The challenges facing European society with the approach of the year 2000

Public participation in regional/spatial planning in different European countries

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FOREWORD

by the Secretary of State for the Environment of the United Kingdom
Th. Rt. Hon. John GUMMER, M.P.

Successful planning systems need to reflect local opinion. Public participation is a common requirement for planning systems in Europe. Notwithstanding other differences, planning authorities all need to recognise that it is a fundamental requirement to seek the views of the ordinary citizen and to listen to them. Only by carrying the public with them in formulating their plans can authorities expect to implement them successfully.

Public participation has long had an assured place in the United Kingdom's town and country planning system. It has been the aim to involve the public not only in the implementation of particular projects but also in the formative stages of policy making. Our experience has shown that to undertake participation exercises well, is a far from straightforward process and needs particular expertise. There are many pitfalls to be avoided if it is to be done properly. Participation, does not necessarily produce consensus and particular groups and vested interests can easily come to dominate and claim their views are representative of public opinion generally. This can place at risk the stakes of more unrepresented groups. Children are a particularly vulnerable group. It is of the utmost importance that their needs are taken fully into account if we are to achieve sustainable development and not cheat them out of their rightful future.

We would not claim that we have everything right yet. Nevertheless given our long experience, it seems particularly appropriate for the United Kingdom's Planning Inspectorate to have jointly hosted this Seminar with the Council of Europe. I congratulate both bodies for their vision in arranging the Seminar to share experiences of public participation across Europe. The papers and presentations illustrate many of the opportunities that can arise and indicate the types of skills needed to realise them. I am confident that the messages will be of value to both politicians and planners in all European countries but, in particular, to the countries of central and eastern Europe now in the process of transition.

THEME 1

THE ALLOCATION OF REGIONAL/SPATIAL PLANNING POWER IN SOME EUROPEAN COUNTRIES - PLANNING SYSTEMS AT NATIONAL, REGIONAL AND LOCAL LEVELS - OPPORTUNITIES FOR PUBLIC PARTICIPATION

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REPORTS PRESENTED BY:

THE ALLOCATION OF REGIONAL/SPATIAL PLANNING POWER IN SOME EUROPEAN COUNTRIES - PLANNING SYSTEMS AT NATIONAL, REGIONAL AND LOCAL LEVELS - OPPORTUNITIES FOR PUBLIC PARTICIPATION

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I. ARGUMENT

This report is structured to include some general information that could facilitate the understanding of both the actual situation in the allocation of regional/spatial planning power in Romania and the opportunities for public participation, as well as actions that take place and envisaged changes.

The report includes two introductory parts: some essential data concerning Romania and a short characterisation of the situation before 1989, to facilitate the comparison between the point of departure and present stage, and a better understanding of present problems and obstacles.

Some characteristics of the transition period as well as the description of some of the steps that have been taken in order to build a new planning system constitute the subject of the next chapter.

Due to the fact that in Romania the creation of opportunities for public participation is actually in an emerging state, a special attention was devoted to the presentation of the draft of the Urban and Regional Planning Law and of the difficulties that the process of implementing the law will probably face, regarding public participation.

Finally, some remarks concerning the issues of European integration in the field of regional and urban planning are made.

II. ROMANIA: ESSENTIAL DATA

The Romanian territory is an area of 238,400 square kilometers; the population was 22,810,000 inhabitants in July 1992. The average density is 95.7 inhabitants per square kilometer. The area of the country is almost equally partitioned between mountains and hills (33%), plateau (35%) and plains.

The territory is organized in 40 counties ("*judets"*), 262 towns (among which 54 are "*municipiums*") and 2,689 basic administrative units ("*communes*") that group 2-8 villages.

The communes and towns are grouped, according to population size, as follows: 2,723 under 10,000 inhabitants; 177 between 10,000 and 50,000 inhabitants; 39 between 50,000 and 200,000 inhabitants; 11 between 200,000 and 400,000 inhabitants, and Bucharest with a population of 2.2 million inhabitants.

The **Romanian Constitution** of 1991 establishes the basic principles for the public administration at regional and local levels: the **local autonomy** principle and the principle of **decentralization of public services**.

To these principles, the first article of the **Local Public Administration Law** of 1991 (Local Government Act) joins the other two: the **eligibility of local public administration authorities** and the principle of **citizens' consultation in local problems of relevant interest**.

Concerning local government, the Constitution and the above mentioned law provisions establish that the communes and towns are autonomous and that the county level is a regional one that has a main responsibility "to coordinate the activity of communes and towns interest". At the county level, the government is represented by a "prefect" whose main responsibilities concern the coordination of decentralized services of the ministries and to assure the legal control regarding the local councils' and county councils' decisions.

The mayors and the local councillors are elected through direct vote; the county councillors are elected by the vote of all local councillors in the county, and they elect the president of the county council.

In spring 1992, the first local elections took place: almost 45,000 local and county councillors were elected.

The Local Public Administration Law establishes the responsibilities of local and county councils; it is interesting to note that from the 24 responsibilities designated by law for local councils, 16 are directly or indirectly related with regional/spatial and urban planning and with urban development. The local councils are responsible to approve the "urban development programme" of the town/commune as well as the related plans and by-laws. There are no specific provisions in the "Local Public Administration Law" concerning the public participation in planning or other kind of activities, except the fact that the mayor is responsible to assure the co-operation of county councils with non-governmental and community based organizations. The Constitution provides the principle of the referendum both at national and local levels and that an organic law has to be adopted in this respect; this law does not exist yet.

III. THE SITUATION BEFORE 1989 - COMMUNIST PERIOD PLANNING

The planning system before 1989 was based on the "Systematization Law" of 1974. The law and the way it was applied is an outstanding example of how good principles can be stated and then be distorted or ignored by aberrant practice.

Motivated by the Communist Party's care for development, a centralized system of plans-approval was set. Every detailed plan in towns had to be viewed and accepted by the planning authority in Bucharest; all the master plans for towns and all the towns' central area plans were presented to Ceausescu who could change, no matter what, in any manner (destroying towns' old centers, changing arbitrarly the development directions, placing polluting industry in the wrong place, a.s.o.). The "working visits" were even worse: an
obedient local government apparatus consented (and often amplified) any aberrant "indication".

It is no surprise that, like a reflex, these two words - **systematization** and **indication** - horrified everyone, and, after 1989, the word "systematization" was almost eliminated from vocabulary.

The State as the only investor, and the aim of diminishing by any methods the private property (especially of the land) led to a uniform urban development scheme:

- an outskirts expansion during the forced industrialization periode of the 70's: new collective housing areas sheltering the rural exodus;

- an overdensification of most of these "Athens Charta" zones which resulted in a dramatic decrease in comfort, a cut in public investments for schools, health-care buildings and other facilities and an accute expansion of "large concrete slabs" units, with low quality thermic and water insulation;

- a demolishing "offensive" to gain land for new buildings, once the "land economy" was decreed;

- an overpushed "inner urban growth" that damaged thousands of old buildings and historic monuments and deleted urban identity of so many towns, since the unique model of a "new center" with "political headquarters, city supermarket and house of culture plus hotel" was put in practice everywhere.

At the regional scale, the centralized-planned economy favoured in a certain measure a balanced territorial development, but characterized by excesses in size of investments, ignorance or overexploitation of local resources (although the principle of their rational use was claimed) and a total lack of "maintenance policies" for infrastructures and all types of buildings. However, excepting the Bucharest region, the villages were not so destroyed as things were presented in western media - it was sooner a lent decay; the main problem was a lack of support from the state for water supply systems and for roads improvement.

The principle of "large public participation" was claimed in the law but it was reduced in fact to two "symptoms": an **empty media propaganda** (the image of "the leader" with an index in front of a model was both boring common and frightening) and the **public exhibitions of models and plans**, where citizens were anguished searching their house to see if it would not

be demolished in the coming years.

During this period, the population gained a sad experience stuffed with all kind of abuses (in the central areas of Bucharest, even overnight evacuation and demolition) or excessive policies. Facing the central power and local governments' indifference, the citizens used, when possible, all the means (not always very "orthodox") to save their house or their garden, ignoring and even hating the "public interest" principle that, apparently, caused so dramatic consequences. It is understandable that in this "urban culture" (or lack if it), **the attitude toward the law** was a negative one; to ignore it, if not "to dribble" or to disobey it.

It is obvious that in a system that intended to dissolve the individual into the amorphic "working people" mass, there was no use of participation opportunities (like specific notification, hearings, formal discussions, appeal) and that NGOs and *ad-hoc* groups were considered subversive.

IV. TRANSITION TOWARDS "NORMALITY" - A DEMOCRATIC SOCIETY AND A MARKET-ORIENTED ECONOMY

After 1989, the Romanian society has entered a "transition" period; it is more than the transition toward a market-oriented economy, it is a transition toward "normality", in all sectors of society's life.

Unfortunately this normality is perceived more like a "pattern model" or a "set of parameters" that have to be fulfilled (like the previous "far-away perfect communist paradise" was presented); it is not perceived like a process for achieving a dynamic balance characterized by a reasonable and in-time reaction capacity concerning the environmental changes, being this environment the natural one, the social one or of other kind.

It is useful to mention here some characteristics of the transition period which are relevant in a certain measure for the planning activity.

Since 1990, the political framework has changed; in fact there is a whole class of politicians that appears (according to statistics, only 5%-7% of the people elected in the Parliament, county councils or local councils, "practiced" politics before 1989); under this circumstances, the eternal conflict between planners and their long-term perspective and politicians' "short-term goals" is even more acute. At the same time, very few politicians have a correct perception of regional development, urban development or planning problems; the changing situation of the transition period makes the approach even more difficult. The motivation that might determine a politician to be careful with planning issues (the wish to be re-elected) does not exist for many of the present MPs or councillors: a part of them do not intend to have a political career; some of them used this position for gaining an economic status and to facilitate the take-off of their business. On the other hand, the politicians are confronted with so many and so different problems that, even in the situation of a honest goodwill, it would be difficult for them to become familiar with technical aspects and strategic goals of planning activity (the usual reaction of a local councillor is "as long as there is unemployment and there is not enough heating in our houses, there is no time for traffic or environment quality studies elaboration, or to establish special building rules in historic areas"). The above reaction reflects another characteristic of the period: the multitude of problems the society is facing and their priority.

There are many vital issues that have to be approached (new legislation, privatization, economic restructuring, social protection, a.s.o.) and there is also a tendency toward solving the more stressing problems and often the short-term ones. The planning problems were not considered as being prioritary; the recent evolutions in some urban centers as well as negative consequences concerning investment activities in unplanned areas have generated a positive reaction, although the proposed instruments are received with doubts and suspected of negative effects (losing foreign investments, limiting individual rights, a.s.o.). In this respect population participation is often perceived as an obstacle for the "successful transition".

Another characteristic of the period is the process of building a new legislation; although many laws have been adopted, there are a lot of domains that need basic laws. The Local Public Administration Law was approved in 1991; a law concerning the building permit was adopted in the same year as well as a law regarding the restitution of agricultural land to private owners; a law of expropriation for public interest purpose was adopted in 1994. The draft Law for Land Registration and Cadaster is under discussion in the Parliament; the Urban and Regional Planning draft Law was recently finished; the law concerning the general status of property (an organic law) is under work and it is appreciated as very necessary in a country where a lot of abuses took place in the last fifty years in this respect. The Local Taxes and Fees Law was adopted in 1994, but yet there is no law concerning the local budgets (the transfers from state budgets, which are however low, are the main resource for local budgets); there is no law to rule the administration of municipal and county property; no law concerning environment protection, tourism a.s.o., has been adopted so far.

The process of decentralization in administration is taking place with syncops; the local councils still need a lot of instruments to act normally (see the legislation above); the recruitment and payment of civil servants is a difficult problem for local administration (for the central one, too) since most of the architects and civil engineers that worked for planning divisions (in Romania "planner" is not a recognised profession) prefer the private sector, due to opportunities and a better income. There is a general lack of experience and a low speed of reaction to the rapid changes that take place. Often, political conflicts and corruption complicate the situation, as well as the relation between central and local governments.

This transition period is characterized by structural changes in the economy, which take place in a variable rythm, determined or influenced by lack of resources (including foreign aid programmes), by the estimated or registered social reaction (a social sensitivity that very often puts the government into delicate situations), by the media campaigns (or lack of information) or by political interest. These changes are associated with an inflation which only in 1994 was better mastered and had a lower rate; the balance is however very fragile, according to experts' evaluation.

To these characteristics the situation of new "markets" that are just emerging has to be added; the land market, the construction market, a.s.o., influence the planning process and the stakeholders' reaction, and often generate distortion (in some areas in Bucharest, land prices reflect no more the building potential of the plots or the possible revenue); the same situation is registered in some touristic areas.

Due to the lack of popularity of the Systematization Law's effects, this was the first law abolished in December 1989, although there were good principles that could have remained in force.

Under these circumstances, the planning activity was blocked and this was accompanied by a dramatic decrease of construction activity. In that situation, due to lack of legislation and changes in land property and in structure and number of investors (as well as the opening of the market for foreign investors and for private ones), the highest priority was appreciated to be a law concerning both the building permit and the essential provisions for planning activity.

This law was adopted in August 1991, before the Constitution (December 1991) and the Local Public Administration Law (October 1991).

The law specified the responsibilities concerning the delivery of building permits by giving the local councils (the mayors, at that time) this power, excepting the communes, where certain categories of buildings had to be authorized by county level (the prefect at that time) -public investments, any other buildings than housing.

The law introduced the "Planning Certificate" as an information act that offers data about the legal, economic and planning status of the land and/or building that it refers to. This certificate was intended to help the potential investors concerning the requirements of the legislation and of the urban plans. The certificate was a necessary act for obtaining a building permit.

A major change that was brought by this law consisted in a new structure of plans that effectively decentralized the responsibilities concerning plan approvals: each community (commune, town or county) became responsible of approving the plan regarding its territory. Certain categories of plans (those concerning protected areas and central areas of big towns as well as master plans for touristic settlements) are approved at a higher level-county council- and reviewed by the responsible national agencies or ministries. The plans were grouped in Regional/Spatial Plans (at national, regional, county, inter-community and community levels), with a "structural" content and Urban Plans (General Urban Plan for the town/village, Zonal Urban Plan for an urban area and Detailed Urban Plan for one or a small group of plots/buildings), with a content that included both rules concerning the allowed/forbidden activities, and rules defining the building's realization (floor-area-ratio, maximum hight, buildable area, architectural conditions, a.s.o.). The Urban General Plan and the Urban Zonal Plan are accompanied by by-laws.

In the situation of lack of legislation concerning public land leasing, a chapter establishing basic conditions in which public owned land could be leased was introduced in the law.

The ministerial decision that followed the law provided detailed procedures and forms for Planning Certificate and Building Permit delivery as well as contents and approval procedures for the different categories of plans. It must be underlined that the procedures were very simplified because it was considered that, at that very moment, it was almost impossible to elaborate a comprehensive law concerning the whole planning system. So, excepting the public status of building permits and of planning certificate lists (that had to be accessible to the public at the City Hall), no other public participation provisions were made.

However, the frame-law concerning the regional/spatial planning was already under work.

The period after the Building Permit Law was, in many respects, an “experimental” one: many facts and situations confirmed some previous estimations or stood out unattended consequences.

The law provided that building permits cannot be delivered if a legally approved urban plan does not exist; for exceptional cases, a specific procedure was established, which involved that a local council decision was required for each building permit delivered without being based on urban plan. The negative consequence was that very soon the “exceptional” procedure became very common.

Another example can be given from the local council’s perspective; the law stated that when the General Urban Plan is not yet elaborated, the building permits can be delivered based on detailed plans; the local councils and mayors discovered very soon that it was much more convenient for them (both from particular interests and legal state control points of view) not to elaborate General Urban Plans, that required preliminary studies and a review by the Ministry and other agencies, but to “manage” the situation by a “puzzle” of detailed plans, for which approval procedures put “no problems”. This situation was registered in the main big cities, with negative effects, sometimes worse than before 1989 and it had to be related to the “liberal” approach of democracy that often was claimed as an explanation.

A major difficulty, both in planning and in construction activity, is the lack of the general status of property law; the fact that many lands and buildings are “between” two owners has generated lack of certitude and decay, as well as distortions on the real estate market.

Conscious of the difficulties regarding the new law implementation, a programme of planning division restructuring, both at local and county levels was established by the Ministry, in order to improve the structure and responsibilities and to inforce the professional capacity. Because the local Public Administration Law was under approval, the government took no decision concerning this programme, so the lack of personnel, associated with the low level of salaries in administration, were a serious bottleneck, favouring negative consequences.

The population’s attitude - inherited as shown above - together with the lack of control capacity and corruption, as well as with difficulties in justice procedures, led to a strong increase in the number of buildings realized or modified without a building permit. It is necessary to note, however - as a “cultural” issue - the fact that to ordinary people’s minds, there is no distinction between sense of property and the building right (“it is my land and I build no matter what I want on it, and no matter how; no one can limit this right, since now there is democracy”).

It is interesting to point out that in the information and formation activity, very few things have been done and media (an incredible number of new papers has appeared after 1989) prefered more spectacular subjects and only the big real estate scandals deserved attention.

A good action took place in the Institute of Architecture: in co-operation with the ministry, two programmes were opened - a three year “college” specialized in planning and a two year Post-Graduate Course specialized in planning and urban development. Unfortunately, the local administration offered very few working places, so the graduates were quickly absorbed by the

private design firms - there is however a gain, since there are very few architects capable of elaborating urban and regional plans, according to new standards.

The Ministry developed a research programme concerning the elaboration of methodologies, guidelines, guidebooks for professionals, local councils and mayors in order to facilitate the process of law implementation. There were organized training programmes of one – two weeks, in different regions of the country, with or without foreign assistance; the results are now to be observed.

It must be said that in some big cities (Timisoara, Bucuresti, Oradea, Arad), the local authorities decided to open exhibitions, accompanied by presentation and informal discussions related to the specific studies or to the first stages of general urban plans. The results proved on one hand the interest of population, but mostly put in evidence the necessity of information and formation programmes, in order to transform the population in a useful "partner".

The new law concerning the expropriation for public interest purpose is very balanced and it is a coherent example of protecting both the public interests and the citizens' rights; the procedure gives the possibility of negotiation and the right to appeal for the expropriated owners. The local administration appreciated the law but considered the procedure rather long and ineffective; the author thinks that this is a typical transition approach.

The relation between the politicians and the professionals continues to be a very difficult obstacle: the former consider that they may modify no matter what plan or by-law provision (very often according to personal interest) and the latter feel frustrated by the power's ignorance and, sometimes, by their own lack of capability to communicate with the politicians. It must be noted that the Public Servants' Law does not exist yet, to protect the professionals in public administration.

V. THE NEW URBAN AND REGIONAL PLANNING LAW

After the adoption of the Constitution and the apparearance of the Local Public Administration Law, the need for the frame Law Concerning Urban and Regional Planning was more and more claimed.

The elaboration work of this law took into consideration the basic new issues characterizing the transformation process in Romania: a new system in local administration with a high degree of decentralization, radical changes in economy and in property status, the necessity of a real public participation in regional and urban development decision-making, changes in legislation, as well as the objectives of European integration and sustainable development.

A big quantity of information material was consulted: legislation from Denmark, Sweden, Finland, the United Kingdom, Belgium, Switzerland, Spain, Japan, the United States, as well as new laws from Poland and Bulgaria; legislation, plans, procedures and different other documents from France were consulted, too. The information and exchange of experience in different workshops and seminars organized by UNCHS, UN-ECE, and other organizations were used in the process of law elaboration. Two rounds of consultation with local public administrations, with planning public servants, with ministries and professional organizations took place.

The structure of the law evolved: the law was, at the beginning, more general, ruling in different areas of regional and urban development activity (including land registration and cadaster, expropriation, public and private domain management, leasing procedures, a.s.o.); in time, due to specific laws that have been drafted (Real Estate Registration and Cadaster Law, Expropriation Law) or others that are under work (General Status of Property Law, Private and Public Domain Management Law), the content of the law became more specific and now, the law is dealing with two big issues: the planning system and the urban management activity (mainly also from the planning point of view).

The "General Provisions" chapter of the law points out the general interest represented by regional/spatial and urban planning activity, which is based on the principle of sustainable development, and is put under full state and community's responsibility and which takes place with a large population participation.

At the same time, as a consequence of the feed-back registered after the implementation of the Building Permit Law, the law contains detailed chapters dedicated to planning activity at national, county and local levels.

In the present form, the law establishes full responsibility for each level concerning the related plans that are elaborated. The content of the plans is in itself more specific and the planning system is simplified: the regional plans have legal force concerning the county councils and the local councils, and the plans that are directly compulsory for citizens are reduced to two - the General Urban Plan that establishes the land-use and general conditions for construction activity, accompanied by the municipal planning by-law, and the Local Development Plan, which is a detailed plan stating the specific conditions for realization of one or more construction in an area inside or outside the settlement; there is also a Zonal Urban Plan that is a kind of a structure/strategic plan, elaborated for a complex urban area or for an area where a medium-term development programme is envisaged.

The law provides a framework for counties' or local communities' association, in order to cooperate in planning activities and in providing public services.

The law establishes principles regarding the elaboration, financing, review and approval procedures for the plans and by-laws.

At national level, the law gives to the Government the responsibility of general coordination in the domain. The Ministry of Public Works and Regional Planning is a specialized authority concerning regional and urban development and planning, cooperating both with other ministries and with county councils and local councils. At national level, the National Development Plan is elaborated in order to harmonize different governmental programmes and regional development programmes; the plan is structured in sections (the sections concerning the national transport infrastructure and the protected national interest areas are already elaborated; the sections concerning water reserves and management and the structural model for human settlements network development are under work). The sections are approved by the Parliament. The Government has the power to elaborate regional plans, if the respective territory is appreciated as needing this. The Government approves the General Planning Rules that are used for guiding planning activity and delivery of building permits.

At county level, the County Council is responsible for the elaboration of the regional plans covering the county area or an area where two or more counties are associated; the County Council also coordinates the realization of infrastructures of regional importance and facilitates the co-operation between municipalities.

The Local Council is fully responsible for the development and planning activity at local level. Both the municipal development programme and Urban General Plan are adopted by the Local Council. The Local Council cooperates with agencies, utility suppliers and economic agents concerning the planning activity. The Local Council approves the Zonal Urban Plan as well as all the local development plans.

The principles of co-operation between different levels of administration and of partnership between public and private sectors are stated in the law.

A special chapter is dedicated to **opportunities for public participation in development and planning activities**.

Three forms of public participation are presented: population information, population consultation and referendum.

The citizens' participation is assured both at individual level and in the form of NGOs or CBOs.

The Ministry, county councils and local councils are responsible for organizing and monitoring the process and the activities regarding public participation.

According to the law, the population must be informed about the goals of regional and urban development programmes, about the decisions of public authorities regarding the elaboration of different types of plans including the aim of the plans as well as about the whole content of plans and by-laws that are to be examined, in order to be approved according to legal procedures.

The information activities must be done through **general modification and public access** to programmes, plans and by-laws consultations at the County Hall or the City Hall; **media notification** and **exhibition** of the whole plan or parts of it accompanied by **written representation** and **informal discussions** may also be used.

Following the information activities, the population may address to central or local authorities **reactions** or **proposals** concerning the plans and the provisions of by-laws - the term is fixed and made public by the authorities, but cannot exceed 45 days. The responsible authorities must then analyze the public reactions, and the report is part of the final plan, together with **reasons given** for accepting or refusing them.

When a local development plan has to be elaborated, all the owners in the area must receive **specific notification** (this proposal in the law was very sceptically received by most of the specialists and politicians).

The **public consultation** is defined like the process through which the population expresses the options and opinions regarding the content of the plans and by-laws that have to be approved;

this process includes **information activity, public hearings** and the elaboration of a **final report.** The final report must be published.

The Ministry is responsible for establishing specific procedures for public participation opportunities for different types of plans.

A large chapter of the law is dedicated to the territorial and urban management, including provisions concerning data banks, urban operations, land operations, limitations concerning the building right, as well as functioning permit and change of destination permit. One section is dedicated to preemption rights of local public administration concerning the acquisition of land and buildings.

The law establishes provisions for protected areas that include historic monuments, natural monuments or parks, a.s.o.

It is obvious that, in comparison with the previous lack of legislation, these provisions are ambitious, although not yet in accord with western European legislation.

The process of law approval will be difficult, but it is sure that implementing the law will be even more so.

A big number of specific ministerial decisions concerning procedures is needed; guidelines for implementing the law and transitory measures are necessary; “client-tailored” handbooks have to be used in order to facilitate the law implementation.

The delicate issue of public participation requires a real **strategy** in order to generate, to monitor and to accelerate the changes in perception and attitude in such a manner, that the provisions of the law could be successfully applied and would not remain dry formalities.

In this activity, the help of professional organizations is needed (the Romanian Union of Architects already organized in the previous years large debates accompanying well done exhibitions, mainly concerning Bucharest’s problems and its central area’s future development); for the media to be a partner in this strategy, specific training actions for journalists are needed.

An important role can be played by NGOs and we are content that finally, after the foreign founded programmes concerning local public administration were launched, some locally founded foundations and associations are providing programmes related to regional and urban planning, in order to educate the public and the elected persons and to train the public servants and professionals (communicational skills need to be developed and this is only one example); they need support and to be encouraged.

The author strongly believes that the coordination of efforts is needed for the success of this strategy, in spite of some reluctance, at different levels, concerning the efficiency of public participation. These changes can be part of the normality that we call “democratic society” -a democracy that “works” and does not stand stockstill in a “perpetuum project”.

VI. EUROPEAN APPROACH

In terms of planning and, specifically, in terms of public participation, the European harmonization cannot be a short-term issue, in spite of all public claims. Like in the situation of the sustainable development approach and principles, the specific problems, difficulties and side-effects of the transition are as many obstacles.

The western standards, procedures, positive results are still quite far, but the steps toward them must be done rather quickly and coherently; in this process, the role of assistance and exchange of information and experience is essential.

For improving the quality of Urban and Regional Planning Law, a seminar that grouped experts from western European countries was organized in Bucharest, in November 1994, with the help of the Council of Europe. The subject of the seminar was “Urban Legislation” and the draft law was also presented and analyzed; many of the improvements were made after this seminar, including the structuration of public participation procedures in a separate and enriched chapter.

At the same time, it must be pointed out that the National Plan’s section concerning the most important transport infrastructures was elaborated in accordance with the schemes of communication networks at European scale.

The roads, railways and bridges have started to be built; let’s hope that the landscape crossed by them will be unified in quality level and diverse in specific identities.

THE ALLOCATION OF REGIONAL/SPATIAL PLANNING POWER IN SOME EUROPEAN COUNTRIES - PLANNING SYSTEMS AT NATIONAL, REGIONAL AND LOCAL LEVELS - OPPORTUNITIES FOR PUBLIC PARTICIPATION

European strategies

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1. THE LEGAL AND CULTURAL CONTEXT OF THE GERMAN PLANNING SYSTEM

1.1. Divisions of power

The Federal Republic of Germany is a parliamentary democracy with horizontal and vertical divisions of power. Horizontally, power is divided among the Parliaments as the legislature, the Ministries, officials and employees of the public service as the executive and the Courts as the judiciary. In the vertical sub-division, power is divided among the *Bund* (federation), the *Länder* (states) and the *kommunale Selbstverwaltung* (local self-government).

A provision of the federal republican system is that the Federation, in the form of the Federal Ministries, only occupies the highest administrative level, without any subordinate authorities at their disposal. Normally, federal Acts are implemented by the *Länder* (states) "as if they were their own laws". This also applies to all Acts relevant to planning. Therefore, the Federation is not the most suitable contact partner for questions and issues in relation to spatial planning. The *Länder* and the municipalities are the more important agencies of power in this regard.

In each *Land* there are different ministries responsible for *Raumordnung und Landesplanung* (state spatial planning). The parliament of the Land (the *Landtag*) provides only general guidelines, which are adopted in the *Landesentwicklungsprogramm* (State Comprehensive Development Programme). The definitive decisions are made by State Ministries and their subordinate agencies and authorities.

A stronger transfer of decision-making to the political arena takes place at local level. New building land is designated by means of local statutes (a *Bebauungsplan* - legally binding land use plan, is such a statute), which must be adopted by the local public representatives. The officials and the employees of the local administration prepare these plans, the final decision is met, however, by the local parliament. At local level, in a range of federal states, the principal official (*der Oberbürgermeister* - the head burgomaster) is elected directly by the people. Therefore, there is a relatively strong democratisation of planning at the local level.

1.2 The guarantee for functionally active local (self-) government

The most important constitutional principle in relation to spatial planning is the guarantee of a functionally active local (self-) government in Article 28 of the *Grundgesetz* (Basic Law).

According to the German understanding of this, local government involves the possibility for the *Gemeinde* (municipality) to decide on the definitive planning uses for the municipal area (the planning autonomy of the municipalities). This planning autonomy confers the municipalities with a realizable independence in spatial planning, supported by the courts. Although the municipalities must bring their plans into line with the aims of state spatial and regional planning, they must, however, also be allowed enough room for their own decisions. In this sense, "bringing into line" does not mean to obey, but to respect.

2. THE PLANNING SYSTEM

Like the administrative structure in Germany, the system of spatial planning has three levels: The *Bund* (federal) level, the *Land* (state) level and the local level. Local land use planning (*Bauleitplanung*) is the most important. It is carried out by the *Städte und Gemeinden* (municipalities); but because of its direct impact on land and land law, the instruments and procedures of local land use planning are regulated by the *Bund* in order to provide uniform legislation throughout the FRG. The *Baugesetzbuch - BauGB* (federal building code) contains the legislation governing local land use planning and the preparation of local land use plans. It is the most important legislation affecting the planning and zoning of areas for building and the permissibility of individual development proposals in the FRG.

2.1 Local Planning

Under the provisions of the *BauGB* the *Gemeinden* must prepare a *Flächennutzungsplan* - F-Plan (preparatory land use plan) for the entire of their area. The *Gemeinden* also prepare *Bebauungspläne* - B-Plans (binding land-use plans) for areas where new building is planned (in the F-Plan) to take place. A B-Plan is to be developed out of the F-Plan and regulates, in detail, the type and scale of building which may take place. It is legally binding on all public and private parties. The provision of local infrastructure also lies within the responsibility of the *Gemeinden*.

The *BauGB* provides the *Gemeinden* with mechanisms for the protection and implementation of local land-use plans, such as pre-emption rights, the freezing of development in certain circumstances and special permission for the sub-division of plots. All of these powers and responsibilities mean that the *Gemeinden* have very tight control over the supply of building land and the type of use of that land. Thus, any significant level of building outside of existing built-up areas can only be undertaken with the co-operation of the *Gemeinde*.

The *BauGB* also divides the whole area of Germany into three zones for the permissibility of development:

1) areas covered by a B-Plan, where development is permissible if it does not contravene with the provisions of the B-Plan;

2) built-up areas without a B-Plan, where development is permissible if it "fits-in with" the surrounding area and buildings; and

3) undeveloped outskirts areas without a B-Plan, where in general only privileged development belonging to the area is permissible.

In all cases it is not possible to construct a building or to change land-use without an official *Baugenehmigung* (building permission). In addition permission will not be issued unless the provision of local infrastructure (roads, footpaths, sewers, etc) is available.

The contents of both the F-Plan and the B-Plan and the designation of land for building (or other uses) are largely matters for the individual *Gemeinde* to decide; although they must take account of the objectives of higher-level plans, the regional plans and the spatial and sectoral plans of the *Land* and the *Bund*. Indeed, the *Gemeinden* participate in the preparation of these higher-level plans and can therefore influence their content.

2.2. Regional Planning

The detailed regulation of supra-local spatial planning is a responsibility of the individual *Länder*, who make their own laws for *Landesplanung* (state spatial planning). This involves the preparation of *Landesentwicklungs-programmen* and/or *Landesentwicklungsplänen* (state comprehensive development programmes or plans), which set out the development policies and objectives for the Land, based on a hierarchy of central places.

Regionalplanung (regional planning) adapts the policies and objectives of the *Landesentwicklungspläne* and -programme into specific objectives for regions within the *Land*, for which individual *Regionalpläne* (regional plans) are prepared. The organisation of *Regionalplanung* is governed by the *Landesplanungsgesetz* (state planning act) of each *Land*.

These *Länder* Acts also provide a special spatial planning procedure (*Raumordnungsverfahren*) to ensure that large scale project proposals (major retail centres, waste-disposal facilities, etc) comply with the objectives of *Landesplanung* and *Regionalplanung* (i.e. to establish the most suitable location for the projects).

2.3. National Planning

In relation to supra-local spatial planning, the *Bund* provides the *Länder* only with basic rules and principles. These were first provided in the (*Bundes-) Raumordnungsgesetz* (federal spatial planning act) 1965. In addition, the *Bund* and the *Länder* together provide official guidelines as framework for the spatial planning. The overall objective of *Raumordnung* is to create "equivalent living conditions" throughout the FRG.

The *Raumordnungsgesetz* - ROG (federal spatial planning act) 1965-1993, is prepared and passed by the *Bundestag* in co-operation with the *Bundesrat*. It is the "framework" legislation for spatial planning, which is implemented by the *Länder*. The ROG defines (i) the broad aims and guiding principles of spatial planning in Germany and (ii) the organisational rules and procedures for the carrying out of spatial planning by the *Länder*.

The ROG also lays down the organisational and procedural framework under which spatial planning is to take place:

a) the sole competence of the *Bund* to decide the framework, content and organisation of spatial planning for the entire federal area;

b) the establishment of the *Raumordnungsbeirat* (spatial planning advisory council) which is to advise the BMBau minister in relation to the guiding principles of spatial planning;

c) provision for a regular report on spatial planning in the FRG (undertaken by BMBau);

d) the *Raumordnungsverfahren* (spatial planning procedure), which examines whether significant public and private development projects (eg airports, waste disposal facilities, major retail centres, golf courses, etc) conform with the requirements of the ROG and *Länder* spatial plans/programmes.

In 1992 the Conference of *Bund* and *Länder* Ministers for Supra-local Planning (MKRO) adopted the advisory "*Raumordnungs-politischer Orientierungsrahmen*" (guidelines for supra-local spatial planning - english version 1993). The guidelines replaced the *Bundesraumordnungsprogramm* - BROP (federal spatial planning programme), a broad development programme for the FRG, last prepared by the *Bund* in 1975. The guidelines provide general principles for spatial development in the FRG, based on the ROG and relating to the following:

- settlement structures, poly-central structures and city networks;
- the environment and land-use;
- traffic planning, including inter-regional traffic and european transit routes;
- Europe, including expanding inter-regional and cross-border co-operation and principles for european spatial planning; and
- planning and development, including the regional allocation of funding.

The various *Bundesministerien* (federal ministries) also prepare *Fachpläne* (sector plans; eg for federal transport infrastructure) which are subordinate to federal spatial planning, but are binding on the *Länder* and the *Gemeinden*. The *Grundgesetz* entrusts the preparation of *Fachpläne* in many areas to the *Bund*, including federal highways, railways, waterways, facilities for air-transport and defense. The *Fachpläne* are bound by their respective legislation and are to be co-ordinated between the *Bund* and the *Länder*. They are also to comply with spatial planning at the *Bund* and *Länder* levels. Local land-use planning must be adapted to the higher level sector plans.

Fachplanung (sector planning) plays an important role in supra-local planning, together with *Landesplanung* and *Regionalplanung*. The planning of highways, railways, airports, waste disposal facilities, etc. is subject to special procedures, the results of which are binding on the *Gemeinden*. All persons and agencies affected may participate in these procedures. They also have the right to appeal against decisions to the courts.

The German planning system is not only identified by its sub-division of responsibility between the *Bund*, the *Länder* and the *Gemeinden*, but also by a division of power between the legislature, the administration and the judiciary. The position of the judiciary is particularly strong. Any person whose rights are harmed by the plans or decisions of a public authority may appeal against the plan or decision to the courts. In such cases, the court will examine not only the legality of the procedures involved in the plan or decision but also the material legality of

the plan or decision itself. German legislation is partially based on a reaction to court decisions, which are either raised to general principles or are denied by the legislature. Overall, the number of regulations and their importance in Germany is high, too high according to some observers.

3. THE IMPACT OF THE EU ON PLANNING

In the older-*Länder* the influence of the EU is mainly related to the provision of structural funding for the redevelopment and restructuring of declining traditional industrial areas. Since 1990 the major focus for funding is the economic restructuring of the new-*Länder*.

Between 1991 and 1993 the EU Structural Funds contributed about 11% of the total funding for the improvement of regional economic structure in the new-*Länder*. The *Bund* and the older-*Länder* provided the rest between them. The level of EU funding will increase following the designation of the new-*Länder* as EU Objective 1 Regions from the beginning of 1994. It is now recognised that there is a need to include EU funding in the planning process and to co-ordinate the instruments of the EU, *Bund* and *Länder*. Furthermore, there is a need to increase inter-regional and trans-border co-operation and the harmonisation of trans-border regional planning. The *Länder* are responsible for the co-ordination of these tasks within each *Land*, in consultation and co-operation with the *Gemeinden*.

European guidelines for spatial planning could help to provide for the following:

- orientation to the principle of a relatively balanced poly-central settlement structure;
- support for co-operation between European cities and regions forming trans-national networks;
- improving accessibility within the spatial structure by developing hierarchical networks extending even into sparsely populated areas;
- a quick development of transnational networks (transport, energy, telecommunications);
- the rejection of rigid spatial development approaches; and
- the strengthening of regional centres against European-scale agglomerations.

In accordance with the principle of subsidiarity, the EU should concentrate its pan-European spatial planning efforts on areas affected by existing or potential development problems. From the German point of view, joint spatial planning is needed for the following tasks:

- establishing dynamic development regions in the new-*Länder* which support poly-central settlement structures and provide stimulation for development in eastern Europe;
- the integration of the new-*Länder* into the transnational networks;
- redeveloping traditional industrial areas and regions facing major structural adaption problems;
- the development of an efficient railway network throughout Germany, to provide for increased north-south and west-east traffic;
- the promotion and development of trans-border co-operation at national and local levels along Germany’s border areas. In particular along the borders with

Poland and the Czech Republic, which are also EU borders, and where the emergence of a "wall of prosperity" in the heart of Europe must be prevented.

4. DECISIONS AND ENFORCEMENT

4.1. Decision levels

The local (self-) government level comprises:

a) the *Kreisfreien Städte* (county-free towns), which generally have more than 50.000 inhabitants, of which there are a total of 116 in Germany;

b) the *Landkreise* (counties), of which there are 322 and

c) the *Kreisangehörigen Gemeinden* (municipalities belonging to a county) of which there are approximately 15.000.

Land-use plans are prepared by the *Städten* (towns) and the *Gemeinden* (municipalities), not by the *Landkreisen* (counties). Smaller municipalities are often formed into joint associations, which are responsible for, among other things, the preparation of the *Flächennutzungsplan* (preparatory land-use plan).

A *Baugenehmigung* (building permission) is granted by the lower federal state authority, the *Landratsämter* (state administrative offices) or the *Kreisfreie Städte* (county-free towns). These *Baugenehmigungsbehörden* (building permission authorities) are bound by the municipal *Bebauungspläne* (binding land-use plans).

4.2. Enforcement procedures

The two main enforcement procedures against illegal development are:

- the suspension of construction (*Baueinstellung*) and
- the removal of structures (*Beseitigung baulicher Anlagen*).

These are governed by the LBO's (state building regulations). The enforcement procedures are implemented by the building control departments (*Bauaufsichtsamt*) of the *Landkreise* (counties) and the *kreisfreie Städte* (towns/cities).

<u>The suspension of construction</u>

An order for the suspension of construction can be made where:

a) construction has commenced on a development requiring a *Baugenehmigung* (building permission) for which no permission has been granted;

b) the development is not being built in accordance with the *Baugenehmigung* as granted or

c) unauthorised building products are being used in the construction (i.e. products not authorised under the EU Building Products Guidelines).

Construction may resume once the regulations have been complied with.

The removal of structures

Where a structure has been erected or altered illegally, the *Landkreis/kreisfreie Stadt* is entitled to order its partial or complete removal; but only if no other means is available to enable the structure to comply with the law. This also applies to the illegal creation of uses.

A difference is made between structures (and uses) which are "formally illegal" and those that are "materially illegal". A formally illegal structure is one for which no Baugenehmigung (building permission) has been obtained, but which can be permitted. Here, compliance with the law will be sought by the authorities. The owner or person responsible will also be liable to a fine.

An order for the demolition or partial demolition of a structure can only be made when the structure is "materially illegal". That is when it contravenes public law and could not be permitted even if an application were made for permission.

The implementation of enforcement is by means of three instruments:

1) A money fine. The threat of a fine can encourage the owner to undertake compliance/demolition. Where this is not done the fine must be paid. Fines can be imposed and collected more than once for the same offence;

2) The authorisation of a contractor to carry out the enforcement action (*Ersatzvornahme*) and the recovery of the costs of the action from the owner;

3) The *Landkreis* or *kreisfreie Stadt* can carry out the enforcement action itself. It may only do so to remove a danger to the public.

All enforcement instruments must first be notified in writing to the owner (or person responsible). The owner may protest against the use of enforcement to the local authority, to the higher state authority and to the courts.

In general, enforcement procedures are not often used. This is largely due to the clear definition of development rights contained in the B-Plans and in the provisions of the *BauGB*. Where a development right is unclear, the *Bauvoranfrage* (preliminary application) provides an inexpensive and quick answer.

5. EVOLUTION OF THE PLANNING SYSTEM. PARTICIPATION. TRENDS

When the *Baugesetzbuch - BauGB* (Federal Building Code) was issued in 1960, it was thought that all areas where building could take place would be covered by a *Bebauungsplan* (binding land-use plan) within a forseeable period. In this way, one hoped to arrive at a development process completely controlled by plans. Today everybody knows that it is neither possible nor

necessary that a plan be prepared for all areas likely to be built upon. This is particularly so for built-up areas, where building occurs only on individual vacant plots. With the progress of time, the regulations that govern building projects in built-up areas (*BauGB* Section 34) have been expanded and perfected. In addition, the possibility to build in the undeveloped outskirts (*BauGB* Section 35) has been controlled in greater detail.

Public Participation

Public participation is only regulated in respect of the planning process for land-use plans, not for individual building permissions. The rules of the *Baugesetzbuch - BauGB* (Federal Building Code) provide for two phases of public participation. The first phase comprises the "early" participation of the public at the beginning of the planning process. The public are to be informed at the earliest opportunity of the principle aims of the plan; these aims are also to be discussed with them. Informing the public is usually undertaken by means of notices in newspapers, which advertise the display of the documents in the *Rathaus* (town hall). It is there that the discussions are also held. Where important issues are involved, special presentations will be organised for discussion.

The second phase of public participation occurs when the draft of the completely drawn plan is displayed for a period of one month. The public may now submit representations and suggestions. Each person who submitted a representation must be informed of the outcome of its consideration. Where a plan is changed following the display, it must be redisplayed (with the exception of minor changes).

The degree of actual public participation depends on the sensitivity of the subjects covered by the plan. Ordinary plans receive only the participation of those directly affected, being in most cases the individual landowners only. Plans with a public interest can, on the other hand, receive thousands of representations.

The possibilities of public-private partnership between investors and the responsible municipality, involving co-operative contracts, have been greatly expanded. There is an overall trend that administrative dealings are not based only on their power of permission and prohibition, but through co-operation with the help of contractual partnership.

6. CONCLUSIONS

In Germany, the procedures for public participation in the preparation of local plans are contained in the *BauGB*. The same level of participation is forseen for both the F-Plan and the B-Plan; this involves the two phases of participation as mentioned above. The first occurs at the beginning of the planning process, where the public are to be informed and to be given opportunity to discuss the aims of the plan. The second phase occurs when the draft plan is displayed for a period of one month.

However, changes to an F-Plan or B-Plan which do not alter the basic principles of the plan, do not need to provide for public participation. Recent amendments to the *BauGB* also allow for shorter public participation procedures, involving a two-week display period only, where a B-Plan is being prepared, amended or supplemented to meet an "urgent need for housing". Also the preparation of a "*Vorhaben- und Erschließungsplan*" (a combined public-private plan for a

building project together with infrastructure) allows for a shortened two-week participation period for any type of projects.

The designation of areas as "built-up areas" and the procedure for a *Baugenehmigung* (building permission) in "built-up areas" does not allow for public participation.

However, persons whose legal rights are likely to be harmed by a decision of a public authority (including the adoption of a B-Plan or the issue of a *Baugenehmigung*) can appeal against the decision to the courts.

The preparation of plans and programmes at the *Länder* or regional level is not legally required to provide for public participation. Nevertheless a special advisory board or council (*Planungsbeirat*) participates in plan preparation in all cases. This board includes representatives from the local authorities, industry and commerce, the *Naturschutzverbände* (nature protection associations) and usually the citizens groups in the area. The laws governing certain areas of sector planning require public hearings for planned major infrastructure projects (such as motorways, nuclear power plants, etc.)

Public participation is a major issue and component of the spatial planning system in Germany. This is mainly a result of:

a) a large number of highly motivated and resourceful "public initiative groups" or *Bürgerinitiativen* and other environmental pressure groups, who not only respond to the plan making process, but who also prepare their own plans for local areas/issues;

b) the growing involvement of political parties in the participation process, especially of the "Greens" and other "alternative" elected representatives at local level;

c) there is a high awareness of environmental issues among the population.

The coming together of Europe has consequences for the spatial and settlement structures in Germany, as it now constitutes a new interface between western and eastern Europe and between northern and southern Europe. At the same time, the tasks and problems caused by the changes in Europe cannot be solved by the individual countries on their own. Although the EU does not have an independent competence for spatial planning, the Maastricht Treaty does contain specific objectives which relate to spatial development.

THE ALLOCATION OF REGIONAL/SPATIAL PLANNING POWER IN SOME EUROPEAN COUNTRIES - PLANNING SYSTEMS AT NATIONAL, REGIONAL AND LOCAL LEVELS - OPPORTUNITIES FOR PUBLIC PARTICIPATION

The case of discretionary planning

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The three actors of the British planning system

Five years ago archaeologists uncovered the remains of the Rose Theatre on the south bank of the River Thames. Although the main artifacts were simply the bases of chalk supports, the find was nevertheless of great importance as confirmation of the siting of one of the theatres in which Shakespeare worked and acted. The world of the theatre, never shy about publicity and celebration, was alight with excitement.

However, there was one, rather serious, problem. The site upon which the theatre remains were found had just been given planning permission for a large block of offices. Battle was joined between the developer, who had invested in a large property transaction, and the world of theatre and archaeology, which wanted the office permission revoked regardless of the compensation of millions of pounds this would require. In between, stood the local planning authority, the London Borough of Southwark.

"In between" was a dangerous place to stand. I recall holding a meeting between the architect of the office block, the formidable ninety year old Richard Seifert, and a nineteen year old archaeologist, which nearly came to blows. The pragmatic world of office construction could not easily be reconciled with theatre folk (their heads in the clouds) and archaeologists (their heads in the ground). An extraordinarily voluble and effective public campaign was launched. The issue was hotly debated in bulging meeting halls.

Finally the planners negotiated a compromise. A new planning permission was given which protected the theatre remains within a large shell inside the office building - which could be the basis of a future exhibition and museum. In compensation, an extra floor was allowed on top of the office building.

I recall this vivid episode because it illustrates three important characteristics of the British planning system and the role of public participation within it. Firstly, it underlines the powerful impact that public opinion can have. In this (undoubtedly very unusual) case, the weight of popular opinion forced a change of an entirely valid permission which the developer could legally have implemented without any inhibition. Public participation is an essential, integral and important part of the planning process.

Secondly, it illustrates the flexibility of the British planning system. A particular set of circumstances was deemed significant enough to justify changing a valid permission and over-turning all the approved policies of the planning authority in giving permission for the extra floor of offices - thereby contravening design and density criteria.

The flexibility of the British planning system is illustrated by the assumption that every planning decision must be determined on its individual merits. Because the system is essentially discretionary, the outcome of any planning decision, large or small, can be influenced by public participation.

Thirdly, the Rose Theatre episode introduces us to the three main players in British planning - the public, the developer and the planner. They represent the three competing ideologies in British planning law identified by McAusland.[1]

The first is that planning law should be used to protect private property and its institutions. The office developer appealed to this ideology to protect his planning permission and his property. Secondly, the public interest ideology sees the law as advancing the public interest, if necessary against the selfish interests of the private landowner. The planning officer acted as the guardian of the perceived public interest in encouraging a re-negotiation of the planning permission. Thirdly, McAuslan suggests the ideology that planning law is the vehicle for the advancement of public participation. The supporters of the Rose Theatre agreed that the strength of public concern demanded that a new planning approach should be taken.

At the heart of the British planning system is the process of development control on which applications for planning permission are decided by the local planning authority. When the politicians on the local authority Planning Committee and their professional advisors consider these applications, they have to take several factors into account. These include a weighty volume of planning law, the policies of statutory development plans and Government (and sometimes European Commission) guidance. Within this context, individual decisions characteristically hinge upon the relative weight of the arguments of the applicant in support of his or her decision and of the views in support of or opposition to that application which are uncovered by the process of participation.

Thus the planner will weigh the development interest against the participation interest which may often be opposed to each other. At one level, the neighbours may object to a house extension. At another level a whole community may oppose a large new housing estate. As we will see, the weighting which the planner must give to the opinion expressed by the participatory process has varied at different times. Currently it has a substantial status, not only

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1 "The ideologies of Planning Law". P McAusland, Pergamon 1980.

in affecting decisions on applications for planning permission but also in influencing the content of development plans, and indeed of Government guidance.

The complexity of planning law and procedure in Britain and the need to treat each policy and each decision on its individual merits and in its particular context are sources of power for the planner. Large numbers of professionals are needed to negotiate the processing of applications. There are far more professional planners engaged in this activity than can be found in any other European country. In other European systems, the process is more prescriptive and more administrative. The British planners with their political masters can act as judges of the public interest and can mediate between the applicant and the objector.
Many planners would argue that the private property interest is powerfully represented in planning law and guidance and has very strong support through the development industry and its command of legal and consultant advice. This has been partially offset by a recent shift in legislation and guidance away from a presumption in favour of development and towards a presumption in favour of the policies of the development plan.

In this continual balancing act between the three interests, few would argue that public participation exercises the greatest power. Some developers believe it can create delay and can sway local planning authorities - or particular elected Members may be excessively influenced by the opinions of their electorate. Many of those active participants would argue against this and say that the complexity of the system benefits the developer and the planner. There is also a distinction between consultation, in which views are invited upon plans or applications, and participation, in which the public is invited to take a full part - and indeed in its strictest sense to be involved in decision-making. As we shall see, participation is far more extensive in the voluntary as opposed to the statutory forms of planning.

Having said this, the British development control process remains discretionary rather than prescriptive and therefore comparatively open in terms of public participation.

The planning powers at different spatial levels

As we now look at the allocation of planning powers through the different structures of the British system, it is necessary to remember that its discretionary nature means that the weight and balance of powers can ebb and flow frequently.

National Planning

This is notably true at the national level. There is no national physical plan. The national structures of planning have proved remarkably stable throughout the post war period and Governments have generally preferred to change their advice on planning rather than change legislation. Advice most notably comes in the form of planning policy guidance (PPGs) which sometimes heralds a significant change in policy: for example, a recent PPG made a pronounced shift towards support of shopping in town centres and against further development of out-of-town centres. New Government guidance is published in draft consultative form; the existence of powerful lobbying group on planning and environmental matters can influence a change in thinking. One notable example a few years ago was the abandonment of proposals to soften the degree of protection given to land in “Green Belts” around large and historic cities. The combined weight of public, property and professional opinion encouraged the Minister to

rethink.

Government can and does also exert influence through more informal advice. For example, the current Secretary of State has made several speeches encouraging local planning authorities and developers to take a stronger interest in the quality of development. In effect, planners are being told to make quality of design a key factor in decision-making. What is particularly striking is that the opposite advice was given by a relatively recent Ministerial predecessor. The proposals, that design was more of a planning authority's business and that it was a central concern, were both effectively the result of Ministerial speech-making without any legislative change and with little significant change in written guidance. In the intense world of British planning, messages about changes in national planning priorities can be rapidly transmitted through the chattering classes of developers and their agents, politicians and planners and the well organised public and private interest groups. The lay public is far less likely to be aware of these messages.

A substantial erosion in the power of planning control and in the effectiveness of public participation occurred in the Thatcher years. Most of this change was made without recourse to legislation. Much of the swing back towards a stronger and more participative planning regime has similarly been realised through changes in guidance and in the climate of opinion rather than in law.

A very important re-orientation of the national planning process has been the greater emphasis upon the statutory plan as the main determinant of planning decisions. This marks a move towards a rather more prescriptive approach. However, it remains strongly conditioned by the requirement that all other relevant interests, including the need for development and expressions of public opinion, are taken into account when deciding planning applications.

The British Government has argued strongly that national planning policy generally rests with individual nation states under the principle of subsidiarity. Nevertheless national policy has been strongly influenced by EC policy, particularly in areas of environmental appraisal and sustainability.

Regional Planning

There is no elected regional tier of Government and regional planning powers are weak. Regional bodies such as SERPLAN are consortia of local planning authorities in the region and act essentially in an advisory role. They seek to influence the content of the Government Regional Planning Guidance. The RPGs are characteristically short and rather generalised indications of Government priority. These too are subject to consultation. Recently, the Government itself has formed regional "Government Offices" which liaise with local authorities but which have thus far shown little inclination to operate as plan-making bodies. The longer term response of Britain to the emerging power of the regional tier in the EC remains uncertain.

Strategic and Local Planning

Local plan-making and decisions on planning applications operates currently at two levels. The more strategic policies and decisions are taken by elected County Councils and the more local

ones by elected District Councils. Thus the statutory Structure Plan sets a context for the County. Districts must reflect it in producing their Local Plans. Both types of Plans are subject of extensive public consultation: this is a statutory requirement. The draft Structure Plan is then debated at an Examination in Public and the Local Plan at a public inquiry. Both are held by Government appointees. Objectors and supporters of the Plan have the chance to make their case. In both Structure and Local Plans the local planning authority takes the final decision on the Plan's content. However, the Government retains and uses power to "call-in" Plans and to change their content if they are not in line with national and regional policy.

Development Decisions

Similarly decisions on planning applications are taken at the two different levels. Essentially, the County considers those proposals which are of a very strategic nature, such as major road schemes, and which are of strategic importance but likely to raise local difficulties. For example, waste disposal and mineral extraction are both necessary in the wider public interest, but no one wants a waste tip or quarry in their own immediate neighbourhood. The County is considered (rightly) to be more likely to take into account both the wider need and the local opinion.

Almost all other types of applications are determined by the District tier. However, some types of development are "permitted" by law and therefore do not require an application. This includes many small changes such as minor rear additions to houses, changes of use of buildings from one type to a very similar type (say from a chemist shop to a newsagent's) and so on. Often these small changes are the source of contention between neighbours: however, redress in such cases has to be sought through other legal channels such as the law of nuisance. There are also some areas, notably Simplified Planning Zones, in which more "relaxed" planning regimes apply. These cover only small areas of the country - often where an intense regeneration programme is under way.

Indeed development control in Britain is characterised by extraordinary complexity. One result is that the public find planning legislation difficult to understand and the planning system difficult to access. A second consequence is that very large numbers of highly qualified professional staff are engaged in the often routine processing of planning applications.

Consultation on planning applications

Nevertheless, the process is a relatively very consultative one. There are minimum requirements on all planning authorities to publicise planning applications and to invite public views upon them. Applications are advertised in local newspapers and by site notices describing the application and displayed on the site of the proposal. Very commonly, local authorities go well beyond these requirements. For example it is common practice to notify all affected neighbours by letter. On more contentious issues, public meetings may be held. In many part of the country, a third tier of elected local councils - Parish and Town Councils - comment upon applications in their area. The opinions of the public and of other consultees, such as major interest groups like English Nature, are "material considerations" in considering decisions.

The elected Members of both County and District Planning Committees are keenly aware of local opinion and may often have been lobbied and petitioned about individual proposals. It is now normal practice to allow the public to attend Planning Committees and some authorities allow both the applicant and objectors to applications to speak. Some local authorities have established Area Planning Committees in an effort to improve the accessibility of the process. Reports on planning applications and on proposals for development plans will refer to the comments made during the consultation process.

Compared with most other forms of public decision-making in the UK, the planning system offers substantial opportunities to participate both in the formulation of plans and in individual decision-making. However, there remain substantial impediments to a full opportunity to participate.

Limitations on participation

Firstly, the language and practice of planning is obscure. In part this reflects the caution of planners; given the task of implementing very complex laws and guidance, they seek to avoid the risk of legal challenge by studied use of professional language. The developer is able to play the same game by use of professional advisers. There is a growing legalisation of planning. The same legal resources are not open to the public, although there is a planning aid service and larger interest groups are increasingly resourced to make expert interventions. Many people do not understand that they are supposed to comment on land-use considerations: for example, a potential fall in the value of neighbours' houses is not a relevant ground for objection although it may be their biggest cause of concern.

Secondly, many developments which may worry people are not exposed to a full public airing, either because they are "permitted" or because they are decided by officers under delegated powers. It can also be argued that the move of emphasis towards the policies of the development plan gives the public less opportunity to influence individual decisions. That development plan will have been subject to consultation, but few people choose to participate in the debate on the abstract long term proposals of a development plan.

Thirdly, planning authorities are under heavy Government pressure to determine planning applications as quickly as possible. Eight weeks is held to be the maximum desirable length of time to consider most types of application. This is not necessarily adequate to allow local opinion to form and express itself. Additionally, planning authorities are now liable to heavy Awards of Costs if they are deemed to have acted unreasonably - and as a result may be less open and more cautious.

Fourthly, the applicant has a right to appeal against a local authority decision; this right does not extent to third parties, so that objectors cannot appeal over the heads of the planning authority. Mr Shepley will talk at length about the appeal process, but it is one which can favour the developer and planner rather than the public because the latter will have less time and expertise, and a less substantial locus, for the debate in front of the appeal Inspector. An application which excited fierce debate in public meetings and in the town hall can end up being decided in a largely empty inquiry room and on a word processor in the Inspector's spare bedroom. I anticipate that Fiona Reynolds may say more about this in her paper.

Most public involvement in plan-making and decision-making is consultative rather than participatory. Very large sectors of the community are effectively excluded because they do not have access to or interest in networks of consultation.

Changes in the weighting of planning powers

Indeed a characteristic of the UK planning system is that the greatest opportunities for participation are at the very local level, but the ultimate power of decision is at the national and sometimes the European level. The Secretary of State can "call in" and require changes to development plans, can call in planning applications where there are seen to depart from the development plan and can generally exert powerful pressures and influence.

Although Central Government will take into account local opinion whenever it does exercise a right of decision, the immediacy and passion of the local debate must be inevitably lost in the rarefied atmosphere of Whitehall (or, for that matter, Brussels). I practice the overwhelming majority of decisions are taken by local authorities. Nevertheless their feeling is that their powers are significantly constrained by Central Government policy and by the threat of intervention.

A second characteristic of planning participation is its cyclical nature. The effectiveness of participation tends to reflect the ideology and interests of the Government of the day - which in itself of course is partially a reflection of perceived public priorities. So, for example, the Labour Government which came to power in 1964 sought to reflect a perceived public mood of greater openness and community involvement. The Planning Act of 1968 and the Skeffington Report of 1969 both promoted greater weight for public opinion in the procedures and decision-making processes of development plans and development control. Conversely, during the 1980s the importance of consultation in planning was explicitly and implicitly down-graded. This partly reflected the greater priority given by the Conservative Government to economic growth through "lifting the burden" on development and releasing the market from constraints including some "costs" of public participation. It also reflected some perceived problems with a relatively participatory planning system. In particular, it was judged to create unacceptable and expensive delay.

Certainly, following the changes of the Sixties, the time taken to approve both Structure and Local Plans became protracted as the public, pressure groups and developers took advantage of the opportunity to press their own points of view. An extreme example was the 22-month long Inquiry into the Greater London Development Plan. Inquiries into major proposals such as motorway schemes and power stations ground on for many months. Some Local Plan Inquiries also sat for months on end. Government became concerned about the costs to industry of delays in deciding planning applications. Measures were therefore taken to simplify and expedite matters. Structure Plans, for example, were to be discussed at Examinations in Public (EIP) rather than at Inquiries. At an EIP selected key topics are now debated in an investigatory way rather than through an interrogative Inquiry procedure. Changes were also made so that in appropriate circumstances, appeals against local authority planning decisions could be the subject of either "informal hearings" or "written representations" rather than of protracted Inquiries.

Arguably, the recent increase on the authority of development plans in the decision-making

process also reflects a concern with the workloads and log-jams created by the openness of a system in which each decision had to be taken on its own merits. The number of appeals had grown considerably and caused concern about both costs and extensive delays. One intention of the shift in emphasis may well have been to reduce the number of appeals by placing the onus on applicants to explain why their application could justify a departure from the policies of the approved statutory plan.

However the change was also a product of the ever-expanding public interest in the subject matter of planning - such as environment issues, the quality of design, transport impacts, shopping centres and the threat to town centres, loss of green field sites and the importance of conservation. Over the past five years, the value of participation has been reasserted. It may be that this stems from the discrediting of the Eightie's philosophy of the individual ("there is no such thing as society" said Mrs Thatcher) and the current struggle between political parties to claim to be the party of the "community". The range of matters deemed to be "material" in development plans and development control has widened considerably. Whereas in the Eighties they were held by Government to be quite narrowly confined to matters of land-use, plans are now to embrace concerns such as environmental quality, transport impacts and safety. The demand of public opinion to see public expression of intent on such matters in development plans and public regulation of them through development control has encouraged Government to expand the remit of the planning system.

The subject matter and the procedures of planning have ebbed and flowed with shifts in Government ideology and have been enabled to do so by the continuing discretionary nature of the system.

The role of the planner

In later papers, Fiona Reynolds and Brian Raggett will represent the public and the developer actors in the triangle described by McAusland. As a planning officer I represent the third actor. McAusland is right to say that the politicians and planners of the local authorities see themselves as representing the public interest. For the Planning Committee and its officers, the task is to weigh the representations of private property and of public opinion and form its own balanced view of the public interest.

But, what <u>is</u> this public interest? It cannot simply reside in the expressed view of consultees on plans or applications. For example, a development such as a hostel for the rehabilitation of offenders will often attract great opposition from neighbours. However, the Planning Committee is entitled to believe that the hostel services a much wider legitimate need which offsets any very local disquiet. Nor does the public interest necessarily reside with the applicant. They will often describe their proposal as in the public interest because it will, for example, generate employment. The Planning Committee may decide, however, that the public interest rests in protecting the local environment rather than in creating jobs through the proposed development. So the local planning authority will generally feel that the public interest is best represented by itself as a neutral judge of this argument.

Indeed, the Members of a Planning Committee have a mandate from the electorate to represent the public interest. In my experience, they conscientiously seek to do this. By and large, Planning Committees are careful to try to balance arguments and are relatively free from purely

political influence on decision-making. There are exceptions to this, just as there are rare examples of corruption. Generally, however, the British local authority planning system retains an integrity which is partly sustained by the participatory process, partly by the need to adhere to national policy and partly by the powers of appeal and review against unreasonable behaviour. It is bolstered by a common belief that some clear adjudication on development issues is essential on a quite small, densely populated and attractive island.

The credentials of the professional planner as a representative of the public interest are more questionable. Planners have considerable power: they conduct the negotiations with applicants and orchestrate the participatory process; they formulate plans and recommendations for the politicians; they take the majority of decisions themselves under delegated powers. Professional planners strive to identify an objective public interest. This is a dubious concept in itself since planning inherently requires subjective judgements between finely balanced arguments. Furthermore planners inevitably bring their own prejudices to their consideration of the public interest. They are predominantly white, male and middle-class and susceptible to introduce in their deliberations the values associated with these characteristics, however hard they seek to avoid this. The discretionary nature of planning is a source of power to planners. Participation is an essential means of introducing into the planner's deliberations some external indications of how others interpret the balance of public interest.

Participation in non-statutory planning

Perhaps the most important advances in participatory practice can be found outside the formal procedures of plan-making and processing of planning applications. British planning is becoming increasingly pro-active. This leads planners to involve both the private developer interest and the public interest in advance of formal decision-making. Good practice leads to discussions between the developer and the local community, often facilitated by the planner, well in advance of any formal planning application. Both public and private interests are now commonly invited to participate in the implementation of planning proposals.

This can take a formal nature: for example, in Kent local people are invited to regular monitoring groups at which quarry operators report back and are questioned on the effectiveness with which they adhere to the conditions set out by the planning authority when permission was given. Often the participation is in voluntary and non-statutory activities. Partnership between the private sector, the community groups and the planning authorities are springing up at different spatial levels and for all sorts of activities - from implementing footpaths to leading major strategic initiatives such as the Thames Gateway development.

This practice has numerous benefits. It represents a shift from consultation to real participation. It can foster participation as an active rather than a reactive process. It habituates community and other interest groups to the planning process and acts as a mutual learning exercise for planners and the public. The private sector can work with the public on a non-antagonistic basis.

Conclusion

Compared with other areas of British public policy, such as education and housing, the planning system offers regular and often effective opportunities for participation. Its procedures and

flexibility probably make it more open and accessible than many European planning systems. The fact remains that very few participation exercises generate substantial response. For example, it is rare indeed for a draft development plan to generate comments from more than 5% of the population. Most planning applications create little reaction - though there are some spectacular exceptions. The large majority of people are probably unwilling to participate through indifference, cynicism about the value of participation and uncertainty about the process or social and cultural exclusion. In truth the British planning system would collapse if participation grew significantly since the volume of work involved would probably create unacceptable costs and delays.

A central ambition must remain the existence of real opportunities for effective access to planning decisions for all. The growth in more informal partnerships and in pro-active forms of planning offers hope that this opportunity is increasingly being made available.

THE ALLOCATION OF REGIONAL/SPATIAL PLANNING POWER IN SOME EUROPEAN COUNTRIES - PLANNING SYSTEMS AT NATIONAL, REGIONAL AND LOCAL LEVELS - OPPORTUNITIES FOR PUBLIC PARTICIPATION

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1. INTRODUCTION

In Italy there are three categories of problems that concern strongly the Government, the local administrations, the business community, the trade unions and the technical experts:

a) there is a need to frame spatial planning and economic development in the European planning references, in coherence with the Programme Europe 2000+ and, above all, with the principles of sustainable development as outlined in J. Delors' white paper;

b) to create the bases for sustainable development it is necessary to reorganize the Italian territorial arrangement to ensure competitive conditions to the national economy and appropriate living conditions to the Italian people and to protect environment and settlement structures;

c) public expenditure in territorial transformations, environmental protection and rearrangement of settlement structures has been reduced in the last two years by 17% yearly. At the same time employment in the sector has decreased by circa 120.000 units per year, while a considerable amount of financial resources lies unused.

In spite of the willingness and need to enlarge the intervention in environmental and territorial issues, and to frame them in a European dimension, we assist to a reduction of investments that only partly can be reconducted to reduction of financial resources. This apparently contradictory situation is in part due to lack of programming and planning, but mainly is a result of scarce coordination between the different levels and sectors of territorial administration, imperfect coherence in the spatial planning system and of limited opportunity given to citizens and local communities to participate in the choices concerning planning process and spatial organization.

To understand the reasons of this situation, and how Italy is trying to overcome the above-mentioned problems, it is necessary to spend some words on the development of the Italian administrative system and on its current state.

2. STATE OF PLANNING UNTIL 1970

Until the mid seventies the distribution of planning power in Italy was straight-forward and clear.

On the top there was the Ministry of Public Works (and the Ministry of Cultural Assets for

issues regarding landscape and artistic or historical assets). This Ministry exercised three main functions:

- designed the territorial plans, the infrastructure programmes, and the projects regarding these two areas; executing them through Superintendencies for Public Works (dislocated structures on provincial level);

- examined and approved the Master plans and, by means of Superintendencies, the executive plans both from a formal and a substantial viewpoint (in a few occasions the Ministry has obliged the towns to redesign the plans until they were found perfectly coherent with the spatial standards and criteria);

- controlled directly the degree of coherence of the main infrastructure plans of the *"state agencies"* such as FS (State Railways), ENEL (State Electricity), Soc. Autostrade (Highways), with the national planning, normative directions and urban standards.

It was a hierarchic model that assured a substantial coherence between the different sectors of national and local planning. This allocation of power however did not produce a national spatial planning capable of providing guidance and references to local planning or to sectorial programming of national infrastructures. Consequently the action undertaken by the Ministry of Public Works was mainly aimed at controling *a posteriori.* The planning of major interventions, in absence of general reference, tended to assume an increasingly sectorial nature and, furthermore, the control exercised by the central administration resulted in a scarcely permeable co-operation with local governments or to participation of citizens. [2]

In addition it was necessary to concord the arrangement to the principles of the Italian Constitution, which imposes the main power in matters of spatial planning to the Regions. [3]

3. REARRANGEMENT OF THE 1970's

At the beginning of the 1970's the planning system had gone through profound changes. The Regions had been appointed with the power over residential building plans, infrastructures and environmental protection, as well as control and approval of Master plans of the municipal districts. Moreover were established the Mountain Communities (local authorities responsible of groupings of mountain town areas), with power over socio-economic programming and spatial planning. The Regions, on their part, had founded the Districts (intermediate organisms between Regions and Municipalities, in part overlapping with the mountain communities) with spatial planning power. At this point the Regions had the possibility to plan in a unitary way the spatial development and environmental protection of their territory, ensuring at the same time

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2 There were at that time in Italy 92 provinces and little less than 8.000 towns.

3 The Italian administrative regions amount to 20, with an average population of 2,8 millions of inhabitants but with a wide diversification of effective dimensions: the smallest counts 0,1 inhabitants on a surface of 3,300 Sqkm, the largest 8,9 million inhabitants on a surface of 24,000 Sqkm.

coherence between the different levels and sectors of spatial and economical planning.

The changes to the power balance of spatial planning had determined in ten years a strong growth of levels of Government, sectors of intervention, of types of plans. Towards the end of the 70's one territory could be regulated by: the Regional development plan, the Regional landscape plan (environmental protection), the Regional transports plan, the Basin plan (regarding the administration of river basins), the Territorial co-ordination plan, the District plan, the Socio-economic and territorial plan of Mountain communities and, finally, the Master plan. Still need to be added other sectorial planning and programming instruments that have a certain impact on spatial issues: the Industrial development plan, the Social and health plans, the Commercial plans, etc. Many of these plans could not be directly applied, but had to be executed through executive plans and programmes.

All this contributed in creating an extremely detailed planning framework, with competence overlapping in several cases and with a deficiency of coordination procedures. This limit was due to the lack of adaptation of the Central Administration to the new allocation of spatial planning power.

The decisional processes grew in number and became more complex, but the structures and procedures to direct and coordinate the new power framework were not created. The only exception to this deficiency is the art. 81 of the DPR 616, in 1977. This norm attributes to the Direction of Territorial Cooperation the following power:

- definition of the basic guidelines of national spatial structure;
- direction of regional and local planning;
- control of coherence between national and local planning.

Even if the rearrangement of regional spatial power could ensure a substantial coherence to the spatial planning, this option was used in a limited way, apart from a few exceptions. Concretely speaking, the hierarchic structure of the 1950's and 60's had been replaced by a set of not fully connected and equally hierarchic structures. Under these circumstances the decentralization of spatial planning power only apparently contributed to increase the level of participation of local communities, Municipalities and Regions in the choices regarding spatial planning. In reality, it was becoming increasingly difficult to obtain information on the final choices made by different decision-makers and to judge their combined effects.

Furthermore, the high number of plans and programmes, the time gap between definition and application and the absence of an effective guidance and coordination from the Central Administration's part, determined conditions where both spatial planning and the design and realization of infrastructures became extremely complex.

The situation was even more worrying as the central government had, since 1977, ceased to exercise the spatial coordination between the different *"state agencies"* that apply and run the large intervention on infrastructures. The sectorial infrastructure programmes at national level started becoming insufficiently coordinated and not fully coherent; sometimes even contrasting with the regional and local plans. As a result of this, the whole Italian situation was confused

and fragmented. Being there a lack of national design of reference and being scarce the seats for harmonization and participation, any institute with transformation power could operate according to its own sectorial criteria.

The complexity of the power allocation, the high amount of contemporary plans and the poor connection between different spatial plans determined four undesired effects towards the end of the 1970's:

- the participation of local communities in the decision-making processes became more difficult, because of lack of clear and complete awareness of all the decisions regarding spatial development and environmental protection;

- the timing for design and application became extremely long and it started to be difficult to allocate available funds in the foreseen periods;

- the complexity of planning and procedural systems created premises for an increasingly systematic use of extraordinary programmes and, in the sector of residential building, for creation of abusive buildings, that contrast the norms of the plan;[4]

- the economic and social efficacy of public expenditure (measured by the relationship between socio-economic effects and invested resources) tended to diminish, as it became very difficult to assess the combined effects of scarcely coordinated programmes and interventions, hardly known by the public decision-makers.

4. SECTORIALISATION OF POWERS AND EXTRAORDINARY PROGRAMS DURING THE 1980's

at the beginning of the 1980's the legislator tried to modify this situation acting in two parallel directions: by creating sectorial Ministries and by issuing special laws and structures.
Regarding the former direction, two new Ministries were created (the Ministry of Environment and the Ministry of Urban Areas) and the River Basin Authorities (dedicated to the management of the water resources and river basins).

In the latter direction a high number of laws and extraordinary programmes were approved. As the procedures were becoming excessively long and complex there was a need to simplify the procedures and reduce the time required by means of extraordinary measures created for each case according to the needs.

These two lines of action, however, contributed in determining a situation worse than the one

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[4] Obviously the phenomenon of abusive building is not determined uniquely or mainly by the complexity of the spatial planning. There are other economic, administrative and cultural reasons. However, there is no doubt that in some areas the complexity and scarce penetrability for the participation of the plans have contributed to the diffusion of abusive buildings.

they intended to improve. Instead of correcting the faults of the power setting determined in the 1970's, by the creation of an efficient gathering system that would ensure a true coordination between the powers and the participation of the local communities to the decision-making, new power centres of spatial planning and programming were created. This caused an overlapping (and in some cases a substantially opposition) to the previous ones.

All this has led to a systematic derogation from the ordinary planning that ended to be perceived as a set of unreasonable conditions. Hence, in the mid 80's in Italy there was a duplication of spatial planning:

- on the one hand the ordinary legislative, planning and programming system that was less and less applied;

- on the other an aggregate of extraordinary laws and programmes that overlapped the ordinary instruments, and claiming their urgent nature, tried to evade all the coordination procedures of local administration or the participation of local communities and individual citizens, accusing that these formed a source of possible delay.

The whole spatial planning system, and the norms that guaranteed the participation of local administrations and communities to the spatial planning choices at the national level, seemed on the verge of being abandoned. The Regions eliminated the Districts and the District plans. The Municipalities, apart from few exceptions, stopped implementing spatial plans. Today the average age of the general plans of the 100 major Italian towns are 17 years old; in 70 towns the spatial development should have been ruled by a plan designed before 1975 and approved before 1980.[5]

Because of this atmosphere even the centralized administration gave up defining *"the basic lines of the arrangement of the national territory"*[6] limiting the action to the definition of sectorial programmes and special plans for specific and contingent needs.

Rapidly the decisional processes regarding spatial planning and territorial infrastructures assumed the connotations of arbitrariness, followed briefly by a behaviour that left outside the regional and town administrations' procedures, rules, plans and control as well as the participation of local communities. The logic of extraordinary intervention allowed the diffusion of scarcely transparent administrative behaviour and planning choices that privileged private interests instead of the interest of the whole community.

5. PRINCIPLES OF THE 1990's REORGANISATION

The first signal of and inversion in the practice is given by two laws, both from 1990: the

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5 It is not surprising if under these circumstances only 12 % of the major Italian towns consider the General Plan adequate. Source: "*Survey on territorial policy directions of major Italian towns*", National Council of Economy and Labour, 1994.

6 DPR 616/77, art. 81, comma 1

reform of the structure of local autonomies (L 142/90) and the law ruling access to administrative acts and information (L. 241/90).

The reform regarding local autonomies puts in the centre of the new allocation of powers the principals of *"harmonization"* and complementarity. The new regulatory principals tend to simplify the governmental levels and to give a clear definition of competence and relationship between the different levels.

The law ruling the access to information obliges the whole state structure to allow access, in short term and clear manner, to the administrative files.

Hence there is a two-ways revolution in the Italian State administration, that passes from:

- a strongly hierarchic decisional process (which had become fragmented in the 1970's and 80's without however loosing these features), practically to a configuration of spatial planning powers, in which many different decision-makers elaborate issues and objectives, which then are combined in a unique planning system (the complementarity rule);

- a closed administrative system, scarcely accessible to common citizens, to a structure, which (even if only in principle) will clearly communicate its choices and allow access to citizens to its files, evaluations and criteria.

The application of these two laws appears to be long and difficult. The whole normative corps and the structure of central and local powers are still not coherent with an immediate application of these laws. To innovate the Italian power structure in the directions indicated by these two laws, it is necessary to solve several basic problems.

6. "HARMONIZATION" AND COORDINATION

The approval of the reform regarding the reorganization of Local Government did not modify the technical-bureaucratic apparatus or the administrative mentality. Still today the planning choices and the spatial programming are conducted in a strongly sectorial manner and with scarce coordination between the different sectors and levels of government.

An example may be useful to clear up the level of sectoriality still prevailing in this field in Italy. In 1992 the Central Government and the Regions have agreed to a *"protocol of intents"* (an agreement) to reduce the times and increase the investment flow in territorial infrastructures, environmental protection, reorganization and reorganization of settling structures. The objective is to assess all the foreseen works, to verify the completeness of administrative procedures, the projects, the public powers evaluations and to concentrate the available financial resources on those projects that could immediately go ahead in order to sustain employment, to coordinate spatial planning and to incentive economic growth. Of the regions that have joined the agreement even the fastest have spent months (in a few cases over a year) to simply assess the programmes and works due on their territory; to define the state of progress of the procedures and to identify the works that could be immediately started. These long delays have two meanings.

On one hand they show that Regions are not fully aware of the programmes concerning their territory, even if they simply needed to select the programmes that can be immediately set up.

On the other, for almost all Regions this rule has given ***the opportunity to develop verification, coordination and connection processes***.

These two factors clearly show, both the state of spatial planning determined by the crisis of the 1980's, and the new political and cultural climate, as well as the need for coordination and systematic planning in today's Italy. To reach these goals, the Regions have had to create *ad hoc* structures, stable co-ordination procedures and organisms that did not exist before.

There is evidently a basic problem: the absence of a governmental organism -both at regional and national levels - that carries out the collection and organization of information and knowledge about spatial plans and programmes. There is therefore a deficiency in the preliminary conditions, both on national and regional levels, of any form of coordination and harmonization between the different levels and sectors of spatial government.

Furthermore, the arrangement of spatial planning powers in Italy does not foresee any permanent and ordinary institute of confrontation or "harmonization" of the choices during the decision-making process. The connection between the different levels and sectors of the spatial government is activated only in negative terms, that is verifying - after its definition -whether a spatial plan, programme or project contrasts other spatial plans, programmes or projects.

This state of facts creates a climate of tendential distrust in the Local Government and communities towards the infrastructure programmes and national planning. The distrust generates a high degree of conflict that systematically delays both the approval of spatial plans, the projecting and the execution of environmental protection acts, the development of national and local infrastructures.

There is a lack of a global knowledge framework and of rules that define the ways and the procedures of coordination between the different sectors and levels of spatial government. Due to this deficiency it is extremely difficult to evaluate in advance the potential outcome of the environmental protection acts, of the infrastructure development, of the reorganization of the territory and it is almost impossible to evaluate the combined effects of all interventions foreseen for a certain area. In this way it becomes problematic to optimize the investment programmes in function of the country's economic and social development.

The main problem concerning spatial planning in Italy, at present, is to create norms, procedures and public organisms, capable of:

a) delineating a system of spatial directions at a national level, connected to the spatial guidelines in the other European Countries;

b) ensuring coherence between spatial plans defined by the different local governments (20 Regions, 100 Provinces and 8000 Municipalities);

c) granting a true coordination between programming of large national infrastructures and spatial planning at national, regional and local levels.

7. PARTICIPATION

The question of horizontal connection between the different levels and sectors of spatial planning and programming regards not only problems of optimal administration and efficient allocation of public resources, but also those of participation. If we are to exclude the plans and programmes relative to minor interventions, on which common citizens can have a direct control, the majority of spatial planning choices present such levels of technical complexity that the verification can be carried out only by organized representatives or Local Governments, who are capable of expressing - in adequate technical terms - the objectives and interests of the local communities; as well as to exercise a true control on the choices.

In Italy the size of Municipalities allows them to be the organism, that directly expresses the interests of the local communities. [7]

An Italian historian wrote once, that in Italy it is easier for a river to change its course or for a mountain to lower, than for a Municipality to disappear or modify its borders. In fact some of the municipal borders still follow limits of past dominions or seigniories of centuries ago. The Italian towns, regardless the intense migration of 1950's and 60's, or the important social changes, still express strong cultural identity. The small and medium Italian enterprises develop in this local dimension.

However, it is this detailed and local dimension that has determined serious governmental problems. It is evident that the towns with an average population of 4.000 inhabitants and a surface of a few tens of square kilometres (as is the condition of 98% of Italian towns); cannot avail of adequate technical instruments or resources to govern the social and economic processes concerning their territories or to implement an efficient spatial planning in coherence with the dimensions of the phenomena that need to be managed.

To this respect, the law on local government structure (N.142/1990) provides a crucial indication, distinguishing between the representation of local cultural identities and interests and the planning and administration.

The former is appointed to the Municipalities, who has the authority (at least in principle) to interact in the spatial planning choices that regard their territory and the environment where the local community lives. The latter is attributed to the Provinces, to the Metropolitan Cities and to the *"Unions"* and *"Merges"* of Municipalities (associations of small towns that jointly administer the technical structures, resources, etc.).

In this way the reformatory law provides an institutional response to the problem of participation and to the efficacy of spatial government. Confirming on the one hand the right/duty of the local communities to intervene in the decision-making processes regarding provincial planning and regional programmes according to their needs and aims. On the other hand, the law ascribes to an institutional, collective entity formed by the Provinces, the

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[7] 87% of the Italian Municipalities (more than 7000) have less than 10.000 inhabitants. The Municipalities with less than 40.000 inhabitants - equivalent to a small urban neighbourhood -amount to 7.900, which is 98% of the totality of Italian Municipalities.

Metropolitan Cities and the Regions the right/duty to form ***a system of spatial plans coordinated with, and coherent to, the requests expressed by the local communities.***

Certainly the participation of Local Government in the major choices regarding spatial planning and programmes does not completely solve the problems. However, there is no doubt, that if this problem cannot be solved, there will be no possibility to have in Italy a true participation by the citizens to the choices and decision-making regarding the space and environment they live in.

The low level of coordination between the different sectors and levels of government, as well as the low participation of the people in the choices regarding spatial planning and programmes, in Italy are of a same matrix. They form the two sides of a one problem: the lack of institutional seats, of structures and rules of connection between the different streams of planning and programmes.

8. NEW TRENDS: REUNIFICATION OF MINISTRIES AND "HARMONIZATION" RULES

As far as coordination of spatial development is concerned the rules to wholly effect the reform law and the new forms of coordination of participation, the Italian state is moving along two lines.

A series of instruments has been identified to allow an effective coordination and procedures of confront. Coordination has been introduced in the initial phases of decision-making. This line of action includes normative instruments that still need to be improved, but that show high potential.

In parallel, there is a new trend towards progressive reuniting of Ministries with spatial planning powers. In the last two years the proxies of the Ministry of the environment and that of Urban Areas have been unified, and further those of Public Works and Environment. [8] As Mr. Baratta (Minister of Public Works) recently remarked, the unification of the Ministries of Public Works and Environment form the premises, as well as organizational verification, for the formation of the ***Ministry of Territory***. Such Ministry, uniting the competence of environmental protection and spatial planning, is likely to compose the basic instrument to grant a better connection between the different levels and sectors of territorial government. Furthermore, it will ensure the conditions of environmental compatibility to economic development, and help to coordinate the Italian spatial development with the other European countries according to the logic of the Programme Europe 2000+.

Along the normative interventions, the Italian State is developing detailed administrative action that follows three guidelines:

The cooperation with the European organs has been consolidated and there are current projects to develop the connection with other European Countries, both from a spatial planning point of

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[8] At present the Department of Urban Affairs has been associated to the Prime Minister's Office

view, as well as for the predisposition of awareness and programme tools.

The Direction of Territorial Coordination - DICOTER has set up a vast programme of surveys and studies that should be gathered in the ***OSS.TER***, and provide the elements for the definition of guidelines of the national spatial structure. OSS.TER itself is assuming a form of a base to start a *European Observatory* on spatial structure and development, that can highly contribute to the definition of European Community spatial development.

As far as the "harmonization" of the choices in spatial planning and participation of local communities is concerned, it is worth noting that ***the National Council of Economy and Labour - CNEL*** (the third constitutional organ according to the Italian constitution, with legislative initiative) and the ***Ministry of Public Works-DICOTER*** have signed *"an agreement"* to form the *"Observatory of Spatial Policies"*. This is a mixed organism to which participate CNEL, the Public Works Ministry, the Regions, the Provinces, the Local Administrations, representatives of business and labour communities. The *Observatory* aims at analysing systematically the choices regarding spatial planning and programmes and at informing the Parliament and the Government of issues, directions and criteria regarding the rearrangement of this area. The *Observatory,* thence, provides a venue for organized participation of the Local Government and the different social components that contribute to the definition of the criteria and the principles that will regulate the spatial planning and allow efficient forms of participation and coordination.

Finally, still in terms of rearrangement of spatial planning and programme procedures, an other important signal comes from the high number of experiments that Municipalities, Provinces and Regions develop with agreements and coordination. In this case the Local Government overcomes the defaults of the actual normative corps through different forms of voluntary agreements and coordination, both, institutional and social. These forms, known as *"Territorial pacts"* or *"Environmental pacts"*, give extremely interesting examples of coordination, "harmonization" and participation, that witness clearly the new cultural climate that reigns in Italy around these problems.

9. CONCLUSIONS

Definitely in Italy there is the need for a deep rearrangement of norms regulating the issues of spatial planning and programmes regarding decisional processes about territorial infrastructures, environmental protection and reorganization of settlement structures. In particular, it is necessary to define new procedures to coordinate different sectors and levels of government and create new seats for the participation of operators and social representatives in the spatial planning and programming choices, but above all, it is necessary to renovate the administrative culture and *"to make the existing norms applicable"*, as explicitly requires the Public Works Minister, Mr. Baratta. These objectives are approached today in two ways:

- through ***governmental and parliamentary action***, in order to identify a set of norms, rules and structures that respond to the arisen needs of coordination, participation and connection with European directives.

- through ***administrative action and incentive of coordination*** aiming at the formulation of criteria, directions and technical support to central and local

government offices. In this context the study and guide programmes become particularly relevant, as well as the foundation of the Territorial Observatory (OSS.TER) by the Direction of Territorial Coordination (DICOTER), and the agreement for the foundation of a seat for comparison, evaluation and direction for "harmonization" of local and national spatial policies prepared by the National Council of Economy and Labour - CNEL and the Direction of Territorial Coordination - DICOTER.

The bet is very high. The strong sense of local identity, without adequate seats or forms of co-ordination, might take the form of local egoism and slow down or even stop each plan and intervention in the area of infrastructures, environmental protection or urban reorganization. At the other end, the setting of efficient forms of "harmonization", coordination and participation can turn the local identities and differences to a enriching element of spatial planning and accelerate the process of concordance between our economy and the criteria for sustainable development, in addition to an original contribution to the European lines of spatial development.

The normative and administrative projects of legislators, Central and Local Government, business and labour community, show clearly that the Italian society is determined to build all the instruments that are still lacking in order to achieve a thorough reorganization of the whole sector, and furthermore intends to reach this goal in a short run.

THE ALLOCATION OF REGIONAL/SPATIAL PLANNING POWER IN SOME EUROPEAN COUNTRIES - PLANNING SYSTEMS AT NATIONAL, REGIONAL AND LOCAL LEVELS - OPPORTUNITIES FOR PUBLIC PARTICIPATION

Spatial Planning in Greece after 1974 and Public Participation:
practices, experiences and prospects

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1. BRIEF REVIEW OF SPATIAL PLANNING IN GREECE AFTER 1974: LEGAL CONTEXT AND PRACTICES

1.1 The initiation of the process for the creation of legal framework concerning regional (spatial) planning in Greece is to be located in the period 1974-80, which follows the restoration of parliamentary regime in the country.

This period is more generally characterized by the effort to establish a centralised planning system able to cope with the economic crisis in combination with the goals of regional development and economic restructuring.

In this context, the adoption of a spatial policy reflected the hope that the diffusion of economic development can be obtained through the channels of a hierarchically structured and fully fledged urban network combined with land-use regulation at national and regional levels.

As a result of these trends, the Constitution of 1975 (Art. 24) included spatial planning in its provisions as a competence and obligation of the State with the aim of:

- the protection of physical and cultural environment (special reference is made to the forests);

- the regulation of urban growth and the improvement of living conditions in cities and towns of the country.

Following the above Constitutional provision, the Law 360/1976 was laid down, which constitutes the first (and the only, up to this moment) comprehensive act concerning the establishment of a spatial planning system in Greece.

The Law 360/76 reflected the values and administrative practices as well as scientific doctrines of the time, namely doctrines and practices of a centrally controlled, “holistic” planning concept. It introduced two kinds of Plans and Programmes: the “spatial” plans and programmes and those for the Protection of the Environment.

As for the spatial plans or programmes, the law recognizes three kinds of them:

- the National Plan and Programme for spatial development, referring to the entire country;

- the Regional Plans and Programmes and

- the Special Plans/Programmes, referring to a particular sector, function, activity or infrastructure network.

The relation of Plans is hierarchical, in the sense that the lower (geographical) level or special plan has to conform with the higher level or general plan respectively.

The responsible body for the formulation of spatial planning policy, as well as for the elaboration and approval of Spatial Plans (national and regional) was the "Council for Spatial Planning and the Environment", a body at Ministerial level including the major sectoral Ministries under the co-ordinating capacity of the, then, Ministry of Co-ordination and Planning (now Ministry of National Economy). No other competence in regional planning is described in the Law, either at a regional or local level, confirming the absolutely centralised character of the planning system being established.

Needless to mention that no particular provisions existed for public participation, with the exception of the potential participation of selected individuals (experts) in the advisory Committee of Spatial Planning and the Environment which was to be established (it never did) with the role to advise the Minister of Co-ordination or the Council.

Even the participation of local authorities themselves in the decision-making was not envisaged in the Law, and it was only at the discretion of the central authorities to call local representatives to attend the meetings of the Council, without the right to vote.

1.2 The first major effort to foster public participation in planning in Greece occured after 1980.

More specifically, the new government after the elections of 1981, initiated a fully fledged "operation" of urban and regional planning of which the major feature was the effort to give more openness to the whole system by:

- increasing public awareness about matters of urban planning, environmental protection, rational use of resources, etc. (special publications were prepared and distributed by the Ministry on the major themes of the new urban and regional planning policy, the new Law 1337/83 was also extensively publicised and explained, etc.);

- breathing new life and inspiration into the administrative units involved in planning;

- initiating an active contact between the staff of central and local authorities by which the spirit and the aims of the "operation of Urban Revival" as well as the

broader goals of a more effective spatial planning policy were communicated to the local people in open public meetings, consultations and co-operation with the local authorities and the decentralised units of public administrations, etc.;

- by including in the new Law 1337/83 on Urban Planning provisions about public participation during the elaboration of both the Structural Plan and the Land-use Plan of the city.

More specifically, the urban and regional planning operation included following steps:

- the preparation of "General Urban Plans" (commissioned to study groups with local participation) for 432 cities and towns of the country, including 50 municipalities of the metropolitan area of Athens and 27 from Thessaloniki greater area;

- the elaboration (by the services of the Ministry) of a Spatial Development Plan (Master Plan) for Athens, which became a law of the State (Law 1515/1985) and a similar one for Thessaloniki (Law 1561/1985);

- the elaboration by the newly founded Department of Regional Planning (1982-84) of "Structure Plans" for the 51 Prefectures of Greece (except Attiki) in close consultation with the respective local services and authorities;

- parallel to the above structural plans, assessments of the "ecological situation" of each Prefecture were made for the first time (1982) which formed the basis for detailed studies of the main biotopes of the countries, commissioned and completed in 1986.

In order to judge the degree of public participation in planning during this period, one has to take into account the fact that the efforts made in the area of spatial planning were complemented by (and embodied in) the process of the elaboration of the "5 year Plan of Economic and Social Development 1983-87".

The latter process was, also for the first time, made more open and decentralized and was conducted under the co-ordination of KEPE, the National Centre for Economic Research, supervised by the Ministry of National Economy.

In this way the two main governmental bodies involved in regional development policy and spatial planning (Ministries of National Economy and of the Environment respectively) were, for the first time, in close co-operation.

In short, during the first years of the 80's, the policy has been primarily to revitalise the notion of spatial planning - which until then had remained only on paper - to give new impetus to the administrative practice, even by breaking away from formalities, to articulate a new philosophy about space and the environment, which could inspire people inside and outside the public administration with new values so that:

a) the administration could overcome symptoms of passivity, cynicism and often corruption;

b) the people at large could raise themselves above the short-sighted private interests (a syndrome permeating the Greek society due to the widespread small-scale land property), for the sake of more long-term, society goals.

At the legal level, the pre-existing law of Regional Planning 360/76 was not touched and the main emphasis was put upon the urban level where a new Law 1337/83 was passed, which constituted the first attempt for urban growth management, introducing many novel elements in the process and the content of urban planning (to which we will refer below).

1.3 To the legal apparatus of spatial planning was added in 1986 a major outline law, the Law 1650/86 "for the protection of the Environment". Some of the changes introduced by this law which affect spatial planning are the following:

- the Ministry of Environment, created in 1980 (Law 1023/80) with responsibilities in spatial planning and environmental policy, became the only responsible body in these policy areas including the national level. Thus the split between the governmental body responsible for economic planning and regional development (YPETHO) and the one responsible for spatial planning and the environment (YPEHODE) was completed;

- the law states as one of its main goals to serve the purposes of regional development also through environmental policy;

- it introduced the Environmental Impact Assessment for all major public and private works;

- it made obligatory the "location permit" at a development decision-level, prior to the approval of the environmental impact assessments;

- concerning public participation, the law includes in its main objectives: "to increase public awareness and help mobilise the people around environmental matters through proper information and education strategy" (Art. 1).

The Law 1650/86 was not actually implemented until a by-law was passed in 1990. It specified the process by which all private and public projects of some importance had to undergo an environmental impact assessment process parallel to the process of "location permit" (KYA 69269/90).

Of course, this legislation had less to do with spatial planning and more with the compliance of the country with EU environmental policy directives. However, in the context of the Greek situation (lack of official regional/local plans) this and other similar regulations dominated the scene of public policy in spatial planning since 1990, resulting in a piecemeal spatial planning practice.

The resistance of the Greek society due to historical reasons to "accept" a planning situation is,

of course, the main factor for neutralizing all efforts to establish a coherent and effective spatial planning system (see also 3.2). As for this particular period of the mid 80's another (external) factor which played a role was that at EU level spatial policy was incorporated in -and subordinated to - regional development (structural) policy, while at the same time environmental policy was emerging as a major policy area at European and consequently at member state level.

The interest of the EU in spatial planning policy started only very recently; in the meantime, environmental policy had taken the lead *vis-à-vis* spatial planning proper, especially in cases like Greece where spatial planning had not been, historically, well rooted (see also below 3.7).

2. EXISTING REGULATIONS FOR PUBLIC PARTICIPATION IN URBAN AND REGIONAL PLANNING

2.1 Urban level

- Law 17.7.1993 "about town plans, etc." (Art. 3, par. 1):
  Before the approval of the plan by the responsible central Ministry, the respective local authority has to "display" the draft plan for 15 days in the Municipality's offices for inspection by the general public, following a relevant notification by the Mayor to the people of the community.

  The "interested" landowners (who are affected by the provisions of the plan) have the right to appeal within 15 days to the Municipality which notifies the Ministry accordingly. The acceptance of the appeal is in the discretionary power of the administration and the Minister.

- Law 1337/83:
  As previously mentioned, this law introduced a distinction between the Structural Urban Plan (the "General Urban Plan", according to the Greek terminology) and the Urban Land-use Plan (or the "Urban Study"):

a. At the level of the "General Urban Plan", which is approved by the Minister of Environment, article 3 specifies that "the participation of interested citizens during the elaboration of the plan should be pursued through all suitable means, as e.g. open hearings or notification by press announcements, etc.". To the local authorities an advisory role is ascribed (expression of

   opinion), while at the same time they are responsible for conducting the above mentioned participation processes.

   The consultation of the people prior to the finalization of the plan was in this way for the first time introduced in the urban planning process. However, this provision of the law has been criticized as being very vague, and only potentially leading to real consultation of the citizens of the community, the latter possibility depending upon the competence and the political will of the respective authorities.

b. At the level of the land-use Plan, the distribution of responsibilities and participation possibilities are analogous to those of the Law 1923. More specifically: the Plan is approved by Presidential Decree, according to a proposal submitted by the Minister of the Environment. The local authorities can express their opinion to the Ministry.

There is also a mixed advisory body at the Prefecture level, the "Council for Spatial Planning, Housing and the Environment" including representatives of the administration as well as professional/scientific and social organisations of the area, whose consultation is obligatory - prior to the finalisation of the Plan. The participation of landowners and their right for appeal is identical with this of the Law of 1923.

For the broader participation of the citizens of the community, a new institution was introduced by the Law 1337, the "Urban Plan Neighbourhood Committee", which is established (out of elected citizens) by the local authority of the area. This committee is entitled to express views to the Municipal council "on all land-use and functional problems of the area and all the problems resulting from the application of the urban plans" (Law 1337/83, Article 33).

However, although this innovative institution of the new Law did not have wide application because the local authorities, not having themselves decisive competence in the planning process, were not particularly willing to involve in the creation of such Neighbourhood Committees which would only have an advisory role to another advisory body (the local authorities themselves). On the other hand, for the citizens accustomed to many areas of authoritative public administration, it proved difficult to break with the usual passivity and engage themselves in local initiatives, taking full advantage of the new institutions (see G. Giannakoutou...).

2.2 Regional level

- Law 360/76 "The National Council of Planning and the Environment":
  As already mentioned, this law introduced a totally centralized planning process governed by the then prevailing (at least in Greece) notion of "comprehensive" or holistic view of planning.

  No public participation provisions were made in the law. Out of the provisions of this law what is still to date in force is the competence of the National Council of Planning and the Environment on formulating spatial policy and approving "spatial plans" at national level.

  However, this higher level intergovernmental body - in which the participation of representatives of NGO's is only potential and without the right to vote - exists only on paper, since the bulk of the resolutions issued by this Council took place between 1979-1981 and only one such major resolution was made after this period (1985) referring to the establishment of "industrial sites" in all

Prefectures of the country (Res. 21/1985).

- Law 1337/83 (Article 29): Urban Development Control Zone:
  Since the elaboration of structural (spatial) Plans at the Prefecture level by the Ministry of Environment (1984) - in close consultation with local services of various Ministries, the respective local authorities and professional/social associations and co-operatives of the area - the only spatial development plans which have been elaborated at a broader (than the urban) geographical level were the so-called "special spatial studies" which covered part of a prefecture (sometimes special zones extending in more than one prefecture), and were commissioned by the Ministry (since 1988) for areas of "particular" importance due to development pressures, environmental sensitivity, etc.

The land-use part of these studies - which are still being carried out, in the context ENVIREG (Community Initiative) - acquire legally binding form through the instrument of "Urban development control zone" (Art. 29 of Law 1337/83), although the latter had been primarily designed to control development (and speculation) pressures in peri-urban zones.

This "zone" can be compared with the "local development plans" existing in some European countries and contains detailed maps and provisions concerning land-uses and building regulations in sub-areas of the total area to be regulated.

The Urban Development Control Zones come into force through a Presidential decree after proposal by the Ministry of Environment.

The relevant studies are usually initiated by the Ministry. During the preparation of the plan, the local authorities of the area as well as social and professional organizations (mainly those related to or affected by the plan) are informed in open public meetings.

When the second phase is completed and the proposals have taken shape, the study is officially sent to all the municipalities covered by the plan for expression of opinion.

- Development decisions outside the urban plans: the publicity of environmental impact assessment(s).

According to Ministerial regulations 75308/5512/1990 pursuant the provisions of Law 1650/86 and the EU directives 84/360 and 85/337, the Ministry of Environment, once an environmental impact assessment is submitted of a private or public project (work), makes the particular study available to the relevant prefectorial Council within 15 days. The latter is responsible for notifying the public and its "representatives" through press announcement and invite them to take notice of the study and to express views, possibly in written form, to the Prefecture Council.

The latter notifies accordingly the Ministry (within 30 days after reception of the document), including its own opinion about the "environmental terms" which are to be imposed by the Ministry of Environment prior to the granting of the building permission.

The final approval of the environmental terms by the above mentioned central Ministry is also

publicised in the Prefecture through press announcement and on the spot (the headquarters of the Prefecture) notification.

3. EVALUATION, CONCLUSIONS

3.1 The development of the planning system has been very slow compared with the innovative character of the urban legislation of the 20's; that is when the newly formed Greek state had to face the immigration waves from Asia minor (1922).

3.2 The urban growth management in the after-war period was conducted by the then Ministry of Public Works through the same urban planning legislation (Law of 1923), without however making full use of the progressive character of many of its regulations pertaining to the public interest.

As mentioned earlier, the widespread small land ownership and the related social/cultural characteristics coupled with a fast increasing average income asking for investment outlets in the land market did not allow for a robust public land policy to be exercised either by the administration or the local authorities. All the more because the latter were not entrusted for such substantial responsibilities by the central government in a country recently ravaged by a civil war. That proved to be a handicap in this decisive period of rapid growth of the main urban centres, but in particular of the greater metropolitan area of Athens. Thus, while the housing needs of the population were left to be served by the (small) private capital (with relatively good results), no major efforts were made to anticipate and prevent environmental deterioration, create good quality of urban public spaces as well as land reserves for future development.

3.3 Although urban development studies or master plans and spatial studies at a regional or prefecture level started as early as in 1963 (commissioned by the then Ministries of Public Works and of Co-ordination), only 20 years later (in the period 1982-84) a real effort was made to cover the whole country simultaneously and create the first ever data base for geographical information at urban and regional level.

3.4 In general, the period until 1981 was characterized by the lack of institutionalized forms of participation of social groups in the centralized model of spatial regulation. Likewise, the role of local authorities and the local state in decision-making was very limited.

3.5 On the contrary, in the period after 1981, the pursuit of social consensus and legitimisation through the participation of different social groups in more democratic forms of planning, the upgrading of the "local state", the devolution of administrative responsibilities, the gradual shift of decision-making from central government to regional and local agencies are some of the features which characterised the new context of regional and spatial planning.

Thus the importance of the new Urban Planning Law of 1983 (Law 1337) was coupled by the introduction, during the same period, of a number of other laws pertaining to decentralization and the structure of local authority system:

1. The Law 125/1982, among other things, renewed the composition of the Prefecture Council through the participation of local authorities, the business community, professional associations, agricultural co-operatives, etc. Added to

that, it delegated the responsibility to these Councils to decide about the distribution of National funds in their prefecture (Public Investment Programme).

2. The Law 1622/86 envisaged:

a. the redefinition of regions and the creation of Regional Council where the government and the local authorities (1st and 2nd grade) are represented;

b. the provision for the creation of 2nd grade Local authorities (prefecture level);

c. the reshuffle - on a voluntary basis - of the geographical areas of communes/municipalities with the purpose of becoming larger units;

d. the delineation of the process of (economic) planning at national, regional, prefecture and local levels, through the preparation and approval of short-term (1 year) and medium-term development plans/programmes, with the participation of the local authorities at commune and prefecture levels, the regional councils and the central Ministries.

3.6 However, these institutional innovations remained incomplete, as far as spatial planning is concerned. More specifically the separation of responsibilities for economic and spatial planning in two Ministries (see 1.3) required that the Law 1622/86 would provide a mechanism by which the two aspects of planning - spatial and economic - would be co-ordinated and made compatible to each other. But such institutional provisions did not exist in 1622/86 or any other law.

Thus, the historical moment of the mid 80's - when a concerted effort was made to give governmental policy in different areas more coherence and synergy - was lost for spatial planning, since the spatial structural plans although formulated in accordance with the guidelines of the 5 year Development Plan of the country and the Development Plans at Prefecture level (expressed in the form of public investment programmes), never found a proper form of institutionalization. This does not meant that their validity was cancelled, since they performed for many years their role as the main guidance document to assist (and educate) the Prefectural Councils in their new decision-making competences on the spatial distribution of mainly public investments.

3.7 As a result of the above mentioned developments, the present day situation in spatial planning is mainly characterized by:

a. the dissociation between regional development programmes and spatial plans;

b. the fragmentation of the legal framework pertaining to spatial planning;

c. the low level of institutionalized public participation even of consultative character, especially participation of the "general" public at an early stage of the procedure; the legal provisions are mainly limited to the rights of appeal for affected landowners after the plan is completed or decision is made;

d. the development of informal accesses of private interests to the administration seeking to modify particular or general regulations to their own favour;

e. as an alternative way, especially for "third parties" or other social groups defending broader social/environmental goals *vis-à-vis* administrative decisions and actions, the recourse to the Supreme Court has emerged lately, with the purpose of disputing administrative actions and decisions which are either not derived from any broader spatial planning guidelines or not confirming with such existing guidelines at national or European level.

This latter trend has been favoured by the introduction of environmental legislation which provided the means to fight decisions contributing potentially to further degradation of environmental conditions in the country. In this connection, it should be remembered that the awakening of environmental consciousness in Europe at the beginning of the 80's had a delayed effect also in Greece, giving birth to a considerable amount of environmental groups and similar associations geared in publicising, campaigning and taking legal actions in favour of ecological or environmental concerns.

3.8 One has to observe, however, that the surfacing of the environmental questions at European and national levels had the effect of "subordinating" spatial policy to the goals of environmental policy which meant that spatial planning gradually lost its wide scope in "controlling" all sectoral policies in terms of their effects in space; in such a case, the danger of these latter policies to "emancipate" themselves and act outside the co-ordinating capacity of a spatial planning authority is immanent. It remains to be seen whether the recent interest of the EU in spatial planning will help to restore it in its proper place in European and national policy agendas.

3.9 In view of all the above, the Ministry has been involved for one year now in preparing the new outline law for spatial planning.

For this purpose a consultative Committee has been created consisting of representatives of:

- the Supreme Court
- all universities including departments for urban and/or regional planning
- the Confederation of Local Authorities
- the Confederation of Trade Unions
- the Association of Greek Industrialists
- all related professional/scientific Associations
- officials from eight other Ministries

The work of the Committee is at a final stage. The draft Law consists of three main parts: the first referring to the general goals and principles, the second to the structure of responsible bodies and decision-making processes and, finally, the part referring to instruments and mechanisms of spatial planning.

The debate about the law has until now focused upon following matters:

- In terms of general goals and principles, the law should refer to pursue sustainable development but, also, of viable development.

- At the same part of the law, the reference to social justice should be completed by the goal of territorial justice.

- The law should define spatial matters of national importance, especially in relation to land-uses, which should be regulated at central level (protection of coastal areas, biotopes, etc.). The belief was widespread, during the processes of the Consultative Committee, that a more effective regulation of land-uses is needed than has been the case until now.

- Beyond spatial regulations, the scope of the law should be enlarged so as to cover the needs of management of space by the whole of society.

- The need to co-ordinate policies in the areas of economic (national/regional) development, spatial planning and environmental protection was also generally recognized. This would mean the internal co-ordination between competent departments of the Ministry of Environment and most importantly, co-ordination between the two Ministries of Environment and National Economy at all levels.

- As for the distribution of planning powers at the different levels, the need for a more decentralized system is not contested, although there is also a general caution.

- Expressed mainly by planning professionals and staff - about a very abrupt devolution of deciding power in land-use planning to the local level, since this could facilitate pressures by local speculative interests at the expense of the physical and cultural environment. This word of caution reflects the recognition about "the extreme difficulty of achieving any comprehensive approach to the subject of land-use", to use the words of the Council of Europe in the recent comprehensive publication "European Regional Planning Strategy".

3.10 In general, the debates which were catalysed by the process of formulation of the law express and reflect two main positions having to do with the character of public policy and the role of the state in spatial planning:

a) the one maintains that an increased degree of public intervention is needed - and justified - especially in countries like Greece, in order to guarantee a rational spatial development and the preservation of valuable resources as well as to instil a higher degree of coherence either horizontally – between different sectoral policy areas - or vertically, between central - regional – local policies and plans;

b) the other position favours a higher degree of externalization of public fonctions and responsibilities for the sake of efficiency, in the context of a more pluralistic and de-composed decision-making process, which would give the planning

system more “flexibility” and the ability to move away from the rigidity of general rules of the previous centralized regulation.

These schematized positions reflect, of course, the more general debate about the role of the state, in a situation where the borders between public and private spheres of social organisation tend to be blurred.
The new emerging models of political decision-making try to replace the over-bureaucratized regulation with a de-centralized and de-composed one, based on networks and partnerships of a multiplicity of actors which compete or bargain for the goals and outcomes of particular policies.

In sensitive policy areas like spatial planning, the establishment of pluralistic decision-making processes has to consider the danger of such processes - especially in particular social environments - to lead to the legitimization of existing practices of favouritism, clientelism, corporatism. If the goal of sustainable development is to be attained, a real democratization of spatial planning system is needed so that substantial participation of emancipated - but also socially oriented - citizens can take place.

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THE ALLOCATION OF REGIONAL/SPATIAL PLANNING POWER IN SOME EUROPEAN COUNTRIES - PLANNING SYSTEMS AT NATIONAL, REGIONAL AND LOCAL LEVELS -OPPORTUNITIES FOR PUBLIC PARTICIPATION

Conclusions by Prof. Malcolm GRANT
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In this session the seminar addressed the institutional structures of regional and spatial planning systems in different countries, and explored the opportunities that they allowed for public participation. It was recognised that there was no simple model of public participation, but rather a spectrum of participation, ranging from pure tokenism at one extreme and full participative democracy at the other. The public could rarely speak with a single voice and an effective system of public participation is always likely, therefore, to lead to the expression of a range of conflicting opinion.

There was also a spectrum of relationships between the government agencies responsible for planning, and there were obvious differences between hierarchical models in which central government played a key role through national and regional planning ; and horizontal models where local communities had the principal power, through subject to rights of intervention by national and regional agencies in specified cases. There was concern amongst delegates as to the scope for public participation in the formulation of regional and national plans. Whilst there was a role for single issue interest groups, it was more difficult to understand how public participatiion could be secured and public interest engaged at this level. Yet decisions taken at this level could foreclose options for the future and thereby exclude participation.

There was a problem about the use of language in a seminar such as this, because the fundamental concepts suffered in translation. Even words like “plan” and “planning permission” meant quite different things in different planning systems. A “local plan” might be a higly prescriptive document which was effectively a grant of approval for building works because it had direct legal effect ; or it might be (as in the United Kingdom) a rather loose set of guidelines for decision making when applications were made for such approval. There was also a wide range of different perceptions as to the scope and performance of planning. In some countries, particularly at regional level, the function of planning embraced broad economic objectives and not just land-use allocations.

Another key theme was that of the problems of countries whose democratic structures were in transition. In the case of Romania, for example, many of the institutional underpinnings that were taken for granted in western democracies, such as property rights and their judicial enforcement, were still also in a process of evolution. Lessons could be learned from experiences with planning systems and public participation elsewhere, but other models could not be simplistically applied in these new contexts. Each country needed to develop its own democratic structure, sometimes against a background of strong public opposition to state planning, wide-scale private ownership of small plots of land, and a general cynicism about politics and government institutions. Planning creates opportunities for corruption, and although a powerful weapon against this was to open up all decisions to public scrutiny, people were

often desillusioned when their views were rejected and where corruption was suspected. The experience of Italy also demonstrated the risk of adhering too rigidly to a structure that was fast becoming outdated, and hence increasing reliance upon discretionary rules, that had been devised initially for exceptional cases, and turning them into the norm.

Delegates also pointed to the emerging pan-European context for regional and land use planning, and also to the emerging concept of sustainable development which looked increasingly likely to mean that those who presently had the most resources would in due course have to give up the most. There was another important purpose of securing public participation in planning, which was to try to counter the growth of an uninvolved and excluded community and the parallel growth of crime and vandalism.

THEME 2

PUBLIC PARTICIPATION IN THE PLANNING PROCESS AND THE APPLICATION OF THE PLAN - EXPERIENCE OF ORGANISATIONS, SPECIAL INTEREST GROUPS AND INDIVIDUALS

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PUBLIC PARTICIPATION IN THE PLANNING PROCESS AND THE APPLICATION OF THE PLAN - EXPERIENCE OF ORGANISATIONS, SPECIAL INTEREST GROUPS AND INDIVIDUALS

Spain: the experience of public participation in the planning process

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1. THE GENERAL FRAMEWORK OF PARTICIPATION IN SPAIN

1.1. Constitutional references

1. On the subject of public participation, the Spanish Constitution of 1978 (hereafter SC) contains six fundamental articles [see **Appendix I**] concerning: the right of the public to intervene, directly or indirectly, in political decision-making processes (arts. 9.2 and 23), protection of natural resources, environmental rights and quality of life (art. 45); the right to a dwelling and to land-use and town planning (art. 47); and rights, as consumers and users assembled in groups, to defend their interests (arts. 51 and 52, SC).

These six articles conform the constitutional framework that is intended to protect and guarantee the fundamental right of all citizens, either individually or in groups, to participate in the collective tasks of society and to be informed of decisions that affect them.

2. Having regard to the substance of spatial planning activity whether affecting the environment in general or town planning more specifically, the fundamental reference for all Spanish statutes which have been or will be promulgated is contained in arts 45 and 47 of the SC. In this context, planning is probably the area in which the legislation most abundantly and clearly provides guarantees of participation by the citizens in decision-making processes that affect transformation of land and the environment.

1.2. Evolution of public participation in political planning decisions

3. The Act of 1975 was the first reform of modern planning legislation as encoded in the Act of 1956. Both were promulgated under the Franco dictatorship and all the subordinate legislation has been preserved in the new *Ley del Suelo* [Land and planning Act] of 1990 and 1992. Public participation in planning in Spain since the 1975 Act exhibits two peculiar characteristics arising out of the historical moment at which such participation was legally incorporated as part of normal planning procedures.

a) Spanish planning is typically strong on *detail* and *prior programming*. It tends to be *binding* and *prescriptive*, generating substantial new rights/duties and financial conditions requiring fulfilment in return for private appropriation of the benefits of the

underlying land. This general characteristic has given rise to a number of significant requirements - publicity, common knowledge and broad participation of all persons affected by plans, for the purposes of *informing*, *legitimising* and *authorising*:

(i) any ***changes or modifications*** - enhancement or loss - in the existing legal-economic status; eg, where a site is already urbanised and scheduled for development but the development plan may alter specifications of height, volume, use and rights/obligations; or

(ii) ***new, detailed planning*** of new sites yet to be urbanised. This is of special interest to all owners of land currently classified as rural which is designated and scheduled for urbanisation in the immediate future, involving as it does major benefits and obligations.

b) During the Dictatorship, the absence of the most elementary democratic legitimation of organs of governance in either central or local administration was offset with interest by jurists and technical specialists in Administrative Law, who in drawing up planning acts, decrees and by-laws actually overdid the provision for public participation in such internal procedures of the planning process. Their aim was twofold:

(i) to provide a counterweight to the lack of any democratic parties, free trade unions or civic associations through a vigorous system of ***sporadic planning control by the general public*** which contemplated civic and popular participation, and an easy avenue through which the public could bring objections and appeals before the Courts of Justice; and

(ii) to establish a system of ***judicial control of the executive*** based upon strict legal compliance of detailed plans, which politicians, lacking a democratic mandate, would be forced to respect, thus placing constraints upon their discretionary powers. They would be obliged to ensure that the citizens were duly notified and enabled to intervene in such planning processes in defence of their interests as small proprietors.

4. Within this legal-technical and political framework, administrative measures were introduced to allay the desire of proprietors - and by extension, the public in general - to take part in public life and political surrogates therefore (like town planning), debarred as they were from any effective democratic participation in political life. A way was thus opened for any individual, even if he had no direct interest in the development plan concerned, to submit objections, complaints or even his innermost desires regarding such plan, by making it compulsory for planners to consult the sole Trade Union, the sole Party, trade associations, the Regime's official organisations, local authorities, etc., which were provided with specific channels of intervention. This provided a pseudo-democratic release-valve for the few town planning decision processes to which citizens had access; all were aware, however, that the final word on every specific plan always lay with appointees of the Central Government or the sole Party, whose job it was to look after the prevalent ideological and economic interests of local governing classes and power elites.

Land speculation in town planning practice during the forty years of dictatorship - camouflaged

at the time by spurious specific technical requirements - was utterly catastrophic. This is instantly visible in any city or town, no matter how small, throughout the length and breadth of Spain, and particularly on the Mediterranean coast, where speculation in the service of domestic and foreign tourism was rampant. The conscious sectors of popular opinion raised no serious outcry against these onslaughts on the environment and the quality of urban life until the appearance of *popular civic movements* in big cities during the last years of the Franco regime (1970-75), which provided cover for nascent political parties that would emerge into the limelight with the advent of democracy (beginning in 1976).

5. However, these planning practices based on technical and legal subterfuges had become ingrained in the mentality and culture of planning both official and private. They prompted expectations of gain from development business in many officials in new democratic authorities who continue - now as before - to serve the interests of powerful local or national groups. The result has been the revelation (now no longer swept under the carpet as before) of cases of serious public corruption where easy profits have been reaped from political decisions involving planning and land reclassification.

Nor have reforms of planning legislation - which the 1978 Constitution allocates to the *exclusive competence* of the Autonomous Communities (directly-elected democratic regional governments) - succeeded in reducing or restricting such active public participation in development planning processes, despite the existence of unimpeachably democratic organs of local or regional government. Indeed, since the end of the Franco era in 1975, *all* statutory regulations governing public participation on land development have remained *quite untouched*, even in the latest *Ley del Suelo* [Town and Country Planning Act] of 1990-1992 (see **Appendix I**, section **B** *passim*).

Since the change of regime in 1976, the thrust of reform has been towards cutting down *time and procedure for publication and public participation* in the successive planning stages. Such initiatives have been justified on grounds of a need to simplify and speed up public decision-making; only the time allowed for notification is cut back, not the legal provisions for intervention of citizens and/or courts in all planning decisions of a political nature.

1.3. The debate over judicial control of executive discretion *versus* greater discretion on grounds of political legitimacy

6. One of the central themes in the current debate over legal-political doctrine is the clash of two viewpoints: constitutionalism/administrativism *versus* civil libertarianism.

The positions at the heart of the debate are:

(i) the view that *judicial powers of constraint* on the executive ought to be cut back to allow legitimately-elected, democratic organs of government greater *discretion to take political action;*

(ii) the contrary view: ie, the need for greater judicial control and power to constrain the discretionary acts of the executive and defend the individual and personal freedom against the *arbitrary and discretionary powers* of the all-powerful State Leviathan with its dangerous tendency to swamp constitutionally-recognised

individual liberties and civic guarantees.

This long-standing Hobbesian debate, which has lost none of its relevance or power to arouse passion and is causing upheavals in current Spanish political thought, is of great importance for discerning degrees of public participation in political decisions.

1.4. Forms of participation and contentious relationships in actions affecting territorial interests

7. The concept of public or civic participation in political planning decisions is structured on two complementary levels:

a) **Direct public participation**, with intervention open to private individuals, legal personae (corporations, companies, banks, etc.) and associations of individuals (these may be of all kinds - neighbourhood associations, ecologists, squatters, "friends of the castles" or persons prejudiced by Project X; old people or hunters; shopkeepers or landowners; clubs, trade unions, political parties and so on) who are entitled to intervene in specific cases that affect them, or to have proposals submitted to public consideration by the local, regional or national authority in order to be able to set forth and defend their private or collective interests on their own behalf or on behalf of a social group that they represent.

b) **Indirect public participation**, specifically through *interadministrative relationships* between democratic, representative political bodies. Broadly speaking, this will take the form of disputes and conflicts of local *versus* supra-local collective interests, or regional *versus* national, or local *versus* national, always of an overtly political cast. The degree to which these government organs actually represent the interests of citizens in such indirect public participation is in inverse proportion to the extent of the jurisdiction that they represent: the smaller this is, the more compact, concrete and direct these interests will be - and at times the more vigorous their means of expression. In practice, frequent disputes arise over matters of spatial planning between the three levels of Public Administration: ie, Local Governments, Regional Governments (of Autonomous Communities) and the Central State Government, all of which the Constitution recognises as autonomously empowered to defend their own interests and material areas of competence as marked out more or less clearly in the Constitution itself. It is this kind of *conflict of competence and interadministrative participation* that attract most attention, running as they do along two axes:

(i) *vertical* interadministrative conflicts: between different offices and political parties in the various administrative levels, which clash over a proposal by any one of them that conflicts with one or more proposals put forward by the others. The Constitutional Court may be called on to settle the demarcation of powers brought to issue in such disputes;

(ii) *horizontal* interadministrative conflicts: between one and another neighbouring municipality or Autonomous Community; or bodies at either of these levels having territorial jurisdiction and objecting to central state decisions that affect them; or occasionally Spain's disputes with other States in the European Union. Horizontal disputes have to be pursued through participation and political

coordination among equals and may eventually be settled in the ordinary courts.

8. The issues raised by *interadministrative indirect public participation* are of tremendous relevance and importance for the undisturbed political, legal and social functioning of the entire Spanish constitutional system and deserve to be dealt with in a section apart. However, here they are discussed together with issues of *direct public participation* in the course of the various stages in the development planning process, in terms of institutions having a peculiar status with respect to decision-making and to sectoral aspects (roads, coasts, rivers and dams, historical protection, agriculture, etc.) and environmental issues.

2. ECHELONS, STAGES AND FORMS OF DIRECT PUBLIC PARTICIPATION IN THE DEVELOPMENT PLANNING PROCESS

2.1. Various echelons and stages of public participation during the spatial planning and decision-making process

9. There are three broad echelons participating in any spatial or development planning process (see DIAGRAM 1):

a) **Planning authority:** The *public authority having direct competence* over the plan concerned and responsible for taking decisions and for promoting, processing and approving it, as determined by the constitutional distribution of powers; this may be the Local, Regional or State Authority (here generally referred to as the Planning Authority or decision-maker in respect of the object of competence concerned).

b) **Other Public Authorities** or Government Organisations involved or affected, other than the above, representing democratically-elected bodies as organs for indirect participation of the people within their jurisdiction, and hence *duty-bound* to intervene or participate and constitutionally *bound to be consulted* so that they may voice the opinion of the interests that they represent. (If the plan is a local initiative, it will affect other neighbouring local authorities, the relevant regional authority and the central authority; if the initiative is regional it will affect the local authorities within the region, other adjoining regions and the central authority; if national it will affect the regions and municipalities directly involved or affected).

c) **Individuals, associations and Non-Governmental Organisations (NGOs)**, open to direct participation of persons, entities and associations or *ad hoc* groups local or national in scope, who *may intervene* voluntarily provided that they believe their interests are being violated or infringed upon by planning processes. Their intervention will carry more or less specific weight depending on their level of organisation, size, prestige and social power (this category may include arms of political pressure groups of considerable power or influence on public opinion and decision-making organs: press, TV, the Catholic Church, merchants, entrepreneurs, trade-unions, aristocrats, military, parties, etc.).

10. As for the general time phases comprising almost any planning process for general development or a specific sector, we may identify up to four cumulative, necessary and non-potestative stages through which the promoting body must carry its plan - plus a judicial

stage, which is evidently potestative in the event of conflict over legal rights, interests or competence.

The articulation of these time phases with the three echelons can be seen in DIAGRAM 1.

First stage: Draft Plan. Following approval of plan initiation, once sufficient progress is made, a Draft Plan is submitted (and approved internally, if appropriate, by the drafting Authority), containing the surveys, proposals, alternatives and broad outlines of the basic decisions involved. The Draft Plan must be issued for general notification over at least one month; it must be published in the Official State Gazette and in a newspaper to allow interested parties to examine it and if they so wish, make oral and/or written representations or propose other alternatives. The sole end of this stage is to gather opinion and comment (cf. **Appendix**, sect. **B.2), art. 125 RP**). Already at this stage there are contacts with other Authorities in formal (specific notification) and informal hearings and discussions; also, informal contacts are arranged with local citizens, associations, etc. in the form of public hearings, display of plans, videos, films, round tables, radio interviews, leaflets and booklets, etc. The drafting team examines all suggestions received, accepting or rejecting them as appropriate, reports to the Authority on each and then completes a redraft of the plan for initial approval.

Second stage: Plan (initial approval). Once the plan is granted initial approval by the Authority, it must be issued for general notification by publication in the Official State Gazette and a newspaper. At least one month's notice must be given (although 2 or 3 months is more normal); the plan must be aired through public hearings, neighbourhood meetings, meetings of interest groups and other means, and publicised via all written and spoken media (cf. **Appendix**, sect. **B.3), art. 114.1 LS; and art 128 RP**). All those with something to say may express their opinions - even if they have no direct interest and do not own buildings or land - by means of *written statements or representations*. These may be submitted with or without legal counsel, in technical, formal or plain and simple language. Specific acknowledgement must be made of all such representations. Once these have been examined, a final draft of the plan is prepared for provisional approval by the same Authority responsible for drafting and processing it.

For the plan at this stage, incorporating amendments as a result of the above general notification procedures, there are two possible outcomes (cf. **Appendix,** sect. **B.3), art. 114.2** and **3 LS**; and **art. 130 RP**): **(i)** *there are no amendments of substance* in respect of property rights defined in the plan as publicised in stage 2, in which case it is prepared for provisional approval; **(ii)** *there are amendments of substance* affecting property rights defined in the plan as publicised in stage 2; in this latter case the plan must go back in its entirety to the initial approval stage and second-stage general notification procedures repeated (as if for the first time), *for the same length of time and using the same media for publication and the same avenues of participation*. Once representations have been examined and for any not previously considered accepted or dismissed, the same situation could in principle arise again and the whole general notification procedures have to be gone through for a third time. It should be said, nonetheless, that this has never been known to occur other than where a judicial decision is handed down some years after approval, bringing the whole process back to the initial approval stage. This has occurred on more than one occasion.

Third stage: Plan (provisional). Following provisional approval by the drafting and promoting

body, the Plan is raised to the competent Public Authority for final approval (Autonomous Community, Regional Planning Authority, National Government, etc.).

Fourth stage: Plan (final form). Once it receives the full dossier and the representations made in the course of official and public hearings, the higher Planning Authority concerned has six months in which to examine these. During this time it will consult the Plan's drafters in order to decide upon issues of technical content and wider implications. It may decide: (i) to approve the Plan as it is; (ii) to withhold approval and return the Plan for remedy of errors or legal defects; or (iii) to approve the plan provisorily, subject to certain amendments. If no decision is forthcoming in six months, the Plan is deemed to be approved by positive administrative silence (cf. **Appendix**, sect. **B.3), art. 114.4 LS and art. 131**).

For a Plan to become effective, there are two general notification requirements, which are legally very important and the *sine qua non* for full effect and automatic supersession of the previously-existing plan: (i) publication of the final approving decision in the Official State Gazette; and (ii) publication in full, in an official daily bulletin, of the description, regulations, by laws and written prescriptions, together, where appropriate, with the basic plan drawings, so that citizens have access to a definitive text.

Fifth stage: appeals by other Authorities and individual citizens. In addition to individuals and groups having made representations in stage 2, any other individual or group, even though they entered no written representations in that stage, are entitled to file an administrative appeal in pursuit of any legal rights which they feel the Plan infringes upon, by reason either of defects of legal form (procedures) or of the actual substance of the plan (cf. **Appendix**, sect. **B.4), art. 304 and 305 LS**). The appeal will be against the Planning Authority which granted final approval, not against the drafters. The Authority may either accept or reject such appeal. If an individual citizen is not satisfied, he or she may have recourse to the Law Courts, either through ordinary civil proceedings or through the administrative court machinery. An appeal may go through two jurisdictional levels: the Regional jurisdiction, then the Supreme Court, which is the top echelon. A citizen who considers that his or her fundamental civil rights have been violated may appeal directly to the Constitutional Court, but this very rarely occurs.

11. It is most often the case that developments, plans or building work by other Authorities infringe on the current plan, and for such events specific procedures exist (cf. **Appendix**, sect. **B.5), art. 244 LS**). Such differences are practically always settled in the administrative courts, or may even reach the Constitutional Court since article 244 of the Land Act is pre-Constitutional (promulgated in 1956) and is deemed unsatisfactory by the new regional and local governments incorporated under the Constitution. In fact the Constitutional Court itself has called for a revision of this statute to bring it into line with the Supreme Law of the land.

2.2. Description of the range of Organisations involved in public participation

12. The organisations or associations most often consulted or most widely represented nationally and regularly having an active part in planning procedures - subject, of course, to the specific material and type of problem concerned in any case - are, briefly, the following:

- Professional associations (architects, engineers, lawyers, physicians),
- Neighbourhood associations in towns or districts concerned,
- NGOs (chiefly ecologists)([9]),
- Trade unions ([10]),
- Employers' associations (CEOE and PYME),
- Chambers of Commerce,
- Several Consumers' and Users' associations,
- *Ad hoc* defence groups formed spontaneously by persons prejudiced by or having an interest in local schemes or specific plans.

13. On 14 February 1994, an *Environment Advisory Council* was set up as a consultative body, with wide powers of intervention and participation in all major State-level decisions affecting the environment. It has been particularly critical of national plans for roads, motorways, waterworks and so on. The Council has fourty members and is chaired by the Minister of Public Works, Transport and the Environment. There are only four other Government members, the rest representing NGOs, trade unions and other bodies from practically all the areas listed in §12 above, plus eight technical and scientific experts of acknowledged prestige and independence. The members meet quarterly and are delegated by their respective organisations for two-year periods. Their meetings and discussions have reached a very wide audience.

2.3. Adequacy, fairness and effectiveness of the opportunities for participation

14. Persons and organisations intervening in participation processes fall into two broad groups:

a) Persons or groups ***possessing direct material interests*** in the plan concerned and directly affected by it. Their interest is confined to the defence of their properties, interests or rights. Their aim is to ascertain what may become of these and to try to preserve them and prevent their disposal or simply to augment and improve them for their own benefit. Their attitude is essentially conservative of their clearly-circumscribed goods and rights, and they do not therefore take an active part in the examination of alternatives or other proposals received; they confine themselves to opposing or defending the *status quo*, either passively or violently depending on how serious a threat they perceive to their interests. Such groups or persons may include

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9 The most important of these are: Nature Protection Association (ADENA), Ecologist Nature Defence Association (AEDENAT), Federation of Friends of the Earth, Environmental Defence Organisations Coordinator (CODA), Foundation for Ecology and Environmental Protection (FEPMA), Iberian Fund, European Natural Heritage Fund, Greenpeace, Spanish Ornithological Society (SEO), Iberian Council for Nature Protection (CIDN), Coordinator of Non-Governmental Organisations for Development, etc. Each has a representative on the Environment Advisory Council mentioned in §13.

10 Nationally, Comisiones Obreras, Unión General de Trabajadores, Confederación Nacional de Trabajo, etc., basically because they possess technical and legal capabilities. Also, in very specific cases, farmworkers' and rural landowners' unions.

those opposed to noisy, annoying activities that disturb their present habitat ("occasional ecologists") or to having "low-class" social groups near them who will bring down property prices; or again, those who favour any increase in the value of their property, whatever the social cost, as conducive to "progress and development". Participation and intervention by such groups of citizens in planning processes tends to be occasional, isolated, dispersed, self-centred and highly vocal; they are normally the first at public participation sessions looking out for their own site or property, keen to know what will become of that but with no concern for the more general good.

b) Persons or groups possessing no property or other direct interest, but only ***indirect interests of a professional, political or ideological nature***, perceived as consciousness or wariness regarding changes likely to be brought in by the plan concerned. While not necessarily personally disinterested, they tend to be more active participants, perceived as they are to be defending broad-based interests or values backed up by ideas, theories, methods or practical experience; they may pursue more altruistic goals - political, ecological, group interests, etc. - or again they may be seeking to protect the interests of groups every bit as conservative as the small property owners, only in ideological terms. This type may include dynamic ecologist groups ("ecologists by conviction"), *advocacy planners*, NGOs, advocates of social reform, renewal, etc., alongside professional speculators in general on the lookout for the sacred and inalienable rights of private property. Participants in these groups tend to act with generosity, adopting a generalised, ideological approach. They are technically well-documented and defend abstract economic, social, political or environmental values in a forceful, organised manner. They will not stop short of mass demonstrations and press declarations, and are often willing to go to the Law Courts to enhance their social prestige.

15. The capacity of either type to influence decisions is in direct proportion to: (i) the "noise" they are able to make in defence of their interests; (ii) their personal social power and the influence they can bring to bear on the group in government (in which case they manoeuvre covertly or "backstage"); and (iii) their capacity to bring disparate interests firmly together around a simple and effective ideological banner.

In extreme, not to say perverse cases, their capacity to influence decisions is in proportion to their ability to intimidate the Government and its servants by means of attacks, threats, sabotage, death and ruin (as a number of traumatic experiences in the Basque Country have shown; see **Appendix II**). In very isolated cases, a proposal for compulsory purchase of land for the construction of public utilities has even been known to result in the murder of the mayor or the person responsible for the proposal at the hands of an enraged owner (cases occurring in remote country areas of Spain).

2.4. The role of the public as watchdog of the planning system: resources and relationships of "representative democracy" *versus* "personal democracy"

16. The central problem of public participation in planning in democracies lies in the dialectical relationship of four fundamental variables. The factors - technical and social complexity (**C**), guarantees of transparency and comprehensibility/understandability (**G**), costs (**Q**) in time and resources invested, and direct, participative democracy (**D**) - are combined to try and find an optimum of ***democratic efficacy***. What we have, then, is a set of four formulae

with four unknown variables which may be grouped into two broad families of curves arranged graphically in a dual system of cartesian coordinates: costs ($\mathbf{Q_i}$) and democratic forms of direct participation ($\mathbf{D_n}$) [See DIAGRAM 2];

1) COSTS. For the family of costs curves ($\mathbf{Q_i}$), the function costs (**Q**) is taken to be *in inverse proportion* to the complexity (**C**) of the social system in which it is generated or the technical complexity of the problem, and likewise to the guarantees (**G**) of active participation which it is sought to observe or secure [**Q = f(C,G)**]; hence, the greater the complexity the less sure are the guarantees and vice versa. Therefore, given equal complexity (point **1** in the diagram), to increase guarantees of participation, higher costs must be invested (move to point **6** on curve $\mathbf{Q_i}$; or from point **2** on $\mathbf{Q_1}$ to point **5** on $\mathbf{Q_2}$). In order to hold to a constant costs curve (point **1** on $\mathbf{Q_1}$), if guarantees (**G**) are increased, the complexity (**C**) and technical content of the problem must be reduced so as to increase understandability (move from point **2** or **3** on curve $\mathbf{Q_1}$; or from **4** to **5** on $\mathbf{Q_2}$) - and vice versa. This gives us the following formulae:

a) **Technical complexity (C) *versus* guarantees (G) of understandability [G=φ(C)]**, wherein the two variables stand in *inverse proportion*: the greater the social or technical complexity of the problem (diversity and abundance of socio-political and technical factors to be taken into account), the less easy it will be to convey the scope and nature of possible and feasible solutions. In this function, then, in order to achieve greater transparency and understanding of the problem, the complexity and interplay of factors (concealed interests, social and economic conflicts or environmental effects) must be downplayed, the tendency being to oversimplify to the point where the problem as presented is not true, as variables, repercussions and so on are glossed over. The danger then is that participants will be deceived at first by such oversimplifications and that - not all of them being fools - someone will smell a rat and raise a rumpus.

b) **Costs (Q) in time and resources *versus* guarantees (G) of comprehensibility and transparency [G=ρ(Q)]** (social and economic costs/benefits), wherein the two variables are in *direct proportion*: the greater the guarantees of communication and participation, the greater the costs will be in time and money, meetings, consultations, leaflets, videos, correspondence, explanations, etc. Savings in time and money can only be achieved by restricting guarantees of civic participation.

2) DIRECT DEMOCRACY. For the family of participative democracy curves ($\mathbf{D_n}$), either of the direct, personal variety (**Dp**) or the indirect, representative variety (**Dr**), direct participative democracy is again taken to be in *direct proportion* to the complexity (**C**) of the social system in which the problem arises or to the technical complexity of the problem itself, and likewise to the guarantees (**G**) of active participation which it is sought to observe or secure [**Dp = f(C,G)**]; hence, the greater the complexity, the more guarantees of participation
are required to maintain a constant level of participative democracy, and vice versa. Thus, at a given level of complexity (point **1** on $\mathbf{D_1}$ or **2** on $\mathbf{D_2}$) if it is wished to secure augmented guarantees of participation, then the amount of direct, personal participation (**Dp**) must be increased (move from point **1** to point **6** or from point **2** to point **5** on $\mathbf{D_n}$) at the expense of indirect, representative participation (**Dr**) through elected bodies. In order to hold to a constant level of democratic participation (point **2** on curve $\mathbf{D_2}$), if the complexity (**C**) of the problem itself or of the social sector affected increases, guarantees (**G**) of public participation must be

augmented (move from **2** to **4** on curve $\mathbf{D_2}$; or from **3** to **5** or **6** on $\mathbf{D_n}$). Costs (**Q**) then inevitably rise, stepping up from one of the middle curves ($\mathbf{Q_1}$ or $\mathbf{Q_2}$) to a higher one ($\mathbf{Q_i}$). This gives the following formulae:

c) **Costs (Q) *versus* direct (D) or personal (Dp) democracy [$Q=\xi(Dp)$],** wherein the two variables are again in *direct proportion*, so that the more direct, specific and personal public participation is in discussing and reconciling positions on any important problem facing the community, the greater is the expense in time and resources required to achieve the general level of participation desired. Greater direct participation (**Dp**) may be achieved by stepping up the ladder of cost levels. If we accept that indirect, representative forms of democracy (**Dr**) stand in *inverse* relation to personal, participative forms (**Dp**), then pursuit of the interests of the social body through representation by elected bodies will be less costly than through direct, personal forms. If the aim is to reduce costs, then indirect representative forms must be preferred to direct, personal forms.

d) **Complexity (C) *versus* direct (D) or personal (Dp) democracy [$Dp=\psi(C)$],** wherein the two variables are in *inverse proportion*, so that the more complex the social organisation (or the technical problem) is, the less likelihood there is of being able to solve problems by direct, personal consultation - or conversely, the greater is the need to solve problems by means of indirect representation systems wherein the citizens entrust decision-making to elected bodies at local, regional or national level.

17. Generally speaking, we find a correlation between complexity (**C**) and costs (**Q**) [$\mathbf{Q=f(C)}$]; and similarly we find that direct, participative democracy (**Dp**) correlates with the transparency and guarantees of participation (**G**) that the system provides [$\mathbf{Dp=f(G)}$].

Civic and legal guarantees of participation (**G**) stand in *direct proportion* to the costs (**Q**) of solving any given complex problem and likewise of achieving any approximation to direct, personal forms of consultation (**Dp**) regarding the same problem [in simplified form:
$\mathbf{G = \gamma(Q, Dp)}$].

Contrariwise, civic and legal guarantees of participation (**G**) stand in *inverse proportion* to technical and social complexity (**C**), representative democracy (**Dr**) and hence costs (**Q**) of solving given problems [$\mathbf{G = \zeta(C, Dr)}$].

The key to optimum participation in each case lies in finding a balance of least costs, maximum direct participation and a prudent degree of simplification to ensure the greatest possible public participation; in other words, we must seek a ***zone of optimum relative effectiveness*** -a zone of variable values or *fuzzy set* (see DIAGRAM 2) that best suits the conditions and requirements of each specific situation as determined by political assessment.

18. Given the complexity and the need for speedy decision-making in a society governed by representative democracy, government bodies require some degree of discretion in most everyday or exceptional decisions if they are to adapt regulations to each specific case in obedience to political guidelines legitimated by elections. However, this tendency of complex representative democracies (discussed in §6 above) entails a relaxation of individual guarantees and a degree of discretion that is not without risk, given the high cost in time and money that

the submission of all decisions to the public watchdog would involve. Friction with the judiciary is constant. The latter stands as legal guardian of the constitutional rights and guarantees of all groups and individuals affected by political decisions and thus circumscribes the freedom of elected organs of government to exercise political power.

Where the problem to be dealt with is especially fraught - involving high degrees of politico-social and technical complexity and demanding optimum transparency and direct, personal democratic participation to obviate any possible doubt that the option chosen is the best one - costs in time and resources may soar out of control; this added cost may nonetheless result in maximum social satisfaction. Such is the case described in **Appendix II** (and DIAGRAM 3), concerning the decision-making process for an arterial motorway in the Basque Country, following the model known as ***Nuclei of Participative Intervention***.

APPENDIX I

LEGISLATION ON PUBLIC PARTICIPATION

A)REFERENCES FROM THE SPANISH CONSTITUTION OF 1978 (SC).

1) In the **Preliminary Title of the SC:**

Art. 9.2: It shall be the duty of the public powers [Legislative, Executive and Judicial] (i) to foster suitable conditions for real and effective freedom and equality of the individual and the groups to which the individual belongs; (ii) to remove any obstacles that prevent or hinder full achievement of this; and (iii) *to facilitate the participation of all citizens in political, economic, cultural and social life*.

2) In **Title I, On fundamental rights and duties, Ch. 2, Rights and freedoms, Section 1**, *On fundamental rights and public freedoms*:

Art. 23.1: Citizens have the *right to participate in public affairs*, either (i) *directly* or (ii) through representatives freely chosen in periodic elections under universal suffrage.

3) Again in **Title I**, **Ch. 3, On the principles governing social and economic policy**, there are four relevant articles:

Art. 45: 1.- Everyone has the right to enjoy an environment adequate for his or her personal development and a duty to preserve it. 2:- The public powers shall keep watch over the rational utilisation of all natural resources, for the purpose (i) of preserving and improving the quality of life and (ii) of protecting and restoring the environment, upon a foundation of *indispensable collective solidarity*.

Art. 47: 1.- All Spanish citizens have the right to enjoy a decent, adequate dwelling. 2.- The public powers shall (i) foster the requisite conditions and (ii) introduce appropriate regulations for effective realisation of this right, by regulating land-use in the general interest in order to *prevent speculation*. 3.- *The community shall participate in the surplus value* generated by the planning activities of government bodies.

Art. 51: 1.- The public powers shall (i) guarantee the *defence of consumers and users* and (ii) introduce effective measures to protect their safety, health and legitimate economic interests. 2.- The public powers shall (i) *promote information* and education of consumers and users, (ii) foster organisations thereof and (iii) *attend their representations on matters which may affect them*, in such terms as may be established by law.

Art. 52: The law shall regulate professional organisations [employers, NGOs, etc., as well as the right to unionise, associate and form Professional Associations as provided in arts. 7, 22, 28 and 36] which contribute to the *defence of their own economic*

interests. These must be internally structured and function in a democratic manner.

B) REFERENCES IN THE PLANNING LEGISLATION. Land Regulation and Town and Country Planning Act (LS 1992)

1) ***Basic*** **general principle** (applicable nationwide)

Sect. 4.4 (LS 1992):- In drafting, processing and controlling planning, the competent planning authorities *must* (a) *secure the participation of interested parties*, and in particular (b) *such rights in respect of initiative and information* as may be due to (i) *entities representing* affected interests, and (ii) to *private individuals*.

2) **Draft Plan** (not binding, only for internal administrative purposes).

Sect. 125 (Decree regulating planning):- As soon as work on drafting the Plan is sufficiently advanced to admit the formulation of planning criteria, objectives and general solutions, the Planning Authority responsible therefore must announce, in the Official Gazette of the Province and in one of the leading newspapers in the Province, the availability of the works for public inspection so as to allow a period of at least one month for submission of written and oral representations and, where appropriate, other planning alternatives by Local Authorities, associations and individual citizens.

3) **Initial, provisional and final approval of the Plan** (with all statutory documents, not yet binding but generating certain valid property rights and useful for obtaining building permission pending final approval).

Sect. 114 (LS 1992):-

1:- Upon ***initial*** *approval* [in public session in the Town Council or Regional Parliament] of a Plan by the Planning Authority responsible for drawing it up, it shall be subject to *general notification for a minimum period of one month* through publication-

a) in the Official Gazette of the Autonomous Community;
b) in that of the Province, where applicable; and
c)in one of the daily newspapers with the largest circulation in the Province.

On expiration of this period, a further period of equal duration shall then commence for representations by the Local Authorities whose territory is affected.

2:- The Planning Authority which initially approved the plan shall grant ***provisional*** *approval* with any appropriate modifications. If such modifications should entail substantial amendment of the Plan as initially approved, *general notification must be repeated for a further period* before provisional approval is granted.

3:- Once provisional approval is granted, reports shall be requested from the provincial or regional Planning Authorities. Failure to remit such reports within one month shall be construed as approval through administrative silence.

4:- Upon completion of these procedures, the Plan with its full dossier shall be submitted to the competent authority for comprehensive examination and ***final*** *approval*, which must be granted or denied within a period of six months. Failure to issue a decision within this time shall be construed as approval by administrative silence.

Sect. 128 (Decree regulating planning, provisions set forth in **Sect. 114.1 LS**).

1:- The decision to grant *initial approval* shall be accompanied by a decision to initiate general notification procedures.

2:- Following initial approval, the Plan shall be subject to general notification by announcement, to be published (i) in the case of provincial capitals or towns with more than 50,000 inhabitants, in the Official State Gazette (or that of the Autonomous Community) and in the provincial Official Gazette; or (ii) in all other cases, only in the provincial Official Gazette. In either case, the announcement shall also be placed in one of the leading newspapers in the province.

3:- This stage shall last at least one month, during which time the dossier shall be available for general inspection.

4:- During this same period, *written representations or objections* may be submitted.

Sect. 130 (Decree regulating planning, provisions set forth in **Sect. 114.2** and **3 LS**).

In the light of (i) the outcome of general notification, (ii) the hearing referred to in the foregoing section and (iii) the technical reports, the Local Planning Authority which granted initial approval shall grant *provisional approval*, subject to any appropriate amendments.

Should such amendments entail substantial alteration to the Plan's criteria and solutions as initially approved, before proceeding to provisional approval the Local Planning Authority must repeat the general notification and hearing procedures, allowing the same period of time.

Sect. 131 (**Decree regulating planning,** provisions set forth in **Sect. 114.4 LS**).

1:- Where general Plans for provincial capitals or towns with over 50,000 inhabitants are concerned, once *provisional approval* is granted, the approving L.P.A. shall request reports from the Provincial and the Regional Planning Authorities successively. Failure by either to issue such reports within one month of such request shall be construed as approval by administrative silence.

[**2**, …]

3:- The L.P.A. which granted provisional approval shall submit the Plan, along with the technical reports referred to in paragraph **1** above, to the Regional Minister responsible

for Town and Country Planning, for further processing and *final approval* if appropriate.

4:- Before deciding on final approval, the responsible Regional Minister must request a report from the Regional Government's Planning Advisory Committee. Again, failure to issue such a report within one month shall be construed as a favourable opinion.

4) Objections and appeals against plans after approval.

Sect. 304 (LS 1992). Public action [by any natural or legal person or group, whether possessing direct interests in the location or not].

1:- Action before the administrative Authorities and the Courts of Administrative Justice to enforce compliance with planning legislation and with Plans, Programmes, Projects, Rules and Bye-laws, shall be public action.

2:- If such action is undertaken in response to the performance of works deemed unlawful, it may be brought during such performance or at any time within the periods laid down for the adoption of measures to protect the legal planning order [up to four years following completion of the unlawful works concerned].

Sect. 305 (LS 1992). Action before the ordinary courts [as opposed to courts of administrative justice].

Over and above the provisions of the foregoing section [public action open to all], proprietors and holders of title in real property rights [at this stage only those directly concerned] may petition the ordinary Courts for demolition of works and installations contravening regulations as to the distance between structures, wells, cisterns or trenches, common ownership of building or other urban elements, or those regarding inconvenient, dirty or hazardous uses [activities classified as harmful to the environment or health] which are expressly designed to govern the use of the other properties.

5) Disputes in the event of a local plan conflicting with projects and works of other public Authorities

Sect. 244 (LS 1992) Acts promoted by Public Authorities

1:- All acts [works, installations or building subject to municipal planning permission] which are promoted by Public Authorities or Public Corporations administering goods of such Authorities *shall likewise be subject to municipal planning permission* if such is required under the relevant legislation [regional or sectoral, respectively].

2:- Where reasons of urgency or exceptional public concern so necessitate, the Minister [national or regional] having competence in such matters may order remittal of the project concerned to the relevant Municipal Council, requiring the latter, within one month, to issue notice as to whether or not the project conforms with the current local

town and country planning.

In the event of non-conformance, the dossier shall be remitted by the Department concerned to the relevant Minister [national or regional Councellor], who shall lay it before the Cabinet [or equivalent regional body] after first eliciting successive reports from the competent body in the Autonomous Community, which must be issued within one month, and then from the Central Commission [national or regional] for Land and Town and Country Planning. The Cabinet [or equivalent regional body] shall decide whether the project may properly be implemented and in affirmative case shall order initiation of the procedure for planning modification or review, in accordance with the process laid down in the planning legislation.

3:- The Municipal Council may in any event order the suspension of works referred to in subsection 1 of this section if an attempt is made to proceed with these in the absence of or contrary to notice of conformance with the planning and prior to a Cabinet decision in favour of executing the works. The Body which drafted the project and the Minister [responsible for Town and Country Planning] shall be notified of such a suspension order.

4:- This power shall not extend to works directly affecting the defence of the nation, for the suspension of which an order shall be required from the Cabinet, at the proposal of the Minister of Public Works, Transport and the Environment, in response to a petition from the competent Municipal Council and following a report from the Ministry of Defence.

APPENDIX II

ALTERNATIVE MODEL OF PUBLIC PARTICIPATION VIA *NUCLEI OF PARTICIPATIVE INTERVENTION* (NPI)

CASE-STUDY: THE URBINA-ARDATZA MOTORWAY THROUGH THE DEBA RIVER VALLEY (BASQUE COUNTRY) January-March 1994

Purpose: to examine the utility, need and, if applicable, the best alignment for a trunk motorway to traverse the Basque Country in a NE-SW direction, linking San Sebastian-Eibar-Vitoria or France-Spain and completing the network of existing E-W aligned motorways on the Cantabrian coast and the Ebro valley, and the Vitoria-Bilbao link.

A public enterprise, DEBASA (Deba Bailarako Autobidea, S.A.), was created to manage, finance and build the motorway, with capital contributions from the Basque Government and the Alava and Guipuzkoa provincial councils (respectively the regional and local authorities responsible for roads within their historical territories).

Political context: In the light of two previous traumatic experiences - the Lemóniz nuclear power station (paralysed and finally abandoned because of threats and attacks by the terrorist group ETA) and a Pamplona-San Sebastian motorway running through the Leizarán river valley (subject to multiple sabotage attacks by ETA and semi-paralysed for that reason)- a need was perceived to take special pains in respect of public works of this kind to ensure democratic legitimacy, full environmental consideration and active participation by local citizens in the adoption of solutions.

Participative model adopted: The model chosen for this new Vitoria-Eibar-San Sebastian link, and applied between January and March 1994, was that of ***Nuclei of Participative Intervention*** **(NPI)** [**Basque** *Interbentzio Gune Partehartzaileak*]. The model was designed and tested (for mediation and consultation in problematical situations involving conflicting interests) by the *Forschungsstelle Bürgerbeteiligung und Planungs-verfahren at the Bergische Universität Wuppertal* (Germany), a founder member of the European Network of Centres for Public Participation (ENCPP) and a correspondent of the Center for New Democratic Processes (CNDP) in the USA, the *Centre National de Recherche Scientifique (CNRS)* in France and, on this occasion, the *Laboratorio de Estudios Sociales-Giztarteaz* of San Sebastian, Spain, the firm responsible for directing and organising this experiment in participation.

Basic structure of the NPI model: A random sample of citizens aged over eighteen was selected (weighted in proportion to the districts or towns affected by the project) [in January 1994]. They took a week off their various employments, for which they received compensatory payment. Fourteen NPIs, each composed of twenty-five persons, were set up to hear, grasp, consider and select from among alternative proposals placed before them by a number of

proponents (political, ecological, social and economic groups, individuals, NGOs, etc.), each of whom were allowed equal time and means to defend their positions and opinions on the issue. With the assistance of neutral expert technical advisors, each NPI debated the issues internally and selected the best overall options. In March 1994 their final verdict was remitted to the public authorities for them to act upon. The results of the experiment were relatively encouraging, and the project as finally approved is currently being examined [November 1994]. The total costs of this participative experiment has been of *c.* $ 700.000.

[See numbered summary and basic operating structure in DIAGRAM 3, attached].

For further consultation and abundant bibliographical information (in Spanish and Basque), inquiries to:

- LABORATORIO DE ESTUDIOS SOCIALES-GIZARTEAZ, Paseo de Francia, 13 A, 1º D. **20012 DONOSTIA/SAN SEBASTIAN (Guipuzkoa)**; tel +34-43-280 336; fax 321 284.

- DEBASA. Olaguibel, 38. **01004 VITORIA/GASTEIZ (Arava)**; tel +34-45-189 729; fax 189 785.

PUBLIC PARTICIPATION IN THE PLANNING PROCESS AND THE APPLICATION OF THE PLAN - EXPERIENCE OF ORGANISATIONS, SPECIAL INTEREST GROUPS AND INDIVIDUALS

Ms Fiona REYNOLDS
Council for the Protection of Rural England
London (United Kingdom)

Planning without people would be a very one-sided affair. The system only works as effectively as it does because people are prepared to engage in it and bring it to life. Without their involvement the planning system as an instrument designed to deliver objectives in the public interest would have very little credibility.

However, although there is a long record of public participation in the planning system as it operates in the UK, from the participant's perspective it is still far from ideal.

The system is geared towards those who can "play the game". Expertise is highly valued and a systematic, organised approach is necessary to participate fully and effectively. To those new to the system, inexperienced about or ignorant of planning law, it can be inhibiting, frightening and inaccessible. For those who want to use non-technical language or express emotions that do not have a formal place in planning policy, the system can appear narrow and limiting. The challenge for all is to ensure that meaningful participation is encouraged and made possible from as wide a range of parties as want to contribute.

The tradition of third party participation in planning processes in the UK is well established. It has evolved in parallel with the evolution of the planning system as a whole, and has been given renewed significance for all parties as a result of Article 54a of the Planning and Compensation Act 1991 which gives priority to the development plan in considering individual applications. The Act also requires a complete coverage of Structure, Local and Unitary Development Plans. These measures increase the importance of early, strategic participation which can bring great rewards but can also frustrate those who miss the development plan boat and wish to intervene later in the process.

There are an enormous range of potential participant types in the planning process. They can be very broadly categorised as follows:

- near neighbours and those directly affected by a proposed development who do not have any property rights which would give them a right of access to proceedings;

- members of a local community who band together - often opportunistically - to oppose a particular, often large development which affects the community as a whole, whether that community is a local neighbourhood or whole village or town;

- members of a local community who are drawn into the process of development

plan preparation, local development schemes or other initiatives under the umbrella of mechanisms such as “planning for real”, “community planning” etc.;

- members of a local amenity or “action” society which is formed for a particular purpose and which organises regular scrutiny of the planning register and draft development plans to ensure advocacy of its particular local interest; and

- members of a group (such as CPRE, FOE etc.) which is linked into a wider network and whose role combines a local watchdog function with wider strategic purposes.

Many non-governmental environmental organisations give a great deal of emphasis to their involvement in the planning process in order to pursue their objectives. Leading participants are the Council for the Protection of Rural England (CPRE, organised in county branches, whose main aim is countryside protection); the Civic Trust (which concentrates on development in or associated with settlements); the Royal Society for the Protection of Birds (RSPB) and the Wildlife Trusts (whose main interests are wildlife and habitat protection) and Friends of the Earth, whose local groups comment on a wide range of development proposals.

There are in addition a wide range of other bodies who participate in the planning process, for example parish councils, farming and landowning representatives, professional institutions such as the Royal Town Planning Institute and a wide range of business and commercial interests including bodies like the House Builders’ Federation (HBF). A number of statutory bodies enjoy privileged status because they are statutory consultees. This paper focuses on those who intervene as individuals or groups, usually with some public interest purpose in mind.

The description above may give the impression of a very organised and structured approach to public participation which of course does not happen in practice. Any local authority will experience a wide range of inputs from both predictable and unpredictable sources, and - if it is doing its job of encouraging public participation well - in a rather unstructured and variable way. However, it is also notable that few local authorities receive large numbers of responses from “the public” at large - people who are unconnected either to the development itself or to a voluntary group - however informal - whose purpose depends on it playing a part in the planning process.

Whatever the kind of participant, there are difficulties in the present system. For example:

- the sheer intensity of development pressure in some areas means that systematic scrutiny of planning registers can be a Herculean task - for example, some CPRE branches may scrutinise two hundred planning applications each week;

- for those not familiar with the planning register and/or the mechanisms for local advertisement, there is an element of chance as to whether they even hear about a proposed development or development plan in which they might have an interest;

- recent pressure by central Government to speed up the process means that local

authorities are under intense pressure to meet deadlines. This restricts the leeway for lay participants who often need to arrange meetings or site visits to consider the issues in their leisure time;

- local authorities can be insufficiently sensitive to the needs of objectors, making documents available for study only during working hours, over-charging for photocopying or copies of relevant documents and otherwise inhibiting (even if unknowingly) effective participation (see CPRE's Public Access to Planning Documents - attached);

- the standardisation of forms for objection to development plans can be off-putting for lay people and can inhibit genuine feelings from being expressed if the focus is on technical language in neat, logical steps;

- development plans themselves can pose real difficulties for participants in finding out about them early enough, getting access and finding the time to scrutinise often lengthy documents, and conforming to the local authority's timetable and procedures for consultation;

- where objections are made in hand-written form or using non-technical language, there is a risk they will not be taken seriously by planners who look for technical justification for objections; and

- the cost of participating can prove prohibitive if more is needed than a simple letter or objection. This becomes particularly difficult if a case is pursued to appeal and expert evidence or formal legal representation is required.

Public participation should not be seen as something which just takes place at the local level. The public also has a right to contribute - however indirectly - to the formulation of policy and its implementation at the national level, and this can often have a profound influence on the way decisions are taken locally. "Expert" groups like CPRE and other NGOs connected to a national network obviously have a head start in this process, and have over the years had a significant impact on both the planning system and its implementation.

For example, at national level CPRE has:

- achieved changes in planning legislation which enhance the rights of third parties (eg a requirement to give publicity to all planning applications) and strengthen the attention paid to environmental issues and the development plan;

- achieved changes to the Government's national planning guidance notes - the Planning Policy Guidance (PPG) and Minerals Planning Guidance (MPG) series - which now give greater weight to environmental objectives;

- lobbied Ministers to use their speeches, discretionary powers, opportunities to intervene in local authority plans and when making individual decisions in ways that better protect and /or enhance the environment; and

- pressed local authorities generally to raise the profile of their environmental responsibilities and address a wider range of responsibilities.

At the regional and local levels CPRE has, both through its national office and county branch network:

- commented extensively on draft Regional Planning Guidance and, as a result, persuaded central Government to strengthen their environmental content; criticised the Government's regional offices for failing to ensure that national requirements for environmental policies are adequately reflected in development plans; and

- lobbied individual local authorities during the preparation of their development plans to improve the environmental direction of plans, sometimes achieving fundamental changes eg the withdrawal of a new settlement proposal from the North Yorkshire Structure Plan.

This is in addition to the daily, weekly and monthly task of monitoring the planning register and engaging in the process of development plan preparation and review that goes on in every CPRE county branch around the country all the time. These achievements are both significant and underpin the value of third party participation. But it comes at a cost. Bodies like CPRE - the leading NGO as far as participation in the planning process is concerned - are poorly resourced by comparison with commercial and development interests - whether major developers, associations like the HBF or private sector interests; and the majority can only intervene on an *ad hoc* basis as they simply do not have the resources to follow the process systematically. This gives those who can - like the HBF - a significant advantage. Moreover, bodies like CPRE often carry the burden of raising issues of public significance at public inquiries which become the process by which anomalies in national policy are addressed or new policies made. Since there is no financial assistance available to third parties for this kind of role, this places a sometimes intolerable financial burden on poorly resourced NGOs. Sometimes the case for the developers is not challenged by default rather than because there is no case to challenge.

There is a also real need for the Planning Inspectorate to develop its role and understanding of the environmental issues which are increasingly being raised during the planning process. The rapid evolution of planning policy as it reflects environmental imperatives puts a particular onus on the Inspectorate to ensure its Inspectors are up to date with current policy in both its formal sense and its interpretation - over which there can be considerable room for manoeuvre. There is a rapidly developing research literature on complex issues such as traffic and demand management and the use of sophisticated environmental assessment techniques and the use of the planning system to address longer term environmental objectives - such as CO2 reduction. Planning Inspectors will need to keep abreast of these developments. Finally, there is considerable and worrying evidence of confusion at the local level about what terms such as "sustainable development" mean and how they are being interpreted in Examinations-in-Public, Local Plan policies and by Inspectors. The Inspectorate could play a useful role in assisting a more coherent and consistent approach to the interpretation of these important concepts on appeal.

What, therefore, would improve the prospects for third party participants?

Some of CPRE's key proposals are attached (see Citizens' rights and the Planning System). If implemented, these improvements would considerably enhance the opportunity for and the quality of public participation, to the benefit of society at large.

Finally, CPRE sees it as a priority to help those for whom the planning system is relatively uncharted territory to play a role in defending their local environment. To that end we are producing a series of Campaigners' Guides and leaflets designed to demystify the system and guide people through it.

The leaflets are aimed at the general public and neither assume detailed knowledge nor imply that it is necessary in order to play an effective role. Titles available so far are Responding to Planning Applications, Local Plans and Environmental Statements - Getting them Right; and those in preparation relate to local transport, minerals, Environmental Assessment, water, trees and woodlands and public inquiries. We have also produced an Index of National Planning Policies, an invaluable index to the PPG and MPG series intended to assist lay users of the system.

CPRE's Campaigners' Guides are aimed at a more technical audience and designed to produce a step by step guide through complex processes, and include advice on key issues to be raised and campaigning tips as well as guidance on the steps to be followed. Titles so far available are on opencast coal, Local Plans, road proposals, and Using EC law; and a minerals guide is in preparation.

By a combination of the means outlined above, CPRE believes public participation in the planning process could be made more effective, meaningful and contribute to a higher standard of decision-making in the planning sphere.

APPENDIX I

CITIZENS' RIGHTS AND THE PLANNING SYSTEM
Detailed proposals

Plan preparation

- local planning authorities should be legally required to undertake publicity and participation at the four major stages of the plan preparation process;

- local planning authorities should be required to designate a specific officers to deal with public participation throughout the plan-making process - these officers should actively seek out the views of those not normally involved in the planning process;

- a statutory requirement for public consultation during the preparation of Regional Planning Guidance by local authorities and the Government should be introduced;

- environmental and community based interests should be represented on an equal basis with the minerals industry in the preparation of official requirements for aggregates production and quarrying.

Planning applications

- legal minimum requirements for publicising planning applications should be strengthened to include compulsory neighbour notification; the publication of a weekly list of applications in local newspapers and additional publicity for a new category of "controversial" developments;

- local planning authorities should be required to make duplicate planning registers available at convenient places which are open outside normal working hours and to publicise their existence;

- the minimum statutory period for public consultation on planning applications should be extended from 21 to 28 days and local planning authorities should be under a duty to consider all comments received up to 3 days before the decision date;

- local planning authorities should be required to notify all parties who have commented on a planning application of any significant amendment to the application;

- the period of time in which a local planning authority must determine a planning application before an appeal can be lodged should be extended from 8 to 12 weeks except in relation to householder developments;

- local planning authority officers should be statutorily required to make letters of objection and any accompanying documents available in full to planning committees for inspection;

- local planning authority officers should be statutorily required to present sufficient summaries of public comments on development plans and planning applications to planning committees;

- deemed consent procedures allowing local authorities to grant themselves planning permission for their own development should be abolished;

- the exemption of the Crown and statutory undertakers from normal planning controls should be removed;

- local planning authority officers should be empowered to grant permission for development in accordance with the development plan to which no objections have been received within the statutory period;

- all consultees and those making written representations on planning applications should be informed of the decision made on an application;

- local authorities should be prepared to explain their reasons for granting planning permission in writing to any interested body which requests it.

Appeals

- organisations and individuals who have made representations on particular development proposals should have the right to challenge the grant of planning permission for development not in accordance with the development plan or which has been granted by the local authority to itself - the Secretary of State should have the right to refuse to consider frivolous appeals and award costs in these circumstances;

- all consultees and those making written representation on planning applications should have the right to be heard at an appeal;

- notices of appeal should be placed in the local press at the appellant's cost within 7 days of an appeal being lodged and for at least two successive weeks;

- any person making written representations within 21 days of the last day an appeal notice appears should have the right to be heard at appeal;

- the principal of funding for third parties at major public inquiries which help shape Government policy should be established in law;

- the rules governing the procedures at planning inquiries should be amended to:

  .require local authorities to give anyone a reasonable opportunity to inspect and take copies of all proofs of evidence and summaries, including those of the authority;
  .require Inspector's to give "clear, adequate and intelligible" reasons for reaching their decisions;
  .require Inspector's to produce separate "findings of fact" in their report;

.ensure that evening sessions are held when requested;
.the period of notification of an inquiry date is extended from 28 to 42 days.

- the Chief Planning Inspector's Handbook should be made widely available to the public and regularly updated;

- consideration should be given to separating the Planning Inspectorate from Government and possibly integrating it into a new Land and Environment Court - the Secretary of State would be given the right to call in any planning appeal within 28 days of its being lodged so that he could determine it - this would allow for departures from policy;

- answers to Parliamentary Questions concerning the operation of the Planning Inspectorate should continue to be published in Hansard.

Legal challenge

- legal aid should be extended to public interest litigation brought by interested individuals or organisations;

- any body should have the right to challenge planning decisions in the courts regardless of their interest in the land affected - the concept of *locus standi* should be extended to environmental interests.

Access to documents

- legal controls should be introduced to curb overcharging by local planning authorities for development plans and the copying of documents and a Government circular on public access to planning documents should be issued;

- all technical and supporting documents associated with a development plan should be publicised and made available at a reasonable charge by the time the plan goes out for formal public consultation;

- a general right of public access to local authority planning files should be introduced except in clearly defined circumstances;

- local planning authorities should be required to make the agenda of committee meetings and background papers available to the public free of charge and ensure sufficient copies are made available at meetings.

Environmental assessment

- opportunities for public involvement in the scoping and preparation of environmental statements should be enhanced;

- environmental statements should be made available to the public at a reasonable charge;

- an environmental assessment monitoring body should be established to oversee the operation of the system and to ensure high standards in the quality and content of environmental assessments and environmental statements.

Planning obligations

- all planning obligations should be placed on a public register which is available for inspection free of charge;

- local planning authorities should be required to consult with environmental and community based interest before entering into planning agreements.

Enforcement

- a legal duty to ensure compliance with planning controls should be placed on local planning authorities supported by a power to require retrospective planning applications to be submitted.

PUBLIC PARTICIPATION IN THE PLANNING PROCESS AND THE APPLICATION OF THE PLAN - EXPERIENCE OF ORGANISATIONS, SPECIAL INTEREST GROUPS AND INDIVIDUALS

Planning with the public

Mrs Inger VAABEN
Nature Protection Board of Appeal
Copenhagen (Denmark)

Since a major reform of the planning acts in Denmark in 1975 the public participation in the preparation of plans on both regional and municipal level has been a main feature.

Before that time only physical plans at the "local plan level" were included by legislation giving rights to the public to see and comment on plans before their approval by municipal and national authorities. However, many municipal councils had built up a tradition of informing and hearing the public concerning overall planning including new master plans. So in many ways the reform represented the best from already common practice in some municipalities.

Much inspiration to the planning act renewal was obtained from British planning legislation. Decentralization was and is the code word.

In the beginning of this "new planning era" regional and municipal councils made great efforts in communicating plans to the public. The first "wave" of plans following the reform was accompanied by exhibitions, pamphlets, special editions of local newspapers, meetings in central places as well as in local neighbourhoods in the municipalities. And such efforts were generally met with support and sympathy by the public.

Sometimes the efforts would seem exaggerated compared to the possible results. And many a council member seems afterwards to have reached the conclusion, that public participation is both costly, time consuming and of little use. At the same time many a citizen would feel, that participation does not equal influence.

Such frustrations were and are inevitable, when questions of give and take are at stake, and when perhaps overwhelming numbers of opinions concerning almost every aspect of municipality life have to be concluded into practicable plans and politics.

Another aspect has to be taken into account, namely the criticism, from both politicians and developers, of the extended planning period before any decisions could be made in regard to building projects, resulting in "unwanted" delays and changes. For example the process of plan preparation, hearings and final passing of a local plan may well take a year.

It is a general judgment that practice since the years after the planning reform has been more modest in regard to engaging as many citizens as possible in planning for the region or the municipality as a whole. Experience emphasizes that the closer the planning problem is to the individual citizen, the more interest is given from local groups as well as individuals, and the more sincere is the willingness to establish a genuine dialogue. Consequently a tendency is seen

to arrange hearings and meetings concerning smaller portions of the planning problems, for example traffic plans for certain areas in a town, local plans for smaller areas.

The role of private associations and non-governmental organizations

Landowners and farmers associations, political parties, associations for the conservation of nature resources, athletic associations, chambers of commerce etc., all contribute from time to time to discussions on urban and regional planning. None of them, however, has special rights to be consulted; nor can any one of them veto a plan. As every other citizen they have the right to be heard. Often they arrange with the regional or municipal councils in the area to subscribe to all planning documents made public.

A special role is played by the "Danish Society for the Conservation of Nature" with 217 local committees spread over the country. Based on a great number of personal memberships (between 5 and 10 percent of the population) the society is often heard and its statements have influence on the general opinion. Local committees may question public planning in their area and get support from expertise in the association's head office in Copenhagen. The experience gathered in this way gives the association a certain political influence on a national level as well.

The Danish planning system

Some ten years after the reform, the former three planning acts were combined into one, at the same time introducing further steps of decentralization, e.g. central approval of regional plans was cancelled, with the intention of simplifying the planning system.

The first section of the Planning Act emphasizes that the intention of planning is to aim towards:

- appropriate development in the whole country and in the individual counties and municipalities, based on overall planning and economic considerations;
- creating and conserving valuable buildings, settlements, urban environments and landscapes;
- preventing pollution of air, water and soil and noise nuisance; and
- involving the public in the planning process as much as possible.

One might say that Denmark has one of the world's simplest and clearest spatial planning systems, with an extensively decentralized delegation of responsibility. The municipalities are responsible for comprehensive municipal planning and local planning for specific areas. The counties are responsible for regional planning. The Minister for the Environment can influence this planning through regulations, national planning directives and public information.

When national interests are at stake, the Minister can veto the planning decisions of the municipalities and counties. The appeals system is similarly simple compared with that of other countries. In most cases, only legal and procedural questions can be appealed.

The planning process is controlled politically. The municipal council must publish proposed municipal and local plans; after a period of public comment, the council may adopt the plan including any changes based on the comments or objections of the public or public authorities. Similar rules apply to the county councils and regional planning. Each municipal and county council must revise the municipal and regional plans every fourth year (the local election period), which keeps them up to date. Public participation is an important part of the planning process. Before a municipality prepares a proposed or amended municipal plan, the municipality must give the public the opportunity to submit ideas and proposals for the planning work. When a proposed plan is then published with a report accounting for the plan, the public has at least eight weeks to submit objections and proposed amendments. Similar rules apply to proposed regional plans or amendments. A public comment period of eight weeks applies to local plan proposals.

Environmental protection is becoming an ever more important part of spatial planning. Development must be sustainable, and this is provided for in the Act and the practice that is developed in the counties and municipalities. For example, regional planning governs the location of polluting industrial enterprises and the protection of water resources and nature.

Municipal planning governs protecting and improving the urban environment, including architectural features, green spaces, urban ecology initiatives and noise from transport facilities and enterprises.

Environmental impact assessment is an integrated provision of the Act that is based on a European Union directive. The directive establishes that public and private projects that are likely to affect the environment significantly must be subject to environmental impact assessment and public consultation before they can be initiated. The purpose is to ensure that all known environmental effects are considered in advance and that all necessary measures have been taken to protect the environment. The counties normally carry out this assessment as part of regional planning, but the state carries this out through a national planning directive for projects enacted by a specific act.

Experiences

While the Danish planning system has functioned for almost twenty years, practice about announcement and invitations with the aim of involving the public has developed differently from place to place. Only occasionally is the subject a matter for reports and discussions between planners. And the press is seldom seen to forward opinions on specific plans. So we should feel quite satisfied with our planning practice and the participation of the public. Or should we not? As some of the following examples will show, there is both a lack of understating in the public about the formal rules on planning participation and, occasionally, widely spread frustrations following the political decisions of major plans and projects, which in turn may influence the local political climate too.

Three examples

The following examples relate to recent cases where the public opinion has been involved, and sometimes challenged. The scale varies as well as you will find some variations in the attachment to the formal rules of participation within the Danish planning system, which I have

outlined above. The choice of examples aims at illustrating to which extent there is a common comprehension of the formal rules of participation and at showing where common awareness of the democratic rules may take over and lead to extensive public debate. Afterwards I shall relate the examples to recent discussions among planners in Denmark.

Example 1

Public debate can be difficult when major interests are involved, and public influence may accordingly be insignificant.

Burmeister & Wain, Christianshavn, inner Copenhagen - the most central building site in Denmark

The area is situated at the inner harbour, just opposite Christiansborg Castle and the government administration buildings. Hundreds of thousands of people pass every day. Formerly the area was occupied by the B&W motor factory (ship's motors) with stores, production halls and offices.

The area was bought in 1987 by a private developer, DFC which wanted to preserve most of the existing buildings, refurbish them for private enterprises (manufacturing and commerce), supply facilities for the existing dwellings in the neighbourhood and construct 200 new apartments.

However, the municipality of Copenhagen had other plans for the area. A plan comprising a housing scheme and the extension of a neighbouring bank's head office.

The developer then had to make a new plan including doubling the housing while demolishing most of the existing buildings, for which the public had expressed great interest in preserving. The new plan consisted of 500 privately owned apartments, a hotel, a commercial centre, as well as 20,000 sqm. of buildings for commercial purposes. The plot ratio was raised from 150 to 180 percent.

A traffic analysis forecast the additional traffic load from this plan to 7,000 vehicles a day, and they all had to use one street opening to one of the busiest routes through inner Copenhagen.

This resulted in massive protests from the local inhabitants. While the former plan included a public library, kindergartens and a swimming hall, none of this was left in the new plan, and the 500 new apartments had to make use of the existing facilities without providing new.

A public meeting

Very unconventionally the private developer now arranged a public meeting and invited all the inhabitants of the quarter of Christianshavn. The assembly gathered a lot of people, far more than usual at similar meetings arranged by the municipality. The resistance against the plan was overwhelming. Nobody believed in the benefits of a plan with the said contents. And the meeting was reported by the press, furthermore confirming the public feelings about the plan.

Public participation is not equal to public influence!

Eventually, the city council of Copenhagen, passed a local plan in accordance with the developers scheme. Most of the existing buildings were demolished. A year or two later the developer went bankrupt, and today the area (the most central building site in Denmark) lies empty in its sixth year.

Example 2

For many years there had been discussions about a bridge or tunnel connection between Denmark and Sweden. The discussions took place both in the public, in the press and among the politicians. Although it was always understood, that such a traffic connection had to wait for the Storebelt connection between Zealand and Funen, which actually is under construction. When it came to the final decision about the connection to Sweden, it proved to be difficult to perform the normal and accepted debate in the Danish Parliament prior to the decision. At the same time the public had great difficulties in accepting and understanding, that an investment in a bridge of these dimensions is a matter of state politics, where public influence has to be handled by the people's elected representatives in the Parliament.

The Øresund Link

In 1991 an agreement between the nations of Sweden and Denmark was signed concerning the establishing of a bridge or tunnel across Øresund connecting Copenhagen and Malmö.
The agreement was made dependable upon a series of investigations, which would cover environment assessments, e.g. impacts on the water flow from the Baltic Sea through the Danish belts into the North Sea and vice versa.

A month after the formal agreement between Denmark and Sweden the Danish Parliament passed the act of building a combined road- and railway tunnel and bridge.

The debate both before and after the passing of the act has been vigorous. Both the political parties against the link and the public opinion did, and still do, have difficulties in understating the traffical need, the agreed design (why not a tunnel only for trains?) and the postulated following growth in almost every aspect of commerce, research, variety in city life, education etc. as well of the ability of attracting foreign investments to the region. A new European growth centre to some, and an unnecessary venture to others.

What seems most peculiar to many, is that the Danish Parliament hardly had any disputes over alternatives and alternative designs before the final political decision. The majority parties seem to have committed themselves both by the negotiations with the Swedes and internally to the one and only solution, which eventually now is being carried out. So the parliamentary debate seemed a formality from the start, which is seldom seen in Denmark. The Parliament signalled no wish to investigate alternatives or argument with the public, although both Swedish and Danish natural interest organizations, official and private, pointed out that the environmental consequences were far from examined.

The press dwelled on, maybe a detail, the traffic forecasts, which had a tendency to grow at the rate of the costs of the project. The future fares of crossing the bridge were politically fixed to the level of today's ferry fares, so when project costs are growing, all the more vehicles have to pass the bridge in the future to keep the fares down within the thirty year depreciation period.

The views against have been formulated sharply. Some see the project as an international conspiracy with Denmark serving as a doorstep between Norway-Sweden and Germany. Many seem incapable to fully understand the advocates' calculations adding urban populations, facilities of big cities, harbour capacities, knowledge centres (e.g. universities), time saving in transportation and many other figures aiming at characterizing and comparing a new growth centre to others out in Europe. It seems hard to prove that the economic growth in a combined urban region should be larger than in each of the cities, or that 2 plus 2 should add up to 5, when the figures are put together in the same box.

Instead of the wanted political debate about why and how, the public was offered to study and comment the plans for the railway and road connections to the bridge across the island of Amager and through certain quarters of Copenhagen. In 1992 the Øresund Group went into a public hearing about these plans. Protests and alternative suggestions followed in great numbers. And when the hearing period had ended, the original plans were confirmed just as proposed.

The fact, that public participation had no place or no influence on the political decisions, neither at the time of the overall design nor when the details were laid out, shows that a discussion about the relationship between representative democracy and public participation could be useful in Denmark of today (re. the later passage "The arrogance of power").

Example 3

Public meetings in Vejle, Eastern Jutland

The third example is from one of the bigger municipalities (approx. 45,000 inhabitants) in Jutland. Here, former experience from big public meetings in central places about the future in the community and the municipal plan lead to another way for the council to confront the public.

The ideals and expectations from the early days after the planning reform, when the spirit of democratizing the planning process was high, have given way to less romantic ways of doing things. This is because it has proved difficult to engage the populace in the decisions, unless some "infringement" was perceived - according to the Municipality of Vejle. On the opposite, some municipal councils' unengaged and minimal efforts to inform and listen to the public have only led to insignificant results, if any.

The municipal council of Vejle therefore decided to go out in the public with an open mind and arrange meetings in all the smaller communities within the municipality. The challenge was to initiate a debate of local problems and at the same time let this debate serve as an opening to the debate of planning problems, solutions and perspectives within the twelve year frame for the municipal plan. All households received an invitation to the meetings, followed up by announcements in the local press. A short description of previous planning and questions inviting to the planning debate were the contents of a booklet which was published for everybody to obtain free. And local organizations were encouraged to start the debate among their own members and join the local meetings.

The municipality describes the result as a success. Nine public meetings were attended by more

than 1,000 citizens, the local press reported from every meeting and in general the initiative was met with a positive attitude. The activities, the debate, the concern for everyday life in the neighbourhood are all taken as a proof of genuine engagement in local life and planning. Of course the debate gave air to some more "wild" proposals, but many ideas evolved to the benefit of specific planning items as housing for the elderly, traffic planning, preservation of green areas, and so on.

Afterwards local working groups were formed with the intention of continuing the debate as the municipal plan takes form.

Time will show if the municipality of Vejle will succeed. It will depend on how the plans are carried through.

Appeals

Is the public satisfied with the quality in the planning?

If one may conclude on this matter from the number of appeals on legal and procedural questions in connection with the planning decisions of the municipalities and counties, the answer must be yes!

Denmark has 275 municipalities and 14 counties. The Nature Protection Board of Appeal receives about 500 appeals a year over such questions. This makes less than two appeals per planning authority. The cases tend to concentrate to the bigger municipalities, where planning activities are more extensive and the inhabitants live closer to each other.

One might assume that the number of appeals would increase, if it was possible to complain about topics, for example a certain lack of quality of a plan. However, in Denmark it is entirely up to the council in question, within the rules of the planning act, to decide on the contents of a plan.

Contemporary opinions on public participation in the planning

"Rationality and power"

The Danish planning philosopher and professor at the Aalborg University in Northern Jutland, Bent Flyvbjerg, defended in 1991 his doctor's thesis, titled "Rationality and power". The defence and publishing of it put planning problems on the agenda in the press and among politicians for quite a period, which seems somewhat extraordinary.

His thesis uses an uncovering of the "power play" and planning involved in the placement of a new bus terminal in the heart of Aalborg, as a background for interpretations of the relations between knowledge and decisions - or rationality and power - on the local arena. Normally we use the phrase "knowledge is power", but he inverts it to "power is knowledge". Thus understating and explaining that the planning authority has the power to decide which information should be considered basic for the planning in question, and which information should be considered of no importance, or perhaps not existing.

He states the following four phases of planning:

- Genesis (creation of the idea)
- Design
- Approval
- Implementation

Only two of them, design and approval, are normally visible to the public. But in reality they may be less important. The first, genesis, and the last, implementation, are determining for the plans, which are prepared and the results obtained.

Genesis

Determining for what finally is laid out to planning approval is the idea of the plan and the negotiations beforehand between politicians and civil servants, and between politicians and groups outside the town hall, often representatives for local commercial interests or other political authorities. Here the struggle between power and rationality begins.

Design and approval

The phases comprises stating of means, politics, considerations to existing plans and legislation, preparation of plans and alternatives, if any, and so on. The phases follow normally acknowledged rules and occur if not entirely in public, then according to rules securing publicity of the final plan and political treatment of remarks and suggestions successive to the hearing period.

Implementation

Bent Flyvbjerg describes this phase as the core of planning: “Planning and politics conceived without implementation are useless planning and politics”. His thesis is that the unintended and not foreseen consequences of a given plan are at least as comprising as the intended and foreseen.

His advice is, that plans without an implementation strategy should not be accepted by the politicians nor be submitted by the planners.

If we move back to our three examples, and use Bent Flyvbjerg’s terminology, the first two show how genesis overruled the design and plan approval including the participation of the public.

In addition the Christianshavn example shows how implementation was never possible, if one assumes the implicit economical conditions as fatal.

Concerning the Øresund Link, implementation was thought so vital, that the formal rules were almost put aside. The consequences of the first example are a third, and new plan implemented by other parties.

The consequences of the Øresund Link are still to be considered as a matter of belief.

The arrogance of power

In Denmark we have generally instituted a tradition for asking the public, the voters, prior to major decisions. Recently we have had two votes on the EU and the Maastricht treaty, and every time the result has taken the established political parties with surprise. The last time we had the smallest possible majority for accepting the treaty.

Referring to the two votes the managing director of "Danish Society for the Conservation of Nature", David Rehling, explains that the good will of the politicians to secure public planning participation seems to be replaced by harsh decision-making. His view is, that when the politicians fail to solve the severe problems, e.g. growing unemployment, they tend to show their ability in smaller and less complicated areas. Hence in the case of the Øresund Link, which made the former Minister of the Environment, and present member of the European Parliament, Lone Dybkjær declare that the whole case was "the perfect recipe for the public's distaste for politicians".

Of course there are differences from national policy to regional and municipal. But the risk exists that the said attitudes expand from the capital to the rest of the country, consequently wiping out or undermining the usual local traditions of an open debate.

Denmark is a country of long democratic practice. The acceptance of planning decisions, including the unpopular, is far greater, when the public has participated.

Perspectives

After a long period of growth, e.g. the urban area in Denmark has doubled since World War Two, we have now reached a period of stagnation, or consolidation. The planning problems in focus move from area planning to urban renewal.

In some urban areas the consequences of unemployment, social problems, and declared problems in areas with a relatively high number of foreigners, are getting visible and tend to alter our image of the society. In the bigger cities talk of "ghettos" is now heard, meaning that certain areas or housing estates tend to gather social problems, alcohol and drug abuse, violence and crime.

Other areas are inhabited by young, e.g. undergoing education, and retired people with only a small income. Especially the young are a mobile group, which for a shorter period move to the towns away from parents and suburban boredom.

Those, who can afford it, move likewise from the town to the suburbs, leaving the old quarters with their former social order falling apart.

The polarization between "rich" and "poor" areas is generally hard to accept for Danish politicians wanting things as they used to be, and it makes it more difficult to establish a dialogue about planning problems. Who should be the counterpart when people are moving in and out all the time?

Conflicting interests make it also harder to carry out urban renewal schemes, as they widely

build upon the participation and acceptance from the inhabitants. It also makes it harder when it comes to groups with no tradition, especially for joining or understanding a debate on planning issues.

If the "normal, interested citizen" becomes a rare specie, and the aspiration of our planning no longer is growth or provision of new housing areas, but change and improvement of our cities, how can we explain where planning, with its rules of participation, stops and social politics starts?

The Danish sociologist, Leif Thomsen, has recently raised these views and questions.

Maybe we can learn from Vejle Municipality, and maybe we also can learn from the social housing estates (incorporating 20 percent of all housing in Denmark) where, during the last couple of years, former centralistic management has been replaced by decentralization of competence and economic responsibilities.

Conclusions

If one might dare to conclude for other countries, where experience from Danish planning practice could be of inspiration, the following points have proved to be crucial:

- genuine interest and will to participate are basically found at the local level, very near to the citizens influenced by the planning in question;

- the politicians' will to put forward planning issues, listen and let the public opinion be convinced by decisions, or argument explicitly against the opinion, is usually observed closely;

- participation is part of a democratic process. Sticking to formal rules is not generally accepted as a way to escape a genuine dialogue;

- society is changing all the time, so are the terms of planning and implementation. If the chances of implementation change, then revision of the plan must follow and consequently the public opinion must be consulted. Otherwise the plans may be considered of only inferior significance to the society, and the participation a matter of formalities;

- while the society changes, the way of debating and the parties interested in the debate may change too. Both the politicians, the administration and the citizens must realize the needs of dialogue on several levels and in several forms - from a conference on Internet to school classes studying the municipal plans, or to meetings between politicians, social workers, police and inhabitants in neighbourhoods troubled by youngster gangs or other social problems with risk of getting out of hand.

These appraisals are not very technical. It is my hope, however, that their aim at the substance of participation is understood and accepted.

Appendix

Denmark

The planning process for regional and municipal plan revision

1. Prior public participation

   - solicitation of ideas and proposals;
   - report on previous planning;
   - deadline of at least eight weeks;
   - informational campaign.

2. Proposed regional or municipal plan

   - preparation;
   - contact with other authorities;
   - county or municipal council approves proposal;

3. Proposal published

   - deadline for objections of at least eight weeks;
   - proposal sent to Ministry of Environment and other state, county and municipal authorities;
   - proposal assessed by state authorities; regional plan may be vetoed and municipal plan called in.

4. Adoption of plan

   - processing of comments and objections submitted by the public and authorities;
   - changes, if any;
   - plan adopted if not vetoed or called in;
   - negotiations if plan vetoed or called in;
   - if agreement not reached, Minister for the Environment decides.

5. Publication of final plan

   - publication;
   - plan sent to relevant authorities.

6. Administration of plan

   - county council ensures that proposed municipal and local plans are in accordance with regional plan;
   - county or municipal council must act to implement the plan.

7. Revision every 4 years

PUBLIC PARTICIPATION IN THE PLANNING PROCESS AND THE APPLICATION OF THE PLAN - EXPERIENCE OF ORGANISATIONS, SPECIAL INTEREST GROUPS AND INDIVIDUALS

European strategies

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I. INTRODUCTION

The present period of transition in Poland, which started in 1989, is characterized by rapide and far-reaching political and economic changes. The transition from the centrally planned system to a market-oriented economy has affected all areas of political, economic and social life. Recent changes have also provided new opportunities and conditions for spatial planning and public participation in the planning process.

The most significant changes in the area of spatial development and planning resulted from disintegration of the centralised system in which public administration at regional and local levels was only a part of central authorities. The communal, local government elections in May 1990 constituted the first step in the fundamental rebuilding of the state structure. The fully democratic elections, won by Civic Committees and Solidarity groups, turned the commune level self-governments into real representatives of local communities.

Since 1990, the statutory spatial planning in Poland has - in accordance with the related legislation - largely passed into the competencies of local authorities. As a result of these crucial changes the role and position of participants (actors in the planning process) have considerably changed. Since 1 January 1995, when the new Law on Spatial (Physical) Development came into effect, the adopted procedures have enhanced the openness of the planning process and strenghtened the opportunities for effective public participation in this process, particularly at the local level.

II. THE SPATIAL PLANNING SYSTEM AND PUBLIC PARTICIPATION DURING THE PERIOD OF TRANSITION IN POLAND, 1990-1995

Public participation before 1990

The opportunities for public participation have considerably changed in Poland over the past fifty years. Since 1945 until the early 1980's the opportunities for effective participation of individual citizens in the planning process were very limited. Some non-governmental organisations, especially highly prestigious professional societies, had a chance to present their opinions on the planning issues and sometimes to object against spatial planning solutions, though very seldom to any effect.

The first step towards a more democratic procedure in the planning process at the local level and the admittance of limited public participation was introduced by the Spatial Planning Act of 1984. For the preparation of each spatial local plan an advisory "Local Plan Committee" had to be appointed. The Committee comprised representatives of public administration, local communities, NGOs, and individual professionals. For the first time since 1945 public participation of local communities was officially recognised. Although still limited, public participation became subsequently an integral part of the planning process. In most cases, it played a very positive role in the preparation process of local spatial plans.

Beginning of the transformation process

The experience of the functioning of public participation in the planning process under the democratic system has been relatively short-lived in Poland. It has to be remembered that the system of local self-governments has been introduced by the constitutional amendments as late as in 1990. As a consequence of this reform the functioning of local spatial planning systems has also changed. For the first time, all the competencies relating to local planning has been vested in democratically elected self-governments, which took over authority from the lower-level central administration. However, due to various reasons, the preparation process of new spatial development legislation, which started in 1990, took almost five years until the Law on Spatial Development was enacted. Consequently, some inconsistencies and lack of cohesion in legislation, development policies and planning documents persisted until the end of 1994.

As a result of this situation, the task for new local authorities in the 1990-1995 period was difficult, as in their work they had to accommodate new requirements, at the same time adhering to the old regulations that were still in force. Therefore, the change in spatial planning was not as dramatic and visible as it was in political issues. For an ordinary citizen, who for four decades considered any planning authority as a part of the oppressive system, the introduced changes seemed not to be fair enough. On the other hand, over the last two -three years a marked improvement has been noted in spatial planning activities of some local authorities. Many of them work in successful partnership with planners and are open to public participation of citizens and non-governmental organisations. Others are still reluctant to co-operate, continuing to profess the old ideas that the authorities should primarily decide without listening to citizens.

Various examples of public participation in the spatial planning process in recent years

The cases presented below have been selected to illustrate public participation at different levels of planning concerning projects of varying scale and scope:

Small town of Krzeszow. In the course of drafting the spatial plan in 1994, the chief planner organised a series of meetings with the local community. The inhabitants selected and supported a more ambitious version of the draft plan. To support the programme of renovation of historical monuments, the inhabitants set up a Foundation (a non-profit NGO). The very active local community established relationships with NGOs from other towns in the region to exchange experience and coordinate some activities.

Szczecin - Inner City Renewal. The renewal project started in 1992. From the very beginning the local community was divided, one group supporting the programme and another

contesting the operation. Finally, two NGOs were established, namely the "Housing and Employment" and the antagonistic "New Secession". As a result of a well organised informative campaign the number of programme followers grew considerably. With a broad public support the renewal programme was extended and the rehabilitation work is now continued.

Krakow. In the process of implementing the rehabilitation and conservation programme of the Old Town in Krakow, a very active role has been played by local NGOs, in particular the "Civic Committee for the Revitalization of Krakow Old Town" and the "Ecological Club of Krakow". The most spectacular success of year-long campaign carried out by both NGOs, was the closing down of the chemical plant and one section of the steelworks, which had been strongly polluting the Old Town.

Warsaw. In the course of preparation of the Master Plan of Warsaw, an Advisory Committee for the plan was set up. The Committee was composed of individual experts, specialists, representatives of NGOs and local authorities. The primary responsibility of the Committee was to advise the planning team on spatial development policy, as well as environmental and spatial issues. In the course of public viewing of the draft plan several hundred protests and objections were received. Finally, the plan was approved in 1992 and no legal action has been brought to the administrative court.

National level. The Society of Polish Town Planners (TUP) was cooperating with the Ministry for Physical Planning and Construction in the preparation of the Bill on Spatial Development. The TUP was invited to consult and advise on some planning issues. Two representatives of the Society, as well as representatives of other NGOs, such as the Association of Polish Architects and ecological groups, attended the sessions of the Parliamentary Committee working on the Bill, which finally was enacted by the Sejm on 7 July 1994. Motions and amendments to the Bill proposed by representatives of NGOs resulted in a few important modifications made in the document, such as the introduction of the system of obligatory spatial planning studies at the regional and commune level, and the formulation of environmental requirements to be met in the course of the preparation of local plans and planning permits.

The range of organisations involved in participation

As a result of recent reforms in Poland the range and number of organisations involved in the spatial planning process has rapidly increased. In addition to "old" traditional associations and societies, which have been functioning for many years, a lot of new non-governmental organisations have emerged. This phenomenon has been due to the fact that NGOs have started to play an increasingly important role in forming public opinion, pressing on the local authorities and influencing the planning process.

Non-governmental organisations vary considerably as regards their subject of interest, size, structure and form of activity. Some organisations deal with issues of broad public interest, such as environmental protection, urban and architectural heritage, open space reserves, sustainable development, etc. On the other hand, many organisations and local interest groups are concentrated solely on solving their particular planning or development problems.

Public participation has now become an integral and indispensable component of the planning

process across Poland, although it is not yet clear how far it would influence the decision-making process. It has been noticed that, in general, inhabitants of small human settlements are more active in planning processes than city dwellers.

Different groups of non-governmental organisations and other selected organisations are presented below to illustrate various types of public participation:

a) Major Public Organisations, such as:

- Polish Ecological Club,
- Society for Rehabilitation of the Disabled,
- Polish Green Party, etc.

The Major Public Organisations, with a wide scope of activities, have clearly defined statutory objectives and forms of activity. They operate at the national, regional and local levels. They basically focus their activities on: supporting environmental and/or health education, promoting sustainable development, cooperating with the government on legal issues, supporting planning initiatives and proper spatial planning solutions, objecting against spatial plans that may have an unfavourable impact on the environment.

b) Professional Societies, such as:

- Society of Polish Town Planners, TUP,
- Association of Polish Architects, SARP,
- Polish Federation of Engineering Associations, NOT, etc.

Professional Societies, Associations and Federations assemble the majority of professionals active in the field of spatial planning and related areas. They have a long tradition in: cooperating with the central and local governments, making public appearances on spatial issues and spatial programmes, assisting local initiatives, initiating and supporting the development of spatial planning at all levels.

c) Local Societies, such as:

- Society of Friends of Warsaw,
- Learned Society of Plock,
- Civic Committee for Revitalization of Krakow Old Town,
- Society of Lovers of Zywiec, etc.

Local Societies rally people deeply concerned with local traditional values and cultural heritage. Some of them have existed for dozens of years. They usually enjoy high prestige due to their constant interest in protecting historical architecture and urban values. In the course of preparation of spatial plans or rehabilitation programmes a Society’s opinion may influence the planning approach and concept.

d) Foundations (Non-Profit Organisations), such as:

- Foundation for Promotion of Local Democracy,

- National Environmental Foundation,
- "Ecological Village" Foundation, etc.

Foundations are non-governmental, independent and non-profit organisations. Establishment of foundations of this type became possible in 1989 as a result of democratic and market reforms. Through financial support the foundations promote specific projects and development programmes.

e) Neighbourhood Associations and Ad Hoc Groups, such as:

- Associations of Property Owners,
- Groups Against the Dunajec Dam Construction,
- Sympathizers of Neighbourhood Sadyba, etc.

Many small local groups have been formed in recent years either to support or to oppose spatial planning or implementation decisions of local governments. Private sector interest groups focus their activities usually on carrying their particular, often very narrow, points. Ad-hoc groups are set up sometimes only to oppose a specific decision: construction of a building, turning a lawn into a parking, building of a road. Neighbourhood associations usually initiate or support plan or programmes aimed at improving the conditions in their area.

The above review represents merely a general picture of the most characteristic "old" and "new" groups or NGOs operating now in Poland. New organisations are still working out their ways of activity and the position in the changing political and economic environment. Old societies and organisations have to adjust themselves to the new conditions, particularly those of market economy. They are often faced with serious financial and resource problems.

The role of the public as a guard of the planning system

The role of the public as a guard of the planning system cannot be overestimated. This role is of particular importance in the area of environmental protection and sustainable development.

The past experience of East European countries, where public opinion was entirely eliminated from any decision-making process in the sphere of national and local policies, provides an impressive negative example. In Poland, strong public opinion was voiced in the 1950's and 1960's against the erection of several large state-owned industrial complexes devastating the environment, such as the steelworks in Warsaw and Katowice, the chemical plants in Pulawy and Oswiecim, but unfortunately this opinion could not be published and presented openly, and went unheeded. The results have been devastating for the environment.

In the 1980's, when the Solidarity movement partially shattered the political system in Poland, fierce protests and opposition of green parties against building a nuclear power plant, similar to the Chernobyl plant, forced the government to discontinue the construction. It was the most spectacular success of public intervention in Poland, illustrating the important role of the public as a guard of the planning system.

On the other hand, based on the same rational principles, the results of public intervention can be negative, bringing about unacceptable disbenefits. This happened in Warsaw, where local

green parties blocked the waste management system modernization programme, which provided for minimization of landfilling through building a modern incineration plant. Since no alternative solution was proposed by the protesters nothing has happened, and the situation with respect to solid waste management in Warsaw has been continuously deteriorating.

Traditionally, the opinion of the public is expressed by public organisations and sometimes Ad Hoc Groups organized to contest a project. This form is likely to be continued also in the future, as it provides a flexible framework for watching planning policies and decision-making process, and then expressing public opinion and objections.

III. THE NEW SPATIAL PLANNING SYSTEM IN POLAND - OPPORTUNITIES AND THREATS FOR PUBLIC PARTICIPATION

Spatial planning framework at various levels

The present spatial planning system in Poland has been specified in the Law on Spatial (Physical) Development, enacted in July 1994 and effective as of 1 January 1995. At the three planning levels: national, regional and local-spatial planning documents of different legal nature are prepared. The spatial planning system provides a general framework for public participation in the planning process.

It is the responsibility of the commune to establish the intended use for and principles of development of land situated within its jurisdiction. This task is carried out by the local government by means of local spatial plans, which constitute a set of commune regulations (local by-laws) binding on citizens, local authorities and state authorities. The local spatial plan provides a legal basis for granting planning permits.

Formulation of state spatial policy and coordination of development programmes that extend beyond local interests and are aimed at implementation of public objectives, are the tasks of appropriate supreme and central state administrative authorities and Voivods (public administration heads provinces). The principles of National Spatial Development Policies are to be prepared by the Central Planning Office. They shall provide a basis for the elaboration of target-oriented regional or national programmes for public works (technical infrastructure, roads, environment protection, for example), and for the preparation of spatial development studies for the Provinces (Voivodships).

Adequacy of the opportunities for public participation at the local level

The spatial planning system provides a legal framework for extensive public participation in the planning process at the local level. To ensure public participation in the planning process during the preparation of spatial plans, the local authorities are obliged to:

- announce by communiqués in the local press, in a manner generally accepted in that locality, that the preparation of the local spatial plan has been initiated, and encourage suggestions and proposals to be submitted to the plan;

- provide written notification of the date, on which the draft plan shall be available for public viewing, to property owners and tenants whose legal

interests may be infringed by the provisions of the plan, and persons whose suggestions were not taken into account in the draft of the plan;

- make the draft plan available for public viewing for a period of at least 21 days;
- receive protests and objections, and examine them within a period of one month;
- announce the date of the session at which the commune council will examine protests and objections that have not been hitherto taken into account, notifying the parties concerned by name and individually;
- deliver to the parties concerned excerpts of the commune council resolution, pertaining to the decision to waive the objections, together with instructions concerning the possibility of bringing the matter to administrative court;
- announce the date of the session, at which the draft plan will be considered;
- arrange for the resolution of the commune council to be published in the voivodship official gazette.

In cases where there is no local spatial plan, planning permits are issued upon an administrative hearing concerning the matter. The parties concerned are notified about the date of the hearing, and, additionally, it is announced in the local press or in a manner generally accepted in a given locality.

At the local planning level, the openness of the planning process and the possibility of participating in local planning seem to be adequate, and meet the needs and expectations. The citizens may participate through:

- submitting suggestions and proposals to the plan at the beginning of the planning process;
- filing protests (by anyone who questions the provisions adopted in the draft plan);
- filing objections in writing, by any person whose legal interests or rights have been infringed by the provisions of the draft local spatial plan;
- bringing legal action (appeal) to administrative court by anyone whose objection was rejected by the resolution of the commune council.

The present spatial planning legislation guarantees, within the limits defined by the law and according to the standards of social behaviour, everyone’s right to protect his/her own legal interests through participating in the planning process. However, too little time has elapsed since the introduction of the new Law to be able to find out how the provided opportunities have been utilised by the general public. It has been noted that the situation varied substantially between small towns/communes and big cities. It is usually more difficult to approach and attract citizens in big cities and urban agglomerations to active participation in the planning

process than it is the case in smaller communities.

Adequacy of the opportunities for public participation at the regional and national levels

At the regional and national levels the opportunities for public participation are much more restricted as compared with the local level, both by the legal context and much lesser involvement of the public. There is no obligation for the appropriate authorities to present regional spatial development studies or the national spatial policy for public inspection, since those studies do not constitute binding documents. It has to be stressed, however, that a prerequisite for the implementation of any government project (roads, electricity lines, buildings, etc.) is that they are introduced into a local spatial development plan, following negotiations with the commune concerned. Thus, the normal local planning procedure open to public participation applies before any planning permit can be issued.

At the regional level, for each province (voivodship) a regional spatial development study should be prepared. The general public will be informed about the preparation of the study by announcement in the voivodship official gazette. The study shall be appraised by the local government assembly (a body consisting of representatives of all commune councils from a given voivodship).

In the important field of the environment, in conformity with Agenda 21 of the Rio de Janeiro Conference, the Minister for Environmental Protection and Natural Resources organises briefing sessions on environmental issues on the regional and national scales. Usually two, three times annually conferences, attended by representatives of several score, non-governmental environmental organisations and green parties, are organised by the Minister, providing an apportunity for NGOs to criticise the policy, make suggestions and proposals, offer co-operation in specific subjects, and present public opinion on various environmental matters.

At the national level, the state spatial development policy, after it has been prepared by the Central Planning Office, is presented by the Prime Minister to the Sejm (the Lower House of the Parliament) of the Republic of Poland. The presentation of the state spatial development policy provides an opportunity for public discussion, primarily by professionals and scientists, but also by journalists and individual citizens.

Spatial planning studies are subject to professional discussions by advisory bodies at the national and regional levels, appointed in accordance with the provisions of the Spatial Development Act to advise the authorities concerned on spatial planning issues. A substantial portion of the membership in these advisory bodies are representatives of non-governmental organisations, individual professionals and scientists. In all of those advisory bodies representatives of the Society of Polish Town Planners are appointed members, being very active in presenting professional advice and opinions.

To recapitulate, until now the spatial planning problems at the regional and national levels in Poland have attracted attention of professionals, some non-governmental organisations - particularly professional societies, though not of the general public. For those few groups concerned, the existing opportunities for presenting opinions and views are rather adequate. However, if the regional spatial policy and planning is to play a more important role in controlling spatial development, the information system and participation opportunities will

need to be expanded.

Fairness and effectiveness of the process

It is too early to assess how the new spatial planning system is functioning. At least two-three years are needed for collecting observations about the ongoing and completed local plans and spatial planning studies at various levels in order to present a credible opinion as to the fairness and effectiveness of the process.

Until 1995, the participants were generally not satisfied and unconvinced that the issues were considered thoroughly, and that their representations were taken sufficiently into account. However, the situation differed substantially from one place to another. In some cases, people's postulates, protests and objections were considered fairly by the Commission for the Plan. However, it does not necessarily mean that participants were satisfied with the process and accepted answers and justification received. A deep-rooted public distrust in any form of planning and regulation did not help co-operation.

Now, in the new situation, it is essential to convince the general public that some scope of regulation and planning coordination is indispensable for common interest.

Relationships between NGOs and local governments

The variety of NGOs representing different goals and various types of public participation makes any generalized assessment of the relationship between NGOs and the government impossible. Relationships between NGOs and local governments depend largely on the approach of each party involved. From this point of view two groups of NGOs may be distinguished: (a) representing general public interest, and (b) representing particular interests of a specific local pressure group. Usually, the government is open to co-operation with non-governmental organisations representing public interest, while many of *ad-hoc* pressure groups are considered as troublesome partners.

In general, the role of non-governmental organisations is perceived as an integral and indispensable component of the planning process, although in individual regions and communes its nature and extent may vary.

Expectations and threats facing the new spatial planning system and public participation

It is expected that the new spatial planning system and planning legislation, effective as of 1 January 1995, will:

- effectively resolve conflicts of interest between citizens, self-governed communities and the State;

- properly protect legal interests of individual citizens and real estate owners;

- form a fair basis for supporting public participation in the planning process at the local level;

- fairly recompense for a decline in real estate value caused by the changes concerning land-use and other planning decisions;

- efficiently protect the environment at the local, regional and national levels;

- form a framework for a proper response to various needs and conditions of individual communes of differing scale and character;

- protect the interests of communes in negotiating terms and obligations for implementing broader public objectives;

- introduce a universal, local level system for monitoring changes in spatial development to serve as a basis for making appropriate proposals and suggestions concerning the preparation or modification of local spatial development plans;

- strengthen and streamline the coordination of spatial planning policies and programmes at the national, regional and local levels;

- gradually build public trust as regards fairness of the spatial planning process.

In contrast to the above positive expectations, certain reservations and misgivings as to the functioning and effectiveness of the new spatial planning system have been put forward by several groups of planners, relating to:

- possible adverse effects of the extensive opportunities to participate in the planning process, namely time consuming procedures of appeals and suits, which may seriously delay the preparation and approval of many local plans;

- uncertainties as to the state of preparation and readiness of local authorities in many communes to take over and carry out all responsibilities concerning spatial planning policy and decisions on all issues concerning local spatial development plans;

- the unforeseen consequences of the obligatory adoption of the system of increase or decline of land value in the local spatial planning and implementation process, without having any previous experience in this area;

- the statutory restriction of the supervisory authority to objecting against the resolution on the local spatial plan exclusively on legal grounds, without any possibility to object against the approved plan on the basis of essential planning matters;

- hard to meet requirements for more skillful and better trained planners, who -in addition to the traditional planning activities - should also act as advisors to local authorities and negotiators among various actors in the planning and development process.

IV. FINAL REMARKS

1. The new Law on Spatial Development enacted in 1994 has introduced a modern spatial planning system in Poland. It does not mean, however, that the transformation process in the area of spatial planning has been completed. Several other Laws relating to spatial planning issues, such as the Land Management and Expropriation Act, and the Agricultural Land and Forest Protection Act, have to be diligently revised and adjusted to the already introduced economic, social and political transformations, directly or indirectly affecting spatial planning and development.

2. The local government system, functioning since 1990 at the commune level, has proved to be efficient and reliable in most cases. A marked improvement has been recently noted in spatial planning activities of local authorities. The next step in promoting and developing self-governments activities was planned by the previous Government, and involved introduction of the second level of local government at the county (*powiat*) level. Although this reform has been suspended by the present Government, it is rather a problem of time when this next important change in public administration will be introduced. Establishment of local governments at the county level will certainly strengthen the spatial planning system and further promote and support public participation in the planning process.

3. To be successful in implementing the new spatial planning system and developing public participation in the planning process, more extensive education on environmental and spatial issues at all schooling levels is badly needed. This has been a long term goal for the authorities, institutions and non-governmental organisations concerned, but little has been done so far in this respect, although the situation as regards environmental education is slightly better than it is as regards spatial development and planning.

4. To improve the spatial planning process better understanding and co-operation among sectors involved, namely citizens, politicians, entrepreneurs and planners, is needed. To play an active role in this process, planners have to be better prepared for their new role of advisers to local authorities and negotiators between the participants in the spatial planning process. Planners should be particularly helpful in forming good relationships between local governments, NGOs and citizens, and in presenting spatial development problems to the general public. This is a challenge for the present generation of urban planners.

5. The present spatial planning system in Poland and the framework for public participation in the planning process is comparable in many of its aspects to the systems prevailing in many countries of Western Europe. The difference boils down basically to the limited experience in the implementation of the new system and lack of observations as to its advantages and disadvantages.

6. The major strategic objectives concerning public participation in the spatial planning process include:

- extending education on environmental and spatial planning issues at all educational levels (long term objective);

- improving the system of information for the general public about environmental transformations and spatial planning projects (immediate goal);

- alleviating disadvantages, in terms of time, of public participation in the local planning process by improving efficiency in dealing with individual citizens and NGOs, at all successive stages of the planning process;

- promoting participation of NGOs and individual citizens in discussions on environmental and spatial issues at the regional and national levels;

- training legal advisers, lawyers and judges in the specialised field of legal suits regarding planning and land issues;

- preparing urban planners, through extended training and restructured curricula, for being able to better negotiate and deal with NGOs and individual citizens as regards spatial planning issues.

APPENDIX

THE SPATIAL PLANNING SYSTEM IN POLAND

The new Spatial Development Act has been enacted in July 1994 and came into effect as of 1 January 1995. The regulations of the Spatial Development Act refer in many instances to the provisions of other Laws, which relate to spatial development issues, such as the Building Code, Land Management and Expropriation Act, Agricultural Land and Forest Protection Act, and many others.

The new constitutional system introduced in 1990 vested all the competencies in land-use planning in commune authorities (local self-governments). Local plans, approved by Commune Councils, provide a legal basis for land-use changes, land subdivisions, building permits and other decisions.

In accordance with the Physical Development Act of 1994 the objective of spatial planning in Poland is to formulate national, regional (provincial) and local spatial development policies; to establish land-uses and principles for land development; to set up procedures for resolving conflicts relating to land between citizens, self-governed communities and the State.

Organisation and administration of planning

The planning system covers four administrative levels: State, Voivodship (Province), Administrative Districts and Commune level[11]. Each level has its defined duties and obligations in the area of planning:

1. At the central government level, formulation of national development policy and key decisions in national planning is the responsibility of the Central Planning Office, while the Ministry for Physical Development and Construction is responsible for spatial planning legislation. Other Ministries are responsible for the preparation of development programmes for government projects.

2. At the regional (provincial) level, the Voivod - as the representative of the central government - is responsible for coordination of regional planning studies of state and public projects, and formulation of voivodship development policy. The voivodship administration should monitor the development, keep records and negotiate with commune authorities in order to resolve conflicting issues.

3. At the administrative district level, representing lower level of state territorial administration, building permits are issued and building control is carried out.

[11]Poland is divided into 49 voivodships (provinces) and 2384 communes, of which 837 urban and 1547 rural, governed by elected local self-governments.

4. At the local level, the Commune Council is responsible for spatial development policy, planning and development control. Local spatial plans have a local status, with which all construction and other development activities have to comply. Of the four levels of planning the commune/municipal level is the most important one. The openess of the planning process at the local level for public participation is statutorily guaranteed in the Spatial Development Act of 1994.

PUBLIC PARTICIPATION IN THE PLANNING PROCESS AND THE APPLICATION OF THE PLAN - EXPERIENCE OF ORGANISATIONS, SPECIAL INTEREST GROUPS AND INDIVIDUALS

Participation of young people in regional/spatial planning

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A review of the literature dealing with young people and design reveals that "children and participation" was a fairly popular theme in the 1970's. In the 1980's, guidelines for various children's facilities and spaces were developed, but there were few instances of direct participation by young people. The 1990's seem to have rediscovered "young people as planners". Surveying children's participation in both occidental and oriental countries, Roger Hart (1992) claimed that children and young people have a secondary role as citizens. It is only in the third world countries that they sometimes take their fate into their own hands.

My own research in Finland confirms the culturally and politically subordinate status of children and the young. Thus the recent role of children as urban planners and even as "agents of urban policy" is exceptional. But what is the child's or young person's perspective in planning, and what are the preconditions for girls and boys to participate?

On the basis of my own research (Horelli, 1994; 1995) and on that of Hart (1992), Chawla (1994) and Kyttä (1995), I argue that even if there is plenty of evidence of children's competence, and of contributions by young people to design theory, the preconditions for their participation in urban and regional planning is an ideological and political issue. Young people need both facilitators with methodological knowledge and active adults who are ready to accord space and conditions for participation.

A Finnish case study will be used to show what young people's participation in spatial planning is like. It will be followed by a discussion of the results of several participatory experiments with young people. I will conclude with a proposal for improving the present situation.

A Finnish case study: the Kitee story

Kitee is a small rural town in northeastern Finland. When it was officially conferred city status two years ago, the local council decided "to do something for the children". The heads of the school and welfare departments suggested that children might participate in the improvement of a problem neighbourhood of 2,000 residents around their school. Planning started in the autumn of 1992 at a special club for 7 - 12 year olds held by two teachers twice a week after school. The Ministry of the Environment and of Social Welfare and Health supported the project. An architect and an environmental psychologist were hired as researchers to moderate the planning and to evaluate the outcomes.

Various participatory or enabling techniques were applied in the course of the planning process (Kukkonen, 1984; Horelli, 1992; Burnette, 1994). A "futures workshop" for both children and local residents helped formulate the different goals of planning. The children also used expressive methods to communicate their visions and ideas, such as drawing, writing,

photography and model building. During the spring term, some twenty children were actively involved in the club and the rest of the school (350 students) participated on special theme days dedicated to environmental issues. The spring of 1993 culminated in a colourful exhibition of the children's work held at the municipal centre. The proposals were discussed by a panel on which the children, local politicians, residents and teachers were represented.

Parallel to the children's involvement, some women residents who had participated in the future workshops continued to mobilize other residents in the area, and thus succeeded in founding a residents' association. In the autumn of 1993 the children's ideas were recorded on specific project cards for future implementation. One class took up traffic safety in the area, presenting its findings together with the residents at the meeting of the local council. The proposal evolved into an official citizens' initiative for which public funds were allocated.

In the spring of 1994 "the Kitee story" was displayed at the Museum of Architecture in Helsinki. The exhibition and a debate arranged between the children and government officials received nationwide publicity.

The project is still in progress. The development work has proceeded from the stage of identifying needs and problems and searching for new solutions to the stage of translating them into praxis (Engeström, 1987). It will take several years for the process of change to run its course and for new modes of praxis to become established. Meanwhile, similar projects are being set up in other countries. The same methods have been applied by a group of Swiss children in Locarno and a class of French students in Rouen, locations of two international exhibitions on Young People as Urban Planners (Horelli, 1995, photos 1 and 2).

Results of young people's participation in urban planning

The following results are based not only on the case study described above, but on several other well-documented publications (Hart, 1992; Chawla, 1994; Horelli and Vepsä, 1995; Kyttä, 1995).

1. If the participation process is well-structured, children and young people show striking competence in the analysis of environmental problems as well as in the formulation of new ideas. Children aged 8-12 have a good grasp of scale. Perhaps the most surprising result of the children's neighbourhood planning is their ability to deal with a great variety of issues and with the residential area as a whole.

At Kitee, for instance, the plans made provision for the improvement of the surroundings and yards of the apartment blocks, the currently inaccessible lakefront, the creation of meeting places for different generations and, of course, activities for the young.

The designs for the school yard revealed that the children's plans contained a greater number of and more detailed affordances than those of the architect in the project. This could also be seen in the different allocation of space for various activities (Kyttä, 1995). Thus the plans of the children and those of the architect had different spatial, behavioural and experiential consequences. The hidden curriculum in the children's plans was the facilitation of diverse type of encounters and exchanges between peers and between children and adults. This is an essential part of social learning.

Children also focus on abstract characteristics such as safety, beauty, communality and ethics (Horelli and Vepsä, 1995). Thus children seem to express a rationality of care and responsibility, opposed to the dominating technocratic and instrumental rationality. There are, of course individual, cultural and gender differences among children. Girls' preference for quieter and more social activities is conspicuous. Boys like to engage in games and intensive movement. The most striking cultural difference between Finnish and Continental children concerns their attitude to nature. Greenery and forests are still vital for the Nordic children whereas children in Switzerland and France are content with fewer natural elements. All these children love beauty, but their sense of esthetics differs greatly from that of adults.

One of the results of children's participation can be seen as an increasing pressure on the municipality to change its mode and content of action and its hierarchic organization (cf. Figure 1). The children's contribution to planning was made possible in the case of Kitee by a political decision of the local council and by the efforts of a few key persons. This started a process which put pressure on the town to broaden the content of urban planning to cover ecological and social issues. There is currently a demand for the planning process to include groups like children, young people, the elderly, and women. There is also an impetus to broaden the scope of environmental education in the school curriculum to include social and cultural dimensions alongside ecological ones. Discussion has been initiated on how the school could be transformed not only into a "three dimensional textbook" but into the town's general learning and development centre (Adams, 1993; Nelson et al. 1993). This would mark a vital step in the implementation of the most important sub-project - "The ecosocial development of Kitee". As a consequence, there is also increasing pressure on the town to desectorize and network its hierarchic organization.

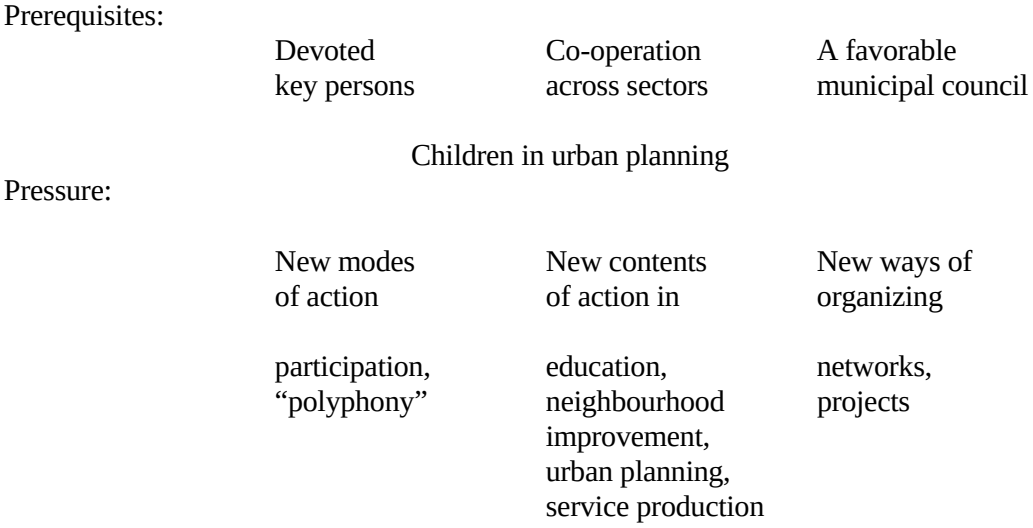

Figure 1.Prerequisites and consequences of children's planning at Kitee, Finland.

2. Another important result of children's participation is their contribution to design and planning theory. This is done not only by expanding the content of planning to include ecological and social issues, but also to the procedure of design by opening it to new groups. They also show that participation is a learning process that should be enhanced by appropriate tools and techniques (Horelli, 1992; 1995). Kolb's (1984) model of experiential learning

provides an example of the hermeneutic-action circle which is at the core of participatory design (Figure 2). Each phase ranging from action to personal experience, reflective observation and conceptualization should, however, be enhanced by a variety of enabling methods which allow the facilitator to be sensitive to differences of age, gender, class and ethnicity.

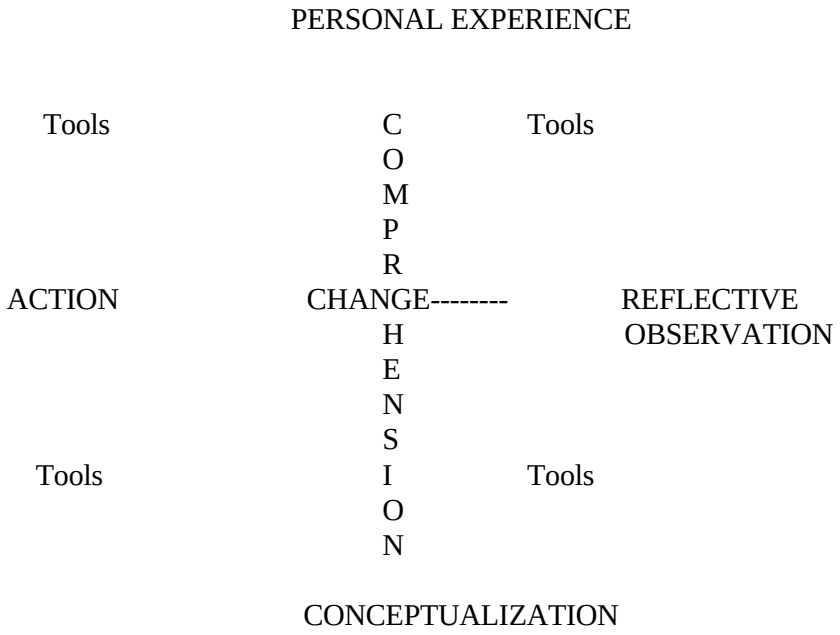

Figure 2.The circle of experiential learning facilitated by appropriate tools.

Participation is thus conceived as a combination of action, communication and research (cf. Wisner et al. 1991).

With the appropriate facilitation young people can easily climb the “ladder of participation” to the third level, that of cooperation and decision-making between children and adults (Figure 3; Hart, 1992). The highest level on this ladder, where the adults act as children’s assistants, is more or less utopian and can be applied in small scale contexts, such as adventure playgrounds.

Children’s participation is not modelled on the image of the democratic, rational individual expressed by Kant. Children’s involvement often happens in a playcontext, which is “here and now” - oriented (cf. Kjörholt, 1993). This accounts for the frivolity of some of their ideas. In fact there is a post-modern dimension to it. It can be seen as a post-modern contribution to the movement of community architecture.

CHILDREN'S REAL PARTICIPATION,
ADULTS AS ASSISTANTS

COOPERATION BETWEEN
CHILDREN AND ADULTS

CHILDREN TAKING PART
IN ADULTS' PLANNING

LISTENING TO
CHILDREN

ADAPTING CHILDREN
TO THE PLANNING

Figure 3.The ladder of children's participation.

Consequently, children and young people have an important role to play in that part of urban policy which, in the name of ecological and social justice, tries to integrate local resources and to support the rise and coexistence of different cultures (Figure 4). Urban policy may be interpreted as taking place within the dialectics of global trends and oppositional political strategies (Schulman, 1995). The global trends comprise the tension between an increasing internationalization, on the one hand, and an augmenting localization, on the other. Amidst these trends urban politics try to balance the oppositional strategies of economic activation and the enhancement of ecosocial justice (Figure 4).

		URBAN POLITICS	
		Economic activation	Enhancement of ecosocial justice
GLOBAL TRENDS	Interna-tionalization	Promotion of markets (Global city)	Support for multiculturality
	Localization	Integration of resources	Prevention of segregation (Dual city)

Figure 4. Young people's contribution to urban policy lies in the area of preventing the rise of a dual city, but also in that of the richness of multiculturality.

3. The third result deals with the legitimation of young people as participants. Irrespective of the above-described competence and contributions of children and young people, their position as "planners or agents of urban policy" is an ideological and political issue. The UN Convention on the Rights of the Child contains the combination of the "3Ps": provision, protection and participation (Sgritta, 1992). The first two rights, which are rather passive by nature, have received general acceptance. The third - participation, one of the most important dimensions of citizenship - has been largely ignored in most countries. It is evident that children's position as urban planners or citizens is dependent on adults, who are willing to accord space and the conditions for participation to children.

Conclusions and proposals for improvement

Children's and young people's perspective in spatial and regional planning is multidimensional, comprising not only developmental, social and design theories of different types and levels, but also children's direct participation. This, however, places demands on planners and teachers to learn and disseminate new procedural and substantive theories of environmental planning. These should consist of participatory techniques which are sensitive to the intentions and needs of boys and girls, women and men from different classes and cultures.

Children and young people need alliances to alter their reduced cultural and societal position. Adults should adopt an active conception of the child and a willingness to engage as an ombudsman for children in adult institutions as well as in those of children. The Rights of the Child should focus more on the dimension of participation.

A good sign is the recent grounding of the EUroFEM - a network of concrete women's projects, which accords a special place to the participation of children and young people (Horelli, 1995). In fact, we have to thank the Council of Europe for this network, since its roots go back to the seminars on Women in Regional and Spatial Planning in Athens (1990) and in Örnsköldsvik, Sweden (1994).

The legitimation of young people to participate in urban planning should of course spring from an altruistic ideology. I think, however, that even instrumental motives are valid, since our survival in a rapidly changing world depends on the valuable and different talents that the next generation possesses.

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PUBLIC PARTICIPATION IN THE PLANNING PROCESS AND THE APPLICATION OF THE PLAN - EXPERIENCE OF ORGANISATIONS, SPECIAL INTEREST GROUPS AND INDIVIDUALS

Conclusions by Mr Claude CASAGRANDE
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At the end of the workshop, the Chair thanked the rapporteurs for their very varied and wide-ranging contributions, which had provided much interesting food for thought.

1) The first conclusion is in fact a question: are we dealing with **public consultation** or **public participation?** It should be noted here that there is often much confusion between the two, although they are, of course, completely separate concepts. Consultation concerns projects which have already reached an advanced stage of planning, while participation takes place much further up-stream and is thus a much longer and much more difficult process.

2) The second conclusion concerns the conflicts between the **public interest** and **individual or private interests.** When does an organisation or interest group represent the public interest and when is it only an aggregation of individual interests?

For their part, in contrast, is not the role of elected representatives to defend the general interest? This seems to present both an obvious conflict of interests and real difficulties.

At the same time, there is a problem of understanding related to the complexity of the issues and documents concerned, their technical nature and the language used by the experts, which often becomes a veritable jargon that means nothing at all to the general public. The more complex and technical the issue, the truer this is.

3) While it is clear that public participation in the choice of planning policies is an essential part of democracy and that it is vital to ensuring the success of projects, there are two pitfalls which need to be avoided. The first of these concerns participation that is distorted either because large sections of the population are unaware of the opportunities available to them for having their say, or they have difficulties in understanding issues which may be intrinsically complex or poorly presented (see above), or the process is distorted by the purely sectorial actions of not particularly representative groups out to pursue their own interests.

The other pitfall is the tendency of public participation to undermine the role, the legitimacy and the responsibility of elected representatives, who run the risk of seeing their role in decision-making diminish, **while still having to assume responsibility for the decisions.** Participation by the public - which very often means a particular section of the public - must not result in people not elected by their fellow citizens enjoying the same legitimacy as elected representatives, who do have the endorsement of the ballot box behind them and do regularly have to stand for election. On the whole, we live in a system of representative, participatory democracy and not in systems of direct democracy.

4) Public participation is inherently a lengthy process (requiring negotiations) and often conflicts with the demands on elected representatives (often concerning economic factors) to act swiftly. Studies which recommend certain actions at specific junctures may no longer be appropriate or may have been overtaken by events only a few months later.

5) Local planning policy requires genuine decentralisation of powers within each country and hence **the absence of supervision by higher authorities.** Account has to be taken of possible conflicts that may arise between nationally decided planning policy and policies decided and wanted at local level. In this connection, there is a need to clarify the respective powers of each tier of government (an issue that does, in fact, seem to be on the agenda in many European countries).

6) Lastly, the involvement of young people is an extremely important factor. Of course, they express themselves differently and the issues need to be presented in an appropriate manner, but it must be realised that it is young people aged ten to fifteen who will be the main beneficiaries of most of the major projects being carried out at present. It is essential for the involvement of young people also to figure prominently in the discussions on town planning.

THEME 3

THE EFFECTS OF PARTICIPATION IN THE PLANNING PROCESS ON LAND-USE DEVELOPMENTS, THE ECONOMY AND THE ENVIRONMENT - BALANCE OF ADVANTAGES AND DISADVANTAGES OF PARTICIPATION

CHAIRPERSON: Mr. Adrian MOTIU
Senator - Member of the Commission of Environment,
Regional Planning and Local Authorities of the
Parliamentary Assembly of the Council of Europe

REPORTS PRESENTED BY:

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CONCLUSIONS BY THE CHAIRPERSON:

Mr. Adrian MOTIU
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THE EFFECTS OF PARTICIPATION IN THE PLANNING PROCESS ON LAND-USE DEVELOPMENTS, THE ECONOMY AND THE ENVIRONMENT - BALANCE OF ADVANTAGES AND DISADVANTAGES OF PARTICIPATION

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Introduction

It is my task this morning to develop one line of thinking which Robin Thompson has already highlighted in his Paper. He has emphasised that three actors come together in a play - thankfully perhaps not one written by William Shakespeare, nor one performed in the Rose Theatre on London's South Bank.

These three actors have roles which seem, superficially, quite simple. As you have heard Robin Thompson describe, the Planner faces the difficulty of reconciling or balancing the representations of private property interests and public opinion, and of then trying to describe whatever decisions are taken as being in the "best public interest".

This conundrum leaves some with the impression that the Planner has a thankless - or even impossible - task. He can be sure of one thing, however, - public participation will never satisfy everyone 100% of the time. The decisions or recommendations will always upset someone, and he or she will therefore only be regarded, at best, as "guardian" of the public interest - and more likely be seen as a referee who tries hard to reconcile conflicting objectives.

For the sake of simplicity here, though, I will describe the developer/investor or landowner as a single group, capable of being taken together as the "second actor" in the play, and the representation of the wider public interest (dealt with by Fiona Reynolds in Session II) as portraying the "third actor". I think this is appropriate, not least because of the fact that specialist interest groups do so often appear under the term "third party objectors" at planning appeals or public inquiries.

The particular perspective that I bring to this Conference is a private sector one, in that my firm is one of the private sector development consultancies in the U.K. However, my own role is one of advising Local Authorities on development and regeneration, and therefore I have - I hope - some understanding at least of both public and private sector views on the benefits and disadvantages of public participation.

Later in this Paper, I shall go on to explain what factors influence the private sector view of public participation in planning. The benefits and disadvantages of the current system will be highlighted, but first it has to be emphasised that those "strengths and weaknesses" can only be perceived by those business players who understand how to work (or some might say exploit) the system.

I shall try to draw some conclusions about the ways in which participatory planning might

reasonably apply across Europe - whatever the national socio-political context. But any attempt that I make to do this will be a little presumptuous given the scant knowledge that I have about the workings of other European planning systems generally, and their public participation components in particular.

I expect that I shall be showing, at very least, that the U.K. system has found an uneasy compromise or balance, where no party is wholly dissatisfied, yet neither are all groups positive in their support of the present participation arrangements. In other words, do we have situation where the benefits and disbenefits of participation, which all three main actors see at present in the U.K., more or less cancel one another out? If we do, does public participation in the U.K. represent an achievement equivalent to no more than the "lowest common denominator" - or is it instead the "highest common factor", which the three actors or players in the play will willingly accept?

Benefits of Participation

It is quite clear that the right to contribute to key environmental decisions is recognised at the highest level, and no reasonable developer or landowner would question the public's rights to influence both the development control and the development plan process. Indeed, some three years or so ago, the EC's Environmental Commissioner was quite properly quoted as saying "every citizen has the right to be heard on the decisions that affect their environment and thus their life".([1])

Some developers might occasionally wish that public participation exercises could be dispensed with altogether, but there are real benefits, beyond simply recognising that the public's involvement is a key feature in any democratic society. These other benefits arguably include:

- making the decision-making process more open;
- helping the public to focus its concerns and to understand the ultimate basis for planning decisions;
- Ensuring that development proposals genuinely do take account of users' specific needs, and in that sense the system is not only responsive, but generates a higher quality end product.

Probably the best way in a paper such as this to examine these potential benefits is to concentrate on one particular aspect of the planning process. I shall therefore limit most of my comments to the process of production of the development plan - and the public inquiry process that often provides the true "stage" on which - to continue the analogy - the three actors act out a key part of the play.

In passing, I would argue that the public inquiry into a local authority's development plan is now the key stage in this particular "play"; though the determination of planning application may be the "final act" in the play, following the advent of Section 54A, the scene has usually been firmly set, by the policies endorsed or rejected by the Inspector at an earlier Local Plan Inquiry.

In other words, my view is that the key stage for public participation is the one leading up to, and during, the public inquiry into the development plan.

This has been clear since late 1992. Indeed, in its report for the year ending 31 March 1993, the Planning Inspectorate Executive Agency([2]) observed that (since the introduction of Section 54A) "developers and objectors are taking an increased interest and are tending to submit more objections resulting in more material for the Inquiry Inspector to consider, both orally and in writing, and that as a consequence, Inquiries are lasting longer and the subsequent reporting period is necessarily extended."

The shift to the dominant position of Section 54A is not the only change that has had an impact; and, in the future, the reform of Local Government is likely, in no small way, to disrupt the process of plan preparation and approval. If developers and institutions will be looking for one thing in the U.K. in the late 1990's, it will be greater planning "certainty" - not least after the difficulties that arose from the 1980's gamble with *laissez faire* policies. Unless developers have confidence in the planning system, arising from the reformed Local Government system, this will have an adverse effect on economic growth in the last years of this century. Sound strategic planning and consistent policy formulation and interpretation at local level, in development control and appeal decisions, that is the plea. But more of that later, when I highlight some of the CBI's views on the extent to which planning is truly "shaping the nation".

There has been quite extensive analysis of the degree of satisfaction with the public inquiry process - for example, the recent studies by WS Atkins (on planning appeals)([3]) and Chesterton Consulting (on development plans)([4]). Most of these studies have highlighted that there is broad satisfaction with the existing U.K. system, and that while in retrospect some participants might, with hindsight, have preferred another appeal method, (one in ten according to WS Atkins), there is little pressure from the private sector for substantial change.

Indeed, I suggest that the private sector overall welcomes the openness of the decision- making process, and in particular recognises the benefits of negotiating openly with a planning authority whilst a development plan is still at draft or "deposit" stage.

One recent study by Lavers and Webster([5]) reported that this process of direct negotiation at these early stages in the development plan is "much favoured by financial interests", often leading to "a tacit agreement.... that a modification to the plan will take place prior to deposit".

Most developers and landowners also recognise that it is better to ensure that the debate about controversial or substantial proposals is channelled properly, with a full airing of the reasoning behind major planning decisions, firstly in a public forum, and then, where necessary, in an Inspector's decision letter. Over the last 15 years, I have personally been involved with well over 20 major town centre shopping schemes, and I have no doubt that public concerns about the most controversial of these have usually best been dealt with by handling them at the earliest possible stage.

The extension of this same argument also applies to the consideration of the "end users" requirements. I can recall, in the early 1980's, advising a local authority in Hampshire on a small supermarket development in its town centre, where many of the local opponents of new development were against any change in the town centre whatsoever, arguing instead that the

town - Petersfield - had old but adequate supermarkets, and could not reasonably accommodate new development close to its natural heart. I am pleased to say that there was a gradual dawning that there was a need for the town to change if its retail and commercial role was to survive. The small scale Rams Walk development is anchored by a Waitrose store. It was promoted by the Council and the subject of extensive public participation and has now been woven into the historic fabric of the centre in a way that this is now nationally recognised as one of the touchstones for the practice of central area improvement for market towns - and Petersfield's Civic Society, who originally opposed the scheme, have been among the first to praise it!

For the private sector then, the benefits of participation are many and varied. But perhaps the two crucial ones are firstly that the system enables developers to understand the reaction of others to their proposals, where necessary "drawing the sting"; and secondly, it provides ample opportunity for representations to be made by the companies themselves. Lavers and Webster's([5]) analysis of objections and representatives made at both draft and deposit stages of a number of plans showed the diversity of the groups who provide an input.

- individuals and small local businesses 75.3%
- nationwide companies, including retail and financial businesses 12%
- development business/builders 2%
- organisations including environmental groups 10%

Disbenefits of Participation

Traditionally the arguments put forward against public participation have related to:

- its costs;
- the delay it causes;
- the fact that it can obstruct essential development (such a new sewage works);
- its inequitable effect.

I am not convinced that - other than in those very high profile cases where development would inevitably have been seen as controversial - there are often examples of public participation causing developers extra costs, or extensive delays. From my experience of development, it usually takes retailers and funding institutions far longer to make up their minds and agree the details of an appropriate deal than any public participation exercise ever leads to unexpected delay.

In this sense, it is quite unusual if a developer is resistant to a participation exercise; most will have anticipated it as just another part of the pre-contract phase - like the archaeological dig, the pre-letting and the funding phase. A well-advised developer will probably have tried to make sure that the participation phase runs in parallel with other tasks (such as pre-letting) thus

causing no appreciable delay or cost penalty at all.

On the other hand, unexpected delay, especially in the period close to a construction start, will cause a developer to gain more than a few extra grey hairs. If the development has, by then, been financed on a fixed term basis, new public participation hurdles at a late stage will be costly, and can, at the extreme, cause a development to become unviable.

Two examples that would cause most developers to reach for the aspirin (or perhaps another) bottle, would be:

1. the calling in by the Secretary of State of a planning application which is consistent with a recently adopted development plan;

2. very significant delays (e.g. more than 6/9 months) in publishing a decision following a public inquiry into a Section 78 appeal or a CPO.

Most developers know that they are bound to have to persuade potential tenants to accept some flexibility - in terms of when the scheme will be "available for letting", but if the hiatus caused by uncertainty over a planning appeal or CPO decision lasts for more than 6/9 months, then it my experience the end users identified for the development start to look elsewhere. Clearly, it is not the objective of any party to see this happen, not least in that if a favourable decision finally emerges much later than expected, it may ultimately remain unimplemented if the commercial market (or simply the tenant demand) has moved on very significantly in the meantime.

Dealing very briefly with the other two disbenefits mentioned, it is, in my view, unavoidable that certain types of development will be the subject of controversy. For these developments that no-one NIMBY (not in my back yard) or NINTO (not in my term of office) wants, there are in reality more benefits arising for public participation than disadvantages. This is the case because participation should enable the underlying case for the development (or, perhaps the new motorway) to be evaluated and established at the outset. At very least there is a greater danger to the proposal's credibility if there is an absence of accurate information about it, or an attempt to limit debate or be unduly secretive about those matters "that affect the environment and thus the lives" of the citizens in the area.

I anticipate that Fiona Reynolds may say rather more about this point, and indeed may also have some highly pertinent views about how equitable the public participation system really is. Suffice to say, I do believe that if we have a system where over 75% of representations on a selection of plans were made by individuals and small businesses (as outlined by Lavers and Webster), then it cannot reasonably be claimed that public participation exclusively favours large organisations.

Maintaining a Balance Between Benefits and Disbenefits

Public participation is no longer a confrontational process - although I have to say that there are still one or two barristers who believe otherwise - and whose temperament at inquiries sometimes resembles a rottweiler when anyone challenges their client's preferred policies or proposals. I am pleased to say, however, that the prevailing attitude is more along the lines expressed in the recent CBI report([6]) "Your Part in Land-Use Planning - Guidelines for

Business".

"The successful development of the British economy requires an adequate supply of development land for use by business. With recent planning legislation and public calls for increased environmental protection, this will be available only if business sets out its needs more clearly and makes known its views at all stages of the planning process. Business needs to work in partnership with Local Authorities and Planners so that each can become more aware of, and understand better, the others requirements".

To me, the encouraging aspect of this recognition of the essential measure of public participation is that the CBI has been making similar points to its Members for some time now . Indeed, in another recent article([7]) on the progress made since the 1992 RICS/CBI report "Shaping the Nation" the warning was given "business which do not seek to involve Local Planning Authorities at an early stage can often spend much time planning their own projects only to find that there is considerable delay before planning decisions are taken. If businesses work more closely with Local Planning Authorities at an early stage in their plans, there would be benefit to all concerned and fewer complaints about the time taken to determine planning applications."

"Shaping the Nation" was a crucial document in another sense. It emphasised the private sector view that the present Government has still some way to go before it can say that the planning system is fully satisfactory to the business community that the CBI represents. The criticisms were mostly at the strategic level (highlighting, for example, the CBI's concerns as to the lack of integrated land-use and transportation planning, and over the potential adverse impact on strategic planning of Local Government re-organisation).

Undoubtedly, there are currently concerns held by the private sector about public participation, and the results of a new survey of attitudes to participation among developers, lawyers, architects and planning consultants will be presented at the Conference.

Among the greater concerns perhaps are:

- the doubt whether significant benefits do arise from two separate stages of consultation within the development plan (i.e. the Consultation Draft and Deposit Draft) stages - and whether the Local Authority could instead immediately generate a "Deposit Draft", for fuller consultation, more quickly;

- the organisation and overall length of Local Plan Inquiries;

- the limits to be placed on third party appeals (e.g. will these only apply to developments of national importance - where planning permission given is not in accordance with the development plan). Developers and landowners would be seriously concerned about the potential negative impact of the right of appeal being offered more widely to third parties;

- On a related topic, there is already concern that the judicial review procedure has almost become an extension of the public participation spectrum - but in view of the cost - it is only an option available to those with significant financial resources.

Conclusion

So to my conclusions. I do not take the view, expressed with tongue in cheek perhaps by David Wilcox([8]) in a recent "Guide to Effective Participation" that "most community participation is a sham or a shambles". Yes, there are plenty of examples of failure, confusion and of dissatisfaction with public participation. Cynical views of the process are bound to emerge as well. But how can problems be kept to a minimum?

Not, I suggest, by regarding:

- **public meetings** as "events designed to allow the maximum number of people the minimum opportunity to participate";

- **the media** as a "low cost alternative to talking to people";

- **a project steering group** as "a driverless vehicle with no powers to change direction", and

- **consultants** as being "the people you pay to reduce your own contact with the community and to take the blame if things go wrong".

These definitions (or warnings perhaps) are also helpfully suggested by Wilcox, as are a number of key principles that should apply to all attempts to secure effective participation. Two of the more important guiding principles he suggests are:

1. **Be clear about the level of participation you are offering**. Do not portray something as active participation with the opportunity for evaluating options, if it is really no more than information giving or gathering. Nothing is more likely to antagonise the individual, the business community or the action group than giving a misleading impression as to the influence they will have if they do contribute.

2. **Identify the different interests that you want to involve.** In doing so, it is clearly essential to recognise that each one has its own agenda, and objectives, and it may be important for a forum of key players - or a "Planning for Real" exercise - to be set up, so that these complementary and conflicting aspirations can be mutually understood a little better. The private sector increasingly recognises that exercises like "Planning for Real" can pay off in expediting the development process, through gaining greater and quicker understanding and agreement.

Recent studies published by the Department of the Environment and others have highlighted the benefits of community involvement in planning, and arguably even improved the quality of developments. In Community Involvement in Planning and Development Processes([9]) it is pointed out that success of community involvement "depends on all parties having realistic expectations of possible outcomes". More recently, the National Planning Forum([10]) concluded that knowledge and understanding of the available information is often the real key to success, since documents are not truly available unless people know they are - and how to use them! This "best practice" note is perhaps particularly helpful for those wishing to set up new

participation systems. The Forum calls on Planning Authorities to outline their arrangements for publicising information, in local planning charters, describing what information is available, in what form, where and when it may be obtained and what charges, if any, are involved.

So the overriding message from the National Planning Forum is one that I might mention as I start to draw this Paper to a close. "The essence of an effective planning service is that people should be encouraged and enabled to participate, helped along by Authorities making available all the information people need to know".

There are many other aspects of the public participation process that I could have covered in a short paper such as this. For example, I have barely mentioned:

- **the adverse consequences of "slippage" in the development plan process** (e.g. caused by delay in the Local Authority's preparation for an Inquiry, or by delay in the publication of an Inspector's report);

- **the structure and length of inquiries** and the way in which similar types of objections are dealt with;

- **the disruption and programming implications of inquiries into very major development proposals** (e.g. Terminal 5, Heathrow);

- **the extent of variation in total costs arising from participation in major public inquiries**.

None of these issues should, however, be ignored.

Suffice to say that the detail as to how public participation becomes a success, or alternatively a discredited activity, depends on the practical results that are seen by the public to emerge from all types of planning decision. Whether that decision is one taken by an officer under delegated authority, one taken by a Planning Committee, an Inspector at Appeal or by the Secretary of State, the quality and clarity of the reasoning behind it will ultimately, in my view, be the test that will enable all parties to accept it.

Public participation rarely leads to every participant acclaiming the result with enthusiasm and applause. But if the decision - or the end result in terms of the development built - is viewed as reaching well above the lowest common denominator or the minimum position sought by all participants, then it will have been a measurable success.

Other EC countries clearly do not have the same development plan process or system of appeals by public inquiries, informal hearings and written representations as the U.K. does. The flexibility of the U.K. system is one of its strengths. It is, however, important not to put added strain on that process, or extend it unduly.

For the future in the U.K., there may perhaps be a Labour Government in place in two years time and one has to ask what difference would that make? The Labour Party has made it clear that it wants to do three things with planning:

1. to cut down on delay;

2. to involve communities at a much earlier stage;

3. to enable people to understand planning issues at a local level.

That agenda seems to suggest issues which coincide with many of those that have been raised already at this conference. But it is vital that, whatever changes are proposed to existing participation systems (if any) they are readily understood by all involved, and easily co-ordinated with the present plan making and public inquiry system.

At the end of the day, there would be little to gain (and much to lose I suggest) from abolishing the existing public inquiry system. There would also be much to lose by an extensive introduction of rights of appeal for third parties.

The general public's - and more specifically the business sector's - confidence in the future of planning will be fostered by the belief that there is a simple and fair process to which all can contribute. The fact that such a small percentage of the total population do currently participate in public participation exercises is not necessarily too much of a bad thing. The potential reasons that Robin Thompson gave are all certainly plausible - but there is another.

Could it just be that more than 1% or 2% simply do not feel the need to say "that's fine, I have no comment to make. You are not proposing anything that I disagree with, so I am happy for you to carry on." Quiet acceptance is, I believe, something of a British trait - and is more likely as a form of "non" participation than vocal support or strong objection. And, on that, I hope not complacent note, I look forward to the continued debate on participation throughout the rest of this Conference.

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THE EFFECTS OF PARTICIPATION IN THE PLANNING PROCESS ON LAND-USE DEVELOPMENTS, THE ECONOMY AND THE ENVIRONMENT - BALANCE OF ADVANTAGES AND DISADVANTAGES OF PARTICIPATION

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The question of public participation in regional/spatial planning is an especially delicate one, mainly because, while it is the object of a very broad consensus in principle, as borne out by a number of reports such as the 1982 World Charter for Nature, the 1987 report by the Bruntland Commission or the conclusions of the 1993 Rio Summit, it is also highly controversial in its application since it may bring about genuine changes to decision-taking procedures. This is reflected in particular in participatory arrangements with a legal content; this point was emphasised, for example, in Principle 6 of the Bruntland Report: “States shall grant all persons likely to be affected by a planned activity equal access and due process in administrative and judicial proceedings”.

Prospects for the observation of such arrangements in European countries do not bode well: their scarcity and inadequacy, combined with deviations and abnormalities - and the way forward is littered with obstacles and pitfalls - means that in the general climate people tend to be wary of these arrangements albeit acknowledging their theoretical merits.

Over recent decades, the countries of central and eastern Europe have not given a central role to public participation in planning. The economic and institutional transition is an ideal opportunity for considering the objectives, methods and safeguards for introducing participation so that it can play its principal role of including people in decision-taking and winning society over to development projects.

It is very hard to weigh up the pros and cons of public participation. However it is implemented it does seem to be a necessity, in any case, although it does not always alter the final decision.

In some cases it could be said, to paraphrase a cliché, that it is better to have a popular but “bad” project” than to impose an unpopular “good” project in an authoritarian manner.

But the arrangements currently practised have their disadvantages - they prove costly (not only in the financial sense) and, above all, may lead to deadlock.

After some methodological details about the aims of public participation, this paper will analyse in more detail what is at stake legally, economically and politically speaking, recent developments and changes or reforms that seem necessary.

We shall concentrate on France but all the time bearing in mind the major differences that may exist between various member states of the Council of Europe. This is because the implementation and impact of public participation are deeply rooted in the history and culture of a given country, its political and institutional system and, above all else, the different balance struck culturally between solidarity and community action on one hand, and individualism on the other.

On this score, there is an obvious north-south divide.

1. WHAT IS PUBLIC PARTICIPATION? THE ADVANTAGES OF THE MAIN METHODS

The catch-all word "participation" covers a multitude of different situations. We shall be sticking to a simple distinction between two possible functions of "participation": information and consultation. We should add informal participation which can play as important a role as the other two types.

1.1. Information, the most basic form of participation, consists in bringing to public knowledge information about a project to be implemented or, in any case, in respect of which there is no other participation arrangement.

This may be seen as a minimal form of participation. Yes, it is. But we should not underestimate the progress still to be made to guarantee a degree of transparency in the knowledge and understanding of projects. Memorising information, biassed presentation (eg, underestimating the cost of a project), failure to take external effects into account, etc. are all common enough for this issue to merit attention: clear, complete information, presented intelligibly, is a decisive asset if participation is to play a proper part in improving a given project or its acceptance in the community.

A major problem linked to information is that of access. There is all the difference in the world between a notice put up at the town-hall, compulsory publication in newspapers, public information on request and systematic information to everybody concerned prior to a final decision.

There is the additional question of the content of the information to be given and the hidden traps. Information files do not always err on the side of insufficiency - they may contain too much information. There are examples of impact study files that are so technically sophisticated that only a handful of experts (eg in the construction industry) can read them.

Other examples of files concealing "the wood for the trees" are those whose glossy paper, glorious colours, alphabet-soup of arcane acronyms and sheer size make it hard to get to the bottom of the project concerned.

A major challenge for proper public involvement is, therefore, the actual form used to convey information.

1.2. As for consultation, it is, by definition, a more "incisive" form of participation. It is a matter for the authority or contractor in charge to canvass everyone concerned by a project (not always easy to define) in order, in theory, to take their opinions into account and change the project according to their comments.

With varying clarity this includes the public enquiry approach, in the case of town planning, the go-ahead for major building projects or other schemes such as part of the transport infrastructure. In most European countries the arrangement is similar: a file outlining the scheme is made available to members of the public for a certain length of time during which they may make observations for or against the project.

On the basis of these observations an appointed inspector then submits a report, for, against or for "with reservations", or may lay down more specific conditions for the project to become acceptable. The decision-taking authority (minister, prefect, mayor, etc) then decides but is not necessarily bound by the inspector's findings.

A key to this process lies in the actual role played by the public enquiry and the inspector. Should comments gathered through the enquiry simply be reflected as they stand? The answer is very often "no", if we can judge from the sample of those who make themselves known when public enquiries are held. Of course, the summary should nonetheless substantially take on board the remarks made.

On the other hand, when the decision-taking body is not bound by the inspector's opinion, the inspector may well tend to anticipate that body's decision by taking a harder line in his or her report. This only emphasises the importance of having an independent inspector.

The process and genuine impact of consultation differ from a major, large-scale project to a one-off operation. In the former case, for a major transport infrastructure, for example, the contractor and, usually, the government are already very committed by the time the public enquiry is held. Large amounts of money have already been invested in studies, restrictions are dictated by the need to fit in with other decisions and the result of a public enquiry can at best do nothing more than make cosmetic changes. It is extremely rare for the project as a whole to be called into question. This underscores the need to hold informal consultations before a project is planned at all. This is well illustrated by the choice of motorway and high-speed train routes, strengthened by the necessary harmonisation between different countries -eg the Paris-London TGV.

Once the principle of carrying out a project has been accepted, there is also the considerable importance of technical restrictions resulting from the speed chosen - in the case of rail-links, for example. The public debate in France about building a *TGV Est* link from Paris to Strasbourg and on to Berlin and Munich is a case in point: at a target speed of 300 km/h, the *TGV Nord* and Atlantique routes allowed for 4-5000-metre radius curves. If the speed is increased to 350 km/h, this means curves no tighter than a 8000-metre radius. This will reduce the number of possible routes and "small" local variants must be pared down to the bare minimum given their impact on the budget and/or efficiency of the project. Timesaving must then be weighed up against the quality of planning and the environment-friendliness of a project, as they are voiced locally.

1.3. Formalised participation and informal participation

So far we have concentrated on the participation arrangements specified in legal texts. But purely informal measures may also be taken by associations or, very often, by the direct expression of views by local inhabitants.

This means of "participation" is apparently on the increase, both in the case of small local projects and major works, as seen recently in France over the *TGV Sud-Est* - leading the government to set up an *ad hoc* mediation machinery, not originally provided for by law.

These informal types of participation are advantageous because they are flexible, imaginative and fast compared with official channels, which are often criticised for their restrictive practices and slowness. But their possible impact on the final decision obviously poses a delicate problem

in that if they were successful the legitimacy of legally established procedures would be undermined.

2. DRAWBACKS AND HAZARDS OF PARTICIPATION

In a platonically ideal democracy, decisions would be taken as the result of a consensus of agreement taken together. In practice, participation as we have described it is not implemented ideally - a few grey, even black, clouds darken the picture: participation makes projects costlier and slower, sometimes holding up work and sometimes even leading to abnormalities.

Although these drawbacks should not call the principle itself into question, they should be taken into account and lead to suggestions for lessening their effect.

2.1. Costs and time

The former problem is usually raised more often. Yet, in our view, it is not the most serious nor the hardest to put right.

First of all, regardless of its form, it is generally inexpensive to implement participation. Public enquiries relating to town planning projects rarely cost very much. In the case of a major project, such as a transport infrastructure, it may cost more, but the cost of an enquiry will invariably be tiny compared with the overall budget.

The question of time is more serious, if there is a legally set period for consultation. However, the constructor will know about it in advance and should plan accordingly, especially in respect of banking arrangements where time could cost money, especially in these times of very high real interest rates. The argument is therefore a salient one but the resulting inconvenience (and cost) can be allowed for by the contractor, at least since the rules barely change.

2.2. Legal hold-ups. The NIMBY syndrome

The second argument, that of hold-ups, seems far more serious, a growing problem that is hard to solve: the inhabitants of a neighbourhood, village, mountainside, etc. may strongly oppose any development near where they live and employ various delaying tactics to block changes. This behaviour is now described as NIMBY - “Not in my backyard”, symbolising the growing trend to take legal action before the supreme courts in the United States. This flourishing practice is also being diversified, with a rash of new acronyms to match:

LULU: locally undesirable land-uses
BANANA: build absolutely nothing anywhere near anybody
CAVE: citizens against virtually everything.

Every channel of participation is then taken, all the more effectively if legal, in order to block new developments.

This form of opposition is catching on fast in many European countries too, such as France and Germany, in different shapes and forms, creating havoc and leading to a reappraisal of the forms and effects of participation itself.

The French example, clearly accentuated by devolution of powers, is a good one. The *TGV Sud-*

Est is paradigmatic, with ground-swell of opposition all along the planned route, coming from organised and informal groups alike, as well as from municipalities - holding central government to ransom as always by refusing to allow the *TGV* to cross their territory unless they can have a station of their own. In this case, in addition to a public enquiry, the authorities decided to appoint a mediator to try and settle the dispute.

Although nobody questions the public usefulness of a high-speed train between Lyons and the French Riviera, a set of increasingly tricky obstacles is being put in its way.

These stalling tactics are becoming increasingly commonplace in the case of "run of the mill" urban development projects, too. Unlike the situation in France with its "*Zones d'Aménagement Concerté*", in Germany well-founded appeals lodged against the equivalent "*Bebauungspläne*" (B-plans) almost automatically result in a suspension of work with all the economic consequences of such a hold-up.

From this point of view, the trend towards increasingly complicated planning law is very hazardous - adding to the different possibilities for lodging appeals makes the situation uncertain for all those involved in planning. In France a recent State Council report[12] shrank from questioning the need for participation but did emphasise the risks and negative effects of growing legal action, especially when it abuses procedural defects or details that have nothing to do with the substance of the case.

As well as the excessive role now played by lawyers specialising in planning decisions another danger is the growth of so-called Slapping (from SLAPP - strategic lawsuits against public participation). Associations can then be taken to court for vexations appeals and this in turn could trigger defensive reactions by associations to deter such legal action. One American "*cause célèbre*" of Slapp-back involved three farmers from Kern County, California, who won 13.5 million dollars in compensation against an agri-foodstuff giant for SLAPPing them.

These diversions may be food and drink for lawyers and legal advisers but they give rise to decision-taking processes that are light years away from the issue of high quality urban development and environments.

There is no magic response to this kind of behaviour. Of course, the first step must be to encourage operators and contractors to be open, co-operative and helpful, by implementing appropriate organisation and communication strategies at the earliest possible stage of a project.

There is also the economic/financial aspect, taking into account the external effects of a project, the advantages of projects with positive repercussions, the issues of noise and visual pollution, etc. This compensation in the form of the economic impact of projects - such as positive effects on the market value of any property concerned - has triggered a number of varied experiments, persistently raising the thorny issue of assessing costs and advantages, especially where there is no market reference.

The abundant literature on cost-benefit analysis could be a useful basis for examining this subject.

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12 Conseil d'Etat, Urbanisme: pour un droit plus efficace (State Council, Town Planning: for a more efficient law), Conseil d'Etat, Paris, 1993.

CONCLUSION

It is very difficult to separate participation procedures from all other questions about organising democracy. Where does the general public fit into a decision-taking process monopolised by an oligarchy of central government, local authorities and technical experts?

The legislative responses to growing public demand have been mostly instrumental: more and more commissions, mediators, public enquiries, etc., without necessarily satisfying those at whom they are aimed.

A perennial difficulty is that of giving the participation process a degree of permanence when most of the existing arrangements are of a one-off nature.

But this catalogue of difficulties means that we have to admit that choices of town, regional and spatial planning are intrinsically changing relationships between individuals and groups, and whatever choice is made, it cannot please everybody. To paraphrase an important element of John Rawls' theory of justice, we might say that it is, to some extent, the procedure leading up to a decision that is the key to the problem since decisions themselves cannot be standardised.

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THE EFFECTS OF PARTICIPATION IN THE PLANNING PROCESS ON LAND-USE DEVELOPMENTS, THE ECONOMY AND THE ENVIRONMENT - BALANCE OF ADVANTAGES AND DISADVANTAGES OF PARTICIPATION

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1. INTRODUCTION

1.1 Political structure of Austria: Planning at different levels

Austria is a federation of nine states (including Vienna) and has roughly 2,300 municipalities. Political representation and policy-making take place on three levels: federal government (*Bund*), state (*Länder*) and municipality (*Gemeinde*) which also applies to spatial planning. This is understood to be a national task which is performed in co-ordination by federal government, states and municipalities together, although this is not explicitly regulated in the constitution (of 1929).

According to the constitutions' distribution of public functions, comprehensive spatial planning in legislation and execution is the autonomous responsibility of the states, however, with the significant restriction that the express powers of the federal government regarding important measures and planning activities with territorial reference remain intact. Among the latter are for example railways, the supraregional road network, forestry and laws relating to water resources. The consequence in practice is that the federal government and the states both carry out parallel activities related to spatial planning. Local spatial planning is carried out autonomously by the municipalities. There is no political representative body at the regional level, the functional spatial level between state and municipality, since the districts *(politische Bezirke*) are purely administrative entities. Responsibility for spatial planning on regional level and also for economic development planning, a rather new task for Austria within the EU, lies with the states.

A factor of great significance for spatial planning policies is the fact that all territorial authorities, i.e. federal government, states and municipalities also have, in addition to the tasks of sovereign territorial administration mentioned above, the power to implement measures in the sphere of public business administration for which there are no competence limits. This is especially important in the sphere of regional economic assistance. The federal government and the states (in part also the municipalities) both carry on parallel promotional activities to induce private investment with the support of diverse programmes.

In a situation like this, legally binding plans and programmes of spatial planning can be implemented in practice only if a political consensus between the levels is achieved. Often legally binding programmes are replaced by discretionary schemes which are intended as framework for *ad hoc* solutions to be sought in individual cases.

In summary, the starting situation for spatial planning policy may be characterised as follows: in spite of the states' formal competence for comprehensive spatial planning, these must rely on co-operation with the federal government because several federal ministries have powers over important areas of spatial planning measures. The co-ordination of these measures within the

federal government, on the other hand, is weak and no sufficient statutory basis exists in this context.

Spatial planning activities of states are implemented mainly through building regulations, i.e. legal and control measures. The municipality embodies the building authority and therefore actual planning and design processes are carried out only at the local level. Options for state level authorities to design and implement spatial planning are meagre in comparison and limited mainly to state-level infrastructures, the declaration of protected areas and the siting of hazardous waste disposal facilities.

Due to their extensive legal autonomy and spurred by tax incentives, municipalities have a more or less competitive relation to one another rather than seeing each other as partners. This is particularly important for population and economic development policies at the local level, with the consequence that intercommunal co-operation in spatial planning matters is the exception, not the rule.

In a country organized as a federation which has such a split-up power structure, the need for closer co-operation among the three levels of territorial authorities has led to the creation of a platform for spatial planning on national level, the *Austrian Conference on Regional Planning* (*Österreichische Raumordnungkonferenz, ÖROK)*. It is based on a voluntary political agreement between the partners - federal government, states and municipalities. Its main responsibilities lie in the development of a national scheme for spatial planning as well as basic research and groundwork for planning at the state and local levels. These range from small scale population forecasts to definitions of common regional assisted areas. The co-ordination of individual planning work or projects is not carried out within the framework of the ÖROK. The ÖROK lately has become the platform for the domestic co-ordination of schemes and programmes with regard to European spatial planning and development policies.

Spatial planning and regional planning have developed in Austria over the past 40 years out of pragmatic demands. It grew out of political necessity and is not based on national aims laid out by the federal government. The main outcome of the spatial planning laws of the states was first and foremost the commitment of the municipalities to set up land use plans. The states themselves give laws relating to the implemenation of supralocal spatial planning extensive freedom - there are no implementation obligations. On the one hand this made it possible to adapt flexibly to changing demands in the course of time and on the other, it led to the situation in which no spatial planning on supralocal level for large parts of the country's territory exist. For important planning measures with territorial reference, such as federal railways and national roads (competence of the federal government) there is no statutory planning obligation.

1.2 Planning and administrative system

Spatial planning is carried out on all three levels of administration. Draft resolutions (plans, programmes) are prepared by administrative officers. The actual drawing up of plans and programmes takes place in very different manners.

In small municipalities plans are usually drawn up by civil engineers (legally licensed) on behalf of the municipality. Larger municipalities usually have their own building authority which also takes care of local spatial planning matters. Only cities have separate planning authorities or planning departments within the town administration. However, even in the latter case civil engineers are often called upon to draw up plans. This procedure of calling on

external independent experts with their own point of view, may play a role for its political acceptance.

The states usually have spatial planning departments in each of the offices of the state governments (*Amt der Landesregierung*), which work out plans and programmes and prepare these for adoption by the state government. In this case civil engineers or other external experts are also called upon if there are not sufficient administrative personnel.

On the federal level, planning work related to spatial planning only takes place in the areas of forestry (forestry spatial planning) and water authorities (water management planning). Matters of great importance for spatial development, such as planning of railways and national roads is only carried out on project level. In the case of the railways, this is performed by the planning staff of the *Austrian Federal Railways (Österreichische Bundesbahnen, ÖBB*) or by the staff of the federally-owned High Speed Transport Routes Company *(Hochleistungstrecken-AG*), which was established especially for the planning and construction of the new high speed transit routes. Project planning and construction of national roads is being carried out by the state administration bodies on behalf of the federal government (who is the sole financier). Here, the assistance of civil engineers as external experts is often used.

The determination of assisted areas for industry and trade, an activity important for the federal government's regional policy, is carried out within the scope of the *Austrian Conference on Regional Planning (Österreichische Raumordnungskonferenz, ÖROK*), in co-operation with the states. The ÖROK has also worked out the *Austrian Regional Planning Concept (Österreichisches Raumordnungskonzept, ÖRK)* which is supposed to work as a guidance for spatial planning policies by the various public entities responsible for planning.

Table 1

The Austrian System of Spatial Planning

Level	Number of entities	Inhabitants	Planning Authority	Planning Type	Content	Effect
Federal government (*Bund*)		7,8 million	ÖROK*	ÖRK* 91	Guidelines for planning and measures with territorial reference of the federal government, states and municipalities (text)	Recommendation
			Federal Ministries*	sectoral plans	sectoral subject fields (text and/or plan)	binding also for planning on state, regional and municipal levels
State government (*Land*)	9 states	260.000 to 1,6 million	State government	comprehensive state, development plan, sectoral plans on regional level	comprehensive development (text, optional plan) sectoral subject fields (text and/or plan)	binding for regional and local planning
Region	100 districts		State government	regional (development) plan sectoral plan on regional level	overall development sectoral subject fields (text and/or plan)	binding for local planning
Local municipality (*Gemeinde*)	8 mu. 12 44 470 1.798	>50.000 50.000 10-20.000 2,5-10.000 <2.500	municipal council	local development scheme land-use plan building regulation plan	overall development (text, optional plan) designates land-use (plan + text) building regulations guidelines (plan, optional text)	development objectives for land-use plans binding for all land owners

*Federal Ministry for Economic Affaires: roads
Federal Ministry for Public Economy and Transport: railways
Federal Ministry of Environment (hazardous) waste
Federal Ministry of Agriculture and Forestry: spatial planning related to forestry and to water

ÖROKAustrian Conference on Regional Planning, not an authority but advisory council (collegial organ)
ÖRK Austrian Regional Planning Concept 1991
Source: ÖSTAT (Austrian Central Statistical Office), census 1991.

2. LEGAL AND POLITICAL FRAMEWORK FOR CITIZENS' PARTICIPATION IN PLANNING

2.1 Formal political representation and legally granted participation

Political representation and policy-making are carried out on three levels: federal government (*Bund*), states (*Länder*) and municipality *(Gemeinde*). The legislative organs are: the national parliament (*Nationalrat*) on federal level and the state parliaments (*Landtag*) on state level. The municipal council (*Gemeinderat*) is the decision-making organ of the autonomy in the municipalities. On all three levels the political representatives are elected from lists of candidates belonging to political parties; on the municipal level also from non-partisan person lists.

In addition to the regular procedures of the political representatives, some formal processes are devised to give direct political participation rights to citizens. The number of available instruments has been expanded greatly since the 1980s as well as the actual use. These are on the federal level:

- **the plebiscite:** It is mandatory for major changes to the federal constitution (as for example Austria's recent membership to the EU). In the case of partial changes to the constitution and to individual laws passed by the national parliament, it may be held on the basis of fixed quotas (the only case of the latter type was the plebiscite held in 1978 on the issue of a nuclear plant, Zwentendorf, which, as result, never went into operation);

- **the petition:** This is an application by at least 100,000 voters (or one sixth of the voters of each of three states) to the national parliament to reach a resolution on a matter that can be dealt with by issuing a federal law;

- **the referendum:** This may be used to find out the opinion of the population in matters of great significance for the whole country. Its outcome is not directly binding for the government but put to effect by majority vote in parliament.

The **state** constitutions also provide similar plebiscite procedures, which in some states are also applicable on the municipal level.

While a sufficiently defined system of formal procedures for political participation exists, its effective use is relatively limited, especially when compared with a country like Switzerland. On all three levels of the political spectrum, voting on specific issues, be they of political, legal or technical-environmental nature, is rather exceptional. This is caused by relatively difficult criteria for initiating one of the above processes by the electorate. In particular, it is not mandatory to have any kind of public participation on any plan in Austria, nor any level of administration. This, as in the above mentioned differences in the actual practice of political participation, is a very important characteristic of the Austrian planning system. Compared with the Swiss and German systems, the Austrian is clearly closer to the German type.

The only mandatory case of citizens' participation in a decision-making and planning process has recently been provided in the law on **Environmental Impact Assessment (EIA)**. It gives every citizen the right to bring forth a written statement. Citizen's action groups, formed by a written statement, signed by at least 200 people with one person named as representative, may

participate in legal proceedings as a party. Further parties are the municipality of the site and the directly adjacent municipalities, as well as the Environmental Ombudsperson. The EIA-Process applies only to major plants, sites and infrastructures, which are expected to have a significant environmental impact (eg. hazardous waste disposal plants, power plants, large-scale transportation infrastructures etc.). The law follows EU-directives and includes provisions for a concentration of environmentally relevant permit procedures (among others, according to the air pollution laws, water laws and trade and industrial codes). Due to the short period of time it has been enacted, however, there is no experience on the effect and working of the Participation Process included.

Another important element in environmental legislation is the creation of Ombudpersons for Environmental Protection. They have the status of parties representing environmental interests in official proceedings. In addition, the Ombudpersons at federal and state levels, called People's Attorney, who may be called upon by citizens to enforce their interests against authorities in general, are more and more often being involved in environmental and planning conflicts.

2.2 Informal or consensual participation

As outlined above, there is very limited scope for citizens' participation in formal proceedings. Consequently, the vast majority of participation processes are undertaken on informal and consensual grounds. Only in cases, where political leaders and/or governmental authorities encounter a specific need to include a wider public, participation in planning processes takes place. The degree of citizens' involvement in public policy formation, therefore, shows a great diversity, as the varying needs of the individual cases determine the kind of process, the number of people being included, the duration and complexity of the actual process. In practice, the driving forces to start a more open, participatory planning process are:

- a political need to gain wider (public) support for a difficult decision-making or planning problem;

- the need to get access to specific information not available otherwise, or

- the wish to mobilize and activate specific population groups, in order to induce a widespread and more effective developmental process.

At least from the Austrian perspective it can be said that there has to be a specific, rather urgent and concrete cause to start a participative process. The simple wish - sometimes the planners', sometimes not - to include a wider public in planning matters of their concern or to improve the quality of the outcome, is usually not sufficient to overcome time and budget restrictions plus the polticians' and administrators' reluctancy to get involved. The experience so far - as will be shown below - has been one of mixed impressions, with widely varying success and failure stories. Given that experience, some of the reluctancy can be understood, but it is also true that there are good arguments in favour of participative planning.

3. EXPERIENCE WITH PARTICIPATION PROCESSES IN LAND-USE, REGIONAL ECONOMIC DEVELOPMENT AND ENVIRONMENTAL PLANNING

3.1 How to assess benefits and disbenefits

Assessing the benefits and disbenefits of participation processes in an overview turns out to be extremely difficult, since

i. only a portion of participative processes are being documented extensively and if so, these documentations usually focus on describing the technical terms of the process and the eventual outcome; there is no in-depth analysis of what the actual contribution of "outside" participants (as opposed to the usually involved administrators, planning staff and politicians) amounted to and how this may have changed the outcome compared to a non-participative process, and

ii. in order to really be able to judge the changes in outcome compared to a non-participative process, one would need to have participated in the process, at best in a kind of supervisory position and - in addition - to have the research option to evaluate the process afterwards.

An exception from this may be single-issue or single-project processes, where it is clear that activists were able to alter or stop the project altogether. This, however, seems to be much more likely to be brought about through some activist, political process with massive street and media pressure than from within a participation process. So, for most cases of participative planning processes, extensive inside knowledge and analysis would be needed.

Unfortunately, none of this can be offered in the following. The attempt here is to bring together information available from some publicised documentation and from discussion within the planning community and to combine these with personal impressions from my own and colleagues' experience. In essence, the approach is to have a look at where participation takes place and where it doesn't and draw conclusions from the question:

Given the fact that participation in all cases involves an effort on the sides of politicians and administrators, where has it proven to be so valuable that it is being undertaken repeatedly?

3.2 Types of planning processes with participation

To give an overview of the kinds of planning processes, where participation has happened frequently in the recent years, Table 2 shows the types of planning processes on different levels of governmental activity and the content of planning activity. According to the guiding theme of session III, typical processes are grouped by their main focus in Land-Use/ Local Development, Economic Development and Environmental Planning.

Land-Use/ Local Development processes are found mainly at the local or sublocal level. The objectives of the communities' development process and the possible consequences for land-use planning (zoning) are the main themes. This involves a process of clarifiying alternative dimensions and patterns of growth, and how to deal with the consequences for individuals and property owners in particular. The other type of process mentioned at the local level, rural (housing) development and urban renewal, is focused on activating and assisting certain groups

of the population, especially house owners and tenants, to improve the living conditions in the buildings. This involves public infrastructure investment, financial and technical assistance to individuals and organizing rehabilitation activities of public or private housing companies.

In Austria, **Economic Development Planning/ Programming** is mainly being performed on a "regional" level, between states and local communities. Since there are no political bodies but only administrative units on this level, the discussion of developmental perspectives on a regional level necessarily involves forming some kind of a representative platform, including socially and economically important groups. This is necessary for both, physical planning and infrastructure-oriented processes as well as for activating, developmental approaches, which are typical for the programs in EU-assisted regions. Beyond this matter of forming a representative working group in the case of developmental, activating processes a philosophy similar to rural and urban development processes applies - here, too, it is important to encourage economical activities of individuals and groups, to spur investments of enterprises and to assist such processes with public infrastructure and human capital investment.

The third area, where participation is a current element of planning and decision-making processes, deals with the **environmental aspects** of (mainly public) infrastructure investments and with environmental protection. As mainly large-scale infrastructures are of interest here, it is predominantly the state or federal authorities who are in charge of the planning/ decision-making process. Here again, two types of processes can be distinguished: one predominantly dealing with decision-making, as in Environmental Impact Analyses and Site Selection Processes; the other mainly dealing with developmental aspects, as in the case of introducing the idea of National Parks to areas where farmers have been cultivating land for centuries.

Table 2

Overview: Types of Planning Processes with Participation

	Land-Use / Local Development	**Economic Development**	**Environment**
Type of Planning Process	Zoning Local Development Scheme Rural Development, Urban Renewal	Regional Economic Development Plan/Scheme Sectoral Regional Development Scheme	Environmental Impact Analysis (EIA) Site Selection
Level of government in charge of process	**Local**	Local **State** (action on behalf of regional level)	Local **State** **Federal**
Content	local development scheme land-use plan building regulation plan local infrastructure, housing rehabilitation, improvement of parks and public spaces local development projects (housing, business, shopping)	investment subsidies to private enterprise infrastructure (technological, R&D) qualification programmes, information and technical assistance sectoral plan on regional level	technical/environmental infrastructure (power plants, hazardous waste disposal plants, etc.) (high-speed) railway network, motorway tourist development projects National Parks, Protected Areas
Participation mandatory	**No**	**No**	**Yes (EIA only)**
Actual participation in % of total planning processes (estimated)	**10%**	**50%**	**100%**

As mentioned above, **all cases** which form the body of experience with participation in Austria, were introduced on **consensual, voluntary grounds**. Even Environmental Impact Analyses (EIA) so far have involved participation voluntarily, since legal changes to make public participation mandatory were only introduced recently. This leads to a high degree of flexibility and freedom with respect to applied methods and to the number and selection of people to be included. On the other hand, it is very difficult to compare processes, since only a small section is being documented and analyzed and, as a consequence, it is very difficult to learn from the experience of others.

Included in Table 2 is a **rough percentage estimate** of how often **participation** is a significant element of the total of all planning processes in question. These figures cannot be substantiated by any statistics, but are only based on necessarily subjective estimates. Nevertheless, a great difference in the importance of participation to different areas of planning activities can be stated:

Traditional physical planning at the local level, with zoning and local development projects as outcome, include participation in rare exceptions only. Rural development and urban renewal processes on the other hand, which are of a more developmental orientation, involve participation more often. For the same reason, because of a developmental process orientation, the percentage of participative planning/ programming is certainly much higher than in the first category. Only in more traditional, infrastructure-oriented and physical planning approaches, is participation of low priority. In the last group, environmental planning processes, some sort of participation is almost obligatory - the need to include local activists and environmental groups is so prevalent that a process without participation seems practically impossible. To start a process solely within the administration and without widespread participation would in the end and in most cases of great environmental import, turn out to be politically worthless or even counterproductive.

At first glance it is surprising that on the - seemingly - most accessible level for participation, on the local planning level, the percentage of "open" processes is considerably lower than on the higher, more distant and less concrete governmental levels (regions, states, federal). Two reasons may explain this paradox:

i. local land-use planning is a standard process, which has to be performed by any local community in the country and which in practice varies widely in terms of political attention and scrutiny. Often it is seen as an obligation to higher (state) authorities rather than being understood as a means to design the community's own future. In such cases there is little to no interest on the municipality's part, to involve more people than necessary;

ii. the theme itself is rather complex, the process lengthy and not very exiting, so, as long as there are no major conflicts or issues that arouse public interest, only land owners care. Land owners, on the other hand, are mainly interested in the outcome for their own piece of property, not in a general debate of developmental goals etc. As property owners, they are - in all cases - entitled to document their interest in written statements, a step in the formal planning process, after the first draft has been made. This procedure can be seen as a way to collect information and find out the individual interests of residents, but was not included in the term "participation" since it does not necessarily involve more than a single individual's interest and action.

Apart from this, there is a great variety of single-issue, sectoral and sub-local themes, which are being dealt with in a participatory way. The topics range from the design for children's parks, neighborhood traffic control, parking space to new (housing) developments and the effects of shopping centers. Here, the general rule is: participation takes place as soon as there is an issue which mobilizes people in a politically relevant way.

3.3 Cases of participation in planning

To give an impression on the kinds of participatory processes, which form the basis of the following argument, some of the most prominent and best-documented cases are listed in Table 3. For reasons of length it is not possible, however, to present these cases in detail within the context of this paper. Nevertheless, it seems important to add some information on the background and context of the cited cases.

The **community development and land-use planning** processes in Tyrol and Salzburg are remarkable because of the planners' committment and qualification to start and guide the process. It is mainly communities with great concern about a careful and stepwise development, which are inclined to start such a process. The local communities involved have populations of 1.000 to 10.000 inhabitants and are typically located in mountainous areas or areas of rapid suburban/ tourist development, where land is a scarce resource and developmental changes are fast.

Rural development programmes, most of them started in the late 1970ies, usually focus on the spurring of local communities' activities to improve public spaces and private housing conditions in the older sections of villages. The programmes include investment subsidies, technical and planning assistance and a continuous counseling of the development process by (state) administrative staff or by civil engineers. Similar in content, but on a larger scale and with different legal and institutional settings, **Urban Renewal Programmes** have been under way since the mid-1970ies, mainly in the largest cities of Vienna and Graz. The major difference lies in the housing structure, with private building-ownership and private tenants living in sub-standard apartments within in badly maintained 19th-century apartment houses. This, together with the intricacies of different generations of rent control laws and an attempt to induce, at the same time, private investment on both sides, building owners and tenants, guarantees for a complex process. Both types of processes, rural and urban, are possible only with a high degree of mutual information and cooperation between municipalities/ promoting agencies on one side and building owners/ tenants on the other.

Table 3

Selected cases of participation processes, methods and range of participation

	Land-Use / Local Development	**Economic Development**	**Environment**
Cases and Case Studies	Community Development Salzburg, Tyrol Rural Development/Housing Lower and Upper Austria, Styria Urban Renewal Programmes for sections of Vienna, Graz Large-scale city expansion schemes (Vienna, Marchegger Ast)	Regional Development Programmes (Styria, 70's/80's) Regional Economic Development Plans (EU-assisted regions, 1994)	Power plants (Dorfertal, Hainburg) National Parks (Hohe Tauern, Donau-Auen; Neusiedler See) Motorways (Pyhrn, Gürtel), Railway (Semmering, Brenner) Tourism (Montafon) Hazardous Waste (Site Selection Lower Austria)
Methods of participation	permanent working groups and/or workshops of municipal council presentations/hearings architectural/urban planning competitions, exhibitions (Referendum)	permanent working group of regional representatives presentations/hearings Regional Development Board + Reg. Dev. Management counseling of projects	permanent working groups presentations/hearings counseling of action groups (Referendum)
Participants from outside of government/administration	selected citizens, delegates interest groups, local action groups inhabitants of renewal areas, house owners, tenants property owners (party in the plans' ratification process)	Chambers, main interest groups (Social Partnership) State/Federal MPs initiatives, action groups implementing organisations, Non-Profit organisations	Chambers, main interest groups (Social Partnership) State/Federal MPs initiatives, action groups environmental organisations, concerned scientists
Representing (outside of government and Social Partnerhsip)	**Local leaders, interested public, house owners, tenants**	**project initiatives, economic interest groups, regional policy makers, entrepreneurs**	**local to national initiatives, organized environmental groups (nat'l/Internat'l), active individuals, scientists**

A different process quality characterized large-scale projects for **city-expansion** in Vienna, which had been in preparation since the late 1980ies and were greatly spurred by the fall of the Iron Curtain in 1989, a rapid increase of in-migration in 1990 and 1991 and plans to stage a World Exhibit together with Budapest in 1995 (a project, which eventually was swept away by

vast majority in a referendum). Theme of city expansion, however, focused mainly on architectural and urban design studies, urban planning and architectural competitions and on extensive discussions within the professional community. Participation happened predominanty in the context of media coverage and public exhibits of urban planning competition projects. To some extent, however, groups of residents of the designated development areas were invited to bring in their interests with regard to infrastructure, environmental and social development considerations etc., before detailed urban and architectual design work began.

Regional Economic Development Plans follow a similar philosophy as urban and rural development processes: here as well, the intention is to induce and facilitate private economic activity, especially geared at small and medium-size firms, public-private-partnerships in development projects, infrastructures to improve the regions' technological and research facilities. Such a process encompasses a general re-orientation and goal-setting for the regional economy and a screening of public and private development projects. Recommendations on priorities for public funding, monitoring the implementation process and assistance to private initiatives in project development are the main elements of the regional development process. This process type requires continuous information, networking and counseling of organizations taking part in the implementation process (governmental and non-governmental) as well as of groups and initiatives, which may become project developers themselves. As there is quite substantial experience with grass-root, endogenous economic development approaches throughout Austria's rural areas, some of this tradition will be brought into regional economic development policy within the EU framework that is starting now. Nevertheless, since this is a completely new approach in some areas and some sections of administration, a lot will have to be learned.

Cases of planning processes with the main focus on the **environmental** impact of large-scale infrastructures have a particularly strong participatory tradition. In many cases, participation began only when caterpillars first entered the construction site and activist groups tried to stop them. Others started earlier, and a number of significant (political) experiences of the first variety, namely to start construction and then have to negotiate, seemingly have led to the conclusion, in the recent years, that it is wiser to start with negotiating first. In the case of the hydroelectric power plant projects mentioned in Table 3, enduring local as well as nation-wide resistance led to the definite halt of the projects in question. Closely linked to these are the cases of two National Park projects (Hohe Tauern and Donau-Auen), which symbolize an alternative development option and which have to be carefully fitted into the regional economic context. Both National Park projects so far have not been settled in satisfactorily, although in the case of the high alpine region, local participation and project acceptance seem to be close to breakthrough. The third National Park project, Neusiedler See, had not been juxtaposed to a single project but to a number of minor (tourist) development projects. Here, a continuous process of involving relevant groups (environmentalists, residents, farmers, tourist industry etc) eventually led to a wide support of the project within the population.

The problem of **site-selection** for hazardous waste so far has not been solved; even very elaborate and far-reaching participation processes have not led to a result until now. Massive resistance from local and nation-wide environmental groups, may participate in the respective EIA-processes or not; so far it has effectively prevented any location from being selected. Similarly, some major **motorway and high-speed railway projects** have been blocked effectively over years, although participative processes have accompanied the planning and re-designing of several variants (railway: Semmering and Lainzer tunnels, motorway: Pyhrn Autobahn). Far-reaching, massive tourist development in the Montafon, as against the example

of Vorarlberg, has been prevented and re-dimensioned in a complex process involving outside civil-engineers, project developers, local representatives, regional tourist marketing organizations and selected individuals. Here the process led to a new, drastically reduced development, tailored to the needs of the local population and taking into account for environmental concerns.

According to the great diversity of the participative planning processes outlined above, there has been an even greater **variety of methods**. From the vast array of different methodological features, **three key elements** can be identified as characteristic for most of the processes reviewed - characteristic for a selection of participative processes that went on for a considerable amount of time:

- in the core of the processes usually there are one or several working groups, which stay relatively constant over even longer periods and are of a fairly small, "workable" size; what is going on in this core is crucial to the outcome of the process;

- almost all processes have included presentations or hearings of some form, open to a wider public than the core groups and timed at longer intervals as the working group sessions;

- all processes were guided at least with the assistance of civil engineers or consultants from outside the administration, since essential know-how inputs and some trustworthy and independent mediators are essential for providing support and continuity to the process.

In addition to these three key elements there remains the question of bridging the gap between participating groups and administrators/ representatives, relevant to all three elements. Based on the experience outlined above, it can be concluded that successful processes (which means: processes leading to a generally agreed outcome settling the issue) require a substantial link between "insiders" and "outside" participants, including some committment to agreements reached in the process. Usually, core groups need to be composed of both "parties" to establish that close link. Public hearings should be held with the participation (reverse!) of political representatives in charge and lead to some outcome which can be proven to establish mutual trust during the subsequent proceedings - even if the result of the meeting is only a schedule for further proceedings. Professional mediators can fulfill their role only with a high degree of loyalty to both sides - "insiders" and "outsiders" - , which seems to be a paradox, but is the essential quality of mediating: helping to bring information and reasoning from one side to the other.

As regards to **representativeness of participants** from outside administrative and political bodies, there is also a wide range between the cases reviewed: selected citizens or delegates of particular interest groups, local action groups, local members of chambers (Social Partnership), local and nation-wide or even international environmental groups, concerned scientists and planners, house owners and tenants etc. As a general rule it can be said, however, that there is no representation of all population groups in any of the participation processes. On the contrary, it is standard to have groups participating, who either :

- are directly affected by the projects in discussion;

- have some experience in public proceedings and/ or promoting interests, or

- represent media or scientific concerns.

The matter of representativity leads back to the primary cause for participative planning processes, namely the fact that political representatives together with administrators are either not representative of all affected population groups or are not able to work close enough on a single issue, because it is too complex and time-consuming to be dealt with properly in an ordinary political procedure. Given this as a starting point, it seems quite reasonable to have the most affected groups involved primarily, since they will have to live with the outcome. In addition to this, however, it has been frequently the case that opinion leaders and individuals or groups with experience in organizing and promoting interests, become more and more prevalent in the course of the process. This does not necessarily imply a dominance of "established" interests, since opposing groups as well may be very effective in voicing their concerns. Consequently, population groups with little voice and groups affected by the project, only indirectly (e.g. via budget constraints) in most cases, are not equally included in the participation process. Ironically it remains the domain of the political representatives to bring the interests of the least perceptible societal groups into the process. It has to be said, though, that a participation process including all directly and indirectly affected population groups would be very hard to develop and maintain workable over time and also very costly. Nevertheless, the inherent tendency of the most powerful individuals and groups to dominate proceedings, must be balanced form the beginning, starting with the composition of working groups, and has to be a major concern for process mediators and political/ administrative representatives.

3.4 Participation in Planning: Balance of Benefits and Disbenefits

Summarizing the experience from the cases presented above, the following Table 4 tries to outline and compare typical benefits and disbenefits of participation in the three settings for planning (land-use/ local development, economic development and environmental planning).

Table 4

Overview: Benefits and Disbenefits of Participation in Planning Processes

	Land-Use/ Local Development	Economic Development	Environment
Benefits	Increased knowledge about (unintended) impacts development intentions and projects of individuals, groups value setting increased transparency of the decision-making process, trust improved information transfer from administration/planning authority to residents conflicts management between rivaling groups stimulate private initiative and investment in renewal areas	Knowledge about develop- mental problems, experiences development intentions, projects of individual, and groups value setting, development priorities, self-determination mobilizing ideas, initiatives and projects from within regions, improved access to information, technological and service innovations Assist project development	Increased interest in impact, local/regional knowledge methodological criticism, alternative approaches value setting, influence on development philosophy improved technological, scientific and engineering quality revised and improved project design delay and/or stopping of dangerous/costly projects
Disbenefits	Power sharing/loss of power for council members, mayors political commitmment beyond constituencies, "political" cost: transparency of mistakes and interests high individual effort for participants and politicians uncertainty of outcome, risk of uncontrollable process development (e.g. dominance of property owners)	introduction of a new level of (political) decision-making conflict with existing structures (municipalities, states) power shift to strong regional groups/elites platform for individual econo- mic interest and lobbyism slowing-down decision-making and development measures conflict with (not sufficiently included) environmental interests	Power sharing/loss of power for state/federal authorities high political effort and risk establishing a new platform for fundamental project opposition delay and/or stopping of environmentally vital projects uncertainty of outcome, risk of uncontrollable process development

Concluding from the experience outlined above, **benefits from participation can be expected to outweigh disbenefits** - under the condition of a professionally guided process - in the following types of situations:

- in cases of major value conflicts and/ or developmental perspectives between different population groups;

- in cases of major infrastructures with effects on a specific region and its population;

- in cases of existing difficulties in the communication between administration and residents with regard to planning matters;

- in activating processes, where public actors try to stimulate private initiatives.

Reviewing the cases leads to the impression that non-participatory processes would have caused comparatively high costs in economical, environmental and political terms:

- pushing through projects without taking interests of opposing groups into account may be cheaper in economic terms at first glance only - a substantial avalanche of protest movements may be triggered by the very attempt to do so; this, consequently, can cause long delays or stop the project altogether;

- a continous counter-checking and controlling of major infrastructures may lead to a considerable improvement in the design and environmental impact or even lead to a questioning of the underlying assumptions altogether (e.g. is the annual increase of electricity output really needed and is pursuing that goal worth it destroying large sections of fluvial forests ?). It is a matter of value judgement, again, how such an outcome is being viewed - as societal gain or loss;

- the aspect of re-establishing trust between residents and administration may be of vital importance in situations, where this had been lost because of previous conflicts - a honest participation approach could be the only way out of a dead-lock situation;

- processes of developmental quality are, as has been argued above, conceivable only in a participative way - how and how intensively participatory elements are needed for a successful development process is, however, disputed.

Potential disbenefits from participation, however, can still be higher and the balance may turn negative, since any complex process involving politicians, administrators, planners and citizens bears the risk to become uncontrollable and destructive, blocking any decision-making for even further years. There can be no guarantee, but in the types of situations indicated above, it can only be recommended to establish a well-devised participatory process. Not to do so would seem to take a high risk of failure in both dimensions, quality of the plan and political acceptance of the plans or decisions made.

3.5 Conclusion

Apart from costs in financial and time dimensions, the major question weighing the pros and cons of participative planning remains: Is the process going to be politically viable, will it improve the political position of representatives, mayors, ministers? Or, if that is out of reach, will it be politically wiser to include public participants in decision-making than choose a process without? *Is it worth to get involved?*

One conclusion may be drawn from the cases reviewed (and from some others, not outlined above): Politicians and administrators make a committment the moment a participative process is started, a committment to participants and to an eventual process outcome. It is clear from the outset that the results from such a process will be different from the plan or project it started

with. And there has to be something in it for “outside” participants - if there are no results worth of their (usually voluntary) effort, dissatisfaction will be great. Such frustraction may be politically ignored for a while, but it will come back, one way or another -in media coverage, in elections, in problems with administrative personnel and so on.

To begin with such a process, getting involved needs to have some - politically relevant - advantage over not getting involved. It is being argued here that the abstract possibility of making a better quality development plan is usually not sufficient to provide this edge. Instead, there has to be a visibly “hot” issue and - more often than not - there has to be no other exit. From a planner’s viewpoint this may be less than optimal, since there will be a lot of cases where a better quality of the result would be possible and economically reasonable (and the participation deficit, particularly a the local level, is vast in Austria). But as long as this cannot be demonstrated in politically relevant terms, there is no way. In addition, it can be said that even legal provisions to make participation mandatory, for example in local development planning, would not really change matters: (Municipal) representatives obliged to have participatory elements in “their” planning process without wanting it would not be very trustworthy and engaged partners. As a result, there remain **two recommendations**, one for planners and one for politicians/ administrators:

- it is necessary for planners to improve their professional qualities with respect to process mediation substantially - in terms of information, moderation of discussions, process design. These professional qualities must provide some guarantee of the process quality and reduce the risk of a process turning desastrous, costly and endless. In addition, it seems worthwhile to have a professional discussion on the benefits and disbenefits of participation and continuously learn from experience;

- similarly, for politicians and administrators the environment has changed, has become much more complicated and turbulent. They, too, have to adapt and learn and prepare for a more open role as political mediators in a (wider) public decision-making process. The number of situations where participation is needed will grow further and become the rule rather than the exception. This calls for a new role for the policy-maker in general, as mediator in an open process, where the actual outcome is not clear in the beginning. To be able to politically survive in such an environment, and to know professionally how to behave in these situations, is the challenge for the future.

With rising environmental concern, a higher degree of education and new telecommunication technologies, a more interactive mode of public discussions emerges in general. Participation in planning therefore increasingly will become, growing from the areas outlined above, standard procedure. Information, however, about prerequisites, methodological requirements and potential (positive) outcomes of participation in comparison to non-participatory processes, is low and fragmentary at best. In order to lay grounds for a new generation of participation processes, it seems essential to improve this information basis. Professional education for planners has to be largely improved in terms of the political reasonings and implications of participation as well as in terms of essential mediating techniques. Teachers with practical experience in participation, however, are rare so far in Austrian universities. Hopefully, some of the experience with the first generation of participation processes in Austria will be used to prepare for a more successful second generation.

THE EFFECTS OF PARTICIPATION IN THE PLANNING PROCESS ON LAND-USE DEVELOPMENTS, THE ECONOMY AND THE ENVIRONMENT - BALANCE OF ADVANTAGES AND DISADVANTAGES OF PARTICIPATION

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INTRODUCTION

In the Netherlands, interest groups and private citizens have ample opportunity to express their opinion about plans and to influence government policies.

The Dutch have reclaimed and created their country. The Netherlands is a metropolitan country with free, enterprising and democracy-oriented people. The battle against the sea has reinforced their solidarity and made it necessary to safeguard their country for the future as well. Social conceptions and the meaning of planning have determined the extent and methods of public participation.

The following matters are addressed here:

- public participation and deliberation in the past, present and future;
- the conceptions of planning;
- the planning method and its application to regional plans.

The closing section is a short survey of the advantages and disadvantages of public participation and deliberation on the regional level. This report focuses on public participation and deliberation with respect to spatial planning.

The Appendix to the report is entitled “The Netherlands; The rules of spatial planning.” I advise the readers of this report to pay special attention to it.

Together the Report and Appendix concisely give you a good impression of regional spatial planning in the Netherlands.

1. THE PAST

1.1. Sowing the Seeds

The roots of the Western democratic system take us back to Ancient Athens. There an autocracy expanded into a new form of government, whereby all the decisions were made by a selected group of free citizens who came together at public meetings. The majority of the population still had no way to influence what the official authorities did or did not do. In essence, this form of “democracy” remained intact until the nineteenth century. Stimulated by economic or emancipatory circumstances, here and there experiments did involve more democratic relations, though they rarely entailed either the direct or indirect participation of one and all.

In addition to resistance to absolutism, the French Revolution gave rise to the discussion between the *volonté de tous* and the *volonté générale*. The French opted for the latter. In the Netherlands, this discussion seems to have been revived.

It was barely a century ago that a Dutch Prime Minister stated that "public involvement in government would lead to anarchy and to the rule of the lower quality segment of society over the higher quality segment." The same views could be heard in the other countries of Western Europe. In the end, however, universal suffrage was introduced in all these countries in the early twentieth century.

For decades it was as if the era of democratic experiments and innovation had come to a close and the best possible state had been achieved. Two world wars and an interbellum period during which the recently attained democratic values were ubiquitously threatened accounted for a change in attitude.

After the end of World War Two in 1945, the countries of Western Europe were willing to make every effort to insure their external security and prosperity. In the period of post-war reconstruction, this led to technocratic, material-oriented and functional planning. There was no time for "participation," nor did the Cabinet and Parliament have the required confidence in the citizens' capacity to speak their own minds.

In the early sixties, a shift began from a society oriented toward material prosperity to one more focused on well-being. Growing social awareness and the increasing need for fundamental democratization fit into this framework. A wide range of groups wanted to exert influence of their own on the processes that were shaping the developments in society.

Some doubts arose as to precisely how democratic the political decision-making process was. The bureaucratization of the policy-making and government apparatus made them all the more inaccessible. The people in power were too far away from the public at large, and were not adequately in touch with the changes affecting society.

A number of questions arose. Were all the interests being properly promoted? Did the parliamentary majority coincide with public opinion? Shouldn't the individual citizen be able to exercise direct influence on the decision-making process? Couldn't or shouldn't everyone be able to have a say? Shouldn't there be a far more direct democracy?

In the period from 1960 to 1970, the administrations of all the countries of Western Europe were confronted with questions of this kind. The people were demanding participation. Participation in the sense of taking part in decision-making and in the sense of directly influencing it.

1.2. The Dutch experience

Ever since the sixties, the Dutch "representative democracy" has been supplemented by "deliberation" and "public participation." They are both ways of giving the people a say. In the rest of this report, it is essential to draw a distinction between these concepts.

"Deliberation" can be defined as:

"An organized process, whereby a government gives other government levels and institutional groups the opportunity to present their interests, and whereby the various parties can rest assured that these interests are given proper consideration in the decision-making process."

The concept of "public participation" has been defined in a number of ways, most of which are vague and unclear. By the early seventies, there were many publications alone with their own different definitions.

I define **"public participation"** as:

"An organized process whereby the government gives private citizens, action groups and so forth the opportunity to make comments, and whereby they can rest assured that these comments are given proper consideration in the decision-making process."

For the participants, the essence of the difference between "deliberation" and "public participation" lies in:

* <u>the difference in input</u>

    - deliberation involves the promotion of interests;
    - public participation gives the people a chance to present their thoughts and ideas.

* <u>the instrumentation</u>

    - deliberation usually takes place at committees or work groups consisting of people on a more or less equal level. The proceedings are usually not open to the public;
    - public participation usually takes place at public hearings.

The people attending the hearings are not necessarily all on an equal level, since the private citizen usually has less information and knowledge at his disposal.

From the point of view of the government, deliberation and public participation both mean:

- gathering information, which is important in connection with the extent and complexity of the subject;
- examining and scrutinizing conflicting claims;
- to give information about the proposed policy and providing a solid foundation for it;
- gaining insight into the social feasibility of the proposed policy.

The first two points have to do with improving the policy quality, and the last two are related to gaining support for it.

There was initially quite a bit of criticism of the notion of giving the public at large a say. This was based upon apprehension about the short-sightedness, the detrimental effects on quality, and the waste of time it would entail. These objections have since been rebutted. What has exhibited a sharp rise however, has been the amount of time the drawing up of plans seems to

require. Public participation is certainly one of the factors here, though it is not the major one. The growing complexity of spatial planning issues, the links with environmental policies and the augmentation of the security provided by the law have all been contributing factors.

The legal foundation for deliberation and public participation has been laid down. The Spatial Planning Act and the Province and Municipality Act have provisions that make deliberation and public participation compulsory. The Provincial Spatial Planning Committee and the Provincial Environmental Protection Committee are required by law to consult with other levels of government and groups in society. Public participation is prescribed via by-laws that stipulate how "every individual" is to be involved in the policy-making.

The aspect of "**legal security**" is also significant. Every individual has a right to submit objections to every policy proposal. What this primarily involved at the start was safeguarding and addressing the actual interests of the residents or firms affected by a policy proposal. A wide interpretation of the term "actual interests" has made it possible for objection procedures to also be used to introduce objections based upon principles or ideologies and to have them lead to actual court cases.

2. THE PRESENT

Ever since 1970, public participation, deliberation, and formal objection procedures have mushroomed in the Netherlands. Public participation is very much in fashion nowadays. It has mainly benefited the groups that have proved themselves best able to use it as an instrument for defending their own interests. But among officials and citizens alike, there is some discontent with public participation.

Many an individual has noted that as a rule, the influence of public participation on decision-making remains confined to thinking and talking about the issue at hand, and only leads to marginal changes in the actual plans. In the end, the traditional pattern of information, oral and written reactions and discussion groups tend to result in a final report.

A change is now becoming evident in the route these processes almost automatically came to take in the past two decades. There is a marked tendency toward submitting objections, and the Dutch system provides ample opportunity to do so. The government itself has very few options in this respect. Officials have to follow legally stipulated procedures and refute petitions or objections with well-founded reasons. The same holds true for the partners involved in consultations. If they feel insufficient attention has been devoted to their interests, they can also turn to the objection procedure.

Thus the authorities are increasingly confronted with people and agencies submitting objections. Present-day legislation makes it possible for objections to be submitted at every planning phase (strategic and operational) and stage (exploratory, pre-design and design). The same holds true for the granting of licenses. This means projects at the national level only reach the implementation stage after a lengthy period of trials and tribulations. For example, the discussion about expanding the airports at Amsterdam and Maastricht has been going on for almost two decades! Talks on a heavy freight train connection between Rotterdam and the Ruhr district in Germany have been going on for a decade. Now the project is being updated, so the talks might as well start again from the start.

At the provincial level, the situation is the same. The environmental facilities (garbage dump sites, incineration plants, storage for dredgings) are particularly apt to evoke the "not in my backyard" effect.

In response, the legal framework is being adjusted. The Spatial Planning Act has been amended to include provisions that prevent choices that have been made from being open to discussion again and again. This is consequently a development toward fewer but more effective procedures equipped with clear limiting conditions.

At the moment, research is being conducted on fundamental amendments to divide the plan formulation and plan implementation time in half. For example, planning the construction of a railroad infrastructure takes an average of about sixteen years in the Netherlands or Germany. In Belgium or France, it takes only eight!

In addition, the same authorities are also anxious to gather support for their plans and projects. Public support is more than just approval. The people and the politicians have to have the same perception of a problem. It is on the basis of this perception that society can propose guidelines for solving the problem, which politicians can then choose from.

Distinctions should be drawn between political, institutional and societal public support.

The following forms of support are essential for effective action:

- political support: this refers to the role of the administration and elected officials;
- societal support: this refers to the citizens, the press, and interest groups;
- institutional support: this refers to other levels of government and to private institutions (trade union movement, Chambers of Commerce etc.).

The realization that the government can not do everything itself, but has to base its policies on a dialogue with its constituents forms the basis for the transformation in spatial planning from functional planning to strategic or open planning.

3. THE FUTURE

3.1. From functional to strategic planning[13]

After World War Two, functional planning matured into a planning approach consisting of the following four stages:

Research → Analysis → Programme → Plan (→Realization →Management).

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13 Strategic planning refers to a style of planning as described by Bryson (Bryson, J.M., Strategy Planning for Public and Non-Profit Organizations, San Francisco 1988). In the event that planning is focused on "... a function that crosses organizational or governmental boundaries ... the focus will be on how to organize collective thought and action within an interorganizational network where no person or institution is in charge, but in which many are involved." This is thus a different meaning than in England, where the term strategic planning is used to refer to spatial planning at the supra-local level.

There was a great deal of confidence in a scientific, inter-disciplinary approach. People worked towards final plans. In the event that the bureaucracy and administration deemed it necessary or unavoidable, the results in the form of developed plans were presented for deliberation and public participation.

Consultative sessions were not held beforehand, nor was there any prior involvement of partners or prior creation of backing or support.

But there was considerable public participation. Hearings were scheduled and information was distributed. Public participation was however soon equated with the options stipulated by law for submitting objections. There was “participation by petition.”

This narrow approach to participation nonetheless had sizeable merits. It opened up the field of spatial planning and enabled it to develop from an elite activity into a matter involving society as a whole.

This meant a major step toward the strategic planning method that has been practised in the Netherlands since the eighties. One of the objectives of strategic planning has been to create a balance between the aims to be strived for and their implementation. The available and anticipated means have served as guidelines for the aspiration level of the aims. One essential feature has been the attainment of a sturdy basis for the aim to be strived for by means of deliberation and negotiation. Collaboration with other parties was to generate the ideas, the means and the sturdy basis. The authorities have not presented completed plans, instead they have met the partners half way with concepts, thoughts, proposals and ideas. Throughout the planning process, all of them were discussed with the aim in mind of enabling the partners involved to harmoniously arrive at an understanding. This is why in the Netherlands, strategic planning has also come to be referred to as interactive planning.

An important element in strategic planning is a careful selection of the partners most closely linked to the spatial question. In this way, it is clearly distinguished from functional planning. In functional planning, via participation by petition, private citizens, action groups and residents played an important role. In the present-day decision-making procedure, this continues to be the case.

It is essential for strategic planning that from the very start of the planning process, selected partners are involved whose know-how can make a substantial contribution toward the aims to be formulated, the means to be utilized and the basis that is desired. In this sense, the meaning of spatial plans as the outcome of the process is of less significance. Plans have to be flexible, and should be no more than the political and administrational formulation of the results that have been attained.

Consultation, collaboration and negotiation are central to this concept of planning. Experience has shown that in general, it is very well possible to arrive at agreements with selected partners. These partners include other government levels and societal institutions such as Chambers of Commerce, organizations of employers and employees, farming and environmental organizations, representatives of larger firms, and of social, cultural, educational or medical facilities.

Neither private citizens nor action groups are included among these partners. Up to today, strategic planning has not provided adequate space for public participation as an independent phenomenon, as a "process whereby citizens can count on their comments playing a full-fledged role in the decision-making."

In this regard, the municipalities score clearly better than the provinces. At the land-use plan level, they hold open and informative meetings for everyone. The results are discussed in the Municipal Council.

The provinces exhibit a wide range of variety. In cases where there is comprehensive top-down planning, as in a regional plan, the emphasis is clearly on consultations and negotiations with selected partners. Public participation is linked to the procedure for submitting objections. The result is predictable: thousands of petitions and cynical articles in the newspapers.

If there is a bottom-up approach at the implementation level, quite a different picture is presented. Then the province inventories the bottlenecks, wishes and desires in the region involved. It proceeds to present its solutions to the social problems that have been noted to the parties concerned. Here public participation takes place in much the same way as it was designed to take place.

It is clear that if and when public participation is equated with submitting objections, there is no sturdy societal basis for the desired activity. The mere existence of a political and institutional basis is not enough to arrive at implementation. The sheer numbers of petitions are then bound to lead to lengthy and time-consuming procedures.

At the same time, the lack of public support means that every implementation plan and every request for a license will be grounds for new protests against the activity.

As I noted in section 2, at the moment the mass utilization of objection procedures is leading to the development of a new legal framework that provides for fewer but more effective procedures equipped with clear limiting conditions.

For the rest, the legislative bodies are well aware that the strategic planning approach has a "public participation deficiency." For this reason, the general legislation has recently required provinces and municipalities to formulate a public participation by-law. This by-law states that with respect to all the policy intentions:

- public announcements have to be made;
- all the documents have to be open to public inspection;
- public meetings have to be held;
- a report has to be written on what is said at the meetings;
- reasons have to be given for why comments made at the meetings are not given due consideration.

I would like to summarize by saying that the strategic planning approach is an excellent method for creating a sturdy political and institutional basis (public support) via consultation, collaboration and negotiation.

Devoting more attention to public participation and adopting a serious attitude toward it will help create a larger societal basis than has been the case up to now. This would greatly enhance the effectiveness of spatial planning.

3.2. Applying strategic planning method to regional plans

The most important regional document is the regional plan. The Provincial Executive is responsible for the preparations. The Provincial Councils draw up the plan. If there are objections to essential components, appeals can be submitted to a judge.

How does a regional plan come into existence, and what role is played by deliberation, public participation and the objection procedure?

According to the strategic planning method, a regional plan comes into existence as follows:

- the Provincial Spatial Planning Agency inventories which spatial problems in the region require a solution. On the basis of an initial investigation among the political and institutional groups involved, the Provincial Executive makes a selection of the problems to be addressed. At the same time, a concept is developed of the envisioned spatial and environmental quality and the economic development;

- negotiations are then held with selected partners about a joint definition of the problem. This is a creative process in which the foundation is laid for devising acceptable solutions. Step by step, the commitment of the parties is then determined;

For the regional plans, this means that:

- in the first place, a spatial long-term concept is drawn up, which is in part the result of consultations with partners. Upon this basis, public participation can be granted. The comments made by private citizens and action groups can be incorporated into the process that is to lead to a formal plan;

- the process of consultation, negotiation and collaboration with partners leads to the formulation of a draft plan. Public participation can also be granted on this plan;

- After due consideration of all the comments made throughout the deliberation and public participation period, the Provincial Executive decides to present the plan to the Provincial Council. On this occasion, anyone who so desires can submit objections to the plan to the Provincial States. Objections to essential components can be repeated before a judge.

As has been noted above, this form of plan development does not centre around the formulation of the plan but around the process. The process in which via consultation and negotiation, sturdy support and cooperation are mustered for the implementation.

The plan is more the democratic registration of what has been reached in the process. This means high demands have to be made of the democratic level of this process. Not only the administration but also the population at large have to be able to follow the results and exert influence or express opinions about them. Up to now, experience has shown that incorporating public participation into this process has not been easy.

We still do not quite know how to effectuate the form and contents of this incorporation in a way that is efficient, time-effective and politically correct.

4. DELIBERATION AND PUBLIC PARTICIPATION: PROS AND CONS

As regards deliberation and public participation, the strategic planning approach has the following advantages and disadvantages:

* deliberation with selected partners

  - contributes toward a sturdy basis;
  - grants greater insight and knowledge;
  - creates ties with the results that are attained;
  - contributes toward the input of legal, financial or other means on the part of the partners;
  - promotes a complex consultation structure;
  - requires creativity on the part of management to fit consultations into the existing regulations or procedures;
  - requires adequate process and time management.

* public participation

  - contributes toward a sturdy basis;
  - barely contributes toward greater insight or knowledge at the provincial level;
  - fails to lead to ties on the part of private citizens or action groups;
  - requires adequate process and time management.

Both these forms of involving private society in spatial planning are necessary if accepted, feasible results are to be attained. The advantages more than compensate for the costs. The costs, especially personnel expenses, are never quantified. They are however only marginal compared to the total process, planning and implementation costs.

In the Netherlands, the costs of deliberation and public participation are a non-issue.

In my opinion, a Western democracy has to invest in the involvement of all its residents in spatial planning, economic and environmental processes. Deliberation and public participation are the key words in this respect. Of course the actual implementation can differ depending on the administration and legal situation in each country.

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APPENDIX

The Netherlands
The rules of spatial planning

The Netherlands, in comparison with other European countries, is very densely populated, with on average 500 people per square kilometer (and in some parts of the country as high as 900 people per square kilometer). It is in the west, dominated by the four cities of Amsterdam, The Hague, Rotterdam and Utrecht, that densities are highest. The conurbation around each of those four cities constitute the *Randstad* (ring city) Holland, and there live 7 million out of the 16 million Dutch.

Almost all the country is urbanised or cultivated in one way or another. The result is that many different interest groups and coalitions are competing for very scarce space. This issue has to be handled with great care as spatial planning is a politically contentious issue.

Spatial planning in The Netherlands is exercised at three levels of government - national, provincial and municipal.

At the national level the Minister of Housing, Spatial Planning and Environment is responsible for the preparation of government policy on spatial planning.

Besides the more generally-oriented reports on spatial planning, government policy on spatial planning can also be expressed in plans for specific aspects of national spatial policy. Such plans can consist of structural outline sketches, structural outline plans, and concrete policy decisions that are important for national spatial policy. Both the reports and the plan can be deemed national spatial planning key-decisions (*p.k.b.-procedure*) and follow the procedure under that title.

The aim of this is to involve in the decision-making all of those with any kind of interest. But the final decisions is still taken by the Government, and Parliament can pass amendments.

The other way in which the national level directs spatial planning is, of course, via the normal legislation.

The most important is the Spatial Planning Act of 1965. This legislation is frequently amended and worked out in new decrees.

At the provincial level, the guidelines set by the national government are supposed to be incorporated in regional plans (*streekplannen*). The regional plan is the most important instrument by which the provincial administration can make its spatial policy visible. Such a regional plan indicates the main outlines of the future development of the entire province or of a part thereof.

A regional plan consists of:

- a description in main outlines of the most desirable development, and, where necessary, of the phases through which such a development would or could be actualized;

- one or more maps with explanatory notes, in which these main outlines are as far as possible represented.

The regional plan is accompanied by:

- an experiment in which the ideas and results of relevant research and consultations underlying the plan have been set out.

A regional plan indicates the extent to which the Provincial Executive must elaborate this plan and to what extent it is allowed to deviate from it. The rules through which the Provincial Executive must elaborate the plan and the limits within which they are allowed to deviate should be laid down in the regional plan. Moreover, in respect of the power to deviate it also holds that decisions which have been designated as essential in the regional plan cannot be deviated from; if one wishes to deviate from such decisions, the regional plan will on this account have to be revised.

The preparation of a regional plan takes place under the authority of the Provincial Executive. For this, they consult the Provincial Spatial Planning Committee and carry out discussions with the neighbouring provincial administration, the municipal and polder boards and national agencies involved, and - in the case of the border regions - with the authorities on the other side of the border. After the draft plan has been submitted for public inspection, everybody is free to lodge objections. After this the Provincial Council establishes the plan, whether or not with amendments. The established plan must then be “announced” to the Minister of Spatial Planning. In practice this means that the Minister will ask the National Spatial Planning Committee for advice, which will test the plan to see if it is in line with the national spatial planning policy. If the plan turns out to be in conflict with the national spatial policy, the advice of the National Spatial Planning Committee can cause the Minister to issue a directive to the provincial administration.

The regional plan established in this manner subsequently provides the basis for the approval policy of the Provincial Executive on municipal land-use plans, and for the issuing, if any, of directives by the Provincial Executive.

A regional plan is by its nature a rough plan and has a strongly programmatic character. It is, in particular, of administrative significance as a guide for the province’s own policy and for the assessment of the policy of the municipal authority. All spatially-relevant measures within a plan area are weighed in a regional plan; consequently (and also because of its scale and its place at the administrative middle level) the regional plan is entitled the integration framework of all spatially-relevant measures.

At provincial level also the working through of the spatial policy being pursued there towards the municipal level (which will usually have its basis in the regional plan) will primarily take place through consultation. The provincial administration's most important instrument for the elaboration of its policy is the regulation that municipal land-use plans are subject to the approval of the Provincial Executive.

It is at the level of municipalities that the guidelines and frameworks from above have to find a form in land-use plans which can be directly implemented. But first there can be one more "framework-setting" layer: the municipality can make a structure plan, fairly general, covering all large area.

It is the "land-use plan" (*bestemmingsplan*) which is concrete, detailed and for a small area. It is the only plan in the Spatial Planning Act that is directly binding upon the citizen and because of that reaches much further than the other plan models which have been discussed. Its significance for the citizen and on the public authority. Its significance for the citizen is that it forbids, it is negative planning, nothing can be built except what is in accordance with the plan. The significance of the plan for the authority is that it states what positive actions it can take (e.g. servicing land, laying infrastructure). Detailed land-use plans have to be approved by the province and the citizen can appeal to the municipality, to the province and finally to the Government against those plans.

Administration

The administration of the town-planning system at the three levels is as follows. Each tier has a body with political responsibility: at the centre, the Crown and the ministers plus Parliament; in the provinces, the Council and the Executive (*Gedeputeerde Staten*); in the municipalities, the Council and the Executive (*Burgemeester en Wethouders*). Each level also has land-use planning agencies working under these political bodies.

At the national level, the most important agencies are:

- the Advisory Spatial Planning Council (*Raad van advies voor de Ruimtelijke ordening*). This is very broadly constituted, so that all sections of society can be involved in determining the general shape of national land-use planning policy;

- the National Spatial Planning Committee (*Rijksplanologische Commissie*). There are many different "sector" Departments, and co-ordination between them is exceedingly important. This is the task of this Committee. It is for discussions between civil servants, and all Ministers are represented whose responsibilities involve them in the use of land. It can advise and make proposals for a better co-ordination of national planning policy;

- the national Spatial Planning Agency (*Rijksplanologische Dienst*). This falls under the Ministry of Housing, Spatial Planning and the Enviroment (Ministerie van Volkshuisvesting, Ruimtelijke Ordening en Milieubeheer). Its tasks are to advise (for example, by preparing policy notes) and to check.

At the provincial level there are two main land-use planning agencies:

- the Provincial Spatial Planning Committee (*Provinciale Planologische Commissie*). This is a co-ordinating body with civil servants representing the policy sectors involved in spatial planning. Further, this committee advises the provincial Council and Executive;

- the Provincial Spatial Planning Agency (*Provinciale Dienst Ruimte en Groen*). This has advisory and control functions, and it is responsible to the provincial Executive. Its form and function are not specified by law.

At the municipal level, the law allows much freedom in the organisation of land-use agencies; the municipality can set up its own department or can employ private consultants. In practice, the smaller authorities tend to employ private agencies; the larger authorities to prepare their own plans.

At all times however, political responsibility for spatial planning is in the hands of the politicians.

Each of the three tiers of government has three sorts of responsibility - to check, to initiate, to co-ordinate.

- In general, government at a lower level is *checked* and controlled by Government at a higher level.

- *Co-ordination* is very important in a country where so many agencies are involved in land-use planning, and it is organised both horizontally and vertically. At the national, horizontal co-ordination is the task mainly of the Advisory Spatial Planning Council.

At provincial level, the Provincial Spatial Planning Committee is responsible for both horizontal and vertical co-ordination. Vertical co-ordination is further achieved through the hierarchical organisation of the land-use planning system. Better co-ordination is also a reason why advisory committees are set up.

The complexity of the spatial planning system in the Netherlands reflects the wish to use the scarce space in the best possible way.

The implementation of land-use planning

This is primarly a matter for the municipality. Higher authorities (central government and provinces) establish the framework, and within those limits a municipality makes its own land-use plans. These concern directly the land and buildings within the municipality, so it is at this level that implementation must take place.

The "*bestemmingsplan*"

The most important instruments which the municipality has for doing this is the land-use plan (*bestemmingsplan*). This provides a framework within which very many municipal activities can be integrated.

A *"bestemmingsplan"* consists of:

- one or more maps with the explanatory notes, the land uses being indicated on the maps;

- regulations concerning the use of land buildings.

The plan is accompanied by an explanation, in which the ideas and the results of research and consultations underlying the plan are stated.

The map(s) with the relevant legislation state(s) the land uses permitted in order to ensure sound spatial development.

By its regulations, the land-use plan imposes binding restrictions on the citizen's property right. It is the only plan which is directly binding, amongst other ways, via the building and construction permit requirement and via instructions for use. Moreover, land can be compulsorily purchased on the basis of the land-use plan. Because of all these factors, the plan has been provided with a thorough procedure in the Spatial Planning Act with many legal guarantees. The plan is established by the municipal council and approved by the provincial executive, followed by the possibility of lodging an appeal with the Council State Department of Administrative Disputes.

The possibility exists of making a "global" plan which the municipal executive can later eleborate.

THE EFFECTS OF PARTICIPATION IN THE PLANNING PROCESS ON LAND-USE DEVELOPMENTS, THE ECONOMY AND THE ENVIRONMENT - BALANCE OF ADVANTAGES AND DISADVANTAGES OF PARTICIPATION

Conclusions by Mr Adrian MOTIU,
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The earlier reports have shown that public participation can be achieved through various means in several countries. It ranges from information and deliberation to consultation or consent, administrative or legal objections, as well as administrative or judicial review. Such rights can be granted to directly affected individuals, third parties, special interest groups, citizens of a given area or the general public as such, i.e. everyone interested in participating in a certain development plan.

Public participation in regional/spatial planning is, just like public participation in other governmental or administrative affairs, an important element of a democratic society. The citizen is not only the passive addressee or consumer, but also the initiator and controller. Given this basic assumption of the democratic value of public participation, it was the task of this third seminar session to evaluate the possible positive as well as negative effects of public participation in the regional planning process.

Such effects can obviously be felt with respect to land-use developments, the general economic situation in a certain area and its environment, and some important effects can be summarized briefly as follows:

- public participation as an additional administrative step might generally take more time for land-use developments or the creation of a spatial plan. Such delay can be positive, if it provides for a more thorough analysis rather than a quick but flawed planning. It can be negative, if the length of the procedure outweighs possible benefits, i.e. land-use developments become unpredictable in time or frivolous delays are given room;

- in the same way, additional costs can accrue for the authorities drawing up a spatial plan or individual land-use developers. The costs of public participation should hence be in relation to the total costs of the project in question and the increase in its quality. Due to the long-lasting effects of building and construction activities, whether on a micro or macro level, no-cost planning is, however, not feasible;

- the public opinion and possible reactions towards a planning or land use development project can be realized earlier and thus be taken into account for the finalizing of the project;

- the rights of those enabled to participate can be safeguarded better. Such rights can

range from individual property rights to more general obligations, like for example the preservation of an intact environment;

- the possible environmental, economic and social impact of a planning or development project can be analyzed under a greater scope by enlarging the number of those entitled to participate.

A standardized and fixed scheme of how much public participation should be foreseen cannot be developed for all of Europe. Obviously, some factors will play an important role such as the allocation of spatial planning powers to the different levels of government or administration as well as between those levels themselves, the particular administrative and legal system, the size of the planning project, and the importance of a project for others.

Excessive law suits were often regarded as negative, the latter being, however, more a problem of the particular legal system rather than of the spatial planning system as such. Some countries have thus undertaken to limit the judicial review process in the case of planning procedures. Nevertheless, the effects of public participation can be seen as mostly positive. In order to improve the situation, the public should be informed fully and at an early stage, not only about a particular project, but also about the wider implications of their project, its impact in related fields and other correlations.

THEME 4

PUBLIC PARTICIPATION IN THE EUROPEAN CONTEXT

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PUBLIC PARTICIPATION IN THE EUROPEAN CONTEXT

Transfrontier co-operation and public participation

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I. REFERENTIAL FRAMEWORK

Public participation in the European context has at least two meanings: on the one hand it could mean "participation within cross-border planning" and on the other "citizens' participation in the policy making process of the EU". The second area will not be the subject of the following discussion. There is neither a legal provision for direct citizen participation nor is it feasible. What we have instead are forms of indirect participation:

- via the newly founded Committee of the Regions (Article 198a);
- via various lobbying activities of regions and interest groups (Morass 1992; Benz 1993; Engel 1993);
- via the reorganization of the Structure Funds according to which the distribution of funds is governed by the principles of partnership[14] and programme planning (by regions)[15].

How well those intermediary structures are capable of representing citizens' interests has yet to be investigated. But as they only represent generalized interests of their members and pursue institutional interests more than public interests their relevance in terms of representing citizens' interests may be negligible.

In the following I therefore concentrate on cross-border planning on the regional level and citizen participation therein.

Cross-border planning became a frequently heard term since the discussion of the integrated European market came up.[16] The term signifies the coordination of regional planning across the regional borders of planning agencies. In general all those denominations of areas need cross-border coordination which have impacts on neighbouring regions. Systematically there are three types of signatures:

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14 Directive No. 2081/93 of July 20th 1993, Article 4.

15 Directive No. 2082/93 of July 20th 1993, Article 5.

16 The Federal Government of Germany propagates cross-border co-operation in its "Orienting Framework on Regional Order" (Federal Government, 1992, 19).

- first, those which produce negative external effects (e.g.: environmental burdens, induced traffic burdens);

- second, those which require complementary planning in the neighbouring regions (e.g.: open space planning in particular when defining cross-border Natural Parks, nature protection areas or environmental sanitation areas);

- third, those which induce needs for cross-border networking (e.g.: denominations of central places, transport axes, development axes, economic development concepts).

One could add planning decisions which are to prevent ruinous competition between local authorities when attracting enterprises[17]. However they are difficulty to conceive - at least according to the German laws.

Following the DELORS-initiative "EC 1993" (1987) the readiness to institutionalize cross-border co-operation grew considerably, mostly spurred by fear of losing competitiveness[18]. In part the co-operation was fostered by fiscal incentives. The EC, for instance, motivates cross-border co-operation by INTERREG[19]. However, the latter initiatives refer primarily to cross-border economic development. In the following we restrict the argument to co-operation in the area of regional planning because here the most intense co-operation can presently be found.

II. CROSS-BORDER PLANNING AS NETWORKS

Cross-border planning reflects the classical collective good problem: all actors profit more or less from collective goods, none can be excluded if he refuses to pay. On the other hand the cost sharing is distributed very unevenly, at least not in proportion to the benefits derived. Therefore, each actor is induced to adopt the role of free rider. Regional planning is a collective good: when it is effective it benefits the whole region; but the inherent restrictions are distributed very unevenly between the regional actors. Thus, regional planning and cross-border planning in particular is supposed to be blocked by various actors.

In addition to those political costs we have to take into account the many legal, institutional and positional differences between the regions of different national contexts.

- Thus the cooperating actors may have very different degrees of autonomy: one needs only to compare German local governments with their French counterparts.

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17 E.g.: forbidding enticing away of enterprises; coordinating interregionally used industrial areas on the base of regulations to organize intergovernmental fiscal relations.

18 In Germany: Rhein-Forum (from Aschaffenburg to Mainz), Arbeitskreis Rhein-Neckar-Dreieck e.V. (Mannheim), Technologieregion Karlsruhe (Karlsruhe), Regional Conferences in Northrhine-Westphalia, Hesse and Lower Saxony.

19 EC Initiative based on Article 10 of the Directive 4254/88 (EFRD).

- The planning systems of the different partners may be very different as far as reaching goals (who are bound by them), steering authority (what may be regulated by plans) and binding power (some plans are only of an indicative nature while others are binding) are concerned. This is particularly pronounced in the relation between Germany and France: the German system of regional planning covers the whole German area and is geared towards regional ordering; the French system does not cover all the areas but deals selectively with certain areas; it is based on projects and geared towards regional development (for details cf. Kistenmacher/Saalbach 1992). But also for Dutch partners used to a negotiating planning style, the rigid German system may be a barrier to co-operation, especially since the Dutch system is a more strategically oriented than an ordering concept (Dekker 1993).

- Finally there may be considerable differences in the constitutional and political status of the cooperating actors. The planning agencies of neighbouring countries belong to different administrative levels (e.g.: a stronger central influence in one country compared to a highly decentralized planning system in the other); in addition, the steering competencies of regional planners towards sector agencies and local authorities differs greatly from country to country.

Nonetheless, there are numerous examples of successful co-operations. In Germany, on the level of Federal and *Länder* governments we find Planning Commissions with all western neighbouring countries. The commissions are based on international treaties. But in general they are mere coordinating committees on the *Länder* level without an administrative body proper[20] and without the participation of local authorities - even though they are the true actors of cross-border co-operation. Nonetheless, the governmental commissions are the framework and backbone for the practical co-operation on the lower regional level.

The interregional co-operation proper takes place on the regional level (in Germany: below *Länder* level). Within the EU, mostly induced by subsidizing programmes, one could name[21]: MHAL (Maastricht, Heelen, Aachen, Lüttich, Hasselt, Genk), Euregio Maas-Rhein (Soeters 1993), Region Rhein-Waal (Nijmwegen, Arnheim, Emmerich), EUREGIO (Twente, Oost-Gelderland, Kreise: Coesfeld, Borken, Steinfurt, Grafschaft Bentheim) (ILS 1985, Gabbe 1985; 1992), the region Ems-Dollart (Verspohl 1992), PAMINA (Südpfalz, Mittlerer Oberrhein, Nordelsaß) (Kistenmacher/Saalbach 1992), EURODISTRIKT Saarbrücken and Metz, co-operation in the region of “Saar-Lothringen-Luxembourg”, which was organized on the governmental level inducing local authorities to organize their own co-operation[22].

Cross-border planning is beginning to materialize even with neighbouring countries outside

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20 Except for the fact that a section within the Ministry responsible for regional planning is also responsible for managing the intergovernmental co-operation.

21 We exclude the economically oriented forms of co-operation like "Neue Hanse Interregio" (Bremen, Lower Saxony, four Dutch provinces).

22 Local authorities convened an association called COMREGIO.

the EU, but is not always supported by governmental commissions. Examples are the International Conference of Lake Constance (since 1972), the Regio Basiliensis and the Euregios between East Germany and neighbouring countries like Euregio Neisse (Hoyerswerda, Görlitz, Jelenia Gora) or the Euregio Egrensis (Bavaria, Saxony, Bohemia).

To institutionalize the co-operation there exists a bunch of organizational devices. Although the European Council developed a framework convention (1980) which was signed by the Federal Republic of Germany[23], additional bilateral conventions are required to transform it into practice.

In praxis the private association is preferred. A private association does not require an international treaty. However, the national governments must consent that local authorities may sign contracts with authorities of foreign countries. For the conventions are bound to the area of foreign policy on which the national government holds a monopoly. (Kistenmacher/Saalbach 1992).

Experiences with cross-border planning have not been evaluated yet. However, from researches on regional conferences in Northrhine-Westfalia, metropolitan associations in Germany (Fürst et al. 1990; Heinze et al. 1992, Aigner/Miosga 1994), on the Euregio Maas-Rhein (Soeters 1993) and international comparative studies (van den Berg et al. 1992; European Council 1993) some general conclusions may be drawn:

1. Formal institutional arrangements solve only a small part of the problems. On the contrary, those arrangements are the most stable which give incentives to very weak institutionalized co-operations, i.e network-co-operations ("soft institutions") (Lang 1989). In the most simple form conferences take the place of administrative bodies; the talks of dominant importance are coordinating the activities[24]. Planning receives only subordinated importance - in case planning activities are necessary they are contracted out to private consultants or local governments. Such cooperative devices exclude all those tensions typical for formalized associations like:

- between the need for sovereignty of the members and the need for institutional own interest of the new interagency organisation;

- between political incentives (voters' behaviour) or fiscal incentives (fiscal conditional grants), geared to local authorities, on the one hand and regional collective needs on the other;

- between abstract goals of area-wide regional plans which induce little political engagement and concrete needs to coordinate on a project base which frequently could be better dealt with on a bilateral base.

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23 Europäisches Rahmenübereinkommen über die grenzüberschreitende Zusammenarbeit zwischen Gebietskörperschaften, BGBI.II, 1981, p.966.

24 In part they may be supported by process organizations.

2. The endeavors of “soft institutions” are, to a lesser extent, directed towards a common plan but more towards permanent talks to coordinate concrete projects. All actors concerned are ready to intensify closer contacts. In effect, cross-border co-operation acts as a network based on dense communication, faith and a readiness of participants to reach compromises and consensus (Soeters 1993). The co-operation is forced together by common problems.

3. Thus, cross-border co-operation for planning is intensively dependent on persons. It is only doing well if managed as network: the collaborating persons learn to know and to estimate each other so well that intensive relations of faith and a propensity to compromise for the sake of the “common good” develop. In general, it results in better interrelated plans. Personal networks and a highly motivated leading actor (promotor) may be the most important prerequisites for a successful co-operation.

4. Frequently, the management of those networks leads to developing a common friend-foe-image which intensifies the internal cohesion:

- by selecting a region which is considered to be the most important competitor;

- by exploiting the common fear of regional decline;

- by capitalizing on the common feeling to be neglected by the state government because of a peripheral political position.

In that case, the strength of the network-organization lies in a common strategy towards third parties, especially towards the European Commission or (within Germany) towards the federal or Land government. But because of that orientation the corporation may lack internal communication, faith building and networking proper.

5. In many cross-border co-operations the “correct” delimitation of the region receives too much emphasis. That may be due to tactical games to block any attempts for cross-border co-operation by endless debates on that topic.

- As to the criteria chosen for delimitation, it is interesting that, whenever the initiative for co-operation derives from the state, the criteria for regional delimitation stress socio-economic interrelations or formal administrative borders. Such criteria are, however, too static and not at all problem-oriented. On the other hand, whenever the initiative comes “from below” the regional delimitation is pragmatically based on the number of actors willing to cooperate. That is, in general, a “dynamic” delimitation open for additional members and action-oriented at that.

6. Although networking between administrative functionaries is much easier, basically more “technical-rational” and more goal-oriented, the results require political acceptance based on political decision making. Therefore many cross-border co-operations find it useful to integrate politicians into the planning process. To do so may produce the side

effect of developing a “regional feeling” amongst local politicians.

III. PUBLIC PARTICIPATION

Cross-border planning is open to integrate organized groups. They are, so to speak, “compatible to networks”, because they are represented by persons. In contrast, citizen groups are less adapted to the functional logic of networks based on:

- personal contact systems;
- not formally binding results;
- rational discourses.

For citizen groups need a permanent feedback of representatives to their “base”. Because of higher needs of legitimization representatives have only small leeway to negotiate in networks. Representatives are prone to get into trouble if integrated too closely into networks of policy making which quickly are labeled intransparent and “mafia-like” by citizens. To integrate citizen groups would then require the networks to become more formal thus destroying their functional logic.

Up to now, formal citizen participation was no problem for cross-border planning since the projects and topics worked on were dominantly of the type which, on the national level, also did not require citizen participation[25]. Where citizen participation is necessary - e.g. for environmental impact assessment - it is organized locally under the requirements of the local planning law, national competencies and the participation routines ruling in that country.

But the more intense cross-border becomes, the more severe are the risks that local participation gets in too late, at a time when important marks have already been set by informal prior decisions. Therefore, it is of growing importance that citizen participation is introduced on the level of cross-border planning.

Citizen participation is ambiguous. On the one hand it reduces the functionality of cross-border networks because participation requires more formal organisation and rules of decision-making. On the other hand citizens’ concerns need consideration in good planning and could best be guarded if included very early, i.e. before the complete plans are put forward, we need some solution.

A solution which quickly springs to mind would be to shift the requirement to institutionalize back to the citizens. Cross-border networks only co-opt those representatives of citizen groups that have formal regulations to choose their representatives and can endow them with enough leeway to negotiate in networks. That would enforce citizens to develop formally

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25 Examples are: Commonly organized cultural events, roads for bikes, common touristical projects, common regional marketing strategies, cross-border co-operation of authorities (e.g. police offices), coordinated vocational training (EUREGIO: Anual report 1993, 18).

institutionalized organisations which legitimate their representatives by formal procedures.

But the requirement to institutionalize formally may overtax the potentials of many citizens thus producing highly selective results. Only those citizen concerns get the privilege of being listened at that are well organized.

The dilemma can be solved if (a) different modes of citizen participation are discerned and (b) one relates the different formes to the different functions and purposes of participation.

Ad (a): Modes of citizen participation can be unilateral communicative acts. Citizens are informed by planners, decisions are taken transparently and can be duplicated by citizens. Real participation, however, is bilaterally organized, a communicative act requiring the dialogue between the planner and those concerned. Dialogues could have the form of:

- consultation,

- advocacy planning or,

- impacting co-operation (e.g. “planning cells” (Peter Dienelt) and “future workshops” (Robert Jungk)).

Ad (b): Citizen participation can perform three different functions. Primarily it serves for improving the planners’solution by effectively integrating citizens’ concerns (participation as creative act). Very frequently the main purpose is to gain acceptance (participation as conflict mediation process). But in a growing number of cases participation is used to make citizens feel responsible for the outcome and to induce them into contributing to it (participation as productive power). In the first case it would be sufficient to co-opt the citizens’ advocats. Such approaches are already pursued in various ways and there exist various models to achieve the goal. In the other two cases the individual citizen must be integrated directly.

The practical models of citizen participation within cross-border planning apply different solutions in the problem:

1. The majority of cooperating devices exclude the problem be referring the citizens to the national systems of citizen participation (mostly on the local level). Actors in cross-border networks thus make use of the advantages of dual level arenas of policy making. Decisions to be taken on a sub-regional level could be prepared on a regional level thus binding the subsequent decisions. Or, if the regional level produces high political costs, actors could change to the local level where they would try to finish up with completed facts (*faits accomplis*). They would either profit from the fact that the higher regional level would be found by decisions of lower levels or that lower level decisions could be pre-defined at higher levels thus reducing the politically costly citizens participation to a narrowly controlled segment.

2. A smaller number of co-operations restrict participation to continuously informing their citizens on the work of the cross-border planning. By doing so, they pursue two goals. On the one hand, they use the instrument as “public relation” trying to gain citizen support and acceptance. On the other hand, they want to enforce the feeling of regional community thus

indirectly improving the conditions for reaching consensus on regional concerns. The feeling of citizens for community is supposed to intensify so that citizens later on are ready to accept a new regional governing body for instance an institutionalized cross-border association. *Grosso modo*, this is the approach adopted by MHAL and some Euregios.

3. Citizens are integrated into the cross-border planning process if they are organized. This is the approach followed by Regio Basiliensis. The Regio is organized as private association with organized groups entitled to become members. As such they may directly participate in the development of cross-border projects. Regio Basiliensis today encompasses more than 500 members. The approach leads to a certain selectivity. Praxis shows that it is the economic interest groups[26] participating most actively while citizens tend to interfere intermittently via environmental groups.

Such forms of intermediary organization with a strong bias towards "meso-corporatism" (Williamson 1989) suffer from unresolved problems of legitimization. While on the national level there exist different substitutes (e.g.: controlling mass media; scientific critique), on the level of cross-border co-operation legitimization problems have long been obscured by personal networks. The fact that the ordinary political control devices neglected the problem thus endowed cross-border co-operation with the privilege of "technical planning without political control".

IV. CONCLUDING REMARKS

Cross-border planning needs more citizen participation, but since the transnational coordinating devices mostly rest on personal networks, participatory improvements are difficulty to achieve. The practical solutions hitherto applied do not meet the standards of "good participation". But improving participation has also to take into account the entailing political costs of transnational co-operation which may reduce incentives to cooperate. For participation is not merely an expression of:

- the changing role of the state in our society which is symbolized by the fact that the traditional hierarchical interventionist steering model gives way to modes of cooperative problem-solving thus taking account of the growing number of "exit-options" available to the actors and of the peripherization and pluralization of societal powers;

- the growing governmental need to respond to citizens and to democratize planning control.

Participation also implies negative effects:

- it opens up new access roads to actors strong in articulating their concerns thus boasting egoism to the detriment of collective concerns. Participatory devices are

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[26] In general they are better organized, dispose of more financial means and personal resources and have clearer objectives as to what the results of their co-operation should be.

used by protesters, either of a reformist or a conservative nature, while the growing part of those fed up with politics and “apathics” withdraw from politics (Sacchi 1994);

- participation raises the number of conflicts without - at the same time - enlarging the capacity of conflict resolution. Because of growing political costs, planning processes are becoming slower and protracted;

- participation is getting overfraught by functions which in the political system should be performed by other institutions. Those functions are: control of political processes, providing acceptance for political solutions and conflict mediation.

Participation within the cross-border context thus not only is part of the general problem of how to consider citizens’ concerns more effectively in planning processes. It is more and besides all a question of how to develop new models to integrate citizens’ concerns without:

- fostering citizens’ egoism;

- driving up political costs of planning and,

- enlarging the gap between growing needs to resolve conflicts and reduced capacity to mediate conflicts.

Therefore, the European organizations are called upon to support more innovative social experiments to develop participatory devices more attuned to the different needs of modern societies.

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PUBLIC PARTICIPATION IN THE EUROPEAN CONTEXT

Public participation in regional/spatial planning: the interaction of different systems in Belgium

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I. INTRODUCTION

1. Background and general observations

In Belgium as in most other European countries, spatial planning and management takes place through regional, district and local plans. The smaller the area covered, the more detailed and binding the plans are. The applicable legislation makes it clear that the principles of area-wide development are economic, social and aesthetic, designed to preserve the natural beauties of the country intact.

The Local Government Act of 30 March 1836 invested the municipalities with jurisdiction over all town and country planning matters which were not at the time governed by other regulations, apart from alignment plans. Concern with rational town planning first emerged at the turn of the century within the Association of Towns and Municipalities under the influence of Emile Vinck[27]. The reinstatement of war damage after the First World War was very much left to the initiative of the local town and parish councils, which were responsible for drawing up general development and alignment plans under the overall control of "royal high commissioners"[28].

The legislative history of the Institutional (Town and Country Planning) Act of 29 March 1962 makes it clear that the draftsman's intention was to provide municipalities up and down the country with local planning tools and to reinforce and generalize their powers to grant planning permission[29].

At the same time, the 1962 Act provided machinery for public consultation prior to the adoption of town planning schemes, but public inquiry was not an innovation introduced by the Town Planning Act - it already existed in other administrative procedures.

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27 National congresses on the matter were held in Ghent in 1913 and in Liège in 1924.

28 Legislative Decree of 25 August 1915 and Act of 8 April 1918.

29 *Pasin*, 1962, pp. 211, 214 and 220.

The first *"de commodo et incommodo"* procedures (to ascertain the likely nuisances of proposed construction and development works) were prescribed in regulations governing the authorization of certain types of industrial activities considered as dangerous, unhealthy or offensive. The Customary Law of Metz (1579) made the establishment of new forges subject to authorization by the court. Remarkably, authorization was granted only after *"hearing the adjacent inhabitants on the amenity or disamenity to the place on which it is to be built"* [30].

2. Consequences of the regionalisation of regional/spatial planning in Belgium

In 1980, responsibility for town and country planning was devolved to the regions as federal entities[31]. While the country's other two regions retain centralized control over the first-instance administrative decisions taken by municipalities, a Walloon Region Decree of 27 April 1989 - the *"decentralization and participation"* Decree - provides that where a municipality in the region satisfies certain conditions - notably having a local authority planning advisory board and a local outline development plan - the prior assent of the official delegate of the regional planning authority required under the previous legislation, is replaced by a less constraining supervisory power of *ex post* suspension and revocation.

In its Opinion on the bill which became the Decree of 27 April 1989, the legislation section of the Belgian *Conseil d'Etat* (supreme administrative court) cautioned that:

> *"One oft-condemned weakness of the Act of 29 March 1962 was the laxity demonstrated by certain local councils in issuing building permits, and especially parcelling-out permits. What this showed - and is still showing - is that in town and country planning matters, the municipal authorities are particularly exposed to many sorts of pressure which they may find it difficult to withstand".*
>
> *"Proximate authority is a handicap rather than an advantage in this matter. The bill aims to give municipal authorities wider powers. Admittedly, it also provides a supervisory power to suspend and revoke, but the effectiveness of this corrective measure must be seen in its true perspective. The need to give express reasons for suspending or revoking the decision requires the supervisory authority to take cognizance not only of the documents, but also the site itself, which, in the short delay available to it, it can do in only a limited number of cases. It will be for the legislature (...) to assess, in the light of present and past experience, whether and to what extent it should advance towards a "decentralization" of decision-making authority over planning permission, and whether the measures taken to guard against the dangers of so doing should not in any event be strengthened"* [32].

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30 Remond-Gouilloud, *Du droit de détruire - essai sur le droit de l'environnement*, Presses universitaires de France, 1989 p. 97.

31 Under article 6 (1) (1) of the Special Institutional Reform Act of 8 August 1980.

32 Legislation Section Opinion. 18.784/9 of 7 November 1988 (*Doc. Cons.reg.w.*, 1988-1989 Session, No. 83/1, p. 17).

In France, a similar process of decentralization led the legislature to transfer Prefects' powers to grant building permits to local mayors, subject to *ex post* review[33]. The very small size of most French rural municipalities - unlike the Belgian municipalities which were merged in 1975 - reinforce the fears referred to above.

II. PUBLIC PARTICIPATION PRIOR TO DECISION-MAKING

1. Consultation

A public inquiry must always be held before a development plan or compulsory purchase scheme of whatever magnitude is adopted. The same applies to planning permission (building and parcelling-out permits) falling within certain regulatory provisions[34]. One requirement in the Brussels Region is that at least half of the public inquiry must be held outside school holiday periods.

There are two types of public consultation[35]: one is a public inquiry for a specific development project (direct democracy), the other is the opinion of a local consultation committee (semi-direct democracy).

The *Conseil d'Etat* adds an extra degree of control on compliance with these special formalities; it has not hesitated to set aside town planning schemes adopted in breach of the consultation procedure[36]. In a leading case, the *Conseil* held that a project promoter who made substantial alterations at the municipal council's suggestion after public consultation had to re-submit the scheme for a fresh public inquiry, which is tantamount to placing public opinion on an equal footing with that of their elected representatives[37].

2. Access to information

Contemporary judicial and administrative practice shows that there can be no effective protection of the environment without access to information. The European Charter on the

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[33] J. Chapuisat, *La répartition des compétences*. Commentaire de la loi No. 83-8 du 7 janvier 1983, relative à la répartition des compétences entre les communes, les départements, les régions et l'Etat, *A.J.D.A.*, 1983, spec. p. 91 et seq. ("The allocation of powers. Commentary on Act No. 83-8 of 7 January 1983, on the allocation of powers between municipalities, departments, regions and the State").

[34] Buildings which are larger than neighbouring buildings or which will stand in the way of a listed building, for example.

[35] Which may be combined.

[36] See also infra., III, 1 on the duty to give reasons.

[37] C.E., Duray and others, No. 41.209 of 27 November 1992, *Rec.* Significantly, the duty to submit a private development plan to further public inquiry following changes to the original plan by the municipal council is a statutory one.

Environment and Health, adopted on 8 December 1989 in Frankfurt[i], expresses this interrelationship with a lucid statement of principle that:

> *"Everyone has the right to:*
>
> - *an environment which facilitates the achievement of the highest possible levels of health and welfare;*
>
> - *be kept informed and consulted on plans, decisions and activities likely to have an effect on both the environment and health;*
>
> - *participate in the decision-making process*"[38].

Here we have the modern, three-in-one trinity: right to the environment - right of access to information - right to be consulted. The recent institutional reforms in Belgium led to the inclusion in the Constitution of the principles that everyone has "*the right to the protection of a healthy environment*"[39], and "*the right to consult and have copies to him of all administrative documents, except where otherwise provided by statute, decree or rules as referred to in article 134*"[40].

Access to information represents a historical break with a long-established tradition of executive privilege born under the Ancien Regime and turned by Napoleon into an iron law[41]. Conversely, the constitutional amendment and its federal implementing Act[42] form part of a general move towards transparency in a direct line with, most notably, America's Freedom of Information Act (4 July 1966) and France's Government Relations with the Public (Miscellaneous Improvements) Act of 17 July 1978. The reform is part of the same approach which resulted in the passing of the Administrative Acts (Statement of Grounds) Act of 29 July 1991[43].

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38 Cited by M. Dejeant-Pons, *L'insertion du droit de l'homme à l'environnement dans les systèmes régionaux de protection des droits de l'homme* ("Integrating environmental rights in regional systems for the protection of human rights"), Revue universelle des droits de l'homme, 1991, spec. p. 463.

39 Article 23 (3) (4).

40 Article 32.

41 J. Lemasurier, *Vers une démocratie administrative: du refus d'informer au droit d'être informé* (« Towards an administrative democracy: from the refusal to inform to the right to be informed »), Revue de droit public et de la science politique en France et à l'étranger, 1980, p. 1240.

42 Administrative Disclosure Act, 11 April 1994, *Moniteur Belge* (Official Gazette) 30 June 1994.

43 The *ratio legis* of this reform is to acquaint the individual immediately with the reasons for the act without having, as is still too often the case, to institute *ad exhibendum* disclosure proceedings for the sole purpose of gaining access to the file held by the authority (on this, see: C.E., Vandevelde, No. 42.968 of 17 May 1993).

But one further aspect of what should be a trinity is still missing: the right to be consulted before any decision likely to affect the environment is taken.

If there is to be consultation, there must be easy access to information, and documents intended for the public must be written in a language the public can understand, otherwise the authority remains the privileged holder of the communication and may interpret them at will. The more confidential a matter is, the more likely it is that administrative practice will prevail over the letter of the law or of regulation, and the less possibility the citizen has of influencing the decision.

It is precisely to avoid these pitfalls that recent law emphasizes that not only should documents be physically accessible, but also comprehensible to the lay person. A good example of this is to be found in article 5. 2. of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, which provides that the impact assessment study shall include a "non-technical summary" of the information[44].

In an spatial planning and management case relating to a golf course development in a forest area, the Belgian *Conseil d'Etat* held that fair access to information had not been provide where various documents in the administrative records were written in English, which is not an official language in Belgium[45].

Generally speaking, the principle that development plans must be represented graphically and made accessible[46], makes them remarkable tools for enforcing public rights under what are generally less open rules.

3. Directive 90/313/EEC of 7 June 1990 on the freedom of access to information on the environment

While publication of town planning schemes is broadly satisfactory, the same cannot necessarily be said of the preliminary studies, opinions taken and particularly the records pertaining to planning permission. In all three regions, regulations limit access to information to periods of public consultation - one month at the utmost. Outside of these periods, only the administrative authorizations are permanently accessible. This is where Council Directive 90/313/EEC of 7 June 1990 on the freedom of access to information on the environment[47] may

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44 Significantly, informing the public is a recurrent theme throughout the Directive.

45 C.E., Wellens and others, No. 32.953 of 11 August 1989.

46 They are available for inspection in every municipal authority.

47 O.J. No. L 158/56 of 23 June 1990. The regional instruments by which the directive is incorporated are: article 33 of the Flemish Executive Decree of 6 February 1991 enacting the Flemish regulations for environmental permits (*M.B.,* 26 June 1991) the legal basis of which seems questionable in the absence of authorization (the Decree of 23 October 1991 on the public disclosure of administrative documents in the services and establishments of the Flemish Executive does not specifically refer to the environment); the Walloon Region Decree of 13 June 1991 on the freedom of public access to information on the environment (*M.B.* 11 October 1991)

assist the individual.

A first difficulty arises here in that the Directive uses the word "information" while article 32 of the Constitution refers to "documents". Since the intention of the draftsmen of both instruments is that both expressions shall be construed in their widest meanings, excluding information which is not stored on any form of physical medium, there is no reason to concern ourselves with this difference. More particularly, article 2, (a), of the Directive refers to all information relating to *"the state of water, air, soil, fauna, flora, land and natural sites"*, including measures and activities likely to affect them or designed to protect them. Conversely, it is clear from the foregoing that the Directive will not be any great assistance over urban planning projects in urban concentrations, unless the Member States widen the scope.

The requirement of accessibility is not restricted solely to information produced by or the property of the authority; it is sufficient that it is in the authority's possession, in whatever form[48]. This qualification is important, particularly for environmental impact assessments produced by private individuals. By the same token, "public authorities" does not just mean those with environmental responsibilities *lato sensu* but any authority possessing information relating to the environment with the exception of bodies acting in a legislative or judicial capacity[49]. The Flemish Executive's Environmental Permits Decree of 6 February 1991, which makes a "single information centre" - namely the standing committee of the provincial council - responsible for collecting information from the other authorities (article 33 (2)), is not in line with the Directive on this point[50].

Article 3.2. and 3.3. of the Directive permit[51] Member States to provide for a request for information to be refused where it affects:

- the confidentiality of the proceedings of public authorities, international relations and national defence;

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and the Order of 29 August 1991 on access to information on the environment in the Brussels-Capital Region (*M.B.* 1 October 1991). Note that the federal State, which retains jurisdiction over certain environmental matters (the nuclear fuel cycle, among others) is also required to transpose the Directive in its areas of jurisdiction. This, in theory, is the purpose of the Public Disclosure (Administration) Act of 11 April 1994.

48 B. Jadot, *L'accès à l'information en matière d'environnement* ("Access to information on the environment"), Rev.dr.comm., 1992, p. 110. The directive does, however, allow Member States to limit the obligation of disclosure to cases where third parties have an obligation to supply the information to the authority.

49 Article 2 (b) of the Directive.

50 M. Pallemaerts, *L'application en Belgique de la directive européenne concernant la liberté d'accès à l'information en matière d'environnement* ("The application in Belgium of the European Directive on the freedom of access to information on the environment"), Amén., 1991, p. 197.

51 But do not compel.

- public security;

- matters which are or have been *sub judice* or under enquiry, or the subject judicial or disciplinary investigation;

- commercial and industrial confidentiality, including intellectual property[52];

- the confidentiality of personal data;

- material supplied by a third party without that party being under a legal obligation to do so[53];

- material, the disclosure of which would make it more likely that the environment would be damaged[54];

- unfinished data or internal communications;

- requests which are manifestly unreasonable or formulated in too general a manner.

Note that the Directive provides that where it is possible to separate out information on any of the foregoing items from the rest of the document, then information shall be supplied in part.

To this fairly draconian list of restrictions the Walloon Region felt it appropriate to add the *"result of measures not translated into action"* [55]. Such an approach contravenes the Directive in that it permits the authority to routinely set up a "smokescreen" between the source information and the individual. Any court called upon to consider this provision should either hold it to be inapplicable or at the very least refer it for a preliminary ruling to the Court of Justice of the European Union.

Fortunately, other aspects of the Directive are available to the individual:

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52 In this connection, JADOT (*op. cit.*, p. 116) appositely cites the dictum of M. RIGAUX and P.E. TROUSSE, that "*there is no confidentiality when the manufacturing process is in the public domain because it is used by others or because it has been published. In such cases, it is not the manufacturer's particular property*".

53 The regions have transposed this exception differently. The Walloon Region makes no provision for it, the Brussels Region incorporated it *verbatim*, while the Flemish Region allows it provided the third party expressed reservations at the time the information was supplied to the authority. None of these options contravene the provisions of the Directive, which typifies the leeway left to Member States in implementing this type of rule.

54 Judicious though this "balance of interests" may seem, it is open to abuse by ill-intentioned authorities.

55 Article 2 (b) of the Decree of 13 June 1991.

- The individual need not prove an interest in order to obtain information (article 3.1.);

- the authority must respond to a request for information *"as soon as possible, and at the latest within two months"* (article 3.4.);

- Where information is refused, the claimant must have a judicial or administrative review in accordance with the relevant national legal system (article 4)[56];

- the charge made for supplying the information must be "reasonable" (article 5);

- the Directive's obligations must be extended to bodies with public responsibilities for the environment and those controlled by public authorities (article 6);

- In addition to disclosure to individuals, the Member States must publish periodic reports on the state of the environment (article 7).

All this gives rise to ambivalent feelings, and it is to be feared that, in an area in which entrenched attitudes are extremely resistant to the strict letter of the law, the authorities concerned will long continue to avail themselves of the many loopholes offered by the provisions examined in order to evade the obligations placed on them. Consequently, the court lists are likely to remain full for some time to come with actions simply to have sight of records in the authority's possession.

III. PUBLIC PARTICIPATION AFTER THE DECISION IS MADE

1. Review of the grounds

The obligation to give reasons for a decision differs according to whether it was made in a judicial or administrative capacity. In the former case, article 149 of the Constitution, which provides that *"the reasons shall be given for every judgment"*[ii], requires the court[57] to address all submissions made to it in due form.

In administrative matters *stricto sensu* - which is where the entire investigation and inquiry procedure in town planning matters lies before any recourse to the courts[58] - the prevailing interpretation of the Administrative Acts (Statement of Grounds) Act of 29 July 1991 for

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56 L. Krämer rightly stresses that the body tasked with finding whether a request has been unreasonably refused or inadequately answered must be independent of the authority ("La directive 90/313/CEE sur l'accès à l'information en matière d'environnement : genèse et perspectives d'application" - "Directive 90/313/EEC on access to information on the environment: origin and application") in M. Pallemaerts (ed.), *Le droit à l'information en matière d'environnement, op. cit.*, spec. p. 28). B. Jadot adds that the jurisdiction must be empowered to enjoin the authority to disclose a document in its possession (*loc. cit.*, p. 119-120).

57 Be it an ordinary or an administrative court.

58 Hence also to preliminary appeals to a higher administrative authority

individual decisions and the specific provisions as to reasons for urban planning requirements (town planning schemes) having the force of regulations is that while the reasons given for the act must be adequate with regard to the authority's intended purpose, the authority is under no obligation to rebut each and every objection made to it[59].

One reform which should be considered is to require the administrative authority to give a full statement of the reasons for its decision whenever a complaint is raised at a public inquiry.

2. Equality of arms in appeals to a higher administrative authority

The statutory appeals to a higher administrative authority under the three urban planning Acts applicable in Belgium[60] on the grant of planning permission are available only to the applicant for planning permission and the inferior administrative authorities concerned. Riparian owners must refer the matter directly to the Conseil d'Etat, which will review only the legality of the decision.

It might be helpful if appeals to a higher administrative authority, where the authority can judge the expediency of the decision, were accessible to all interested parties without distinction, provided the complaint operates to stay the decision[61].

IV. CONCLUSION

While the case law and administrative practice give the impression of an overall improvement in the situation, it is hard to pinpoint the precise reasons. Is it because the entire country has been covered by area plans for the past fifteen years or so? Have changing economic conditions and building techniques led to an improvement in building design? While there can be no denying the changes in architectural requirements and the perception of the environment, what share of the responsibility is to be allocated to public participation in administrative decisions

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59 C.E., Perleau and Simonet, No. 43.852 of 12 August 1993; C.E., Defays and others, No. 45.338 of 17 December 1993; C.E., Poucet, No. 45.757 of 26 January 1994; C.E., Kerryn, No. 47.050 of 28 April 1994. Conversely, another judgement holds that the reasons must address the complaints (C.E., Tufano and the non-profit "Bertransart Residents' Association"asbl, No. 47.961 of 15 June 1994, J.T., 1994, p. 597). The *Conseil d'Etat* has also held that the requirement to give reasons was less compelling when no complaints had been advanced at the public inquiry (C.E., Cetrano and others, No. 45.336 of 17 December 1993, *Aménagement*, 1994, p. 62, report and opinion of legal assistant Batselé).

60 In the Flemish Region, the Institutional (Town and Country Planning) Act of 29 March 1962 remains in force, subject to *ad hoc* amendments; in the Walloon Region, the matter is governed by the Walloon Code of Town and Country Planning and the Heritage; in the Brussels Region, it is subject to the Institutional (Town and Country Planning) Order of 29 August 1991.

61 There is a further discrimination in the associated matter of classified establishments: while the residents in the vicinity of a polluting activity have equal *locus standi* with the other parties concerned to make an interim appeal to a higher administrative authority, the drawback is that such appeals never act to stay the decision when they are brought by riparian owners, but do - in the Flemish and Brussels Regions - when brought by the authorities concerned.

and what to changes in the administrative mentality?

Whatever else, the appearance must not be allowed to conceal the reality; public participation must not be perceived as a mere red herring, a purely formal obligation serving only to rubber-stamp a decision which has already been taken.

The legal arsenal contains few weapons with which to counter this all-too frequent occurrence. The changes which I have proposed in the grounds for a review of reasons could offer an extra guarantee, but experience shows that public authorities routinely tend to produce no more than a revamped version of the decision originally declared void for want of grounds.

Pushing the requirements further would ultimately give citizens who hold no public office a say in the taking of policy decisions[62]. I do not believe this to be desirable.

What is more needed is a change in administrative attitudes, leading to a new understanding of the public interest.

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62 Special exceptions to this rule do exist where consecrated by ancient usage, such as direct public involvement in the management of the polders and wateringues [drainage syndicates] (See. R. Andersen and F. Haumont, *Rapport belge in Citoyen et administration*, Brussels and Louvain-la-Neuve, Bruylant & Cabay, 1985, spec. p. 32).

PUBLIC PARTICIPATION IN THE EUROPEAN CONTEXT[63]

Public participation in central and eastern Europe

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INTRODUCTION

This paper outlines problems of public participation within the European continent with a special focus on the differences between the Central and Eastern European (CEE) region and other parts of Europe with the aim of showing where these countries stand, what the problems they have to cope with, are and how international/European cooperation can contribute to bridging the gap between the two parts of Europe.

The Specific Situation of the Central and Eastern European Countries within the European Context: Public Participation Problems in General.

In the transition process of the CEE region, public participation gets a special dimension. The transition provides a unique opportunity for building new institutions for handling conflicting social interests and public participation could be an efficient tool in this process. At the same time, public participation is looked upon as one aspect of democratization, as it is strongly tied to basic human rights. These aspects of public participation might explain why progress is so slow with institutionalizing, integrating it into the political and legal system, and implementing it in every day practice. The unique opportunity of the transition process is not utilized enough, mostly because there are so many interests clashing behind the scenes in these countries; they undergo a process of political, social and economic transformation to become an open society and a market economy. Despite the large differences in the cultural, economic and historical development, the countries of CEE all want to take the same direction, still the path of transformation is unique for each of them. They are all striving towards a full membership in the European Union, its institutional framework, which also means they would have to comply with the European norms and standards.

However, even after a few years of the transition process, it seems that there is still no clear understanding that environmental aspects need to be integrated into economic and development policies; and in order to be able to properly enforce laws and implement policies, a strong

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63 Note: see more detailed analysis in Manual on Public Participation in Environmental Decision-making: Current Practice and Future Possibilities published by the Regional Environmental Center for Central and Eastern Europe, Budapest, 1994.

public support for environmental protection and public participation are needed. The major benefits of public participation are not yet fully recognized by all those, government, citizens and industry, who are parts and players in this process: to have a better and more open, transparent decision-making process, decisions which are built on broader consensus and support.

The nations of the CEE region are caught in between the different experience and tradition coming from the socialist past and pushing for building up a new society. The legacy of the previous regimes are still around while the new values are already gaining ground. Many of the basic obstacles of developing an efficiently working public participation system and practice in the CEE region goes back to the heritage of the past, namely the lack of participatory democratic traditions, the mistrust in democratic institutions including the non-existence of experiences with a fair, professional and independent judicial system and the lack of experience with practicing public participation.

The different parties involved in the public participation process are not aware of their duties and responsibilities. Authorities on the governmental side need to understand they have a new role: it is their responsibility to create the legal and institutional framework for public participation. A framework, where there are guarantees that basic rights concerning public participation are respected and where there are provisions that these rights could be practiced. The role of the civil servants should be different from that of the past; they have to manage a full, fair and open public participation process. On the other hand, the citizens also need to develop a new attitude: they should become conscious tax payers instead of humble clients to the state, who have a say in how public money is spent, how public affairs are dealt with. Citizens, who are conscious of their role, and who are active to get to know and practice their rights.

I. THE RIGHT TO PUBLIC PARTICIPATION ACROSS BORDERS UNDER NATIONAL LAW, EC LAW AND PUBLIC INTERNATIONAL LAW

If we analyze the general situation of public participation of the Central and Eastern European countries according to the basic areas, the following conclusions can be drawn:

1. *Access to Information*

Access to information is secured in most of the countries by general environmental framework laws or constitutional provisions, but few countries have specific provisions to implement them. Most of the legal provisions providing access to information are so called “passive” laws, they do not call for active information policy. The legal framework for securing one of the most significant preconditions for public participation is far from complete.

Also, it is not clearly specified in some countries who can get a specific information. Sometimes the access to information is only given to those who can prove an interest. The information exists, but the public is not informed about the available environmental information, the basic terms and conditions under which it is made accessible and the process by which it can be obtained. It is not clearly specified when a request for information may be refused, that reasons for such refusal must be stated in writing and there is no provision to

request the authorities' response within a definite and rational time limit.

In many countries, public authorities do not collect and update regularly adequate environmental information, and there are no mandatory or voluntary systems to ensure an adequate flow of information to the authorities and to the public. Very often, it is not clear what information the authorities should provide and they are not prepared with adequate facilities where the public can obtain copies of the requested environmental information.

Finally, in many countries the citizen cannot seek judicial or administrative review if his/her request for information has been wrongfully refused or ignored, or inadequately answered by a public authority.

The basic constraints can be summarized as follows:

- there are traditional limits on legal access to information (i.e. in some countries only the media have access to environmental information outside pending proceedings);
- the state secrets have traditionally broad definition in some countries;
- there is political opposition to make information available;
- and, finally there is often a passive attitude/ disinterest of the public to obtain and use information.

2. *Public Participation in the Development Decisions and public Access to Means of Appeal*

Public participation is guaranteed under EIA laws or decrees in most of the countries of CEE to some extent (except for one country), but many of them have no specific public participation procedures and some have no right to appeal. The countries which are leading in this respect are the Czech Republic and Slovakia, Poland and Hungary. (See Chart on State Administration in Annex.)

The picture concerning the public participation in land-use laws is even more complex: only seven countries have public participation rights included, and most of them have no specific provisions for the public's right on information, participation and appeal. It is very difficult to give a complete overview of all the laws and regulations that deal with such activities, but it can be stated that the laws regulating building, construction permitting, development proposals are not always in line with the general regulations contained in the framework of environmental legislation concerning public participation. They have even less concrete provisions on this subject and in most of the countries new laws concerning these areas are being drafted nowadays. Also, the administrative laws are being changed slowly. Among the few who have a well-elaborated public participation procedure are Poland, the Czech Republic and Slovakia.

In some countries, citizens have a right to call for referendum and Constitutional Courts exist where people can turn to remedy their problems if laws or an administrative action violates the constitution. In some CEE countries the institutions of Ombudsman have been already set up, but very few of them operate in reality. (See Chart on Basic Rights and Remedies in Annex). At the local level in many countries it is the duty of the local authorities to make sure that the

public is informed and notified about development activities in particular in the field of urban planning and communal activities. These regulations allow citizens to participate in the decision-making on issues of local relevance, but very often give in the hands of the local authorities the power to decide how to inform or involve the public. This means that the potential is there, but there are no specific legal guarantees that the involvement of the public will happen properly. It depends on the individuals, the citizen groups and NGOs how much they can use their leverage. However, if national and local programs, territory structuring and urban development plans are subject to EIA and if there are appropriate public participation rights and procedures, they can be observed.

There should be specific legal mechanisms on place concerning:

- the right to know,
- the right to be heard and
- the right to affect decisions

in the process of local and regional physical planning decisions and the issuance of permits for activities with potential adverse environmental effects.

The public should be entitled also to decision-making initiatives including the right to propose an alternative and should be able to participate directly in the decision-making process as well. One of the major problems in the CEE countries is that if the public is not involved at an early stage, they are not able to affect the decisions in all phases of development, the input given by them is not taken into account (comments are not heard, not answered and not taken seriously into consideration).

The minimum framework for legal requirements can be summarized as follows[64]:

a) Legal requirements concerning the right to know:

- drafts of all local and regional plans should be published;

- citizens as well as NGOs should be informed of upcoming and pending planning decisions;

- there should be public notice of EIA process and public access to EIA reports and background materials;

- there should be public notice of draft and final permits;
-there should be public access to draft and final permit and background information.

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64 Note: Behind the generalization of the regional problems there is a diversity , we focus on the most significant general problem, but we do not always specify at what stage a country is. There are few countries which are more advanced with their legislation, while the bulk of the CEE countries have just made the first steps.

b) Legal requirements concerning the right to be heard:

- there should be a legal right for public/NGOs to comment on draft plans (including adequate notice and time to comment);

- legal rights for public/NGOs to submit proposed plans;

- legal requirement for public-hearing and/or comment requirements for EIA proceedings (with adequate notice and time to comment);

- similarly for public-hearing and/or comment requirements for permit applications (with adequate notice and time to comment).

c) Legal requirements concerning the right to affect decisions:

- there should be legal requirement that comments be incorporated and seriously considered in final decision in the planning process;

- legal requirement that government authorities provide written decisions, including discussion of public comments and explanation of decision in the planning process;

- a right of appeal for those who have participated in the planning process;

- legal requirement that public/NGO comments must be incorporated and seriously considered in final permit/EIA decisions;

- legal requirement that government provide written permits/EIA decisions, including discussion of public comments and explanation of decision;

- a right of public/NGOs to appeal permit issuance;

- a right of public/NGOs to challenge EIA report/decisions and decisions not to perform EIA.

The constraints which are most often present in the development process are as follows:

- lack of clear substantive and procedural rules for participation;

- limitation on standing to participate in and to challenge permit and EIA proceedings (i.e. only affected persons or in some cases NGOs may do so);

- inadequate publicizing of permit/EIA procedures;

- the inadequate publicizing of proposed decisions;

- limitations on standing to participate and appeal in planning decisions;

- lack of possibilities of public/NGOs to be involved in planning decisions;

- lack of a system for deciding who should be informed.

There are also other, non-legal factors which can be mentioned as obstacles in the public participation process:

- the lack of political will and the belief that public involvement will slow down the development process on the side of the authorities, and,

- the lack of interest on the side of public/NGOs to participate, or lack of organized NGOs for participating and the inadequate time and resources of public/NGOs to participate.

II. EUROPEAN IMPLICATIONS OF DIFFERENCES IN NATIONAL PLANNING SYSTEMS

Transboundary Aspects, Regional and Global Framework for Environmental Cooperation

It is a generally and internationally recognized principle that a country may not harm the environment of another country. Yet, many countries show a remarkable tendency towards establishing polluting industries near their borders. This is what happens very often in the CEE region. If such a case occurs, the country that was inflicted can hold the neighbouring country accountable and if they cannot arrange their conflict through international conventions, they can take the matter to court, even to the International Court of Justice if necessary. Of course in such cases citizens are directly involved and affected on both sides of the border.

The problems arise because public participation rights are mostly secured under national law and the law of a country first of all applies to its own citizens within its own territory. However, there are international conventions which try to offer solution to such cases. While the states of other (non- Central and Eastern) parts of Europe, the EC law, national laws and public international law gives substantial rights concerning transboundary pollution problems, the CEE states are lagging somewhat behind.

It seems to be a difficult decision whether or not to allow the citizens of a neighbouring country the same rights as its own citizens; the citizens of another country should have the same rights, they have to have right to information, right to objection or right to take the case to court. More and more countries recognize the principle that public participation must be transboundary in such cases and the citizens of the neighbouring country have the same rights as its own citizens.

In the CEE region, national laws covering the environmental field or other constitutional provisions related to public participation do not deal much or do not deal at all with the transboundary aspects. Even if they do contain reference to the transboundary aspects, they include only general provisions on the necessity of taking into consideration the significant environmental impacts on other countries, they do not have procedures on public participation specified for transboundary effects (with the exception of the Czech and Slovak EIA laws).

At the same time, CEE countries are adhering to part of an increasing number of international conventions and treaties, part of the environmental legal framework at global and regional level. So far they seem to be more integrated in the global than the regional framework, as very few CEE countries ratified so far the Espoo convention on Environmental Impact Assessment in a Transboundary Context, the Convention on the Use of Transboundary Watercourses and International Lakes, and the Convention on the Transboundary Impact of Industrial Accidents.

This situation clearly indicates the level and the pace of integration of this subregion, if we might call so, into the all-European cooperation system. The relationship of these countries among each other and with the community of the European nations is changing at a rapid space, they are heading towards being members of a new cooperative framework, which would include also harmonization of the legal systems. At the same time, they are confronted with too many new commitments which they have to accept. In the flood of law-making, the overall legal reforms and the difficulties of restructuring their economies, the environmental issues do not get the proper attention. The environmental aspects of the transition are not dealt with, as they should be, the drafting of environmental legislation as well as the adoption of international conventions are not on the agenda among the highest priorities.

However, former bilateral agreements between these countries are still in force and might regulate issues of transboundary character, but these do not deal with public participation aspects. This might lead to situations when a case of a transboundary pollution or planned investment, development project might affect several countries, but in case of lack of norms accepted mutually by the affected parties, or in lack of application of generally accepted international norms, serious environmental conflict might arise. It is difficult to handle them and while a solution might take many years, the nature and environment might suffer serious damages. (E.g. the Bös-Gabcikovo water dam between Hungary and Slovakia). The possibilities to turn to the International Court of Justice of course is always there, as well as for citizens of the member countries of the Council of Europe to have access to the European Commission and Court of Human Rights located in Strasbourg. However, both these remedies can only be used if in the first case the parties agree to take their case to the Court, or in the second case, if all possibilities within national jurisdiction are already exhausted.

The environmental conflicts could be prevented and avoided by a different approach, if the affected governments, their environmental authorities would consult each other about such issues and would try to find a mutually acceptable solution. But, there should also be legal guarantees in place which set the norms granting similar rights to each citizen within his country; the same rights should be granted to the citizens of the neighbouring country as the domestic public/NGOs to challenge the decisions that threaten the neighbouring countries; the pollution affecting other countries should be treated as seriously as pollution with only domestic effects affecting one's own.

The legal mechanism that should be in place:

The right to know:

- there should be a notice to foreign governments/citizens/NGOs of proposed decision that may have impacts in their country;

- there should be access to information in the possession of government and industry for foreign citizens/NGOs;
- there should be broad media coverage.

The right to be heard:

- foreign citizens/NGOs should have the right to participate in hearings;
- they should have the right to comment on proposed planning decisions, permits and environmental impact statements.

The right to affect decisions:

- the foreign citizens/NGOs should have the right to appeal decisions with adverse environmental impacts;
- they should have the right to sue the environmental violators.

The constraints for the CEE countries with regard to transboundary issues are as follows:

- there is a lack of procedures for projects with transboundary effects (EIA);
- citizens are potentially limited in their access to appropriate judicial fora;
- there is a lack of good communication among the public/NGOs and governmental agencies of the neighbouring countries;
- and a lack of political will which would help to avoid serious conflicts.

III. HOW CAN THE PUBLIC AND LOCAL AUTHORITIES BETTER UNDERSTAND THE IMPLICATIONS OF EUROPEAN PROBLEMS IN ORDER TO ACCEPT MULTIDISCIPLINARY AND MULTISECTORAL VIEWS?

Major problems of building a framework for public participation at local and national/regional level

The first major step in this field is to make the public and the central, regional and local authorities understand the importance of public participation in their own locality and their roles and responsibilities in this process. A working public participation system can be built up both from top down (authorities create the necessary legal and institutional framework) and bottom up (i.e. the citizens/NGOs try to ensure and practice their rights and push for the necessary framework). The effective public participation happens first of all at grassroot level, in the small communities, that is where the citizens are directly affected by the every day environmental issues.

Public participation issues at the local level therefore are of special importance. The parties involved in public participation need to have a better cooperation and communication and improve their performance to build a basis for reaching common solutions. One of the major obstacles of public participation from the side of the authorities is the lack of readiness and openness of the decision-makers to involve the public/NGOs in a proper way; and on the side of the public/NGOs is the lack of proactive attitude to get involved in the decision-making

process, taking steps to change the existing limitations and use the available instruments. In some countries especially in some CEE countries, the authorities still tend to behave in a paternalistic, authoritarian way and the citizens still do not raise their voice and accept the situation. The authorities need to improve their practice and find the ways of informing and involving the public/NGOs in a more efficient and meaningful way, while the public/NGOs need to be more active asking for information and requesting real participation.

Also it is important to realize that the parties involved in public participation should be partners and not enemies, a constructive dialogue between them will lead to a more productive result than confrontation. A process of evaluating problems, thinking together about the needs can lead to mutually acceptable solutions and can build confidence and partnership between the different parties.

Very often people tend to think, especially in CEE, that the lack of proper legal framework is the biggest barrier in public participation. The legal framework of course is of utmost importance and cannot be substituted, but even if there are no legal tools available, there are always means of public participation other than legal; citizens/NGOs can use the non-formal methods of public participation (such as writing protest letter, organizing demonstrations, protest actions, posters, organizing hearings, etc.) as well as the political channels (using the influence of elected officials, politicians, MPs,etc.). The legal and the non-legal tools can be combined, and very often they can complete each other very efficiently. The experience of the CEE NGOs shows that even in those countries which are most advanced with public participation, citizens/NGOs do not know much about existing legal possibilities, and very few of the NGOs use the legal methods in practice. People are not aware even of the existing legal avenues, or they don't use them or don't know how to use them. At the same time, in every CEE country people, first of all NGOs are familiar with and using to some extent the non-legal tools of public participation.

This experience, at the same time, underlines the necessity of education, training and public awareness raising not only in disseminating knowledge about the existence of different legal and non-legal tools, but also in changing the mentality of the key players in the public participation process. This should also involve representatives of the industry, the investors, whose attitude and contribution to the process is also very important. Very often, at least in the CEE countries, it is not clear neither for the local authorities, nor for the public or for the investors what their duties and responsibilities in a public participation process are, who should do what, what the most efficient methods and techniques are and which should be applied when. The local authorities do not know or are not able to give the investors guidelines on how an expected EIA procedure should happen, or even what an EI study should contain. The investor does not contact in the very early stages the affected citizens, however, if he did so, the problems and interests at stake would be clear from the first moment and could help the investor to go through a procedure avoiding risks, further extra costs and expenditures.

In issues of regional, national, international/European significance public participation needs more organized forms, it is rare that individual citizens can make a great impact without an organizing force behind them (such as an NGO). Also, especially in CEE where there are no traditions of freedom of expression, a citizen as an individual can be very vulnerable. Therefore, here NGO involvement is a basic necessity to provide channels of communication towards and

from the public. Without powerful NGOs who can be partners for the governmental authorities and who are able to mobilize human and other resources, expertise to represent well-based and well-argumented positions, the public participation process is almost impossible. This takes us not only to the issues of the importance how relationship between NGOs and government is formulated, but also to the need of a better and more efficient cooperation between NGOs and the public at large and least, but not last, to the efficiency of cooperation between NGOs themselves. Often, NGOs themselves do not realize how much they can increase their impact on the environmental decision-making process and on the public, if they organize better, coordinate their activities, share their knowledge and resources within the countries as well as among themselves. Unfortunately, in many countries there is a huge gap between what is happening on the local, national and regional, and international level. A good case study to study all the problems related to this issue is the process of the preparation and discussion of the Environmental Action Program for Central and Eastern Europe, and how the National Environmental Action Programs are being prepared. In many countries, it is difficult to get people's interest because they are not invited properly to be involved in the process and they do not see that these international and national programs are being built on them and for them.

IV. POSSIBILITIES TO IMPROVE INFORMATION AND PARTICIPATION OF THE PUBLIC THROUGHOUT GREATER EUROPE

So far we discussed problems and difficulties within countries of the CEE region concerning the right to public participation and public participation rights in transboundary context, which leads us to the evident conclusion that citizens of the European countries might be in very differing situation concerning their basic public participation rights. This creates a situation when one part of Europe has already elaborated and is implementing a public participation system which gives substantial rights to each citizen, while in the other part of Europe this system is non-existing or has just started to be built up (with few exception). However, the tendency of integration into Europe should reinforce the efforts to strengthen public participation in all parts of the continent.

The role of different European institutions

The role of different European institutions (Council of Europe, European Parliament, European Union and European regional organizations such as UNECE) is of utmost importance in creating an atmosphere and incentives for all European countries, including the CEE countries which inspires them to adopt and implement legislation and policies securing substantial public participation rights to their citizens. In this respect the development of a coordinated European legal framework regulating issues of public participation within countries as well as among countries would be very instrumental. Some of the building bricks of such a framework have already been laid through establishing legally binding instruments or initating non-binding initiatives, like the Environment for Europe process. However, there are holes among the building bricks if the process is not coordinated within and between the different levels of governmental activities, as well as with what is happening outside the governmental spheres. (E.g. UNECE draft guidelines on access to information and public participation deals only with what is within the governmental jurisdiction.)

There is a need for concerted actions of the different institutions, international, governmental

and non-governmental organizations in this respect to achieve real progress in improving the access to information and public participation of the citizens throughout Europe. The different binding instruments could be combined with non-binding tools to make an impact in this field. Some of the suggestions are as follows:

- set internationally agreed guidelines and criteria for establishing and implementing public participation rights in a comprehensive way;
- promote implementation of the basic principles through different channels (political, economic, environmental, cultural field) and on different levels (governmental, business, citizen/NGO);
- request monitoring of compliance with the adopted guidelines and criteria regularly;
- request implementation of the basic principles when providing assistance for economic/environmental purposes;
- elaborate country plans for implementation as part of conditions for membership of different European institutions combined with appropriate financial constructions to make easier establishment of mechanisms for improving information and public participation;
- launch a multi-sectoral dialogue between and within countries to assess the public participation problems and to elaborate suggestions to solve them,
- encourage partnership of different interest groups (parliamentarians, central and local governments, public/NGOs, business) to elaborate and implement public participation through voluntary agreements;
- encourage East-East dialogue as well as East-West dialogue on successful solutions, methods in different fora;
- create precedents which can be set as example to be followed.

Other areas or tools of possible assistance which would promote the dissemination of the good practice and would contribute to capability building could be summarized as follows:

- exchange of experience, case studies;
- assistance to develop solutions for specific problems (conflict management);
- training and educational programs for legal specialists, local and central governmental experts, NGOs about available instruments and their use tailored to the needs of the different countries;
- dissemination of experience with successful solutions and lessons of failures;
- raise public awareness about the importance of public participation through official and alternative environmental educational channels;
- support independent green media;
- support NGO activities in public participation;
- support NGOs who provide assistance to other NGOs, citizens in public participation.

Appendix

Status of Public Participation Laws in Central and Eastern Europe (As of 1 January, 1994)

Prepared by Stephen Stec, Central and East European Law Initiative and Jon Fishburn, Intern, Regional Environmental Center

	Basic Rights and Remedies					Environmental Policy				
Country	Basic Constitu-tional Rights*	Source of Right to Healthy Environment	Source of Right to Information	Individuals may petition Constitutio-nal Court?	Ombudsman?	Referendum National	Referendum Local	Initiative National	Initiative Local	Public Consultation in Legislative Process?
ALBANIA	Yes(1)	Constitution	Constitution, EPA	Yes	Yes(11)	Yes(6)	No	Yes	No	In Practice
BULGARIA	Yes	Constitution	Constitution, EPA	No	No	Yes	Yes	No	No	In Practice
CROATIA	Yes	Constitution	Const. SAL, JL****	Yes(2)	Yes	Yes(7)	Yes	No	Yes	In Practice
CZECH REPUBLIC	Yes	Constitution	Constitution, EPA	Yes	No	No	Yes	No	No	In Practice
HUNGARY	Yes	Constitution	Const. Data Prot. Law	Yes	Yes(11)	Yes	Yes	Yes	Yes	In Practice
FYR OF MACEDONIA	Yes	Constitution	Constitution	Yes(3)	No	Yes	No(9)	Yes	No(9)	In Practice
POLAND	Yes(1)	EPA**	EPA	No	Yes	Yes	Yes	No	No	In Practice
ROMANIA	Yes	None	Constitution	No(4)	Yes(11)	Yes(7)	Yes(8)	Yes(10)	Yes	In Practice
SLOVAKIA	Yes	Constitution	Constitution, EPA	Yes(5)	No	Yes	Yes	No	No	Required by Law
SLOVENIA	Yes	Constitution	Constitution, EPA	Yes	Yes(11)	Yes	No(9)	Yes	No(9)	In Practice

* including freedom of expression and association ** Environmental Protection Act *** Draft **** State Administration Law, Journalists Law

Notes: (1) "Temporary" constitution
(2) Exhaustion of civil judicial remedies required
(3) Potentially conflicting constitutional provisions
(4) Appeal to civil courts available
(5) For actions against the constitution by officials
(6) On motion of Assembly
(7) On motion of President
(8) On motion of Mayor
(9) Law in advanced stage of drafting
(10) Subject to geographic distribution requirements
(11) Position vacant

Status of Public Participation Laws in Central and Eastern Europe

prepared by Stephen Stec, Central and East European Law Initiative and Jon Fishburn, Intern, Regional Environmental Center (As of 1 January, 1994)

State Administration								
Country	Participation Rights	Framework Environmental Law (Post 1989) Legislation Procedure		EIA with PP Legislation Procedure		PP in Land Use Law Legislation Procedure		Barriers to administrative process
ALBANIA	Title/Number	7664/93		7664		7693/93		No Standards of Administrative Law
	Information	Yes	No	Yes	No	No	N/A	
	Participation	No	N/A	Yes	No	No	N/A	
	Appeal	No	N/A	No	N/A	No	N/A	
BULGARIA	Title/Number	86/91		86/91		Law on Territory		Lack of Jurisprudence for Standing
	Information	Yes	No	Yes	Yes	No	N/A	
	Participation	Yes	Yes	Yes	Yes	No	N/A	
	Appeal	Yes	Yes	Yes	Yes	No	N/A	
CROATIA	Title/Number	None		54/80, 84 regs		54/80, 84 regs		Lack of Jurisprudence for Standing
	Information	N/A	N/A	Yes	Yes	Yes	Yes	
	Participation	N/A	N/A	Yes	Yes	Yes	Yes	
	Appeal	N/A	N/A	Yes	Yes	Yes	Yes	
CZECH REPUBLIC	Title/Number	17/92		244/92		50/76		Lack of Jurisprudence for Standing
	Information	Yes	Yes	Yes	Yes	Yes	Yes	
	Participation	Yes	Yes	Yes	Yes	Yes	Yes	
	Appeal	Yes	Yes	No	No	Yes	Yes	
HUNGARY	Title/Number	None		86/93				Lack of Jurisprudence for Standing
	Information	N/A	N/A	Yes	Yes	No	N/A	
	Participation	N/A	N/A	Yes	Yes	No	N/A	
	Appeal	N/A	N/A	Yes	Yes	No	N/A	
FYR OF MACEDONIA	Title/Number	None		Law on Investments		Law on Investments		Lack of Jurisprudence for Standing
	Information	N/A	N/A	Yes	Yes	Yes	Yes	
	Participation	N/A	N/A	Yes	Yes	Yes	Yes	
	Appeal	N/A	N/A	Yes	Yes	Yes	Yes	
POLAND	Title/Number	None*		EPA (1980)		Land Use Planning Act		Lack of Jurisprudence for Standing
	Information	N/A	N/A	Yes	Yes	Yes	Yes	
	Participation	N/A	N/A	Yes	Yes	Yes	Yes	
	Appeal	N/A	N/A	Yes	Yes	Yes	Yes	
ROMANIA	Title/Number	None		97/91; 264/91		18/91		Lack of Jurisprudence for Standing

	Information Participation Appeal	N/A N/A N/A	N/A N/A N/A	No No No	N/A N/A N/A	Yes Yes No	Yes Yes N/A	
SLOVAKIA	Title/Number	17/92		?/94		50/76		Lack of Jurisprudence for Standing
	Information Participation Appeal	Yes Yes Yes	Yes Yes Yes	Yes Yes Yes	No No No	Yes Yes Yes	Yes Yes Yes	
SLOVENIA	Title/Number	801-01/90-2/107		801-01/90-2/107				Lack of Jurisprudence for Standing
	Information Participation Appeal	Yes Yes Yes	No No No	Yes Yes Yes	No No Yes	Yes Yes Yes	Yes Yes Yes	

*The amended Environmental Protection Act (1980) provides substantial public participation rights.

PUBLIC PARTICIPATION IN THE EUROPEAN CONTEXT - PUBLIC PARTICIPATION ACROSS BORDERS - IMPLICATIONS OF DIFFERENT NATIONAL SYSTEMS - EUROPEAN STRATEGIES

Conclusions of Mr Yiannos Papadopoulos
Chairman of the Committee of Senior Officials
of the European Conference of Ministers
responsible for Regional Planning

During the fourth Session of the Seminar, attention focused on investigating the potential for public participation in regional/spatial planning in the European context.

The following four main themes were discussed:

- The right to public participation across European state borders.

- The implications from the wide differences in national planning systems on effective public participation throughout Europe.

- Improving awareness among the European public and local authorities on transnational implications of European problems, strategies and policies.

- The possibilities for improving information and participation of the public in planning throughout Greater Europe.

It is quite significant to fully appreciate that there are wide differences in the overall approach towards public participation in the various parts of Europe and within these regions as well.

There are countries where public participation is based upon specific constitutional and legislative provisions, well-defined administrative mechanisms and practices, long experience of both the public and the authorities concerned and a public awareness of the possibilities for affecting the decision-making process. The right to participate is well entrenched in the mentality of the general public and supported by specific European Union's policies.

In other instances fundamental transformation is still very much in progress as regards the political system, social structures and the economy in general. Despite notable improvements and the evolution along a parallel path during the last five years, it seems that the resulting environment has not as yetbeen efficient enough to allow for or to promote active and effective citizen participation in regional planning decision-making.

The main problems hindering the effort for further improvements in this respect are:

- The salient conservative attitude of institutional agencies and administrative authorities towards public participation.

- The public is not convinced of the reasoning of their participation, nor of their ability

to influence decisions.

- Citizens are not sufficiently aware of their rights to intervene in regional planning and participate in the decision-making process.

- Access to information on the issues involved is not usually readily available to the public.

- In some instances public participation seems irrelevant and meaningless, especially when it is not encouraged at an early stage of the planning process.

The issue of how authorities respond to their obligations not only to allow for, but rather to encourage, public participation in a productive manner concerns Europe as a whole, despite differences in terms of stages along parallel paths. The essential issue in this respect refers to an innovative re-definition of the "public interest" and the way to safeguard it, to this extent there are strong similarities between Western and Central/Eastern Europe.

Transborder regional planning is gradually evolving into a major contemporary necessity. Recent attention given to the Regions of Europe by the European Council and the European Commission, which is manifested in many relevant policies and initiatives, suggest that an equally strong emphasis needs to be allocated to the issue of public participation within the context of transborder regional planning initiatives.

Despite obstacles hindering the effort to establish transborder co-operation in regional development (ie. the variety of the degree of administrative autonomy, differences between national planning systems and the constitutional/political status between cooperating agencies) there have been successful initiatives which pinpoint towards possible directions for future action.

The very nature of these initiatives and their dependance on personal networking seem to imply that it is still difficult to attain improvements in direct participatory approaches, available to non-organized European citizens. In fact, there are not readily available prescriptions of how to guarantee the right of the public to influence transborder planning decisions without endangering transborder co-operation as well.

Despite obstacles and difficulties, it is clear that the only choice available is to persist with an orchestrated effort to strengthen links and co-operation in very many different levels (national governments, the European Union, the Council of Europe, NGO's, business, etc.). Establishing fora for a permanent dialogue and exchange of experience and information is expected to create a new climate, conducive to improving performance on transborder public participation throughout Europe. This approach will accelerate the development of innovative institutions, procedures and mechanisms for promoting the meaningful involvement of all European citizens in the building of our common future.