

# THE DEVELOPMENT OF THE RIGHT TO PUBLIC PAR- TICIPATION IN ENVIRONMENTAL MATTERS AS A NEW CONCEPT OF ADMINISTRATIVE DECISION MAKING IN SERBIA

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## **Abstract**

In recent years, environmental law and policy have undergone a change of governance models, shifting from central state, top-down regulation to more transparent, local decision making structures involving private companies, non-governmental organizations, concerned citizens and interest groups. The Aarhus Convention became a part of the Serbian legal system in 2009. Its provisions not only strengthen third-party rights to participate, but furthermore oblige state authorities to be active in involving citizens in environmental decisions. The question arises about the extent of consequences of this development at the international level for the national legal system.

Analysis of the implementation of the General Administrative Procedural Act (GAPA) and the Law on Environmental Protection in Serbia shows that social actors used to be allowed to participate in citizen's forums and decision making in environmental matters, and their role was important only if they were directly and individually concerned. This situation changed partially in 2004 with the adoption of new laws. The article examines recent cases in which the public and public concerned were not able to participate in environmental decision making, even though the law stipulated such a possibility. The article examines the consequences of implementing a new model, where representatives of collective interests would be able to influence environmental decision making, proposed by the Draft of the new GAPA.

**Keywords:** administrative decision making, development of the right to public participation, general administrative procedure, environmental impact assessment.

## 1. Introduction

Positive environmental law in Serbia is characterized by a number of laws and general acts. The framework for environmental protection is regulated by the Law on Environmental Protection (hereinafter: LEP) and the Law on Amendments to the LEP, Law on the Environmental Impact Assessment (hereinafter: EIA) and the Law on Amendments to the EIA, the Law on Strategic Environmental Impact Assessment (hereinafter: SEIA) and the Law on Integrated Environmental Pollution Prevention and Control (hereinafter: IPPC). In addition, Serbian Positive Environmental Law contains a number of sectoral laws governing the protection of water, air, soil, nature, protection from noise, ionizing and non-ionizing radiation, waste management and handling of hazardous materials: Nature Conservation Law, Law on Waste Management, Law on the Protection from Environmental Noise, Law on Biocidal Products, Law on Air Protection, Law on Non-Ionizing Radiation Protection, Law on Protection against Ionizing Radiation and Nuclear Safety, Law on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons.

Since there is no specific law on access to environmental information in Serbia, the right to access environmental information is recognized as a right to access public information and is governed by the Law on Free Access to Information of Public Importance and the LEP.

In comparative theory and law, the nature and the scope of the public's right to participate in administrative decision making, the obligation of the state to facilitate public involvement in its legislative processes and the consequences of the failure to comply with that obligation were discussed in a number of debates (Adler, 2001; Applegate, 1988; Arnstein, 1969; Bell, 2004; Beierle, 1998; Beierle and Cayford, 2002; Bernstein, 2004; Bray, 1991; Brown, 1970; Ebbesson and Okawa, 2009; Gaventa and Valderrama, 1999; Galligan and Smilov, 1999; Dickinson, 1927; Elliott, 1992; Elhauge, 1991; Jreisat, 2002; Kim, 2009; Künnecke, 2007; Kuhn, 1999; Lee and Abbot, 2003; Pomade, 2010; Poto, 2008; Redford, 1954; Roberts, 2004; Rose-Ackerman, 1994; Rowe and Frewer, 2000; King, Feltey and O'Neill, 1998; Stewart, 1975; Coenen, 2009).

The development of the public's right to participate in environmental decision making in Serbia can be divided into three stages. The first stage covers the period up to 2004, which is the period before the LEP and the Law on Amendments to the LEP, EIA, SEIA and IPPC were adopted. The public's right to participate in environmental decision making in the process of EIA was not established prior to the enactment of these laws. Due to this, the issues on legal standing were regulated by the GAPA. That had a large impact on the development of the public's right to participate in environmental decision making, since the models provided by the GAPA do not specifically address administrative decision making in matters related to environmental protection.

In practice, it led to a very narrow interpretation of 'the public' in environmental decision making. In section II, the article points to specific examples of administrative and judicial practice in Serbia. Bearing in mind the comparative perspective (Fisher,

2010; Posner, 1997; Elliott, 2008; Lazarus, 2009), these examples will be discussed in section II.

The second stage refers to the period after the adoption of the LEP and the Laws on Amendments to the LEP, EIA, SEIA and the IPPC, which defined the terms 'the public' and 'the public concerned'. New standards were introduced for public participation in environmental decision making and further development of the public's right to public participation in environmental decision making, as well as the possibility for NGOs that promote environmental protection to be involved in this process. However, many drawbacks of this law emerged over time. This primarily refers to the noncompliance of deadlines for public participation in certain stages of the EIA and those for access to environmental information, which in practice leads to inability to provide the public with timely access to environmental information and the information contained in the EIA study. In practice, there are several instances when the public was not allowed adequate involvement in the environmental decision making, in the projects of national significance. These cases will be discussed in section III.

The third, current, stage refers to the attempt of introducing the new model of legal protection in the GAPA. At the end of 2011, the Ministry of Governance proposed a Draft of the new GAPA. It stipulates that the administrative appeal can be submitted by groups of persons without legal capacity if they can be holders of rights and duties decided on the administrative proceeding or if they are representing collective interest, such as interest of environmental protection, that can be influenced by the administrative decision (Article 52 paragraph 4 of the Draft of new GAPA). The question then arises as to whether this stipulation would ensure the right to public participation in environmental decision making in Serbia. And further, are environmental organizations recognized as a subject in environmental decision making? Recent developments in the legislation and case law, as well as possible future changes in this respect, will be discussed in section IV.

The aims of the paper are to examine the possibilities for public participation in environmental decision making as a new concept of administrative decision making in Serbia, to analyze the legal nature of the right of public participation, to describe the prerequisites for its application, and to explain the uniqueness of its application in environmental protection. In order to analyze the legal consequences of the transformation of the right of public participation in the Serbian legal system, a special attention is given to the Serbian Supreme Court, the Administrative Court, and the Constitutional Court case law, with the overview of the European Court of Justice case law.

## **2. A right of the public to participate in environmental decision making before 2004**

The analysis of the implementation of the GAPA and the LEP in Serbia indicates that social actors used to be allowed to participate in citizen's forums and decision making in environmental matters, and their role was important only if they were directly and individually concerned.

Prior to the adoption of a set of laws in 2004, in administrative authority's practice the public was not recognized as a party that is directly and individually concerned. The right to participate was available only for the parties which derived that right from ownership or related rights. An example is found in the decision of the municipal authority in the following case. A request for building a gas station was submitted to the municipal administrative body in charge of the construction works. On this occasion, a number of citizens addressed the municipal authority with an intention to participate in the licensing process. The municipal authority, acting in accordance with the GAPA, held that only the neighbors, and not the people who do not live close to the land planned for building a gas station, should be allowed the right to participate in the licensing process. The decision contained the following explanation: 'a group of citizens cannot be a party to the proceedings, as it is not the holder of the rights and obligations and legal interests which are solved in the proceedings under Article 40 of GAPA, and because the building site of a gas station is not adjacent to the parcels or buildings of interested parties' (The decision of the Urban Planning Directorate of Kragujevac of 15 March 2002).

In these cases the public attempted to be involved in decision making by submitting requests, motions, reports, petitions and other forms of applications other than an appeal in the administrative procedure. An illustrative example is found in the case also related to building a gas station. Regarding the request to build a gas station with a restaurant and other facilities for various purposes, the competent authority ordered the implementation of impact assessment. Building these facilities was planned on the plot that served as a buffer zone between the highway through the city and the blocks of residential buildings. The competent municipal authority noted that the requirements for construction were met (The decision of the Urban Planning Directorate of Kragujevac, of 20 September 1996). Only then did the residents of apartment blocks that surround the land of planned construction site learn for the first time of the proposed project and the decision of the competent administrative authority. Before that, there were no notifications about project planning, or calls for expressing an opinion, even for the inclusion of the public in any form, because EIA was still pending, and these activities are not standardized by the GAPA. With a notion of the potential impact of such a facility on the environment, all residents of the local community signed the petition that stated the grounds against decisions of administrative bodies, which they could not challenge because they were not recognized as a party to the proceedings. In addition to the petition, they submitted the information received from the other city and state authorities, regarding the participation of citizens in some other proceedings, as parties to the proceeding. Based on information collected in that manner, they argued their request from the petition with relevant documentation which indicated that the subject property is to be built on a part of a landscaped land, that the highway already causes noise and air pollution over the allowed values and levels, and that the level would increase further by building the planned facility. The petition pointed out that the detailed regulation plan does not provide safeguards

against noise and air pollution, and that the only protection against pollution is the buffer zone between the highway and residential areas in the planned location of a gas station. The decision to perform EIA of the facility, based on which the competent authority determined that the requirements for construction are met, does not list any of these facts, nor the information on how much of green space and vegetation would be cut and how it would affect the environment and human health. Upon receipt of the petition, the ministry responsible for public works decided to inspect the case upon official control. The Ministry determined that in this case it was necessary to include other bodies in the decision making which could point to the facts indicated in the petition. Having determined that the facts stated in the petition were justified, the Ministry, upon official control, annulled the decision of the competent municipal authority and prevented further construction. Under the GAPA (Art. 253 (1) 3), the second-instance authority shall, as a result of official control, annul the final decision in the case where the decision has been adopted by one authority without consent, confirmation, approval or opinion of the other authority if required under the law or other regulations.

The Serbian Supreme Court, prior to passing the EIA, tried to shape uneven practices of administrative authorities regarding the right to participate in environmental decision making. In the verdict of the Supreme Court of Serbia, in 2004, on the question of whether a group of citizens has the right to address the court against the decision in the environmental matter, the following position was taken: 'The Court finds that the appellate authority acted properly when it ruled on the right of citizens' groups to participate in the administrative proceedings as an interested party. (...) The first instance authority found that a group of citizens could not be a party to the proceedings, as it is not the holder of the rights and obligations and legal interests that are resolved in the proceedings, in accordance with Article 40 of GAPA, and because the building site for the construction of a factory for processing wood is not adjacent to the parcels or buildings of interested parties. (...) The Ministry of Capital Investments did not accept the above position finding that pursuant to Article 39 of GAPA a group of citizens has the right to participate in the proceedings as an interested party, to protect their rights and legal interests. (...) In this case, a group of citizens, as an interested party, has the right to legal protection in administrative proceedings and disputes' (The verdict of Supreme Court of Serbia of 9 December 2004).

### **3. A right of the public to participate in environmental decision making after 2004**

Following the adoption of a set of laws in 2004, a legal framework was established in Serbia for public participation in decision making in environmental matters (Drenovak-Ivanovic, 2011). The laws governing the right of public access to decision making on specific activities use the terms 'the public' and 'the public concerned'. Thus, the public is one or several natural or legal entities, their associations, organizations or groups (LEP, Art. 3, item 26. as well as EIA, Art. 2, par. 1, item 1). On the other

hand, the public concerned includes the public affected or likely to be affected by the project, including NGOs that promote environmental protection and are registered with the competent authority (EIA, Art. 2. par 1. item 7). This sets two conditions related to the active legitimacy of NGOs in cases where NGOs participate in the process of evaluation of environmental impact as the public concerned. The first condition refers to necessity of NGOs to be engaged in environmental protection. The second condition relates to the obligation that NGOs are registered with the competent authority. The public concerned is entrusted with a significant influence in the process, especially by delegation of powers to direct participation in decision making, and the right to appeal or file a lawsuit. The Serbian law does not stipulate additional criteria for NGO participation in environmental decision making. Additional conditions are found in European countries' legislation. For example, the law of Sweden stipulates that in order for an NGO to appeal in environmental administrative matters it should exist for at least three years and have more than 3,000 members. Since until 2010 there were only two NGOs that met the requirement of the number of members, in the case Djurgården-Lilla, the question was raised regarding the compliance of national legislation with the Aarhus Convention. The European Court of Justice held that, given the small number of inhabitants per square kilometer, this requirement prevents the NGOs to practice the legal protection in administrative matters. After this judgment, the requirement regarding the number of members was alleviated, and NGOs need to have at least 100 members in order to be legitimized to appeal in environmental administrative matters (Drenovak-Ivanovic, 2013a).

The LEP stipulates that the public concerned is entitled to exercise its right to healthy environment by initiating the decision review procedure before the competent authority or the court in accordance with the law (LEP, Art. 81a). Every person affected by the damage has a right to reimbursement. The request for reimbursement may be submitted directly to the polluter. Court procedure for reimbursement is urgent (LEP, Art. 107).

The Law on EIA stipulates that the applicant and the public concerned are entitled to initiate the administrative court procedure against the decision related to the application for approval of the EIA study or refusal of the application (EIA, Art. 26).

The IPPC stipulates that an appeal cannot be filed, while administrative court proceeding can be initiated against the decision of the competent authority on permit granting, or refusing of the permit granting application (IPPC, Art. 15).

In practice, however, there are a number of problems primarily related to non-compliance of deadlines for taking certain actions in the process (e.g., The decision of the Ministry of Environment and Spatial Planning of 25 May 2011), determining the deadlines for taking actions in the same procedure by different laws in different durations (e.g., The decision of the Government of the Republic of Serbia of 21 April 2011), inadequate implementation of the procedure in which the public and public concerned is involved, which is particularly reflected in inadequate notification of commencement of the proceedings in which the public has a right to participate, or

even in the application of legal rules in a way that prevents the public to actually participate in decision making (Drenovak-Ivanović, 2013b). A particular problem lies in the fact that some specific laws do not standardize the public's right to make decisions related to the environment, and some do not even prescribe the right of the public to participate, or the public's right to challenge the decision in an administrative or judicial proceeding (Drenovak-Ivanović, 2013b). Thus, environmental laws concerning protection against radiation and nuclear safety, non-ionizing radiation, air protection, nature protection, environment protection against noise, sustainable use of fish reserves, waste management, packaging and packaging waste, and water protection, planning and management do not establish a provision for access to justice in environmental matters. The Law on Protection against Radiation and on Nuclear Safety does not stipulate a procedure for access to Administrative Court; this law stipulates that in the case of injury a civil lawsuit could be filed (Art. 175). The Law on Air Protection does not provide public participation in the procedure of adoption of strategy for air protection. Consequently, this law does not stipulate a procedure for access to Administrative Court. Sanctions for violating or ignoring provisions stipulating obligations for public authorities are not stipulated by this law (Art. 66). The Law on Water does not stipulate the access to justice in environmental matters as well. GAPA applies to procedural issues in environmental matters, except that they are regulated by special environmental law. Special administrative procedures are established only for the decision making of EIA and integrated permit.

Before addressing specific cases, we shall point to the impact of an administrative appeal on the enforceability of the first instance decision of public authority and the concept of legal standing in Serbia.

### ***3.1. Impact of an administrative appeal on the enforceability of the first instance decision of public authority***

In Serbian law, an administrative act in administrative procedure becomes final when an administrative appeal cannot be filed against it. It means that a) an administrative act was not appealed in the prescribed time limit; or b) an administrative act was rendered by a first instance administrative authority, than appealed and finally rendered by second instance administrative authority; or that c) an administrative act was rendered by an administrative authority whose acts cannot be appealed and reviewed by the second instance administrative authority. In the situation where the second administrative authority renders its own administrative act he/she is able to dismiss or reject the appeal or to change the first instance administrative act with the possibility to exercise discretionary power. GAPA stipulates that an administrative act becomes enforceable when it becomes final, but if an administrative appeal submitted against it does not delay its execution it can become enforceable before that (Art. 261).

The EIA stipulates that the decision of the competent authority on the EIA Study approval is final so the applicant and the public concerned are entitled only to initiate

the administrative court proceeding against the decision. Second instance administrative authority may review the appealed decision on the need for impact assessment or appealed decision on the scope and content of the EIA Study.

The Law on Integrated Environmental Pollution Prevention and Control stipulates that the decision on permit granting is final.

### *3.2. The concept of legal standing in Serbia*

Serbian Constitution ensures legal remedies and judicial review of administrative acts by stating that everyone shall have the right to an appeal or other legal remedy against any decision on his rights, obligations, or lawful interests (Art. 36, para. 2). The legality of final individual acts deciding on a right, duty or legally grounded interest shall be subject to reassessing before the court in an administrative dispute, if other form of court protection has not been stipulated by the Law (Constitution of the Republic of Serbia, Art. 198, para. 2).

An administrative act may be challenged by regular administrative legal remedy – an administrative appeal, by extraordinary legal remedies in administrative procedure and before the Administrative Court. Administrative Court proceeding is initiated by the lawsuit to the Administrative Court that can be submitted against the administrative act which is final in administrative proceeding. It means that the administrative appeal has to be exhausted before the initiation of Administrative Court procedure.

The Law on Administrative Disputes (hereinafter: LAD) stipulates that a party to an administrative dispute may be any natural or legal person maintaining that an administrative document infringes on their rights or legal interests defined by law. A government authority, an authority of the autonomous province and local self-government authority, an organization, a local community, a group of people, etc., who do not have the status of a legal person, may be parties to an administrative dispute if they are holders of rights and obligations or legal interests which are to be decided in the administrative dispute (LAD, Art. 11).

Individuals, their groups, NGOs, other entities have standing in judicial proceedings against administrative decisions if they are holders of rights and obligations or legal interests which are to be decided in the administrative dispute.

The EIA stipulates that the applicant and the public concerned are entitled to initiate the administrative court procedure against the decision related to the application for approval of the EIA study or refusal of the application (Art. 26).

The IPPC states that appealing is not an option against the decision on issuing an integrated permit or against the decision to refuse the application for this permit, but an administrative dispute is. Bearing in mind that ‘the competent authority shall notify the operator of the decision to issue permits or to refuse the application for a permit and other agencies and organizations and the public within eight days from the date of the decision’ (Article 15, paragraph 6) the question then arises as to which

subjects have standing for an administrative dispute. The above formulation suggests that the right to an administrative dispute belongs to the operator alone, as the person to whom the decisions are submitted, while other subjects of the proceedings, including the public concerned, regarding the decision rendered, would have no right to appeal (because it is excluded according to the law), neither the right to an administrative dispute (because they do not have legal standing). The operator is defined as 'any individual or legal entity who, in accordance with the regulations, manages or controls the facility, or is authorized to make economic decisions in the area of technical functioning of the plant and in whose name integrated permits are issued' (Law on Integrated Environmental Pollution Prevention and Control, Art. 2 para. 1 item 15).

Court procedures are regulated by the LAD. According to this law, any person, regardless of legal status, who believes that an administrative act has violated his/her legal rights, is able to initiate an administrative court procedure (Art. 11 (1)).

A party to an administrative dispute may be any natural or legal person maintaining that an administrative document infringes on their rights or legal interests defined by law. An organization, a local community, a group of people, etc., who do not have the status of a legal person, may be parties to an administrative dispute if they are holders of rights and obligations or legal interests which are to be decided in the administrative dispute. The public prosecutor may file a lawsuit against a decision violating the law to the detriment of the public interest (LAD, Art. 11 (2) and (3)). An administrative dispute may be initiated by competent Attorney General, if the administrative act violated the property rights and interests of the Republic of Serbia, autonomous province or local self-government. (LAD, Art. 11 (4)).

### ***3.3. The case of EIA of hydropower facility and public participation***

The European Commission's progress report on Serbia in the European integration process in 2012, among other things, reads that the application of EIA should be improved especially in those areas related to public participation in environmental decision making (European Commission, 2012, p. 57). Following this report, the EIA of hydropower facility 'Hydropower plant' on the river Lim, which was conducted in January 2013, attracted a lot of attention. Several irregularities were noted in the phase of EIA Study approval (The decision of the Ministry of Environment, Mining and Spatial Planning of 9 September 2010; The decision of the Government of the Republic of Serbia of 21 April 2011). A call for public access to the contents of the Study was published on June 1, 2012. The study was laid out in the Municipality of Prijepolje for 20 days, of which the public was timely informed by an ad in the local newspaper Polimlje. However, public presentation and discussion of the study were not held due to lack of adequate conditions for maintaining a presentation in Prijepolje Municipal Building. The study is 700 pages long and was available at the Municipal Building every day from 8 AM to 4 PM. It was not allowed to copy parts of the text, and the study was not available in electronic form. A new hearing was scheduled and also advertised in the newspaper Polimlje, published on January 1, 2013. The notice stated

that the procedure of presentation and public hearing regarding the subject study will be repeated, having in mind the circumstances concerning the termination of the public hearing in the Municipality of Prijepolje on August 15, 2012. A new public hearing and presentation of the Study was scheduled for January 9, 2013 in the premises of Belgrade Chamber of Commerce (Newspaper 'Polimlje', 2013). The hearing was not attended by a large number of NGOs who, as public concerned, once voiced objections to the Study, because of tight deadlines, Christmas and New Year holidays (in Serbia Christmas is observed on January 7) and the inability to make the trip to Belgrade at the time of the public hearing (the distance of about 300 km).

This case opened a number of questions in the professional community. First of all, was the EIA properly applied if the public, in the second call, was left with less than 20 days of access to information about the impact assessment? Also, the question was raised whether an adequate public participation in decision making can be achieved by holding a public hearing and presentation of a study in a city 300 km away from the planned construction site of a hydropower plant. (Andrusevych, Alge and Konrad, 2011, p. 175). In the case NGO Plataforma Contra la Contamination se Almendralejo, the Aarhus Convention Compliance Committee stated: 'Spanish authorities set inhibitive conditions for public participation (need to travel 30-200 km to read project information on two computers), and as a result Spain failed to comply with Article 6, paragraph 3 and 6, of the Aarhus Convention' (Spain: NGO Plataforma Contra la Contamination se Almendralejo Case 36 (2009)).

### ***3.4. Local governments and legal standing***

The above analysis shows in which manner the public concerned, including NGOs, is entrusted with the opportunity to participate in decision making in environmental matters. It further raises a question whether a local government has the ability to influence decision making related to the environment. An illustrative example is found in the case of licensing for exploration of nickel and cobalt in a municipality in central Serbia. In this case, the company received an approval from the Ministry of Environment, Mining and Spatial Planning of Serbia for geological studies of nickel and cobalt and related metals associations on the territory of central Serbia with validity until December 31, 2012 (The decision of the Ministry of Environment, Mining and Spatial Planning of the Republic of Serbia of 11 November 2011). The municipal council of the municipality in which the research was conducted rescinded the previously given approval for geological exploration work on its territory on September 20, 2012 (The decision of the Municipal Council of the Municipality Trstenik, of 20 September 2012). The same company filed a request for an extension of the research on December 21, 2012. In accordance with the Law on Mining and Geological Exploration, a request for an extension of the research can be filed if at least 75% of the planned scope of research activities of the project were finished (Art. 39 para. 1). The application is to be submitted no later than 30 days before the expiry of the approval for the study (Art. 35 para. 2). Along with the request for an extension of the research, certain documents,

including the project geological survey and final report for the previous investigative period, should also be submitted (Art. 35 para. 3 item 3).

If the research is carried out in '... a source of special significance, a tourist and recreational resort (...)' the Law on Mining and Geological Exploration prescribes the obligation of obtaining conditions for environmental protection and nature conservation (Art. 6). The Institute for Nature Conservation of Serbia found that the research area is a recreational resort and a source of special significance. The research site was in the immediate vicinity and zone of Vrnjačka Banja spa and protected springs of unique mineral water 'Veluće'. The Institute for Nature Conservation determined under which conditions the research can be carried out and prescribed that, 'for subsequent years of research', the applicant must submit a new request for the issuance of an act on conditions for nature protection to Institute for Nature Conservation of Serbia two years from the issuance of conditions (The decision on conditions for nature protection for geological exploration issued by the Institute for Nature Conservation of Serbia of 11 March 2011). Since the entity is of special value, the Institute for Nature Conservation conditioned the terms determined by the Decision on the conservation of nature with the company's obligation to obtain the consent of municipalities in whose territory the area is located.

The company applied for an extension of research 20 days after statutory deadline. In addition, the company did not submit an analysis showing that, during the validity of the license for geological study of nickel and cobalt, it performed at least 75% of the project's planned scope of research activities, stating that the company was not able to carry out the planned geological studies within the projected scope and time scale provided in the approval for the research (The request for extension of research approval deadline, of 21 December 2012). In February 2013, the company submitted to the competent ministry a supplement to the request for approval of applied geological research with the necessary documents enclosed (The supplement to the request for approval of applied geological research of 18 February 2013). The applicant did not obtain new conditions for nature protection, as a condition for the extension of exploration rights set out by the Institute for Nature Conservation. Responding to the request and the supplement to the request, the competent ministry approved the extension of the study in October 2013. The explanation of the decision states: 'As the Municipal Council of the Municipality of Trstenik rescinded previously adopted Conclusions concerning hydrological environmental conditions of geological research in its territory, and taking into account the resonances of negative media campaign in public, the company was unable to carry out the planned research. As a result, despite timely preparation, some field work could not be implemented as planned. By changing the position, the Municipal Council neglected the fact that the underlying geological exploration of nickel in this area was approved by the competent public authorities, in each case in accordance with the relevant legal framework (...) the project was brought to a state of high risk and uncertain outcome in terms of security invest-

ments and possibilities for further research' (The decision of the Ministry of Natural Resources, Mining and Spatial Planning of the Republic of Serbia of 16 October 2013).

Considering this decision illegal and that the competent ministry should not have made a decision without a positive conclusion from the local government, the municipality on whose territory the research was conducted filed a lawsuit with the Administrative Court. The Administrative Court, without going into the merits of the case, dismissed the complaint and took the following stand: 'Since the Municipality of Trstenik filed the lawsuit in this legal matter, and the disputed decision did not rule on its right, nor its legally determined interest was hurt in terms of above cited regulations, the Administrative Court finds that the suit was filed by a person who does not have legal standing to file a lawsuit' (The decision of the Administrative Court of Serbia of 23 January 2014).

With respect to this case, a debate was opened in the professional community whether a local authority can participate in environmental decision making as a party with a task to protect the interests of a local community.

#### **4. Further development of the right of public participation in environmental decision making**

The analysis shows that the legal framework does not contain a precise definition of the public concerned and other persons and bodies or organizations that have legal standing. In practice of administrative authorities and the Administrative Court of Serbia there is no unitary practice established on this issue. This means that participants in the decision making in environmental matters, as well as in the procedure upon appeals in administrative proceedings or an administrative action, must prove the existence of a legal interest in accordance with special laws. Major changes in the legal protection system in environmental matters were brought about with a provision on the right to participate in decision making in an administrative proceeding which, in the draft of the new GAPA, is entrusted to 'representatives of the public interest authorized by special law' and 'representatives of collective interest'. Namely, according to the draft of the new GAPA, the right to participate in administrative proceedings as a party is given to representatives of the public interest authorized by a special law, agents or representatives of collective interests of wider public interest, which are organized in accordance with the regulations, when those interests may be affected by the result of the administrative proceedings (The draft of the new Law on Administrative Procedure, Art. 52, para. 4).

There are circumstances which should be taken in consideration in this case. Protection of collective rights and interests has been provided by the Law on Civil Procedure. According to this act, associations, their unions and other organizations, formed in accordance with the law, were able to take action to protect the collective rights and interests of citizens, if they are entitled to such protection by their registered or regulated activities, if the purpose of their association or action represents common interests and rights of a large number of citizens and if they are injured or seriously

threatened by actions of the defendant (Art. 495). However, the Constitutional Court of Serbia found in May 2013 that the provisions of the Law on Civil Procedure which pertain to the protection of collective rights and interests are not in accordance with the Constitution and ratified international treaties (The decision of the Constitutional Court of Serbia of 23 May 2013). The decision's explanation states: 'The Constitutional Court concludes that the provisions of Art. 494 to 505 of the Law do not regulate when a civil law dispute has the character of a collective rights dispute which would be resolved by the rules of the special procedure prescribed in this chapter, with subsidiary application of general rules of civil procedure. It can not be established to which disputes these provisions correspond, i.e. it is not prescribed which dispute, in terms of these provisions, is considered a dispute on collective rights, and the terms collective rights and interests are not regulated (...) which has been done regarding the standardization of other special procedures. (...) Since the requirement for definiteness and precision of legal norms is an integral part of the rule of law so that the citizens are able to genuinely and specifically know their rights and responsibilities and to help them adapt their behavior to meet them, the Constitutional Court finds that the request for definiteness and precision of the legal norm is not fulfilled if the citizens as conscientious people speculate about its meaning and content'.

Having in mind the above, the participation of 'representatives of the public interest authorized by special law' and 'representatives of collective interests' in decision making in administrative proceedings in environmental matters must be regulated in detail and conformed to the nature and content of the subject matter of these specific administrative procedures and the specifics of the legal protection provided by them. Introducing the category of protection of representatives of collective interests and bringing a collective interest in connection with the protection of the environment may eliminate the deficiencies identified in the current legislative framework and practice, if the interest of environmental protection can be clearly determined. Otherwise, the uncertainty in the process of finding and applying authoritative legal norms would not lead to better implementation and protecting the public's right to participate in decision making in environmental matters.

## **5. Conclusion**

The legal framework in Serbia which regulates the issue of public participation in environmental decision making indicates the significant transformation of this right in the past 20 years. The turning point in defining this right occurred in 2004, with the adoption of a set of laws governing the issue of public participation and largely introducing standards set forth in the Aarhus Convention.

In practice, however, there are a number of obstacles to an adequate introduction of the public in the decision making process. One of possible solutions is the amendment of existing laws in accordance with a clearer definition of questions which arise in practice, without a single solution in the public authority and Administrative Court practice. Another possible solution is the introduction of a new model of public par-

participation in environmental decision making that provides the 'representatives of the public interest authorized by special law' and 'representatives of collective interests' with a possibility to be involved in decision making that have an impact on the environment.

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