

A REVIEW ON ENVIRONMENTAL LAW

Abhilasha, Assistant Professor, Department of Law, Galgotias University

ABSTRACT

The following paper begins with a theoretical examination of why public participation recently had this credential and how it might enhance the environment law to assess intentionally whether the implementation of the Aarhus Convention has brought about positive developments in environmental law and policy at EU level. In this debate, following a quick analysis of the key provisions of the three interlocking pillars of the Convention, I will focus on the influence on environmental laws and institutional practises of the EC commitments to participatory procedures. Firstly, the discussion will focus on how the acknowledged importance of public engagement by the EU contributes to a general change from substantive 'command and control' directives to 'decision closers' guidelines.

KEYWORDS: Law, Environment, Review

INTRODUCTION

In recent twenty years the general consensus has grown in the liberal democracies on the need for increased participation of the public in environmental law and policies, although environmental problems resulting from industrialisation have become increasingly scientific, political, ethical, as well as social priorities at the regional, national, regional and international levels. With regard to the concept of sustainable development, the Rio Declaration already states that 'Environmental challenges are best addressed in a way that involves all the citizens concerned at the relevant level.' [1-3] The significance of this statement at European level is exemplified by the recent adoption by Kofi Annan of the Aarhus Convention as "the most ambitious undertaking for environmental democracy under UN auspices."

The implementation of the Aarhus Convention might be regarded as the final admission of the failings to deal appropriately with all dimensions of the contemporary environmental problem of the still prevalent form of technical environmental regulation guided by experts. Although the development in Europe of a liberal democracy based on the significance of individual interests was generally accompanied by industrialisation, this political trend was, at the same time, – argues Dewey – to deal with the increasingly complex and technical nature of the problems of industrial society which individuals cannot understand alone [4-7].

In the environmental field, the application of this notion of 'rational elitism'¹¹ was particularly powerful and increasingly problematic. As Beck argues, because now, most environmental dangers can only be identified by scientific research, scientists and experts have achieved a significant political role with regard to risk control and environmental management. Nevertheless, the view that the practise of environmental regulation can only be implemented through 'rational' scientific opinions from experts who use so-called 'neutral' tools, such as 'costs/benefits analysis' and 'risk assessment,' to compute the best and most efficient solutions to maximise public concern is inherently wrong. Indeed [8-11]– Eden contends – although the

complexity of modern environmental concerns gives science a predominantly important position in environmental policy, science, by entering ethical, political and social worlds, is necessarily 'politicised' in political formulation. Therefore, as the allocation of 'risks' is becoming more and more important to the public, as well as to environmental policy – apart from research – involves issues of personal value in relation to cost, benefits or risk perception, and issues of distribution and social justice that may be very divergent, it is clear that the expert assessments of risks and costs.

Along with the realisation that experts will never be able to generate solutions that reflect the diverse range of interests in society, recent failures of scientific assessments, such as those regarding the transmissibility of BSE to humans from cows or the long-term effects of Chernobyl on the environment and population, have resulted in a widespread awareness of scientific uncertainty and a desire for consensus. As Orts puts it, the complexity of environmental problems beyond the capacity of even the brightest scientists and professors to fix them from afar, as if they were Platonic philosopher-kings or philosopher-bureaucrats [12].

According to the preamble and Art. of the Aarhus Convention, the solution to the increasingly apparent inadequacies of the 'rational elitist' structure in dealing with the environmental crisis appears to be in opening up the traditional bureaucratic top-down system of environmental governance and increasing public participation and civil society participation in decision-making processes. Does a more participatory model, on the other hand, unquestionably improve environmental law and policy? According to Barton, the many justifications for public engagement can be classified into two broad categories: process justifications and substantive justifications. The process argument is predicated on the notion that public participation will improve environmental policy in general, as the public, 'however erroneous and misguided,' should have the ability to voice an opinion on environmental concerns [13-14].

Indeed, as a result of the preceding debate, closed regulatory regimes are no longer appropriate in a free democracy, as environmental regulations may have a profound effect on vast segments of the public and technical assessments incorporate value judgments and political considerations. As Stuart Mills argued over two centuries ago, democracy's foundations go beyond the preservation of individual rights in the negative sense to encompass the promotion of active involvement in public life. Thus, only a genuine assessment of the public's perceptions and values would lend true democratic legitimacy to environmental policies [15]. Indeed, a genuine deliberative process that allows for the exchange of diverse cultural, social, and ethical values between participants and regulators via 'reasoning' and 'reflection' may help to inform the decision-making process by allowing decision-makers to define the public interest and the 'common good' qualitatively rather than quantitatively when drafting p Additionally, when a broad range of stakeholders are actively involved throughout the decision-making process, the acceptance of decisions and public participation in their execution may improve significantly.

Finally, by tying the right to participate in public life to the right to a healthy and appropriate environment, the Aarhus Convention makes a potentially forceful statement, reminding us that environmental legislation is inextricably linked to concerns of social and distributive justice. Although, as Beck argues, industrial society's externalities are increasingly affecting the general population, evidence indicates that "goods" and

"bads" are unequally distributed within society and that a clear link exists between environmental injustice and personal characteristics such as ethnicity and socioeconomic status. By granting the right to participate in and influence environmental decision-making, we might possibly strengthen groups that are historically underrepresented in institutional power structures and encourage a more equitable management of environmental resources and externalities [16-18].

CONCLUSION

This social learning process not only improves the rationality of decisions and the range of possible solutions, but also plays a critical role in closing the implementation gap that is particularly prevalent, for example, with regard to EC environmental law. Indeed, it is suggested that participating in the policy development process increases public awareness and, more specifically, a sense of ownership and responsibility on the part of stakeholders regarding environmental problems and their resolution, thereby encouraging increased compliance on the part of industries and active involvement and enforcement actions on the part of the general public. Despite the fact that high correlations exist between public involvement and decision quality, it is proposed that no such strong correlation exists between deliberation and improved results.

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