preglasne glasbe iz gostinskih lokalov, ki so v stanovanjskih objektih, še posebej v obmorskih krajih v času turistične sezone in v drugih krajih v Črni gori čez vse leto.

Poudarjam, da moramo skupaj narediti vse za večjo ozaveščenost državljanov glede ohranjanja zdravega življenjskega okolja za prihodnje generacije, pri čemer enkrat mesečno v prometu ne uporabljamo lastnih motornih prevoznih sredstev in uporabimo javni prevoz – prometna ali druga alternativna ekološka prevozna sredstva, še posebej v velikih mestih.

Končal bi z mislijo, da je zdrav duh v zdravem telesu mogoč samo v zdravem življenjskem okolju.


**Lidija Lukina Kezić**
Deputy Ombudswoman of the Republic of Croatia


*Born in Zagreb, where she graduated from high school and graduated from the University of Zagreb, Faculty of Law in 1980. Passed the bar exam in 1982 after an internship at the Municipal and County Court in Zagreb. Elected as Deputy Ombudsperson by the Croatian Parliament and took office in 15th July 2013. Until her election as Deputy Ombudsperson, she worked at the Ministry of Foreign and European Affairs in the Department of International Law and in the diplomatic service, prior to which she worked for the Ministry of Justice: in 1996 she was appointed as Assistant Minister of Justice for the protection of human rights, and from 1999 to 2004 she was a Government Agent before the European Court of Human Rights in Strasbourg. She has been s a member of many professional working groups in the area of human rights' protection in the Government of the Republic of Croatia and the Council of Europe and has participated in numerous international seminars, conferences and forums in the field of human rights protection. She has published research papers dealing with the protection of human rights before the European Court of Human Rights in Strasbourg, execution of judgments of the European Court of Human Rights and in the field of interactional criminal law.*

## The Environment and Human Rights: Public Participation in Environmental Matters

The Croatian Ombudswoman is a commissioner of the Croatian Parliament responsible for the promotion and protection of human rights and freedoms and the performance of the mandates of the National Equality Body as well as the National Preventive Mechanism for the protection of persons deprived of their liberty. Also, the Croatian Ombudswoman is the Chair of the European Network of NHRIs (ENNHRI) and among other working groups of ENNHRI, participates in the ENNHRIs Working Group on Sustainable Development Goals (SDGs) which is directly related to environmental protection.

The Croatian Ombudswoman has recognised human rights concerns in environmental protection and since 2013, Environmental Protection is a specific chapter of her Annual Report to the Croatian Parliament, due to her motivation and awareness of environmental protection as a human rights issue but also due to the complaints coming from citizens and citizens' initiatives, mostly related to pollution of air, water or land caused by industrial plants




**Lidija Lukina Kezić,**
namestnica varuhinje človekovih pravic Republike Hrvaške


*Rojena je v Zagrebu, kjer je končala srednjo šolo in leta 1980 diplomirala na pravni fakulteti univerze v Zagrebu. Leta 1982 je po pripravništvu na občinskem in okrajnem sodišču v Zagrebu opravila pravosodni izpit. Hrvaški parlament jo je za namestnico varuha človekovih pravic imenoval 15. julija 2013, ko je funkcijo tudi prevzela. Pred imenovanjem za namestnico varuha človekovih pravic je bila zaposlena na ministrstvu za zunanje in evropske zadeve, na oddelku za mednarodno pravo, ob tem je delala tudi v diplomaciji. Pred tem je bila zaposlena na ministrstvu za pravosodje: leta 1996 je bila imenovana za pomočnico ministra za pravosodje in se je ukvarjala z varstvom človekovih pravic, med letoma 1999 in 2004 pa je bila imenovana za zastopnico vlade pred Evropskim sodiščem za človekove pravice v Strasbourgu. Bila je članica številnih strokovnih delovnih skupin s področja varstva človekovih pravic tako v okviru vlade Republike Hrvaške kot Sveta Evrope, udeležila se je tudi številnih mednarodnih seminarjev, konferenc in forumov s področja varstva človekovih pravic. Objavila je strokovne članke, v katerih je obravnavala varstvo človekovih pravic pred Evropskim sodiščem za človekove pravice v Strasbourgu ter izvrševanje sodb Evropskega sodišča za človekove pravice in na področju mednarodnega kazenskega prava.*

## Okolje in človekove pravice: udeležba javnosti pri okoljskih zadevah

Hrvaško varuhinjo človekovih pravic je za to funkcijo pooblastil hrvaški parlament in je odgovorna za spodbujanje in varovanje človekovih pravic in svoboščin, poleg tega opravlja naloge nacionalnega organa za enakost in državnega preventivnega mehanizma za zaščito oseb, ki jim je odvzeta prostost. Ob tem hrvaška varuhinja človekovih pravic predseduje evropski mreži nacionalnih institucij za človekove pravice in med drugimi delovnimi skupinami te mreže sodeluje v delovni skupini evropske mreže nacionalnih institucij za človekove pravice za izvajanje ciljev trajnostnega razvoja, ki so neposredno povezani z varstvom okolja.

Hrvaška varuhinja se zaveda vprašanja spoštovanja človekovih pravic na področju varstva okolja in od leta 2013 je varstvo okolja posebno poglavje v svojem letnem poročilu za hrvaški parlament, in to zaradi njene motivacije in zavedanja pomembnosti varstva okolja kot vprašanja spoštovanja človekovih pravic ter zaradi pritožb in pobud državljanov, pri čemer se te nanašajo predvsem na obremenjevanje zraka, vode ali zemlje, ki ga povzročajo

(state and private), waste management, electromagnetic radiation, noise pollution, small hydroelectric power plants that degrade protected areas of nature, etc.

Complaints refer to the right to access to information, access to justice and the rights of the citizens to participate in environmental decision-making processes at local and national level. All complaints have one thing in common, and that is citizens' concerns for their health and health of their families.

In our work, we give suggestions, opinions, recommendations and warnings to the state institutions and we monitor their implementation, but still, the level of their implementation is not satisfactory. Recently, we started to organise promotional activities, so in June 2016, we organised a public expert discussion on the Right to healthy life and conditions for a healthy environment since these rights are guaranteed by the Croatian Constitution. All relevant stakeholders participated in the event, such as state institutions, public health bodies, international organisations, civil society organisations and the media. It was also an opportunity to promote the Sustainable Development Goals, and its' Agenda, as an environmental socio-economic human rights issue and a framework with goals on which we should all work together.

In regard to given recommendations, in 2015, the Croatian Ombudswoman recommended that the Croatian government develop a national strategy for the implementation of the SDGs in the Republic of Croatia. Another recommendation was related to the further development of the Health Ecology (part of the National Strategy of the Public Health) by using appropriate regulation and introduction of the obligatory Health Impact Assessment (HIA) prior to the construction of industrial plants or other similar projects that could influence human health, which is particularly important for areas with active industries that use fossil fuel for longer periods of time.

In 2016, the Croatian Ombudswoman repeated previous recommendations since they had not been implemented and issued new recommendations directed to the improvement of protection from electromagnetic radiation, improvement of environmental assessment procedures, noise pollution particularly in air traffic and further improvements in health ecology by ensuring the test of speciation of arsenic and mercury within the public health system. She stressed the importance of harmonisation of Croatian legislation with the Arhus Convention, which is still weak in all of its three pillars: access to information, access to justice and public participation in environmental decision-making processes.

Since 2016 we have established more active cooperation with the Parliamentary Committee for Environment Protection and Nature Conservation and agreed to participate at their sessions, but we have also started to discuss further possibilities of cooperation based on the problems which citizens express in their complaints to the Ombudswoman. We participated at the Committee's thematic session related to the New Plan for waste management in Croatia on which occasion we presented an opinion based on human rights; the right to health, the right to a healthy life and procedural rights.

We recognise the Human Rights Based Approach (HRBA) to environmental protection as crucial in addressing environmental concerns that are framed in climate change, and sustainable development goals and the Croatian Ombudswoman promotes it on every occasion, international and national.

We see the Agenda for Sustainable Development as a transformational and ambitious human rights programme, as a charter for the people and the planet since nowadays we have to protect the people and the planet from the people, apart from re-ensuring peace, prosperity and partnerships that rely on basic values of dignity, equality, inclusiveness, healthy environment, future generations, peace, justice, solidarity, partnerships, etc. The sustainable development goals are also ambitious and transformational since they are integrated, indivisible, interlinked, and interdependent and balance the three dimensions of sustainable development: the economic, social and environmental.

The environmental dimension of human rights is a new one and should be strengthened for the benefit of the planet itself as well as for the benefit of the people. Recognition of the links between human rights and the environment has greatly increased in recent years. In 2012 the Human Rights Council established the mandate on human rights and the environment, and the Special Rapporteur on HR and the environment recommended that the SDGs incorporate a human-rights-based approach to environmental decision-making.



industrijski obrati (državni in zasebni), ravnanje z odpadki, elektromagnetno sevanje, obremenjevanje s hrupom, male hidroelektrarne, ki škodijo zavarovanim naravnim območjem, itd. Pritožbe se nanašajo na pravico do dostopa do informacij in do pravnega varstva ter pravice državljanov do udeležbe v postopkih odločanja o okoljskih zadevah na lokalni in nacionalni ravni. Vse pritožbe imajo eno skupno točko, to je zaskrbljenost državljanov za lastno zdravje in zdravje njihovih družin.

Pri svojem delu državnim ustanovam dajemo predloge, mnenja, priporočila in opozorila ter spremljamo njihovo izvajanje, raven njihovega izvajanja pa še ni zadovoljiva. Nedavno smo začeli organizirati promocijske aktivnosti, pri čemer smo junija 2016 organizirali javno strokovno razpravo o pravici do zdravega življenja in pogojih za zdravo okolje, saj so tovrstne pravice zagotovljene v hrvaški ustavi. Na dogodku so sodelovale vse pomembne zainteresirane strani, med drugim državne ustanove, organi, pristojni za javno zdravje, mednarodne organizacije, organizacije civilne družbe in mediji. To je bila tudi priložnost za promocijo ciljev trajnostnega razvoja in zadevne agende, in sicer kot vprašanje spoštovanja človekovih pravic na področju okolja in na družbenoekonomskem področju človekovih pravic ter kot okvir s cilji, za uresničitev katerih moramo vsi sodelovati.

V zvezi z navedenimi priporočili je hrvaška varuhinja človekovih pravic leta 2015 hrvaški vladi priporočila, naj pripravi nacionalno strategijo za izvajanje ciljev trajnostnega razvoja v Republiki Hrvaški. Drugo priporočilo se je nanašalo na nadaljnji razvoj zdravstvene ekologije (del nacionalne strategije za javno zdravje) na podlagi ustrezne ureditve in z uvedbo obvezne presoje vplivov na zdravje pred gradnjo industrijskih obratov ali izvedbo drugih podobnih projektov, ki lahko vplivajo na zdravje ljudi, kar je še posebej pomembno za območja z aktivnimi industrijskimi panogami, v katerih se daljši čas uporabljajo fosilna goriva.

Hrvaška varuhinja je leta 2016 ponovila prejšnja priporočila, ki niso bila izvedena, in dala nova priporočila, usmerjena v izboljšanje zaščite pred elektromagnetnim sevanjem, izboljšanje postopkov presoje vplivov na okolje, obremenitev s hrupom – zlasti v letalskem prometu in dodatne izboljšave v zdravstveni ekologiji z zagotavljanjem preizkusa speciacije arzena in živega srebra v sistemu javnega zdravstva. Poudarila je pomen usklajenosti hrvaške zakonodaje z Aarhuško konvencijo, saj je ta še vedno šibka v vseh treh stebrih, ti so dostop do informacij, dostop do pravnega varstva in udeležba javnosti v postopkih odločanja v okoljskih zadevah.

Od leta 2016 smo vzpostavili aktivnejše sodelovanje s parlamentarnim odborom za varstvo okolja in ohranjanje narave in se dogovorili za sodelovanje na njihovih sejah, ob tem smo začeli razpravljati tudi o nadaljnjih možnostih sodelovanja za rešitev težav, o katerih državljani poročajo v svojih pritožbah varuhinji. Sodelovali smo na tematski seji odbora v zvezi z novim načrtom za ravnanje z odpadki na Hrvaškem, pri čemer smo ob tej priložnosti predstavili mnenje v zvezi s človekovimi pravicami, pravico do zdravja, pravico do zdravega življenja in procesnimi pravicami.

Zavedamo se, da je za obravnavanje okoljskih vprašanj v sklopu podnebnih sprememb in ciljev trajnostnega razvoja ključen na človekovih pravicah temelječ pristop k varstvu okolja, zato hrvaška varuhinja človekovih pravic ta pristop promovira ob vsaki priložnosti, na mednarodni in nacionalni ravni.

Agendo za trajnostni razvoj razumemo kot program za preobrazbo in ambiciozen program za človekove pravice, kot listino za ljudi in planet, saj moramo danes zaščititi tako ljudi kot planet pred ljudmi ter znova zagotoviti mir, blaginjo in partnerstvo, ki temeljijo na temeljnih vrednotah dostojanstva, enakosti, vključenosti, zdravem okolju, prihodnjih generacijah, miru, pravičnosti, solidarnosti, partnerstvu itd. Tudi cilji trajnostnega razvoja so ambiciozni in namenjeni preobrazbi, saj so vključeni, enoviti, medsebojno povezani in soodvisni ter uravnotežijo vse tri razsežnosti trajnostnega razvoja: gospodarsko, družbeno in okoljsko.

Okoljska razsežnost človekovih pravic je nova in jo je treba okrepiti tako v korist planetu kot v korist ljudi. V zadnjih letih se je močno okrepilo zavedanje povezanosti človekovih pravic in okolja. Leta 2012 je Svet za človekove pravice ustanovil mandat strokovnjaka za človekove pravice in okolje, posebni poročevalec o človekovih pravicah in okolju pa je priporočil, naj se cilji trajnostnega razvoja na podlagi odločanja v okoljskih zadevah vključijo v človekove pravice.

Resnično verjamemo, da je treba vidik človekovih pravic vedno upoštevati v povezavi z okoljem, ko se obravnavajo pritožbe državljanov ali pri spremljanju in poročanju nacionalnim parlamentom in mednarodnim mehanizmom za človekove pravice. Načela in standardi človekovih pravic morajo biti izhodišče za vse politike in njihov glavni

We indeed believe that a human rights perspective to the environment should always be present when working on the citizens' complaints or monitoring and reporting to the national parliaments and international human rights mechanisms. Human Rights principles and standards should guide all policies, and their main objective should be to fulfil human rights, while human rights holders should participate in all environmental decision-making processes at local and national level. The role of NHRIs should be to ensure that the HRBA is implementing wherever needed and in an effective way.

Advocating in the decision-making processes is the core promotional role of NHRIs. When advocating for the implementation of the SDGs, we should keep in mind that it is a human rights document that has the people and the planet in focus, and this perspective should be promoted as a gateway into all relevant policy decision-making processes at the national, regional and international level that deal with the people and the planet. These are the environmental decision-making processes together with the decision-making processes related to regular human rights issues, such as education, work, health, housing, etc., but also the decision-making process related to the economy.

Pro-active role and concrete activities in addressing human rights concerns of the NHRIs within the SDGs are written in the Merida Declaration (HR workshops, partnerships, facilitation, investigations etc.). They should be conducted depending on the needs of the people on the ground and the needs of NHRIs, and their main purpose should be the improvement and strengthening of all human rights standards and mechanisms for their protection, effective and supportive cooperation and exchange of the experiences and practices. Together with active participation of NHRIs in the UN Human Rights mechanisms as well as in environmental and human rights decision-making processes at the national level, at the same time, cooperation with the UN agencies, national and international civil society organisations, independent experts and citizens should be nourished in an atmosphere of mutual understanding and in a transparent manner.



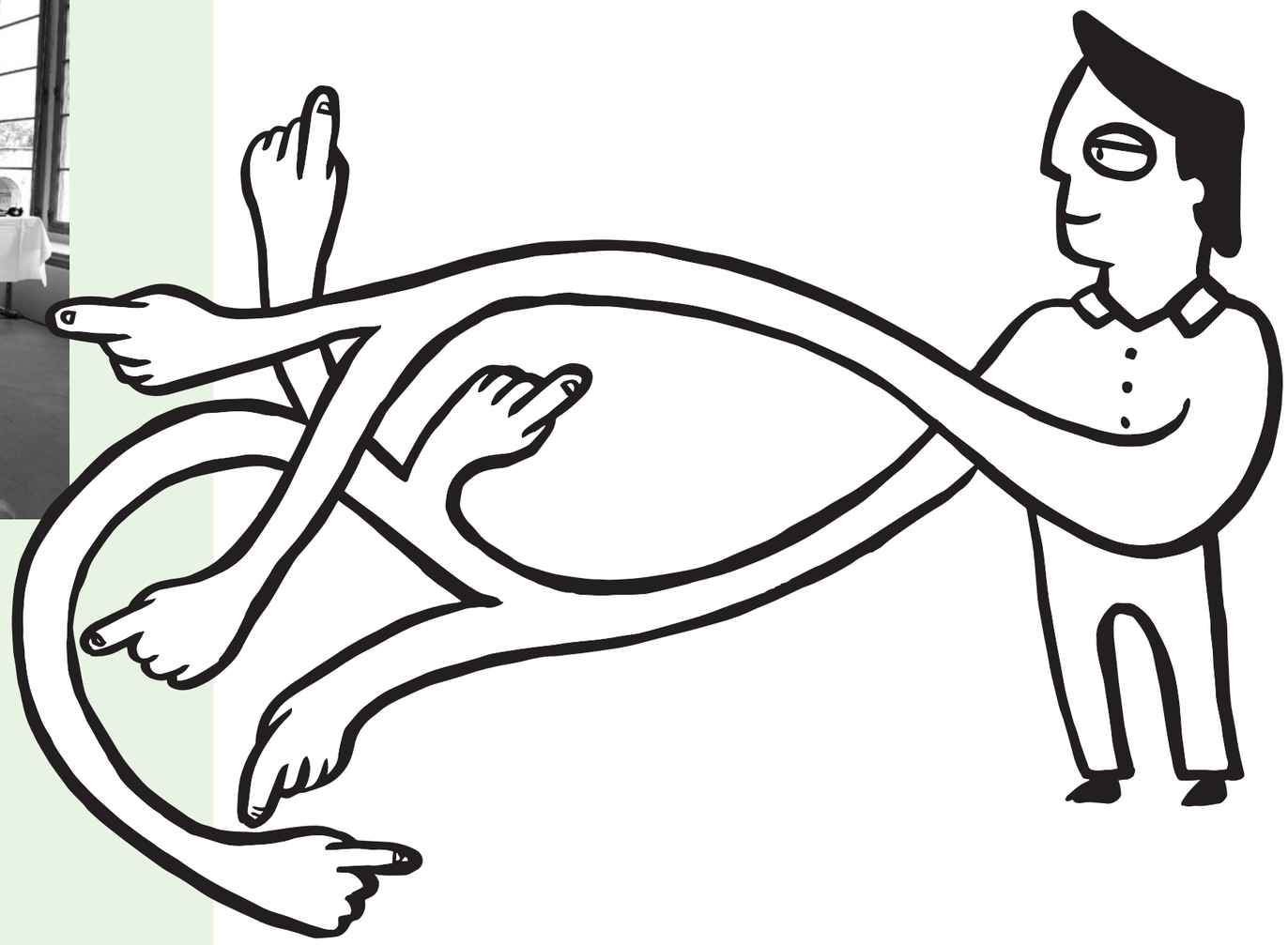
cilj mora biti spoštovanje človekovih pravic, vsi nosilci človekovih pravic pa morajo sodelovati v vseh postopkih odločanja v okoljskih zadevah na lokalni in nacionalni ravni. Vloga nacionalnih institucij za človekove pravice mora zagotoviti, da se pristop, ki temelji na človekovih pravicah, izvaja vedno, ko je to potrebno, in na učinkovit način.

Temeljna promocijska vloga nacionalnih institucij za človekove pravice je, da se v postopkih odločanja zavzemajo za te pravice. Pri zavzemanju za izvajanje ciljev trajnostnega razvoja je treba upoštevati, da se dokument o človekovih pravicah osredotoča tako na ljudi kot na planet, ta vidik pa je treba spodbujati kot izhodišče za vse postopke odločanja v zvezi z zadevnimi politikami na nacionalni, regionalni in mednarodni ravni, v okviru katerih se obravnavajo ljudje in planet. To so postopki odločanja v okoljskih zadevah, skupaj s postopki odločanja v zvezi z običajnimi vprašanji na področju človekovih pravic, kot so izobraževanje, delo, zdravje, stanovanje itd., in postopki odločanja v gospodarskih zadevah.

Proaktivna vloga in konkretne aktivnosti nacionalnih institucij za človekove pravice pri odpravljanju pomislekov glede človekovih pravic v sklopu ciljev trajnostnega razvoja so zapisane v deklaraciji iz Meride (delavnice, partnerstva, spodbuda, preiskave itd. na področju človekovih pravic). Izvajati jih je treba glede na potrebe ljudi na terenu in potrebe nacionalnih institucij za človekove pravice, njihova glavna namena pa morata biti izboljšanje in okrepitev vseh standardov in mehanizmov človekovih pravic za varstvo teh pravic, učinkovito in podporno sodelovanje ter izmenjavo izkušenj in praks. Skupaj z dejavno udeležbo nacionalnih institucij za človekove pravice v mehanizmih ZN za človekove pravice ter v postopkih odločanja v zadevah s področij okolja in človekovih pravic na nacionalni ravni, sočasno pa je treba sodelovanje z agencijami ZN, nacionalnimi in mednarodnimi organizacijami civilne družbe, neodvisnimi strokovnjaki in državljani negovati z medsebojnim razumevanjem in ga izvajati na pregleden način.

# V. DECLARATION ON COOPERATION OF OMBUDSMEN IN THE AREAS OF THE ENVIRONMENT AND HUMAN RIGHTS


# V. DEKLARACIJA O SODELOVANJU OMBUDSMANOV NA PODROČJU OKOLJA IN ČLOVEKOVIH PRAVIC



Ljubljana, 15 September 2017

1. The Ombudsmen from Bosnia and Herzegovina, Croatia, Montenegro, Kosovo, Macedonia, Slovenia, and Serbia assembled at the 4th international conference The Environment and Human Rights: Public Participation in Environmental Matters held on 15 September 2017 in Ljubljana:
   – recognising that the right to a healthy living environment is a fundamental human right (third generation) and that all States should strive to adopt systemic measures to exercise them;
   – considering that Ombudsmen receive and deal with petitions concerning environmental issues and bearing in mind their mission to protect human rights and freedoms in relation to state and local authorities, also in the area of environment;
   – noting that the issues of safe, healthy and sound environment are closely related to the situation in the State's neighbourhood as well as to the transboundary and global context;
   – noting that public participation in environmental and spatial decision-making in our States is below the desired level;

   are unanimous that the undersigned Ombudsmen's Representatives establish closer cooperation regarding the environment, herewith establish a **Network of Ombudsmen for the Environment and Human Rights**.

2. The purpose of the Network shall be:
   – to establish close cooperation between the Members of the Network;
   – to exchange knowledge, findings, experience and good practices;
   – to further develop forms of Ombudsmen's response in the area of environment;
   – to act in concert and to provide mutual support in fulfilling the mission of the Ombudsmen in the area of environment.

3. Participation in the Network shall be voluntary.

4. Membership in the Network shall be open. Applications to join the Network shall be received by the Chair of the Network of Ombudsmen. Applications shall be decided upon unanimously by the Members.

5. The Network shall be open to cooperation with regional, European and international organisations that pursue similar objectives with regard to exercising the right to a healthy environment.

6. Cooperation shall be developed through regular annual forums, conferences or meetings of Representatives, topic-oriented meetings, joint visits to degraded areas, and exchange of knowledge, findings, documents, information and reports.

7. Language used at conferences shall be the official language of the host country with provided interpretation in one of the participating parties' languages.

8. The Network may establish working groups for specific issues.

9. Members of the Network shall adopt decisions by consensus.

10. Members of the Network shall agree on the Ombudsman to serve as the Network Chair for one-year term.

11. The Network shall have its headquarters with the Ombudsman chairing the Network of Ombudsmen.

12. The Chair of the Network of Ombudsmen shall present the positions and agreements adopted.

13. All Members of the Network shall bear their own costs relating to participation unless the Chair or other Members of the Network provide funding for the organisation of particular event.

14. The wording of the Declaration in its original version is in the English language.



Ljubljana, 15. september 2017

1. Ombudsmani Bosne in Hercegovine, Hrvaške, Črne gore, Kosova, Makedonije, Slovenije in Srbije, udeleženci na 4. mednarodni konferenci Okolje in človekove pravice: Sodelovanje javnosti v okoljskih zadevah, ki je bila 15. 9. 2017 v Ljubljani, smo:
   – ob spoznanju, da je pravica do zdravega življenjskega okolja ena izmed temeljnih človekovih pravic (tretje generacije), za uresničevanje katere si morajo s sprejetjem sistemskih ukrepov prizadevati vse države;
   – ob dejstvu, da ombudsmani prejemajo in obravnavajo pobude, ki pripadajo okoljski problematik in da je njihovo poslanstvo varovanje človekovih pravic in svoboščin v razmerju do državnih in lokalnih organov, tudi na področju okolja;
   – ob zavedanju, da so vprašanja varnega, zdravega in sprejemljivega okolja tesno povezana s stanjem v soseščini posameznih držav ter v čezmejnem in globalnem prostoru;
   – ob ugotovitvi, da sodelovanje javnosti v postopkih okoljskega in prostorskega odločanja v naših državah ni na želeni ravni;

   soglasni, da podpisani predstavniki ombudsmanov vzpostavljamo tesnejše sodelovanje na področju okolja, zato ustanavljamo **Mrežo ombudsmanov na področju okolja in človekovih pravic**.

2. Mrežo ustanavljamo z namenom:
   – vzpostavitve tesnejšega sodelovanja med članicami mreže;
   – izmenjave znanj, spoznanj in izkušenj in dobrih praks;
   – nadaljnjega razvoja oblik odzivanja ombudsmanov na področju okolja;
   – skupnega delovanja in medsebojne podpore pri izvajanju poslanstva ombudsmanov na področju okolja.

3. Sodelovanje v okviru mreže je prostovoljno.

4. Članstvo v mreži je odprto. Prošnje za vstop v mrežo sprejema predsedujoči mreže ombudsmanov. O prošnji članice odločajo soglasno.

5. Mreža je odprta za sodelovanje z regionalnimi, evropskimi in mednarodnimi organizacijami, ki imajo sorodne cilje uveljavljanja pravice do zdravega življenjskega okolja.

6. Sodelovanje se bo razvijalo preko rednih letnih srečanj, konferenc ali sestankov predstavnikov mreže, tematskih srečanj, skupnih obiskov degradiranih območij, izmenjave znanj in vedenj ter dokumentov, informacij in poročil.

7. Jezik, ki se uporablja na konferencah, je uradni jezik države gostiteljice, pri čemer se zagotovi prevod v enega izmed jezikov sodelujočih strani.

8. Mreža lahko oblikuje delovne skupine za posamična specifična vprašanja.

9. Vse odločitve članice mreže sprejemajo soglasno.

10. Članice mreže se dogovorijo, kateri ombudsman bo sprejel enoletno predsedovanje mreži.

11. Mreža ima sedež pri ombudsmanu, ki je predsedujoči mreže ombudsmanov.

12. Predsedujoči mreži ombudsmanov predstavlja sprejeta stališča in dogovore.

13. Vsaka članica mreže nosi svoje stroške sodelovanja, razen če predsedujoči ombudsman ali druge članice mreže zagotovijo finančna sredstva za organizacijo posameznega dogodka.

14. Besedilo deklaracije v izvirni različici je v angleškem jeziku.




OKOLJE
IN ČLOVEKOVE
PRAVICE
4. KONFERENCA:
SODELOVANJE JAVNOSTI V
OKOLJSKIH ZADEVAH

ENVIRONMENT
AND HUMAN
RIGHTS
4th CONFERENCE: PUBLIC
PARTICIPATION IN
ENVIRONMENTAL MATTERS

LJUBLJANA, 15. 9. 2017

**DECLARATION**

**ON COOPERATION OF OMBUDSMEN**

**IN THE AREAS OF THE ENVIRONMENT AND HUMAN RIGHTS**

Ljubljana, 15 September 2017

REPUBLIKA SLOVENIJA
VARUH ČLOVEKOVIH PRAVIC

1. The Ombudsmen from Bosnia and Herzegovina, Croatia, Montenegro, Kosovo, Macedonia, Slovenia, and Serbia assembled at the 4th international conference The Environment and Human Rights: Public Participation in Environmental Matters held on 15 September 2017 in Ljubljana:

- recognising that the right to a healthy living environment is a fundamental human right (third generation) and that all States should strive to adopt systemic measures to exercise them;
- considering that Ombudsmen receive and deal with petitions concerning environmental issues and bearing in mind their mission to protect human rights and freedoms in relation to state and local authorities, also in the area of environment;
- noting that the issues of safe, healthy and sound environment are closely related to the situation in the State's neighbourhood as well as to the transboundary and global context;
- noting that public participation in environmental and spatial decision-making in our States is below the desired level;

are unanimous that the undersigned Ombudsmen's Representatives establish closer cooperation regarding the environment, herewith establish a **Network of Ombudsmen for the Environment and Human Rights.**

2. The purpose of the Network shall be:

- to establish close cooperation between the Members of the Network;
- to exchange knowledge, findings, experience and good practices;
- to further develop forms of Ombudsmen's response in the area of environment;
- to act in concert and to provide mutual support in fulfilling the mission of the Ombudsmen in the area of environment.

1

3. Participation in the Network shall be voluntary.

4. Membership in the Network shall be open. Applications to join the Network shall be received by the Chair of the Network of Ombudsmen. Applications shall be decided upon unanimously by the Members.

5. The Network shall be open to cooperation with regional, European and international organisations that pursue similar objectives with regard to exercising the right to a healthy environment.

6. Cooperation shall be developed through regular annual forums, conferences or meetings of Representatives, topic-oriented meetings, joint visits to degraded areas, and exchange of knowledge, findings, documents, information and reports.

7. Language used at conferences shall be the official language of the host country with provided interpretation in one of the participating parties' languages.

8. The Network may establish working groups for specific issues.

9. Members of the Network shall adopt decisions by consensus.

10. Members of the Network shall agree on the Ombudsman to serve as the Network Chair for one-year term.

11. The Network shall have its headquarters with the Ombudsman chairing the Network of Ombudsmen.

12. The Chair of the Network of Ombudsmen shall present the positions and agreements adopted.



OKOLJE IN ČLOVEKOVE PRAVICE
4. KONFERENCA: SODELOVANJE JAVNOSTI V OKOLJSKIH ZADEVAH

ENVIRONMENT AND HUMAN RIGHTS
4th CONFERENCE: PUBLIC PARTICIPATION IN ENVIRONMENTAL MATTERS

LJUBLJANA, 15. 9. 2017

REPUBLIKA SLOVENIJA
VARUH ČLOVEKOVIH PRAVIC

13. All Members of the Network shall bear their own costs relating to participation unless the Chair or other Members of the Network provide funding for the organisation of particular event.

14. The wording of the Declaration in its original version is in the English language.

**Signatures of the Ombudsmen from:**

Bosnia and Herzegovina:

Croatia:

Kosovo*:

Macedonia:

Montenegro:

Serbia:

Slovenia:

* This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.

# VI. THE CONCLUSIONS OF THE CONFERENCE

ENVIRONMENT AND HUMAN RIGHTS

4TH CONFERENCE
PUBLIC PARTICIPATION IN ENVIRONMENTAL MATTERS
LJUBLJANA, 15. 9. 2017

REPUBLIC OF SLOVENIA
HUMAN RIGHTS OMBUDSMAN

- Public participation in environmental decision-making is in practice often merely formal. Regulation drafters often see to the fact that legislative provisions on public participation are formally met while avoiding substantive standpoints on the comments and their consideration.

- The participants have found that both the civil and professional public are often included in the drafting of regulations too late.

- The public has to receive high-quality and comprehensive information, as only such information enables its effective participation.

- The participation of a broad circle of the interested public has to be ensured; it is no longer a question whether the public has to be included but who else should be included.

- It is important for the public to have the right to know who affects legislation. The purpose of such legislative footprint is to record all activities of all participants, to identify the participating professionals, and to disclose lobbying as a work method of interest groups.

- Claims of lack of staff or time constraints cannot be the reason for a lacking implementation of public participation in the drafting of regulations.

- The public expects its comments and proposals to receive careful consideration during regulation drafting procedures and that the reasons for not incorporating them into the regulation are explained.

- New communication approaches and advantages of information technologies have to be included in procedures of public participation in the adoption of environmental regulations.



# VI. SKLEPI KONFERENCE

OKOLJE IN ČLOVEKOVE PRAVICE

3. KONFERENCA:
SODELOVANJE JAVNOSTI
V OKOLJSKIH ZADEVAH
LJUBLJANA, 15. 9. 2017

REPUBLIKA SLOVENIJA
VARUH ČLOVEKOVIH PRAVIC

- Sodelovanje javnosti pri sprejemanju predpisov na področju okolja je v praksi prepogosto le formalno. Pripravljavci predpisov velikokrat poskrbijo le za to, da formalno zadostijo zakonskim normam glede sodelovanja javnosti, vsebinskemu opredeljevanju do pripomb in njihovemu upoštevanju pa se izognejo.

- Udeleženci smo ugotovili, da sta civilna in strokovna javnost v postopke priprave predpisov pogosto vključeni prepozno.

- Javnosti je treba zagotoviti kakovostne in celovite informacije, saj je le na podlagi takšnih informacij omogočeno njeno učinkovito sodelovanje.

- Treba je zagotoviti sodelovanje čim širšega kroga zainteresirane javnosti, ni več vprašanje, ali mora biti javnost vključena, temveč, kdo bi še moral biti vključen.

- Pomembno je, da ima javnost pravico vedeti, kdo vpliva na zakonodajo. Namen takšne zakonodajne sledi je evidentirati celotno dejavnost vseh udeležencev, identifikacija udeležene stroke in razkritje lobiranja kot metode delovanja interesnih skupin.

- Sklicevanje na pomanjkanje kadrov ali časovno stisko ne sme biti razlog za pomanjkljivo izvajanje sodelovanja javnosti pri pripravi predpisov.

- Javnost pričakuje, da bodo v postopkih priprave predpisov njene pripombe in predlogi skrbno obravnavani ter da bodo razlogi v primeru neupoštevanja za to argumentirano obrazloženi.

- V postopke sodelovanja javnosti pri sprejemanju okoljskih predpisov je treba vpeti tudi nove komunikacijske pristope in prednosti informacijske tehnologije.

Zbornik prispevkov
4. mednarodne konference **Okolje in človekove pravice**
Sodelovanje javnosti v okoljskih zadevah
Ljubljana, 2017

Collection of Contributions
4th International Conference on the **Environment and Human Rights**
Public Participation in Environmental Matters
Ljubljana 2017

**Izdajatelj / Published by:**
Varuh človekovih pravic Republike Slovenije
The Human Rights Ombudsman of the Republic of Slovenia

**Uredniški odbor / Editorial board:**
Vlasta Nussdorfer, dr. Kornelija Marzel, Martina Ocepek, Liana Kalčina in Nataša Kuzmič

**Urednik / Editor:** Liana Kalčina

**Slovenian-to-English translation:** Lektor'ca, Nataša Purkat s.p.

**Lektorica / Proofreading:** Lektor'ca, Nataša Purkat s.p.

**Fotografije / Photos:** Tamino Petelinšek in Anže Malovrh,
Slovenska tiskovna agencija / Slovenian Press Agency

**Oblikovanje in računalniški prelom / Design and layout:** Futura d. o. o.

**Tisk / Print:** Tiskarna Cicero, Begunje, d. o. o.
**Naklada / Print run:** 400 izvodov / copies

Ljubljana, december 2017

CIP - Kataložni zapis o publikaciji
Narodna in univerzitetna knjižnica, Ljubljana

502.1(082)

MEDNARODNA konferenca Okolje in človekove pravice (4 ; 2017 ; Ljubljana)
Sodelovanje javnosti v okoljskih zadevah, s poudarkom na sodelovanju javnosti pri sprejemanju okoljskih predpisov : zbornik strokovnih prispevkov 4. mednarodne konference Okolje in človekove pravice, Ljubljana, Ljubljana, 15. september 2017 = Public participation in environmental matters, with an emphasis on public participation in the adoption of environmental regulations : collection of written contributions / 4th International Conference on the Environment and Human Rights, Ljubljana, 15th September 2017 ; [urednik Liana Kalčina ; Slovenian-to-English translation Lektor'ca ; fotografije Tamino Petelinšek in Anže Malovrh]. - Ljubljana : Varuh človekovih pravic = The Human Rights Ombudsman of the Republic of Slovenia, 2017

ISBN 978-961-93381-5-5
1. Gl. stv. nasl. 2. Vzp. stv. nasl. 3. Dodat. nasl. 4. Kalčina, Liana
292998656

**Varuh človekovih pravic Republike Slovenije**
Dunajska cesta 56, 1109 Ljubljana

Telefon: +386 1 475 00 50
Brezplačni telefon: 080 15 30
Faks: + 386 1 475 00 40
E-naslov: info@varuh-rs.si
www.varuh-rs.si

ISBN 978-961-93381-5-5

REPUBLIKA SLOVENIJA
VARUH ČLOVEKOVIH PRAVIC