



REGIONAL ENVIRONMENTAL CENTER



promoting environmental mediation as a tool for public participation and conflict resolution

a comparative analysis of case studies
from austria, germany and CEE countries

final report

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Promoting Environmental Mediation as a Tool for Public Participation and Conflict Resolution

A comparative analysis of case studies
from Austria, Germany and CEE countries

Final Report

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Promoting Environmental Mediation as a Tool for Public Participation and Conflict Resolution

A Comparative Analysis of Case Studies in Austria, Germany and Central and Eastern European Countries

1 Introduction

Public Planning frequently is an area of conflict — be it the development of plans and programmes affecting the environment or the realisation of infrastructural projects — it touches multiple, often divergent ecological, economic and social interests. Models of public participation and collaborative conflict resolution are beneficial to reach a balance of interests in order to find sustainable solutions based on the agreement of many persons involved.

One effective instrument to resolve conflicts in the environmental sphere is mediation. This is evidenced by an increasing number of successfully implemented cases in Western European countries. Besides mediation, a variety of other methods for public participation and collaborative conflict resolution have been developed and implemented in the past twenty years. They all contribute to finding mutually acceptable solutions which might equally satisfy the interests of citizens, decision-makers and developers and also foster the preservation of the environment and the development of a culture of dialogue.

In 2001 the first European Symposium on Environmental Mediation took place in Vienna. It mainly focussed on the experience with environmental mediation within the EU-15. It also showed that there was increasing interest in environmental mediation and other alternative conflict resolution instruments in Central and Eastern European countries (CEE). The objective of the present study was to investigate how conflicts in the environmental sphere — and generally in the area of public planning — are dealt with in Central and Eastern Europe in comparison with Austria and Germany by means of the analysis of the practice. The overall goal of the project is to promote environmental mediation as a tool for effective conflict resolution in the environmental sphere in the region.

On behalf of the Austrian Federal Ministry of Agriculture, Forestry, Environment and Water Management the project team, consisting of the Austrian Society for Environment and Technology (OEGUT) and the Regional Environmental Center for Central and Eastern Europe (REC) based in Hungary, collected 16 relevant cases in CEE, Austria and Germany and carried out a comprehensive analysis of how mediation and other collaborative conflict

resolution processes work in solving environmental conflicts. These case studies illustrate efforts made to apply informal collaborative conflict resolution in Central and Eastern Europe, with mixed results. They offer a variety of starting points for an analysis and invite an investigation of the structural and institutional differences regarding environmental conflict management cases in the “old” EU-member states of Austria and Germany, and in “new” EU-member states as well as their neighbouring countries. Following the analysis, recommendations will be given regarding the implementation, design, context and other aspects of conflict resolution procedures, developing “quality criteria” for implementing environmental mediation procedures.

This project is considered a start-up for future cooperation in the field of collaborative conflict resolution. Therefore the report will be completed by a short outlook on priorities for follow-up activities that turn out to be crucial for fostering environmental mediation and alternative conflict resolution, such as, for example, the organisation of a workshop bringing together experts and different stakeholders involved in conflict management procedures from Central and Eastern Europe as well as Western Europe. This will foster the active exchange of experience and knowledge, the building and strengthening of networks and will also promote collaborative conflict resolution methods which could contribute to the handling of future environmental challenges.

2 Short Overview of Collaborative Conflict Management in Central and Eastern Europe, Austria and Germany

Mediation and other conflict resolution mechanisms are not yet widely used in the Central and Eastern Europe region, and collecting such cases was a challenging task. First of all, alternative dispute resolution tools are not well known in the region and they are mainly used in other areas, such as work conflicts, or family law. Parties to environmental conflicts in CEE still give preference to classical administrative or judicial review procedures and can be quite sceptical about using other tools for solving the conflicts. Moreover, there is not enough knowledge, skills and will to use mediation or negotiations for solving environmental conflicts.

The countries in CEE are lacking experts who could provide their services regarding the conflict prevention or resolution in the field of environment. There are very few organisations for environmental mediation or specialised institutions. In some countries (e.g. Hungary), a number of educational institutions (universities) and associations (environmental NGOs) deal with certain aspects of environmental mediation or even try to apply it in practice, but none could be characterised as one only dealing with the special topic of environmental mediation or has mediated an environmental conflict on a regular basis or professional level.

In Austria, the first mediation-like procedures and procedures with mediative elements in the environmental sphere were implemented in the beginning of the 1990s concerning, for example, waste management issues, landfills, a garbage incineration plant, or the planning of a freight railway line.¹ The first Austrian mediation procedure started in 1996 dealing with a conflict around a cement factory in the province of Salzburg. Before that, mediation was almost exclusively but still rarely used in areas like family conflicts, divorce etc. In the almost 10 years since then many mediation processes have been implemented in the environmental sphere (approx. 60-70), most of them small ones and many more procedures with mediative elements.

In Germany, the history of environmental mediation started a little earlier. In 1984 the first mediation procedure started in the city of Bielefeld and dealt with conflicts concerning three waste deposits. Since the end of the 1980s informal conflict resolution by mediation has become more and more common for conflict resolution. In the 12 years until 1996, 64 mediation procedures were implemented in Germany,² 40 percent of which dealt with waste management issues. According to a subsequent study³ another 86 mediation cases were implemented between 1996 and 2002. There is a wide spectrum of topics that differ from the

¹ Austrian Society for Environment and Technology (OeGUT), Umweltmediation. Praktische Erfahrungen in Österreich, Wien 1999, 45.

² MEDIATOR (1996), Mediation in Umweltkonflikten. Verfahren kooperativer Problemlösung in der BRD, Oldenburg.

³ MEDIATOR (2004), Mediation im öffentlichen Bereich – Status und Erfahrungen in Deutschland 1996-2002

waste issue focus of the first years in German mediation history: Now the majority of the cases are in the fields of urban planning (29.1 percent), traffic (18.6 percent) and spatial planning (10.5 percent).

It seems that alternative dispute resolution is well known and accepted in Austria and Germany. Mediation is successfully applied in many different areas. But it also seems that there are certain reservations against the instrument: Austrian NGOs complain about the amount of resources they need to invest to successfully participate in the ever increasing amount of different processes. Some of them also complain that the experiences show that mediation is, most of the time, the first step to the realisation of the project, albeit an improved project through the consultation of many stakeholders, but, nevertheless, an unwanted project like for example a new local landfill. There may be also some mental reservations of developers or potential initiators in politics and administration against the negotiability of the outcome, which is essential in a mediation process.

Mediation requires well trained experts. In Austria, as well as in Germany, a wide variety of training institutions throughout the country offer education for future mediators with a varying focus, such as on family conflicts, neighbour conflicts, intercultural mediation, and environmental mediation. There is in fact a surplus of qualified mediators in both countries.

3 Collection of Cases

It was the intention of the project to investigate with practical examples how conflicts in the environmental sphere are dealt with in the investigated region and how the applied conflict resolution mechanisms and instruments differ in “old” EU-member states from the practice in Central and Eastern Europe and, more generally, how common it is in the CEE region to use collaborative conflict management. The cases from Austria and Germany that are mainly mediations or mediation-like procedures were analysed in order to evaluate the range of experiences with the instrument of mediation in different settings.

The project team of OeGUT and the REC collected 16 cases of collaborative conflict management: five from Austria, one from Germany and 10 cases from selected countries in Central and Eastern Europe.

Four of the six practical examples of cooperative conflict resolution in Austria and Germany that were analysed, were mediation procedures: one was a mediation-like process and in one case the applied method was a cooperative discourse. Two cases — the mediation cases Natura 2000 Verwall and mediation for Vienna International Airport — have been elaborated as detailed case studies.

Table 1: Case studies and descriptions from Austria and Germany, collected by OeGUT

| | Name | Country | Type of procedure | Topic area | Duration |
|--------------------------|--|---------|-------------------|--|----------------------|
| Case studies | | | | | |
| 1 | Viemediation.at – Extension of Vienna Airport | Austria | Mediation | Transportation — airport | May 2000 – Jun 2005 |
| 2 | Nature 2000 Verwall, Vorarlberg | Austria | Mediation | Nature conservation, land use planning | Jan 2001 – Dec 2002 |
| Case descriptions | | | | | |
| 3 | Future Use and Development of the Green Area in the West of Telfs, Tyrol | Austria | Mediation | Land use planning, tourism, nature conservation | Sept 2002 – Nov 2003 |
| 4 | 110 KV Power Line Schrammbach, Lower Austria | Austria | Mediation-like | Power industry | Nov 2002 – Feb 2003 |

| | | | | | |
|---|--|---------|-----------------------|---|---------------------|
| 5 | S10 Muehlviertel Expressway, Upper Austria | Austria | Cooperative Discourse | Transportation — street | 2001-2004 |
| 6 | Restoration of the Protective Forest above the Village of Hinterstein, Germany | Germany | Mediation | Nature conservation, tourism, land use planning, water management | Oct 2002 – Nov 2003 |

The REC collected 10 cases from the Czech Republic, Estonia, Hungary, Poland, Slovenia and Ukraine. As mentioned above finding alternative dispute resolution cases was a difficult task because there is very little experience with it in the region. Conflict resolution by direct or facilitated negotiations among the parties is most more common whereas environmental mediation in the strict sense is hardly applied and even mediation-like procedures are unusual as the results of the research have shown. One mediation process has been identified in Slovenia, and the one from Poland can be seen as close to mediation, too.

Table 2: Case studies from the Czech Republic, Estonia, Hungary, Poland, Slovenia and Ukraine, collected by the REC

| | Name | Country | Type of procedure | Topic area | Duration |
|---------------------|--|----------------|-------------------|---|---|
| Case studies | | | | | |
| 1 | Putting Toyota MC and PSA Peugeot Citroen Corporate Social Responsibility Promises into Practice | Czech Republic | Negotiation | Industry, trade, enterprises, neighbourhood conflict | Aug 2004 – Dec 2005 |
| 2 | Negotiations over the Conditions of IPPC Permit for the Kunda Pulp Plant Factory | Estonia | Negotiation | Industry, trade, enterprises, nature conservation | Whole process: 2001 – 2004 Negotiation: Jan-Feb 2003 |
| 3 | Negotiations over the Establishment of Saaremaa Deep Harbour | Estonia | Negotiation | Land use planning, traffic, transportation, nature conservation | Whole process: April 2003 – Feb 2005 Negotiation: |

| | | | | | |
|---|--|----------|-----------------------|---|---|
| | | | | | Oct 2003 – Feb 2004 |
| 4 | Negotiating the Conditions of the Mining Permit for the Merko Oil-Shale Mine | Estonia | Negotiation | Power industry, nature conservation | Whole process: Feb 2003 – Feb 2005 Negotiation: Apr-July 2004 |
| 5 | Szentgal Regional Landfill | Hungary | Cooperative Discourse | Waste management | 2004, juridical procedures are ongoing |
| 6 | Route 10 | Hungary | Mediation-like | Urban and land use planning, traffic, trade and enterprises, neighbourhood conflict | Ongoing, the process started 15 years ago, conflict resolution process in 2005 |
| 7 | Mediation to End the Blockade of the Lubna Landfill | Poland | Mediation-like | Land use planning, waste management | 1 st mediation: Feb 1998, 2 nd mediation: Nov 1999-Jan 2000 |
| 8 | Finding the Site for the Low and Intermediate Level Radioactive Waste Repository | Slovenia | Mediation | Waste management | Feb 2002 – Apr 2005, the decision-making procedure is ongoing |
| 9 | Returning the Protected Status to Natural Areas in the Lviv Region | Ukraine | Mediation-like | Nature conservation | The whole process: Dec 1999 – June 2005 |

| | | | | | |
|----|--|---------|-------------|--|---------------------|
| | | | | | Mediation: 2005 |
| 10 | Znesinnia Regional Landscape Park Versus Electric Power Supplier | Ukraine | Negotiation | Land use planning, nature conservation, power industry | Nov 2002 – May 2003 |

The cases analysed vary concerning the type of procedure, the topic area, the duration of the procedure and the quality of the process. The cases have been selected to present a broad range of approaches and experiences with conflict resolution tools. As far as possible, the analysis will refer to the different framework they have.

The case studies and descriptions on which the analysis is based upon are attached to this report and are also presented on the REC's website www.rec.org/REC/Programs/PublicParticipation/mediation and on www.partizipation.at serviced by OeGUT on behalf of the Austrian Ministry for Agriculture, Forestry, Environment and Water Management.

4 Comparative Analysis

In this chapter certain aspects of the different cases are analyzed in order to show the differences among the collected cases. Statements on evident differences between the Austrian cases and the German case in comparison with CEE cases are made but have to be seen as statements regarding the differences between the collected cases. Because of the relatively small number of cases the comparison cannot offer generally valid conclusions about the general differences regarding the culture of conflict resolution in the respective countries as such, but they can be understood as a deliberate approach to hypotheses about these and can also indicate certain trends.

4.1 Background of the conflict

The cases collected from Central and Eastern Europe are diverse, representing different areas of environmental decision making and different environmental impacts. The cases relate to broad environmental issues:

- infrastructure development and related land use planning (Czech Case: Putting Toyota MC and PSA Peugeot Citroen Corporate Social Responsibility Promises into Practice; Estonia: Negotiations over the Establishment of the Saaremaa Deep Harbour; Hungary: Route 10; Ukraine: Znesinnia Regional Landscape Park versus Electric Power Supplier);
- status of protected areas (Ukraine: Returning the Protected Status to Natural Areas in the Lviv Region);
- waste management topics, such as siting of landfills (Hungary: Szentgal Regional landfill, Slovenia: Finding the Site for the Low and Intermediate Level Radioactive Waste Repository, Poland: Mediation to End the Blockade of the Lubna Landfill); and
- permitting of industrial activities (Estonia: Negotiations over the Conditions of IPPC permit for the Kunda Pulp Plant Factory, Negotiating the Conditions of the Mining Permit for the Merko Oil-Shale Mine).

The cases focus mostly on conflict resolution at a more advanced stage of the conflict. Most of the cases collected from Central and Eastern Europe demonstrate a process whereby parties have turned to alternative dispute resolution methods when a legal conflict has already erupted and where:

- the administrative or juridical procedures failed to resolve the problem favourably for one of the parties involved (Czech Republic: Putting Toyota MC and PSA Peugeot

Citroen Corporate Social Responsibility Promises into Practice; Estonia: Negotiations over the Conditions of IPPC Permit for the Kunda Pulp Plant Factory); or

- the alternative conflict resolution ran parallel to the administrative or juridical procedures (both Hungarian cases); or
- an out-of-court agreement was recommended by the Court (Estonia: Negotiations over the Establishment of Saaremaa Deep Harbour).

Only in one (still ongoing) case (Slovenia, Finding the Site for the Low and Intermediate Level Radioactive Waste Repository), the decision to use alternative dispute resolution mechanisms and hire a mediator was made before a legal conflict erupted.

On the contrary the Austrian cases and the German case were all initiated before it had come to a legal dispute. This can be seen as one of the main differences between informal conflict resolution in Austria and Germany and in CEE countries according the investigated cases: The point in time when an alternative dispute resolution process is proposed. In CEE countries there seem to be more confidence in court proceedings rather than in the results of informal procedures. Therefore, alternative dispute resolution is mostly applied when the court or administrative proceedings failed to result in a satisfactory solution.

This field is well known in Austria. When the environmental movement started in the 1980s, alternative conflict resolution was used at a much more advanced stage of the conflict, if it took place at all. There has been a perceivable shift within the last 20 years to alternative dispute resolution at an earlier stage of the conflict or even as a conflict emerges. A possible explanation for this development is that decision makers in communities and public administrations already consider alternative conflict management to be an effective tool that brings better results than formal processes of conflict intervention like court proceedings.

In Austria, the provincial governments have implemented “advocacies for the environment.” These independent institutions were established by the provincial governments — but not bound by their instructions — to attend to the interests of nature conservation and the environment in administrative procedures and in environmental mediation procedures. They intervene in conflicts and offer information on environmental issues to citizens, administration and the political sphere and very often are initiators of alternative conflict resolution procedures. It is the merit of environmental NGOs that environmental issues are now much more considered in political decisions and that institutions like advocacies for the environment exist who now act as institutional supporters of these issues – more moderately than NGOs naturally — but very important in their roles, especially as supporters of the idea of alternative conflict management in this sphere.

As mentioned only two CEE cases can be qualified as mediations. The mediation process in Slovenia seeks a solution to the dispute over the siting of a radioactive waste repository. The solution should be acceptable to the local community and thus avoid future complaint

procedures against the different procedural steps of the decision-making process. After a technical and environmental survey of the site, the selection process was continuing towards the identification of potentially suitable sites. The local communities have been invited to participate in the selection process through an independent mediator, who represents the link between the two parties and facilitates the communication and negotiations between the investor, central authorities and the local communities. The decision to hire the mediator has full political support and the process shows that openness, transparency and a well arranged mediation process can help to find a non-confrontational resolution to such a complicated issue as site selection for radioactive waste disposal.

A most drastic example of how a conflict can develop and escalate is the case from Poland (Mediation to End the Blockade of the Lubna Landfill). It shows how poorly organised public participation activities, as well as avoidance of possible conflicts regarding such a sensitive issue as the establishment of a new landfill, can make local residents feel desperate enough to barricade the entrance and road to an old, badly maintained landfill near their homes. In efforts to get the rubbish moving again and establish conditions for the new local landfill, the commune turned to the mediator to help to negotiate with the protestors. The mediator faced the classical NIMBY (“not in my backyard”) syndrome and had to deal with a variety of conflicts between neighbours, values and beliefs, and finally with consideration of emotional and behavioural dimensions. The mediator helped people to minimise their tension and open up the entrance to the landfill, but the process in general failed, because the municipality did not put the achieved agreement into practice.

The cases from Austria also cover diverse topic areas, such as:

- the field of transportation (Viemediation.at – Extension of Vienna Airport, S10 Muehlviertel Expressway);
- power industry (110 KV Power Line Schrammbach); and
- land use planning and nature conservation (Nature 2000 Verwall, Future Use and Development of the Green Area in the West of Telfs) and the German case of Hinterstein.

In the majority of the cases, resistance from the public — from nearby residents or in any other form affected — arose when plans were getting public about, for example, an infrastructural project like a street, the expansion of the airport, the run of a new a power line or the construction of a golf course. People feared that their quality of life would be affected or that their land would be devalued by the project. In four of the six cases, active citizens mobilised en masse against the realisation of the projects, They formed citizens’ actions groups and used the media to voice for their concern. This conflict forced the community’s or developer’s hand, necessitating a resolution of the conflict. The initiative for the conflict resolution processs mostly came from the advocacies for the environment as explained

below. In two other cases (the German case of Hinterstein and the Nature 2000 area Verwall in Austria) the conflict had a long history and a similar background: They are both rural areas with restricted land use options because of nature conservation obligations. The complex conflict lines ran between the different interest groups (farming, hunting, tourism etc.) as well as between interest groups and the authorities responsible for the compliance of requirements and orders. All the other processes were initiated because of vigorous resistance of citizens against projects or developments.

It can be stated that another main difference between the Austrian/German cases and the CEE cases is that in the former it is the citizens who actively resist or mobilise against public planning or the expansion plans of companies, whereas in the investigated CEE region, it is the NGOs who resist, mostly through disputing decisions in court proceedings and trying to mobilise the public for their concern, respectively representing the local communities in the processes.

4.2 Initiation of the conflict resolution process

In Austria, very often the advocacy for the environment⁴ comes up with the proposal to start a collaborative conflict resolution procedure. Some of the employees of the provincial advocacies are also professional mediators. For example, the mediation-like procedure for 110 KV Power Line Schrammbach was mediated by an employee of the Advocacy of Lower Austria. In three of five Austrian cases the advocacy for the environment initiated the process (Nature 2000 Verwall, 110 KV power line Schrammbach and the mediation procedure in Telfs).

In the case of S10 Muehviertler Expressway the initiator was the Provincial Government of Upper Austria and the Vienna Airport Mediation was initiated by a lawyer, himself a professional mediator, hired by the airport to develop strategies on how to manage the strong opposition against the expansion plans of the airport. The airport had not initially intended to engage in a conflict resolution process but rather a sophisticated public relation campaign. The lawyer convinced the airport of the advantage of mediation but was not mediating the very large mediation process himself. There was a team of two mediators guiding the mediation process; the lawyer played the role of the coordinator of the process. The German mediation case was initiated by the responsible local authority for the affected area.

In contrast to this, the initiators of the vast majority of the cases in CEE countries are environmental NGOs not having much support from local or regional authorities for their initiative.

⁴ "Advocacies for the environment" are independent institutions established by the provincial governments (but not bound by instructions of the authority) to attend the interests of the environment in administrative procedures and environmental mediations.

In three Estonian cases the NGOs try to solve the conflict and negotiate for better results either after the court case has failed or based on the court's instruction to find an out-of-court agreement. Their capacity to bring the case to the court, as well as to negotiate a better result, was supported by a special legal aid service, which is providing free-of-charge environmental legal help to individuals and organisations engaged in issues of environmental protection. Similar organisations (EcoPravo in Ukraine, Environmental Legal Advocacy (EPS) in the Czech Republic and EMLA in Hungary) were running the processes in other mentioned countries. Only in two cases, Slovenia and Poland, other parties than NGOs have initiated the process.

In Slovenia, the Agency of Radwaste management, the organisation which is responsible for providing the conditions for final disposal of radioactive waste, made a decision to use alternative dispute resolution mechanisms early in the process and hire a professional mediator. In Poland, one of the conflicting parties – the local community – made efforts to find a mediator who could help to negotiate with people and dismantle the road blocks and the entrance of the landfill. Later in this process, a local association, the Club of Villages' Administrators, took the role to represent the interest of local inhabitants.

To sum up, in five of the six cases from Austria and Germany, local or regional authorities (or associated institutions like the advocacies for the environment) took the lead in initiating alternative dispute resolution processes, which gives the process backing and increases the chance of successful implementation of the outcome. In CEE countries NGOs are the moving force towards the implementation of informal conflict resolution. In the two cases in Hungary, which affected several municipalities, the attitude of public authorities towards the project development was divided and the Ministry of Environment was perceived as playing a more impartial, neutral role. In the Czech and Estonian cases, the public authorities did not play a significant role in the process, as the negotiations were held directly between the NGOs and the project developer. In the other cases, the public authorities were perceived, especially by NGOs, as supporting the project development. The different level of involvement of public authorities and lack of a leading role in conflict resolution strikes a clear difference to the practice in Austria and Germany.

4.3 Financing of the process

For all conflict resolution processes it is crucial to have enough financial resources to guarantee a process is done correctly, with sufficient time and the necessary expertise.

As in most Austrian cases, local or regional authorities initiated the process and acted in the role as client, covering the costs of the processes. In three of the cases (Natura 2000 Verwall, 110 KV Power Line Schrammbach, S10 Muehviertler Expressway) the provincial government

paid the costs; in Telfs the procedure was financed by the municipality. The mediator proposed that the mayor of Telfs, who was an influential person in the region, should not participate directly, but benevolently accompany the process in order to avoid the impression that the client had too much influence in the process — in this specific case due his personality but also as the financing institution. In the mediation process for Vienna Airport, a plan was made for the airport and the provinces of Vienna and Lower Austria to share the costs, but in the end almost the entire cost was covered by the airport. In the German case of Hinterstein, the mediation procedure was designed as a research project and was financed by a provincial scientific institution.

In most of the cases, finances seem to have been not a severe problem even though some of the processes were very large, long and costly. Only the mediators of the mediation case Verwall complained about the restricted budget.

It is considered a certain danger that those who pay have more power to decide in the process. According to the statements of the people who provided information, it was not the case in the described processes in Austria and Germany.

In the CEE region, the cases were financed by different sources. In the mediation case in Slovenia, the mediator's work has been paid for by the Fund for Decommissioning and Radioactive Waste Disposal from the Krsko Nuclear Powerplant. This ensured the mediator's independence from the Agency of Radwaste, her current employer.

In Poland, the mediation process was not financed by any party. The mediator was working voluntarily and refused the payment from the commune of Gora Kalwaria (one of the parties in the conflict) in order to be neutral and also financially impartial. Additional finances for the overall process would have been very welcome.

Where the conflict resolution was led by NGOs, the finances came from different sources, such as the EU Phare Micro Programme (Hungary, Szentgal Regional Landfill), the National Civic Fund, the Ministry of Environment (Hungary, Route 10), and through a grant from the Carpathian Foundation (the Czech Republic).

In both Ukraine as well as Estonian cases, the parties of the conflict acted within their own budgets on a voluntary basis, while defending their interests during the conflict resolution process. Although there was no separate budget or project available, it was not mentioned as a problem to take part effectively or to lead the process.

4.4 Preparation of the process

In general, the preparation of the process is one of the most important phases of conflict resolution. The cases show considerable differences in the time invested in preparation, especially when comparing the CEE cases with the Austrian/German cases.

In the mediation of the Vienna Airport case, an extraordinarily large procedure, the preparation phase – the so-called pre-mediation - lasted almost a year, with preliminary conversations of the process coordinator with all relevant stakeholders and the setting up of a preparatory group that prepared the actual mediation procedure. Also, in all the other Austrian and German cases, preliminary conversations were undertaken with all relevant stakeholders to inform them about the procedure, to find out their version of conflict history, their willingness to participate and to reach a consensus and to accept the rules of the procedure.

As the mediation and other alternative conflict resolution procedures are new tools for solving conflicts in CEE countries, good preparation — including helping people to understand the procedure and making its advantages clear — is extremely important, but does not often take place. Poor preparation is partly due to the lack of expertise of persons initiating or guiding the process, but it is also due to the lack of knowledge of the advantages of public participation in general.

In Slovenia for example, the mediator has a double task: mediating the site selection process and presenting mediation itself as a new tool for solving potential environmental conflicts. The mediator in the Polish case also stated that he had to educate the participants about the character of the process, motivate them to express their real attitudes, hidden fears and beliefs, give hints on how to overcome the “win or die” position and discourage the parties from using avoidance tactics. In the Szentgal Regional Landfill case, the Hungarian lawyers of EMLA (Environmental Management and Law Association, Kornyezeti Management es Jog Egyesulet) attempted to use mediation as a conflict resolution tool, but their efforts failed when the parties gave preference to the administrative and judicial proceedings. Thus, the efforts to inform the parties about the role and procedure of mediation in order to reach an agreement for the use of this procedure were not successful.

In summary, many processes in CEE seem to start without too much preparation or an explanation of the essence as well as the main steps of the process to the different interest groups, which has a negative impact on the process and its outcomes. The lack of prior preparation affects the motivation of all relevant parties and stakeholders to participate and prevents the commitment of participants to conflict resolution, even though this would trigger giving up some of the claims in order to strike a mutually acceptable solution.

4.5 Involvement of stakeholders and their roles

In conflict resolution processes a variety of stakeholders can be involved and they can have various roles within the process. There are, for example, people directly affected by the project or plan, the developer, representatives of interest groups like environmental NGOs or representatives of the local economy, representatives of public authorities, political decision

makers and technical experts. The involvement of all relevant stakeholders is essential for a successful conflict resolution. To motivate the stakeholders to participate in the process is crucial at the beginning of a process and is one of the steps in the preparation phase of the conflict resolution process executed by the mediator/facilitator. Comparing the involvement of stakeholders and the roles of participants in CEE cases with Austrian/German cases, certain differences can be noticed.

Identification of the stakeholders

As in all the Austrian/German cases the mediators/facilitators had preparational conversations to uncover the relevant stakeholders and motivate them to participate, the different interests are well represented in these processes. In most of the Austrian/German cases, a variety of different stakeholders are involved in representing many different interests. In the CEE cases, the conflict often appears as a conflict between two sides, whereas in Austrian and German cases the differences of interests seem to be more widespread. That is mostly due to the procedural history of the conflict at court and that there are less diverse stakeholders involved in CEE cases. In several cases (e.g. the Szentgall Regional Landfill) the absence of key stakeholders prevented the finding of a sustainable solution.

NGO's

When comparing the cases, it is the involvement of citizens and citizens' action groups which stands out as considerably different. In Austria and Germany it is often citizens who organise themselves in citizens' action groups to mobilise protesters against projects or developments, organise demonstrations and attract the attention of the media on the conflict (110 KV Power Line Schrammbach, Vienna International Airport, S10 Muehviertler Expressway). These activities of citizens frequently supported by NGOs can be — if “loud” enough — the trigger for communities or public authorities to think of initiating a conflict resolution process. In the CEE cases, local communities are mainly represented by NGOs, but there is very rarely direct involvement of citizens in the conflict resolution process itself.

As mentioned, one of the common features in the case studies in CEE is that environmental NGOs rather than environmental or other public authorities play a major role in conflict resolution trying to facilitate the participation of local communities in the resolution process (Hungary: Route 10 and Szentgál Regional Landfill; the Czech case: Putting Toyota MC. and PSA Peugeot Citroen Corporate Social Responsibility Promises into Practice; and the case from Ukraine: Znesinnia Regional Landscape Park Versus Electric Power Supplier). Besides often initiating the process, mediators are in a position to provide information to conflicting parties, strengthen the voice of the local people or facilitate meetings among the parties involved. In some cases they do it on voluntary basis; other times they receive financial support, mostly in the form of the different grants.

It is very common that NGOs have a double role: they are a party in the conflict and act as facilitator in the process (e.g. in the Route 10 case). Even if the NGOs' representatives display a willingness to solve the conflict, their views are still the views of one party in the conflict and that position (i.e. not being an impartial actor to the process) can be obstructive to finding a generally accepted solution. For a smoother process, and a fair and balanced outcome for all parties, an independent and all-party mediator/facilitator and the strict division of the roles and representation of interests and facilitation has proved to be favourable.

In most of the CEE cases the conflict opposes NGOs and local communities on one side, and public authorities and developers on the other side. Only in one case (Estonia) did an environmental NGO take action against the planned development (the Saaremaa harbour) on its own, while the local community supported the project due to economic arguments and were not concerned or interested with the environmental impact of the proposed development. Nevertheless, this case also illustrates that it is very important to establish good and trustful contact with the local community, and provide information on such impacts. It is equally important, however, to listen carefully to the concerns and opinions of local inhabitants and to try to find solutions that could usher in longer term benefits for every interest group.

Differences in the interests of environmental NGOs and the local community can often be seen, as in the case of the Austrian Nature 2000 area Verwall. The intention to protect nature frequently collides with land use interests of land owners or municipalities.

Other stakeholders

Most of the developers in the CEE region still underestimate the power of pressure groups and local people. As can be seen in the Polish case, the developer tried to use the avoidance technique as long as possible, hoping that people will get used to the idea of having another landfill in their backyard and stop fighting against it. In the Estonian case (Negotiations over the Conditions of IPPC Permit for the Kunda Pulp Plant Factory) it was hard to press the developer to allow the announcement of the conditions of the agreement publicly.

According to the Hungarian case presenters (Route 10, Szentgall Regional Landfill), the very emotional attitude of the stakeholders opposing the project during the meeting, and the absolute unwillingness of parties to give up positions were obstacles to the process. If the parties are not willing to reach a consensus — and that means giving up positions — it is not possible to move forward. A constructive attitude can be fostered by a well accepted, impartial third person who acts as mediator/facilitator and through good preparation, which includes initial talks with all stakeholders. That happened in all cases in Austria and in Germany but was not the case in CEE cases except in the mediation case from Slovenia.

In the Western cases there are often representatives of political parties and of all concerned authorities participating in the process, especially in large processes (Vienna Airport, S10

Muehlviertel Expressway), whereas in the CEE examples this is not the case. Mediators see that as an effective way to guarantee the political backing for the implementation of the final outcome, as well as the participation of relevant political parties. It also prevents one party from agitating against the outcome of the process in order to maximise votes.

4.6 Design of the process

As mentioned before, in most of the CEE cases, except Ukraine (Znesinnia Regional Landscape Park Versus Electric Power Supplier and Status to Natural Areas in the Lviv Region) and Slovenia (Finding the Site for the Low and Intermediate Level Radioactive Waste Repository) the alternative conflict resolution processes ran either parallel to administrative or judicial procedure, or after these procedures, when they had failed in finding an acceptable solution for the parties involved.

Only two (Slovenia and Poland) of the ten cases in CEE can be considered as environmental mediation cases, while the rest are:

- negotiations among the conflicting parties, facilitated by lawyers who nevertheless represent the interest of one of the parties (local communities in the Czech case and the project developer in one of the Estonian cases); or
- attempts made by NGOs to bring the parties together and present them the option of using mediation, or other similar conflict resolution tools. Sometimes, the activities were limited to general discussions, in order to hear each other's arguments and reach a better understanding of all the issues at stake.

One of the main conclusions made by many CEE NGOs taking part or leading the conflict resolution procedure is that, compared to administrative procedures, the negotiation/conflict resolution process is clearly more efficient, as long as parties are willing to contribute to the process and are interested in finding a mutually acceptable solution. This point, again, stresses the importance of thorough preparation for the process. It also stresses that — compared to judicial or administrative procedure — the alternative conflict resolution process offers the chance that none of the stakeholders are left totally unsatisfied, as may often happen in the review procedures.

Three out of five Austrian cases and the German one were mediation cases. One was a cooperative discourse (S10 Muehlviertler Expressway) and one a mediation-like procedure. The conflicts were of different complexity, and the number of involved persons varied considerably – from 16 (110 KV Power Line Schrammbach) to 300 (Vienna International Airport Mediation). A larger number of participants affords adapted structures and settings so that the process can be handled and the capacity to work is still guaranteed. Corresponding with the large numbers of participants the procedure had a more complex structure in the Vienna International Airport Mediation. There was the mediation forum as a general forum

where all parties were represented. A process steering group of about 20 members determined the process design, discussed procedural questions, established work groups, and performed other tasks. The actual work was carried out in the different work groups and sub-committees.

The length of the processes also depends on the complexity of the case and the number of participants. The duration of the Austrian/German cases ranges from three months to five years of continuous conflict resolution process, from three meetings (110 KV Power Line Schrammbach) up to over 150 in the case of the Vienna Airport mediation case. The latter was exemplary in the transparency of the procedure and its information policy, but issue was taken with the dimension of the case: Due to the number of participants and the complexity of the interests, the process lasted five years, which was considered as an unreasonable demand by many involved. Such a long process is a burden for citizens who participate in their spare time but also for NGOs, which, by and large, have very limited resources.

The duration of CEE cases is quite different. In Slovenia (Designating the Site for Radioactive Waste Disposal), the process started in 2002 and continues to date. The procedure has several phases and several interest groups to deal with a wide spectrum of the public, representatives of communities who are willing to negotiate about the site in their community, and, later on, the neighbourhood inhabitants. All together the process lasts five to six years.

In Poland, two short-term mediation procedures were organised over two years time, in order to solve the same problem twice. It would have been more efficient to continue after the first mediation process (and the dismantling of the entrance of the landfill) with a well organised and appropriate conflict resolution procedure and find the solution for the real problems regarding the establishment of a new landfill. Unfortunately, the responsible authorities did not realise the need for a systematic approach to finding a resolution, and the mediator was invited to solve the conflict only in the case of emergency.

Other processes, such as Route 10 in Hungary (the conflict started 15 years ago) or Returning the Protected Status to Natural Areas in the Lviv Region (Ukraine, started in 1999), have been conflictual for a very long time, but a systematic conflict resolution process took place — lasting but a few months during 2004 and 2005 — to find a solution. In the case of Route 10 the conflict resolution process did not bring any mutually acceptable solutions for many reasons (the leading NGO did not have a neutral role in the process, there was a lack of official support for the activities, a large number of interest groups strongly refused to budge, and the appropriate skills to handle the situation were lacking). In the case of Returning the Protected Status to Natural Areas Lviv Region (Ukraine) the willingness to find a solution to the long standing problem led to an agreement and to small steps forward when the parties finally met and worked to solve the dispute.

The Estonian examples featured conflict resolutions that took place over short but intensive periods of time. The short period reflected the small number of participants involved in the process. During the process, the Fund for Nature was mostly representing their own interests, because they did not have time to consult with any other interest groups.

Except for the Slovenian example, the conflict resolution processes in CEE were rather short due to the instruments applied (mainly facilitated negotiations) and the majority of the results were not broadly accepted and sustainable due to several reasons explained below (see 4.8). Quite often the process lasted only a couple of months, containing not more than a few meetings.

4.7 Procedural guidance

The mediator/facilitator and his/her aptness play a key role in the conflict resolution process. He or she motivates all stakeholders in individual talks to participate in the process, and it is his/her task to create a trustful atmosphere already in the preparation phase.

As mentioned, the lack of profound preparation often proved to be the reason for failure. When, for example, the relevant affected persons and interest groups have not been involved in the alternative conflict resolution process or are denied participation, then the search for a commonly accepted solution cannot succeed, as was seen in various cases in CEE.

The Austrian cases and the German case were all guided by persons who have the professional backgrounds as mediators. In three of the six cases the process was guided by a team of two mediators/facilitators, a key to success in larger procedures. Even though two of the processes were not mediations, the facilitators followed the key mediation quality criteria for guiding a process, in order to find a mutually accepted solution. They seem to have been well accepted by all stakeholders.

In the CEE cases, only in two cases (*Slovenia and Poland*) the local or state authorities deployed independent mediators to lead the process. In the Polish case, in order to stay neutral, the mediator refused to accept any payment. In the Slovenian case, the mediator was hired by the Radioactive Waste Agency, which was charged with finding the site for the radioactive waste repository. Nevertheless, the contract with the mediator stipulates clearly the independent status of the mediator.

In addition to the above-mentioned NGOs who lead the process and mediators/facilitators, the processes in the other cases (mostly negotiations) were sometimes led by the attorney of one party in conflict. In the Estonian case (Negotiations over the Conditions of IPPC Permit for the Kunda Pulp Plant Factory) the attorney of the developer:

- guided the negotiations;
- offered solutions that would satisfy all parties;

- provided facilities; and
- offered legal support by shaping the final agreement.

Although the attorney acted on behalf and in the interests of his client, he helped to frame the solution that would satisfy the NGO and persuaded his client to compromise on some issues of importance to another party. The NGO acknowledged that the process was very useful as it proved that there is a possibility to negotiate with developers and reach agreements if the facilitation is carried out in a fair and even manner.

According to the Hungarian case presenters (Route 10, Szentgall Regional Landfill), the highly emotional attitude of the stakeholders opposing the project during the meeting, and the absolute unwillingness of the parties to give up positions were obstacles to the process. If the parties are not willing to reach a consensus — i.e. to compromise — it is not possible to move forward. This necessary constructive attitude can be fostered by a well accepted impartial third person that acts as mediator/facilitator and by thorough preparation that includes initial talks with all stakeholders. That seems to have happened in all cases in Austria and in Germany but was not the case in CEE cases, with the exception of the mediation case from Slovenia.

4.8 Quality and sustainability of the outcome

One of the key preconditions for a sustainable outcome is, as mentioned above, the participation of all relevant stakeholders. If that is not given, the agreement of the participating parties and stakeholders is in danger of being disputed or appealed after the end of the process.

In all the Austrian cases, as well as in the German case, a broad involvement of stakeholders was a key factor in the success of the processes. In the case of the Vienna Airport mediation procedure, a few citizens' action committees and one political party did not sign the final document, but as the relevant involved parties and stakeholders all did, it did not endanger the outcome.

The outcome of a mediation process is often put down in a written contract signed by all involved, sometimes a civil law contract, sometimes binding on a voluntary basis. Except the case of the 110 KV Power Line in Schrammbach, all the Austrian cases resulted in a written agreement — legally binding (like in the Vienna Airport and Verwall mediation cases), or binding on a voluntary basis (like in the German mediation case of Hinterstein, in Telfs and in the case S10 Muehlviertel expressway).

Monitoring the outcome is an essential part of guaranteeing the endurance of the results. This can be realised through an advisory council representing all stakeholders which meets regularly (such as in Verwall or the Dialogue Forum Vienna International Airport), which is

responsible for regional conflict management and is also the custodian of the concluded contracts. In the Vienna Airport Mediation furthermore an arbitral tribunal has been installed to guarantee compliant solutions to arising conflict matters, according the spirit of the Vienna Airport mediation.

The changed perception of the other parties that develops during the mediation process, the greater understanding of the interests of others, better relationships and a communication basis are key assets in a process of this kind and can also guarantee the sustainability of the results.

In CEE, the outcomes of the procedure were not so successful in most of the cases. While in the Estonian cases the parties could find a compromise and agree on a solution, in the Hungarian cases the procedure did not lead to concrete agreements, even though some results were reached (e.g. in the Szentgal Regional Landfill one of the outcomes of the joint meeting was the agreement to conduct a new independent expert opinion on the siting, taking into account facts revealed during the meeting). In Poland, the agreement after the first mediation procedure was to involve local people in the planning process of a new landfill but as it did not happen, the protestors repeated the action (blocking the entrance of the landfill) a few years later. A key finding of the various cases in CEE is that the lack of a mutually agreed solution or interim agreements leading to the final solution is affecting the sustainability of the results. To publish the outcome can also be a measure of reinforcing the commitment to stick to the agreed results.

As an illustration of a successful process, in the Estonian case (Negotiations over the Conditions of IPPC Permit for the Kunda Pulp Plant Factory), the agreement was put into practice in a way that both obligated parties received the applications of the other party in writing. On the basis of these applications, the administrative court ended the proceedings and the IPPC permit was changed by the Laane-Viru Department of the Ministry of Environment.

In the Ukrainian case (Returning the Protected Status to Natural Areas in the Lviv Region), during the roundtable of stakeholders (one of the main activities during the process) a consensus was reached. The agreement is part of the meeting documents and it provides for the establishment of a commission including different stakeholders, which will propose decisions on some areas that would regain protected status.

In another Ukrainian case (Znesinnia Regional Landscape Park Versus Electric Power Supplier), the decision took the form of an oral agreement to support the solution made during the meeting about the further procedures (on decreasing the number of trees to be cut and replacement of a high voltage power line, and to provide the approvals needed for the implementation of this decision. The decision was implemented by the relevant authority and the extension of the idea was written into the General Plan of Lviv City.

Summing up, the most relevant reasons for failure in the search for a solution to the conflict in the collected cases proved to be:

- absence of key parties or stakeholders in the process (Estonia: Negotiations over the Establishment of Saaremaa Deep Harbour);
- no support from public authorities/the (political) decision makers (Hungary: Route 10, Estonia: Negotiations over the Establishment of Saaremaa Deep Harbour);
- too little knowledge about the instrument of alternative conflict resolution, the role of the mediator/facilitator and the process of finding a solution (Hungary: Route 10, Hungary: Szentgál Regional Landfill);
- no willingness to reach a consensus and no understanding of the benefits of consensus (Hungary: Route 10 and Szentgal Regional Landfill, Estonia: Negotiations over the Establishment of Saaremaa Deep Harbour);
- controversial role of the leading/facilitating organisation (when the process was led by an NGO) (Hungary: Route 10 and Szentgál Regional Landfill); and
- no final agreement that has a binding character and/or no monitoring of the results (Poland: Mediation to End the Blockade of the Lubna Landfill).

In the following chapter, a summary of the key findings of the comparative analysis of conflict resolution in Austria, Germany and the CEE countries will be given describing the main differences.

4.9 Summary

As stated previously, the comparative analysis is based on 16 cases from the countries mentioned. It can therefore offer insight into differences based on the collected cases, into conflict resolution trends, but cannot provide generally valid conclusions about the practice of alternative dispute resolution in Austria, Germany and CEE.

Generally it can be said, that collaborative conflict resolution is already well known among the actors in the environmental sphere in Austria and Germany. With the implementation of the advocacies of the environment in the Austrian Provinces, mediation and cooperative conflict resolution has won a strong advocat with strong links to the Provincial administrations as well as to NGO's, citizens and citizens' action groups. In CEE countries experiences with mediation and other informal conflict resolution processes are rather rare as the investigations showed.

Regarding the collected cases, the main differences between the Austrian/German and the CEE conflict resolution processes concern

- the starting point of the informal process in the conflict history
- the role of citizens and citizens' action groups
- the initiation of the conflict resolution process;
- the involvement of stakeholders;
- the guidance of the process; and
- the quality of the outcome.

Starting point of the informal process in the conflict history

The collected cases show that in CEE, alternative conflict resolution processes start at a stage when legal conflicts had already erupted. Alternative dispute resolution is mostly applied when the court or administrative proceedings failed to result in a satisfactory solution.

There seem to be several reasons behind this, such as lack of knowledge on alternative conflict resolution tools, lack of skilled professionals to guide the process and a generally higher confidence in court or administrative proceedings than in informal processes in the case of conflicts.

This has been very similar in Austria at the beginning of the environmental movement. There too, informal conflict resolution processes started at a more advanced stage of the conflict. But since then, the situation has changed. As the cases show, now very often alternative conflict resolution processes are initiated before the conflict turns into a legal dispute. This may result from the increasing positive experiences with informal conflict management, with the greater awareness that dealing with conflicts at a very early stage brings much better results at lower costs. As the clients of mediation and similar processes are often municipalities or provincial governments the knowledge of these instruments among political or administrative decision-makers is essential. And there the important role of the Austrian advocacies for the environment has to be stressed again.

Role of citizens and citizens' action groups

Another obvious difference between the Austrian/German cases and the CEE cases is that in the former it is the citizens who start to actively resist or mobilise against unwanted developments and projects in the public sphere. These activities of citizens sometimes supported by NGO's can be the trigger for communities or public authorities to think of initiating a conflict resolution process. Whereas in the investigated CEE region, it is the NGOs who resist, mostly through disputing decisions in court proceedings and trying to mobilise the public for their concern. The NGOs mostly represent the interests of the local population that

is not directly involved. In Austrian and German cases citizens and citizens' action groups are important stakeholders in the processes.

Initiation

Another main difference between the Austrian/German cases and CEE cases can be found in the way the alternative conflict resolution process is initiated. In CEE many of the collected cases were initiated by NGOs. In such cases, NGOs represent local communities in the process and try to mobilise the public for their concern, but they mostly lack support of public authorities.

In contrast to that, in 5 from 6 Austrian/German cases it were public authorities (provincial governments, municipalities, the Austrian advocacies for the environment etc.) that acted as initiators and proposed a collaborative conflict resolution procedure to the persons and institutions concerned. In Austria it is often the advocacies for the environment because they are contact points for citizens with environmental concerns and know much about the practice of informal conflict resolution. Moreover, the strong involvement of public authorities contributes to a higher commitment and backing for the process and for the proper implementation of the results.

Involvement of stakeholders

Experience has shown that the preparation of a conflict resolution procedure and the broad involvement of stakeholders is crucial for its success. The preparation phase in the Austrian/German cases contained preliminary consultations with all relevant stakeholders, gathering information about the conflict and its history, agreeing upon rules of the procedure. Due to this fact, in the Austrian/German cases the different interests are well represented in the processes by a variety of different stakeholders. There are often representatives of political parties participating in the process, especially in large processes whereas in the CEE examples this is not the case. Mediators see that practice as an effective way to guarantee the political backing for the implementation of the final outcome. The participation of relevant political parties also prevents one party from agitating against the outcome of the process in order to maximise votes.

In contrast, CEE conflicts are often between two parties with clearly defined interests that are diametrically opposed. The situation might be due to the procedural history of the conflict, subject to administrative or judicial review, and to a lesser involvement of diverse stakeholders. The CEE case studies showed that little time is invested in the preparatory phase of the procedure and that often times relevant stakeholders are not invited to the process or deny participating (e.g. concerned public authorities) what turns out calamitous for

the outcome. As already mentioned above in contrast to the practice in Austria and Germany, citizens's interests are mostly represented by NGO's, they do rarely participate themselves in a conflict resolution process.

Guidance of the process

Guidance of the procedure by a neutral and impartial person or team has also proved important. The Austrian/German cases were all guided by persons or teams with a professional background as mediators and followed the key mediation quality criteria of guiding a process, in order to find a mutually accepted solution.

In the CEE cases, the situation is different. Only in two cases did the local or state authorities deploy independent mediators to lead the process. More often it is the NGOs who not only initiate the process, but also facilitate it, giving them a double role: representing or being one of the parties in the conflict AND facilitating the process. This dual role can tarnish their perception as neutral and hinder their ability to find solutions. In some other cases (mostly in negotiations) the process was led by the attorney of one party in conflict. In these cases the standing of this person is not clear and can be detrimental to the success of the process.

Quality of the outcome

There are some key preconditions for a sustainable outcome as for example the participation of all relevant stakeholders who are willing to reach a consensus and the attentive guidance by a skilled and all-party mediator/facilitator. The successful examples in Austria and in Germany showed that the quality of the achieved results is reflected by the quality of the process. A successful process leads to a changed perception of the other parties, leads to a better understanding of the other's interests that strengthens the sustainability of the outcome. A written contract signed by all involved and monitoring the outcome are essential part of guaranteeing the endurance of the results. Due to procedural weaknesses in many of the CEE cases – deficits in the design and/or the guidance of the process - the outcome of many processes was not sustainable (see p. 27f.) or offered solution to only a part of the conflict. In none of the CEE cases monitoring measures were applied.

In the final part of the report (see 5) some recommendations are given in order to ensure a better implementation of conflict resolution processes and increase the chances for broadly accepted and sustainable results.

5 Recommendations

Based on the practical experiences of the people involved in the different cases, various challenges and success factors could be identified. In the following chapter some recommendations will be given in order to foster the implementation of environmental mediation and other conflict resolution methods.

5.1 Assuring support for the process

- Already in the preparation stage of a (mediation) procedure, the political backing for the procedure and for the potential outcome has to be assured. This can be achieved, for example, through the involvement of representatives of political parties in the process (Vienna International Airport mediation case), through decisions of political institutions (e.g. the municipal council or the provincial governments) regarding the implementation of the process or the implementation of the results. This was the case in Verwall, where the Provincial government of Vorarlberg committed itself early in the process to implementing the results of the mediation. It was the same in the German case of Hinterstein and the Austrian case of Telfs, where the mayor played a very supportive role in the process.
- To ensure that citizens who are not directly involved also support the process, it is advisable to keep the public informed about the procedure and the progress achieved. This communication avoids rumours and the perception of the procedure just being a project of the elite. For example, in Hinterstein, people who could not take part in the mediation felt like outsiders, because of the strong corporate feeling that had grown within the mediation forum with the successful implementation of the mediation.

5.2 Financing of the process

- Sufficient financial resources have to be guaranteed for the process. Furthermore it has proved to be an advantage when the costs of the process are split and paid by several institutions. That helps to avoid the impression that the voice of the one who pays has a stronger weight than the others and therefore could have the power to determine the outcome.
- The financial resources for the various conflict resolution processes in CEE mostly came from various funding programmes of international organisations and were managed by the NGOs who led the process. In cases where the public authorities

lack the initiative and the leading role in such processes, it is important to enable civil society to take over the lead, through adequate funding programmes.

- The provision of funds for mediation and conflict resolution processes in the budgets of the relevant authorities would be a boost towards the systematisation and regularisation of such proceedings, and would also ensure that participants in the processes, including developers, are motivated to take part.

5.3 Preparing the process

Good preparation is essential for the process to succeed. The recommendations below refer specifically to the mediation procedure, but they are also valid for other types of conflict resolution processes. The thorough preparation of a mediation process requires intense talks with all relevant persons and institutions and includes the following steps:

- clarifying if the mediation is the right instrument for the case: There must be, for example, enough margin for negotiations to develop a win-win solution for all involved parties;
- choosing a mediator or a team of mediators that is accepted by all stakeholders;
- informing all stakeholders about the implications of a mediation process: about the rules of the game, about the opportunities and benefits, about the different roles in the process, possible steps, possible outcomes, etc. This element is particularly relevant for the CEE region, where there is a general mistrust about the use of such processes and lack of knowledge of the benefits of these processes, as shown by the case studies;
- familiarising stakeholders with actual mediation processes, in order to achieve an understanding of the realistic possibilities for solutions, and to see how compromises are reached in real-life situations;
- motivating all relevant stakeholders to cooperate in the common search of a solution accepted by all the parties involved. The stakeholders must be willing to voluntarily take part AND there must be a basic disposition to accept a consensus or compromise;
- assuring (political) backing of the process by involving relevant authorities and decision makers (see above);
- clearing up the question of who will financing the process (see above); and
- securing appropriate general conditions (time, environment etc.) in accordance with all parties involved.

5.4 Designing the process

- A suitable process design has to be developed at the very beginning of the process. It should take into account the financial and time resources, the competence available and the knowledge of those involved. For example, in Hinterstein the mediator realised that some of the people involved had poor writing skills, and were therefore afraid to do so. Other ways to collect and visualise ideas, opinions, interests had to be found that were appropriate for all.
- Closely linked to the process design is the development of a time schedule, which is discussed with those involved and agreed with them. This is necessary to have a clear structure in the process (e.g. by defining milestones, intermediary results etc.) and for a common understanding of the progress of the procedure.
- Agreement about the process design also includes a definition of the roles and functions (mediator, facilitator, “godfather” etc.) of those involved and clarifying the degree of involvement in the procedure. Special attention should also be given to the role of experts in the procedure. It has to be agreed if they are part of the mediation forum or if they only provide expertise on request, who is in charge of gathering the information from them and who pays them.
- For a successful cooperation, it is important to define clear “rules of the game” for the process that are binding for all parties during the whole run of the process. These rules regulate the structure of the procedure, the roles of the people involved, the means of communication and of disseminating relevant information, the information/media policy, and how decision making will take place, among other things. It is advisable to fix these rules in writing to avoid misunderstandings.
- When there are many participants, a clear work structure in plenary sessions and work groups is needed. As shown in the mediation procedures in Verwall and in the Vienna Airport case, it would not have been possible to achieve progress with regard to content or to get to an agreement without work groups. In the extraordinarily large mediation forum of the Vienna Airport procedure, a process steering group of 20 people discussed all procedural questions, collected all the information, established and disbanded work groups, determined the process design and the next steps to be taken — always with the consensus of all parties involved.

5.5 Involving all relevant stakeholders

- All stakeholders must be present to ensure a balanced representation of all interests and balancing power at stake. They must be well informed about the process and their roles, and must be committed to reaching a consensus.
- The stakeholders must clearly understand the process and the possible outcomes. Their involvement and active participation in the process depends heavily on the person providing procedural guidance, as explained below. If some of the interested actors will not perceive the process as fair and impartial, they will simply not take part and prevent the finding of a solution to the conflict.
- It is recommended to involve political representatives to ensure backing for the implementation of the results.

5.6 Guiding the process

The mediator/facilitator motivates the relevant parties and stakeholders, designs the process in cooperation with the parties involved and builds the trustful atmosphere needed for such a process through preparatory talks with all stakeholders.

This preparation and coordination process is a crucial point in each mediation procedure because it builds the basis for good communication within the mediation forum. The mediator must clarify the benefits of the process, explain possible steps of negotiation and negotiate the terms for participation of each stakeholder, among other tasks.

A number of factors figure heavily into the mediator being accepted by all the parties involved:

- Professional background: Although the role of the mediator is to mediate and not to act as an expert, it is an advantage if the mediator/facilitator has at least some expertise in the field at hand. This knowledge strengthens his/her standing in the process and fosters acknowledgement by the stakeholders.
- Familiarity with local/regional/technical specifics: e.g. language/dialect: In several procedures it turned out to be important for the standing of the mediator that he or she has come from the region and spoke the regional dialect (see Verwall and Hinterstein).
- All-party and neutral attitude: Neutrality in a mediation means that the mediator has no own interests regarding the case or conflict. An all-party attitude includes the empathic understanding of the positions and interests of all the parties. The mediator has to prove that he gives each party the same room to present interests and ideas. It is important in the whole process but especially crucial in the initial phase that the

mediator pays attention, that he performs this way and that there is a balance of all different interests, because at the beginning misperceptions, rumours, and suspicions can affect attitudes and therefore a trustful atmosphere has to be built up. An all-party attitude and neutrality help to create an atmosphere where appreciation, trust and frankness can develop, which is necessary for a successful conflict resolution process.

- Skilled tactician: At least as important as the professional standing of the mediator are his/her skills in organising and leading meetings, breaking impasses, motivating participants, prioritising issues, and in general conducting the negotiations in a manner that has the best chance of leading to successful resolution of the conflict. These skills require experience in negotiation, tact, good judgment, and a high degree of energy and motivation.

5.7 Ensuring sustainable results

- A mediation contract where the agreed set of measures is put down in a clearly structured format that shows the goals, responsibilities, time frame and monitoring mechanism is an efficient way of ensuring the sustainability of the results. In certain cases, it may be essential to have the possibility of legal enforcement.
- In addition to a final contract about the solution, it is advisable to write down all the topics where no consensus was reached.
- A high commitment to the achieved agreement can also be reached by making the results public. By this, the results are made publicly traceable and controllable and create a pressure of expectations. However, this is only successful when there is broader public interest in the case, as in the mediation procedure in Hinterstein.
- Another success factor for sustainable results is the further involvement of the participants in the implementation process as, for example, in Verwall, where an advisory council representing all stakeholders in the mediation procedure guarantees this involvement; in Hinterstein where the mediation forum meets to control the implementation of the action plan; and in the Dialogue Forum of the Vienna International Airport.
- Even small-scale but realistic results are good, and are a good basis for further discussions.
- Any conclusions reached during the different stages of the process should be formally endorsed by all the participants and all decisions should be based on the consensus of all participants.

One of the central positive “by-products” of many successful mediation procedures that can be an additional asset for the sustainability of the results are the personal relationships that develop between the participants: it changes the perception of the contrahent when the specific interests behind the position become visible.

6 Outlook

Comparing the conflict resolution processes in CEE with the ones in Germany and Austria, the main conclusion is that alternative dispute resolution tools in the CEE region are of limited use. In the course of the project it became clear that this is due to the fact that there is very little knowledge and experience with alternative conflict resolution instruments in the region of Central and Eastern Europe. Conflicts in the environmental sphere mostly have a long history of administrative and/or court proceedings before an effort of informal conflict resolution is started. There seems to be much more confidence in these type of proceedings to resolve conflicts than in informal procedures guided by an independent and impartial person who does not have decision-making authority. This is possibly not only a question of confidence but of a lack of knowledge about alternative dispute resolution tools and procedural know-how. Disseminating information on successful processes is an important tool in educating the stakeholders about the possibility of using such tools instead of the classical administrative or court proceedings. The outcome of a judicial procedure is most of the time a matter of win or lose whereas environmental mediation and similar cooperative conflict resolution instruments intend to create a win-win situation for all parties with an outcome based on a consensus of all participants.

Many authors of the case studies and other persons involved in the CEE cases expressed their view that there is a need for intensive capacity building on the use of alternative dispute resolution tools for solving environmental conflicts in this region. This requires:

- **access to indepth information** about mediation and other conflict resolution tools and instruments;
- **dissemination of successful case studies** in other countries;
- **exchange of experience;** and
- **specific capacity-building programmes** for various stakeholders (legal practitioners, public authorities, civil society organisations, etc.).

In order to address the expressed needs, to foster the development of a dialogue-oriented conflict resolution culture in CEE as well as in Western European countries and to strengthen the ties between old and new EU-member states and its neighbouring countries, several follow-up activities are suggested below.

6.1 Exchange of experience and training

There was special demand from environmental NGOs, as the main promoters of public participation in CEE, to get into contact with experts in the field of cooperative conflict resolution from other countries like Austria and Germany, where instruments like environmental mediation and other informal conflict management processes are relatively well known and applied more and more often. A joint workshop would be the perfect forum to facilitate the exchange of experience and know-how and to provide training to CEE experts who want to gain or improve their skills in alternative conflict resolution processes. In addition to building the capacity of the participants, the workshop may also lead to the design of a strategy for enhancing the use of alternative dispute resolution tools in CEE countries. The international workshops should also be supplemented by national level training activities targeted at legal practitioners, public authorities and civil society organisations.

6.2 Strengthen networks

Workshops and other networking activities would also enhance further cooperation between the participating experts and institutions. Through the exchange of information and know-how in a network of experts from countries throughout the whole region, the development of cooperative decision making in the native and other countries could be fostered and supported. An international interdisciplinary network of experts (scientists, civil servants and legal practitioners) is also a good forum for gaining new insights into the different perspectives regarding cooperative conflict resolution. It offers a pool of experts for transnational project cooperation and facilitates the dissemination of, for example, quality criteria for conflict resolution processes in the whole region.

6.3 Promote research activities

It may be necessary to adapt instruments and tools of alternative dispute resolution which are successful in Western European countries but may not meet the needs and institutional framework in CEE countries. The thorough evaluation of experiences with the diverse instruments and tools of alternative dispute resolution in the different settings and institutional frameworks is a very important task for advancing the methodological expertise and successful implementation of processes in praxis.

6.4 Implement pilot projects to test the use of alternative dispute resolution in CEE countries

A funding programme could be set up to support the use of alternative dispute resolution tools for several existing environmental conflicts in CEE as test cases. The funding should be

allocated based on clearly identified criteria (referring to the commitment of the stakeholders to the process, environmental and social impact of the case, etc.) and procedural guidance would be offered by leading experts in CEE who have already benefited from the capacity-building exercises above. The results of these processes should be widely disseminated in the region.

6.5 Enhance public participation

Broad public participation in public planning and in environmental matters is the topic of various EU directives and of the Aarhus Convention. In many spheres the legal basis for public participation already exists, but there is still a long way to go because the successful implementation of public participation and broad information of the public is always a matter of changing the political culture. Citizens in countries like Austria and Germany show more and more democratic self-confidence and claim their rights for information and public participation supported by NGOs, but also by initiatives of the EU, communities and public authorities. In CEE citizens seem to have little awareness of their rights, and it is mainly the task of NGOs to act for the enforcement of these rights. Political and administrative decision makers have to be involved in information and training activities in CEE as well as in all other countries because their sensitisation to these topics is central to realising the goal of sustainable development through the broad involvement of the public in environmental and public planning issues.

7 Annex

Collaborative Conflict Resolution Cases in Austria, Germany and Central Eastern European Countries:

- Mediation Procedure Natura 2000 Verwall, Austria
- Mediation procedure Vienna International Airport – viemediation.at
- Future use and development of the green area in the west of Telfs, Austria
- Conflict Management 110KV Power Line Schrammbach, Lower Austria
- Voluntary and advanced civic participation procedure S10 Mühlviertel Expressway
- Environmental mediation process for restoration of the protective forest above the village of Hinterstein, Germany
- Slovenia: Finding the Site for the Low and Intermediate Level Radioactive Waste Repository
- Ukraine: Returning the Protected Status to Natural Areas in the Lviv Region
- Ukraine: Znesinnia Regional Landscape Park Versus Electric Power Supplier
- Poland: Mediation to release the entrance of the Łubna landfill
- Putting Toyota MC. and PSA Peugeot Citroen Corporate Social Responsibility Promises into Practice in the Czech Republic
- Estonia: Negotiating the conditions of IPPC permit for the Kunda Pulp Plant factory
- Estonia: Negotiations over the Establishment of Saaremaa Deep Harbour
- Estonia: Negotiating the Conditions of the Mining Permit for the Merko Oil-Shale Mine
- Hungary: Szentgál Regional Landfill
- Hungary: Route 10

Mediation Procedure Natura 2000 Verwall, Austria

Type of procedure

- | | |
|---|---|
| <input checked="" type="checkbox"/> Mediation procedure | <input type="checkbox"/> Procedure including mediation elements |
| <input type="checkbox"/> Other procedure | |

Topic area

- | | |
|---|--|
| <input checked="" type="checkbox"/> Urban and land use planning | <input type="checkbox"/> Water management/supply and distribution |
| <input type="checkbox"/> Waste management | <input type="checkbox"/> Industry, trade, enterprises |
| <input type="checkbox"/> Power industry | <input type="checkbox"/> Telecommunications |
| <input type="checkbox"/> Traffic, transportation | <input type="checkbox"/> General environmental policies (genetic engineering, nuclear policy etc.) |
| <input checked="" type="checkbox"/> Nature conservation | <input type="checkbox"/> Neighbourhood conflict |
| <input checked="" type="checkbox"/> Tourism | <input checked="" type="checkbox"/> Other: forestry, hunting |

Initiator(s)

Provincial advocate for the environment, office of the Vorarlberg Provincial Government

Short description of the case

The small and very remote alpine area of Verwall was designated as Natura 2000 area due to its unspoiled nature and the rich variety of its flora and fauna with numerous species and habitats worthy of protection. The local communities, landowners and land users were not involved in the selection and boundary setting process. This led to widespread apprehensions and a strong opposition against the Natura 2000 site within the affected communities. As the strong conflicts between the affected communities and the District Authorities and the Provincial Government of Vorarlberg arose and the communication were no longer manageable the Environmental Advocate of Vorarlberg suggested a mediation procedure to develop a binding management plan about the future cultivation of the land and use of the area according to the Natura 2000 target, with the participation of the local population. After almost one and a half years, seven meetings of the negotiating team and several additional meetings of the work groups, the mediation process produced an outcome that was agreed by all stakeholders and that ended the conflicts in a sustainable way.

Participants (number of individuals, names of participating public authorities, institutions, interest groups, persons etc.)

The following interest groups were represented in the mediation team:

agriculture, forestry, hunting, tourism, nature conservation, the mayors of four municipalities, administrative officers of the District Authority of Bludenz and the Provincial Government of Vorarlberg, the Environment Advocacy Office of Vorarlberg and a representative of BirdLife as technical expert. Other external experts were consulted when necessary.

The mediation team consisted of 33 persons in total, 31 men and 2 women, from 25 to 75 years of age. The biggest group within this team was the Mountain Pastures Cooperatives with 15 representatives.

Client / financial sponsor

Office of the Vorarlberg Provincial Government

Procedural guidance by (e.g. mediators, environmental advocacies etc.)

Dipl.-Ing. Wolfgang Pfefferkorn, Dipl.-Ing. Helmut Hiess (mediators)

Geographic dimension

- | | | |
|---------------------------------------|--|-------------------------------------|
| <input type="checkbox"/> local | <input checked="" type="checkbox"/> regional | <input type="checkbox"/> state-wide |
| <input type="checkbox"/> country-wide | <input type="checkbox"/> international | <input type="checkbox"/> EU-wide |

Status of process

- | | |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> concluded | <input type="checkbox"/> in execution |
|---|---------------------------------------|

Start, end, duration of the process (if still in execution: estimated end)

January 2001 – December 2002

Mediation Procedure Natura 2000 Verwall Austria

Background of the Conflict

The Natura 2000 Directive

The European Union's Natura 2000 initiative aims at creating, maintaining and extending a network of particularly valuable natural habitats. It intends to consider not only nature conservation aspects but also all current land uses, as well as specific local and regional characteristics. Central to Natura 2000 are the 'deterioration ban' and the requirement for impact assessments. The 'deterioration ban' means that in a Natura 2000 area no activities are allowed which could endanger the biological diversity. The impact assessment ensures that plans, programmes and projects do not significantly affect the area's conservation goals. The land use in Natura 2000 areas can be regulated by legal and administrative measures. Every four years a monitoring will audit if the objectives of the Natura 2000 Directive are fulfilled.

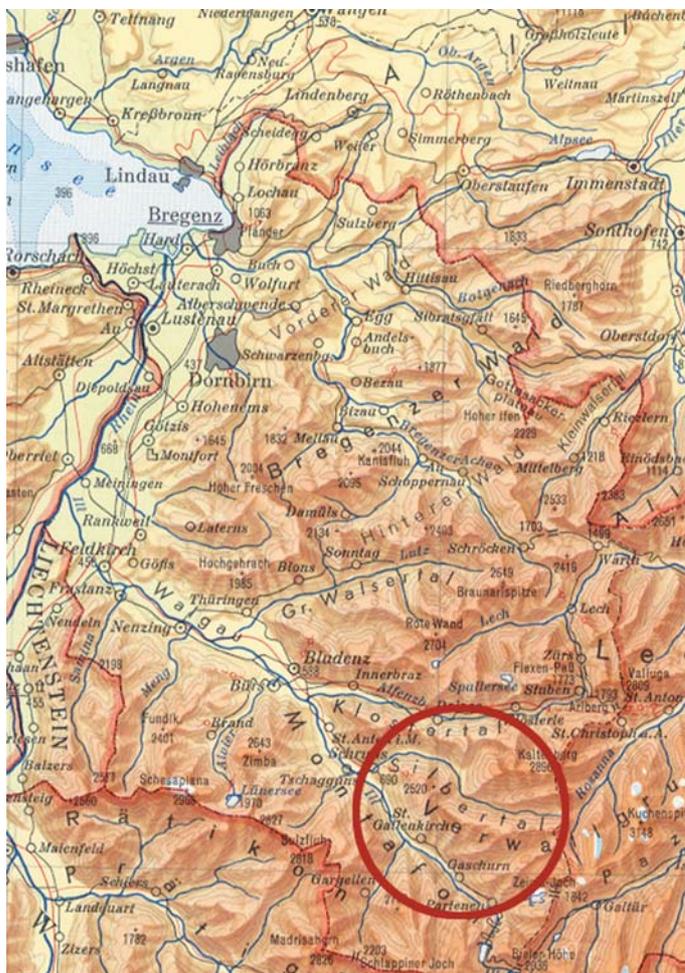
The implementation of the Natura 2000 Directive in Austria has caused alarm – as in many other countries as well. Many people apprehended that whole regions would be transformed into reserves where the population would be excluded from hunting, or going on a mushroom foray would be forbidden. Farmers and forest managers, hunters and tourism managers have fiercely protested against any limitations of their land use possibilities. On the other hand, nature conservation organizations have criticized the dragging and technically deficient implementation of the directive.

The Natura 2000 Directive is, on the one hand, very comprehensive, on the other hand very little specific in details. The specification is task of every EU member state. In Austria, nature conservation is part of the provinces' competence but it also concerns legal matters that are within the national competence. The provincial and national authorities are not only under pressure by the demands of nature conservation organizations and the affected population but also by the EU that calls for immediate and complete implementation of the directive and threatens with penalties or the reduction of means from the Structural Funds. The directive recommends management plans for areas where conflicts of interest are likely to arise, and recommends that these plans should be elaborated with the involvement of the local population – either simple involvement in the form of information or more intensely by a cooperation of users in the process of creating plans.

Natura 2000 Area Verwall

One of the designated Natura 2000 and Special Area of Conservation sites in Austria is part of Verwall, a massif in Montafon, in the Province of Vorarlberg. The Verwall Natura 2000 site, which was designated under the Birds Directive, comprises parts of the districts Klösterle, Silbertal, St. Gallenkirch and Gaschurn, and comprises an area of approx. 12,100 hectares with a total population of about 5,500 inhabitants. A small part of it, the Wiegensee area and the adjoining marshlands, situated within the Verwall special protection area for birds, was designated under the Habitat's directive. Apart from the Silbertal district, the Verwall Natura 2000 site was also designated as a Special Area of Conservation, but only up to the end of March 2003.

Fig. 1: Survey Map: The Natura 2000 Area Verwall in Montafon



Source: Bundesamt für Eich- und Vermessungswesen

The Verwall Natura 2000 site ranges from approx. 1,500 to 2,900 m above sea level. It is situated on the periphery of the big touristic centres of Montafon and Arlberg. However, tourism has had little impact on the region because it has comparably few roads, pathways and ascent assistance. Due to its remoteness and unspoiled nature and the rich

variety of its flora and fauna with numerous species and habitats worthy of protection, Verwall's nature is like a jewel.

The predominant uses of the area are alpine farming, forestry and hunting and to a lesser extent tourism. These different forms of uses have often been in conflict with one another and had also to be treated in the mediation procedure.

The economic development of the Alps and the forest areas in the past thirty years was supported by the Province of Vorarlberg to secure the survivability of the farmers and to reduce the migration from the mountainous regions.

The area was selected and delineated as Natura 2000 site exclusively on the basis of scientific studies. The local communities, landowners and land users were not involved in the selection and boundary setting process. This led to widespread apprehensions and a strong opposition against the Natura 2000 site within the affected communities. The local people felt that they had been passed over, and feared massive restrictions on their freedom to farm and use their land. As the communication between the authorities and the affected population deteriorated more and more, the Environmental Advocacy Office of Vorarlberg proposed a mediation procedure to find solutions to the various conflicts.

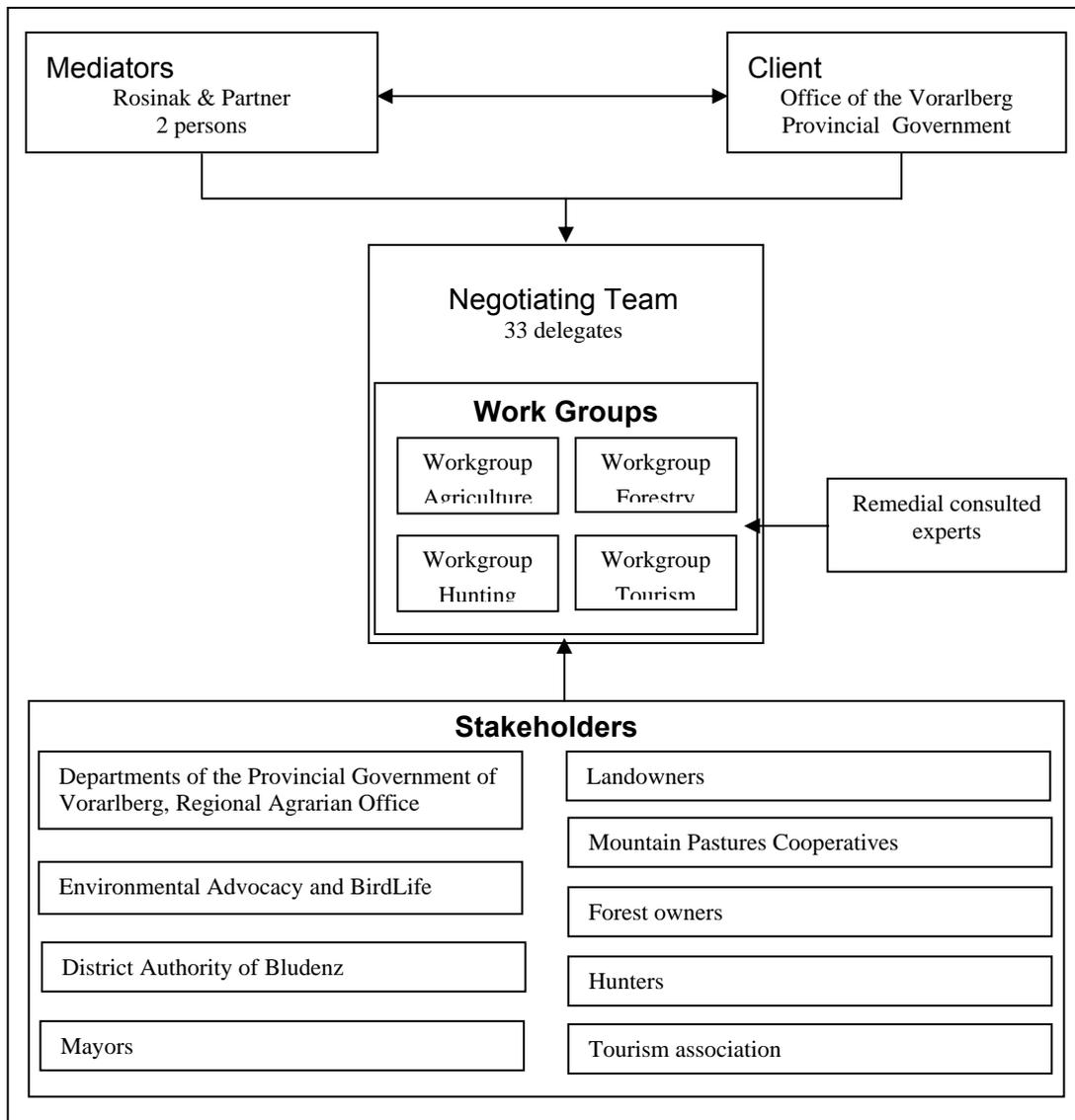
Parties / Stakeholders to the Mediation

The following interest groups were represented in the mediation team:

Agriculture, forestry, hunting, tourism, nature conservation, the mayors of four municipalities, administrative officers of the District Authority of Bludenz and the Provincial Government of Vorarlberg, the Environment Advocacy Office of Vorarlberg and a representative of BirdLife as technical expert. Other external experts were consulted when necessary.

The mediation team consisted of 33 persons in total, 31 men and 2 women, from 25 to 75 years of age. The biggest group within this team was the Mountain Pastures Cooperatives with 15 representatives.

Source: Hiess/Pfefferkorn



Mediation/Conflict Resolution Process

The Environmental Advocacy Office of Vorarlberg initiated the process and also proposed mediation as an instrument for conflict resolution.

The Vorarlberg provincial government funded the mediation procedure. The government supported the process because it did not see any other way out of the misery. Mediation should result in a binding management plan about the future cultivation of the land and use of the area according to the set target, with the participation of the local population, representatives of the Province of Vorarlberg and other experts.

The government assigned two mediators who started with preparatory talks in the affected municipalities and held several informational events in order to get an overview on the conflict situation and to choose the group of participants. The selection of participants was difficult because some Alpine cooperatives strictly refused to be represented by other Alpine cooperatives. As a consequence, the negotiating team comprised 33 persons. As most people were present at almost all meetings, the procedural aspects of the mediation were quite a challenge.

The Beginnings

At the beginning of the process in spring 2001, a basis for cooperation had to be created and the rules of the game needed to be set. The negotiating team decided on rules of procedure detailing the timeline, the roles, rights and tasks of the participants, the decision-finding process and the culture of interaction.

After the rules of procedure had been set, the group focused on the exchange of information. All participants obtained a package of information about the European Union's Natura 2000 Directive, all accompanying laws and regulations and all expert reports and studies relevant for the mediation process. The group discussed the information in detail and clarified open questions. During those intensive, joint discussions the participants fully realized the legal and administrative complexity of the issue. Agreeing on rules of procedure and creating an approximately equal level of information was a prerequisite for the participants to develop trust in the mediation process and finally negotiate their interests.

First Phase of Negotiations

During the first round of negotiations, the current conflicts were in the forefront. The participants spoke of their fears and apprehensions about the status of nature conservation. They criticized other stakeholders and presented their own positions and demands. The past decisions about selection of the area, determination of borders and the content of BirdLife's expert report were put on the agenda. Many of the participants realized only then the scope of the past events, which led to fierce criticism of the authorities and also of the expert report BirdLife had made for a section of the Natura

2000 area. Also other current and past conflicts came up which were in no way connected to Natura 2000 but had an impact on the relationship between the various stakeholders in the negotiating team. It took a while until some kind of trust developed between the participants. The group spent almost a third of the whole time of the mediation process to deal with past events and the complexity of the issue before the participants were ready and willing to tackle the work ahead.

On a content level, the issues of agriculture, forestry, hunting and tourism turned out to be critical. In summer 2001, the group made a trip to the Silver Valley (Silbertal) to clarify factual questions on site.

Second Phase of Negotiations

Subsequently, work groups dealt with those four themes - agriculture, forestry, hunting and tourism - in more detail. At first, some of the participants rejected work groups, but it became clear that a group of 30 persons could not work properly, such as discuss the details of an issue and draft a text. Until spring 2002, each of the four work groups delivered 5-10 pages long drafts of an agreement suggesting how the various usages could be brought into harmony with the requirements of the Natura 2000 Directive. In each of the four groups, somebody from the team drafted a text and discussed it within the work group at first.

Third Phase of Negotiations

In the third round of negotiations, the plenary discussed the four drafts from the work groups to eliminate eventual contradictions. By the end of June 2002, the complete draft agreement was worked out. During the summer all members of the negotiating team took the draft to their own groups and discussed it there: in the town councils, Alpine cooperatives, hunting cooperatives and the tourism association. The draft also included a proposal for future monitoring and the implementation of the negotiated results. Further on-site consultations in the Natura 2000 area took place in summer 2002 to clarify some details.

Milestones of the process

| Phases | Contents | Duration |
|--------------------------------------|--|-----------------------|
| Preparation of the mediation process | Analysis of the conflict, information events, selection of the participants | January 01 – March 01 |
| Start-up | Stipulation of rules of procedure, process design, information exchange, professional basics | March 01 – May 01 |
| First phase of negotiations | Dealing with current and historical conflicts, positions, interests, excursions | May 01 – October 01 |
| Second phase of negotiations | Drafts for agreements concerning alpine | October 01 – |

| | | |
|-----------------------------|--|--------------------------|
| | farming, forestry, hunting and tourism | May 02 |
| Third phase of negotiations | Discussion of drafts for agreements, questions concerning the monitoring, excursions, information of the involved parties about the existing results | May 02 – October 02 |
| Agreements | To reach agreements | October 02 – December 02 |
| Implementation | New Verwall Natura 2000 District Order, referred to the agreement, first meeting of the advisory council | October 03 |

Outcome

After almost one and a half years, seven meetings of the negotiating team and several additional meetings of the work groups, the mediation process produced the following results:

- An agreement determining the future usage and monitoring of the area;
- A draft for a Natura 2000 area regulation explicitly referring to the agreement. The directive entered into force on October 1, 2003, replacing the existing nature conservation regulation.
- A supplementary protocol containing all positions and proposals for which no agreement could be achieved during the mediation process. These issues should be further dealt with in the advisory council.
- An advisory council: For further cooperation between the authorities and the affected population, an 18-member advisory council representing all stakeholders was established. Since 2004, the advisory council meets at least once a year and discusses all important issues regarding the Natura 2000 area and the agreements made. The Provincial Government of Vorarlberg called the first advisory meeting within half a year after the regulation entered into force. In the first session, the participants set the rules of procedure and the work programme of the advisory council.

Conclusions

All participants learned tremendously in this mediation procedure. The starting point for the process was very difficult because the affected people deeply mistrusted the authorities. While the mediation process was ongoing, some participants feared time and again that the government would not take the agreements made in the mediation seriously. Due to the large number of participants, the negotiation atmosphere in the plenary session was often very tense. Without the work groups it would not have been possible to achieve progress with regard to content or to get to an agreement.

The following issues were difficult or challenging:

- The mediation procedure was started only after the conflicts had already escalated and communication between the interest groups and the provincial government had broken down.
- Lack of sufficient information on the general subject of Natura 2000 and the regional details by the government
- Lack of transparency regarding the borders of the Natura 2000 area
- Hidden agenda and lack of confidence between the parties at the beginning of the procedure due to unsolved conflicts from the past
- High number of participants due to problems during the selection phase
- Insufficient financial means for the procedure
- Lack of quality of basic studies
- Unclear information regarding compensation payments for landowners who will face certain land use restrictions

Some factors were particularly helpful in this procedure and are recommended to copy:

- The relevant groups/persons affected were represented at the negotiating table.
- The mediators succeeded in creating an atmosphere of confidence in the procedure by setting clear 'rules of the game', defining the structure of the procedure and the roles of the persons involved, disseminating all relevant information material to all parties as well as by acting as impartial facilitators.
- The objectives and limitations of the procedure were clearly defined at the beginning.
- Careful preparation of the negotiation meetings as well as detailed and complete minutes of each meeting.

- Limited but sufficient time for the mediation procedure.
- Commitment from the provincial government at the beginning of the procedure to implement the results if an agreement is reached.

In general, it has been proven that successful participation procedures are based on a combination of several factors:

- Early start: possibly before the conflicts become insurmountable
- Involvement of all affected persons
- Clear rules of procedure as a basis for the trust of participants in the process
- Clarity about the goals and limits of the participation
- Equal information for everybody
- Clarity about every participant's role in the procedure
- Intensive preparation and processing of the meetings and negotiations (setting of an agenda, preparation of materials, detailed minutes of meeting, drafts and editing of texts, permanent communication with the members of the negotiating team)
- Sufficient time for the whole procedure (in this case: one and a half years)
- Sufficient professional and local knowledge (language!) by the mediators
- Mediators must take care that participants interact with each other in an open and respectful manner
- Sufficient flexibility in the procedure: A supplementary protocol enumerating all those aspects about which no agreement could be reached was the prerequisite that the procedure could be concluded with an agreement.
- Binding results: At first, people wanted to reach an agreement with the authorities in the form of private contracts. However, it soon became evident that a regulation would offer more security for all affected persons.
- Further involvement of the participants in the implementation process: An advisory council representing all stakeholders in the mediation procedure shall guarantee this involvement.
- When dealing with social distribution issues, it is sometimes just not doable to reach a win-win situation; in such a case the goal is to negotiate the distribution of public and private costs and benefits as fair as possible.

Contact information of person/s providing information

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website: www.rosinak.at

Additional information:

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Environmental Advocate of the Province Vorarlberg

Marktstraße 33, 6850 Dornbirn

Phone: +43 5572 25108

**Mediation Vienna International Airport – viemediation.at
Austria**

Type of procedure

- Mediation procedure Procedure including mediation elements
 Other:

Topic area

- | | |
|--|---|
| <input type="checkbox"/> Urban and land use planning distribution | <input type="checkbox"/> Water management/supply and distribution |
| <input type="checkbox"/> Waste management | <input type="checkbox"/> Industry, trade, enterprises |
| <input type="checkbox"/> Power industry | <input type="checkbox"/> Telecommunications |
| <input checked="" type="checkbox"/> Traffic, transportation | <input type="checkbox"/> General environmental policies (genetic engineering, nuclear policy etc.) |
| <input type="checkbox"/> Nature conservation | <input type="checkbox"/> Neighbourhood conflict |
| <input type="checkbox"/> Tourism | <input type="checkbox"/> Other: |

Initiator(s)

Prader, lawyer and professional mediator

Short summary

The mediation process at Vienna International Airport focused on two central subjects:
First, the current level of and ways to reduce noise pollution: work in this area led to
the conclusion of a partial contract on current measures in May 2003, which has
already been implemented and is now undergoing evaluation.

Second, environmentally relevant expansion plans by Flughafen Wien AG and their
impact: after the conclusion of the partial contract, discussions turned to what will happen
when the airport needs a third runway to manage the growth in traffic. The result is
represented by a package of contracts, which creates a secure framework for all parties.

Participants (number of individuals, names of participating public authorities, institutions, interest groups etc.)

Core Group:

Vienna International Airport, neighbouring communities, Provinces of Vienna and of Lower Austria, Environmental Protection Advocacies of Vienna and Lower Austria, all citizens' initiatives that focus on aircraft noise (on regional and supra-national levels)

Extended Core Group:

Chamber of Labour, Chamber of Commerce, Chamber of Agriculture, employees' representatives, representatives of the Vienna Airport AG, Austrian Airlines, Austro Control (Austrian Air Traffic Control), all political parties represented in the provincial parliaments of Vienna and Lower Austria, tourism unions, Viennese district representatives

Since 2004, district conferences have been additionally established with the local Citizens' Initiatives and all participating communities.

In total, more than 300 persons have been directly involved in the negotiations.

Client / financial sponsor

Initially, the procedural costs were to be shared among the Vienna International Airport, the Provinces of Vienna and Lower Austria and – to a lower extent – the communities. Finally, the costs were covered almost entirely by the Vienna International Airport.

Procedural guidance by (e.g. mediators, environmental advocacies etc.)

Process coordinator: Dr. Thomas Prader

After an international selection procedure, the mediation team of Mag. Gerhard C. Fürst, Dr. Ursula König and Prof. Dr. Horst Zillessen was assigned. Mag. Fürst left the mediation team at his own request in the spring of 2003. The mediation team managed the mediation procedure, together with the process coordinator Dr. Thomas Prader.

Geographic dimension

- | | | |
|---------------------------------------|--|-------------------------------------|
| <input type="checkbox"/> local | <input checked="" type="checkbox"/> regional | <input type="checkbox"/> state-wide |
| <input type="checkbox"/> country-wide | <input type="checkbox"/> international | <input type="checkbox"/> EU-wide |

Status of process

- | | |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> concluded | <input type="checkbox"/> in execution |
|---|---------------------------------------|

Start, end, duration of the process (if still in execution: estimated end)

May 2000 – June 2005

Mediation Procedure Vienna Airport – viemediation.at

Austria

Background of the Conflict

Air traffic has been rising dramatically in the past few decades, and forecasts for future flights and passenger development show further huge increases.

In the 1990s, air traffic prognosis for 2010 predicted 20.9 million passengers at the Vienna airport, up from 8.5 million in 1995, and 267,500 flight movements (143,800 in 1995). For 2015, the projection rose to 26.5 million passengers and 304,600 flight movements. The Vienna airport management expected that the rising needs would exceed the capacities of its two runways in 2010 at the latest, and started the planning for extensive infrastructure expansions. A third runway should be built, ideally at a distance of 2,220 meters to the existing runways to enable a curved approach, thus increasing the frequency of landings and creating new capacities.

On 31 March 1998, the managing board of Vienna Airport AG presented the “Masterplan 2015” to its supervisory board. When the plan was subsequently presented in the municipalities surrounding the airport, it was met with strong reactions from the public and the media, which developed into fierce resistance. The presentation of the Masterplan was considered a provocation instead of an offer of information. Not just the Vienna Airport AG felt the heat but local politicians too.

The population in the surrounding communities had been suffering from noise pollution due to the rising air traffic for years and decades. Although technical innovations had led to a noise reduction of the engines and somewhat reduced the burden, the affected people feared that a new runway would reverse the development. Several local and regional citizens’ initiatives mobilized against existing and future noise and environmental pollution, demanded a ban on night flights and acted especially against a third runway. Citizens’ groups and the mayors of the affected municipalities signed numerous resolutions against the construction of a third runway.

Parties / Stakeholders to the Mediation

The **neighbouring communities** of Fischamend, Enzersdorf/Fischa, Schwadorf, Kleinneusiedl, Schwechat, Rauschenwarth, Gross Enzersdorf, Zwölfaxing, Himberg, Maria Ellend/Haslau, Trautmannsdorf, Bruck/Leitha, Arbesthal-Göttlesbrunn, Gramatneusiedl, and Vienna;

The **Vienna districts** of Simmering, Favoriten, Penzing, Rudolfsheim-Fünfhaus, Liesing and Donaustadt;

Aviation Group: Austro Control, Vienna International Airport, Austrian Airlines Group

Citizens' initiatives: Platform for Flight Noise in Austria, Citizens' Initiative Fischamend, Citizens' Initiative AL Schwechat, Residents Association in Lobau, Central Association of Garden Owners in Austria, Citizens' Initiative Pro Margarethen, Residents Association in Essling, Citizens' Initiative Götzendorf/Pischelsdorf, Citizens' Forum in Haslau/Maria Ellend, Association for Active Environmental Protection in Himberg, Platform against the 3rd Runway, Citizens' Initiative Trau.di

Environmental Advocacy Offices of Lower Austria and Vienna

Province of Lower Austria and Vienna

Political parties: Austrian Peoples' Party of Lower Austria, Social Democratic Party of Lower Austria, Freedom Party of Lower Austria and Social Democratic Party of Vienna, Green Party

Chambers and special interest groups: Austrian Federal Chamber of Labour, Austrian Federal Chamber of Commerce, Chamber of Agriculture, Lower Austria Marketing Association, Vienna Tourism Association, representatives of employees and employers at Vienna International Airport

The **district conferences** of Bruck, Baden, Vienna/South, Mödling and Gänserndorf, which were created during the evaluation process following the implementation of the partial contract in 2004.

In addition, the newly founded Union of Citizens' Initiatives and Residents' Associations surrounding Vienna International Airport also joined the process as a partner. This association represents the Citizens' Forum in Haslau Maria Ellend, Platform for Flight Noise in Austria, Citizens' Forum Götzendorf/Pischelsdorf, Citizens' Forum against Flight Noise in Liesing, Citizens' Forum in Trautmannsdorf (Trau.di), Association for Active Environmental Protection in Himberg, Citizens' Forum Pro Margarethen, Residents' Association in Essling, Citizens' Forum Stop-Flight Noise in Vienna South-West, Citizens' Forum in Fischamend.

Mediation Process

The Beginnings

The Vienna Airport AG took the opposition against its extension plans very seriously. Considering the opposition the Airport had to expect in the subsequent environmental impact assessment, the newly appointed managing board wanted a dialogue with all stakeholders before the procedure would start. In December 1999, the company put out a tender for public relations and process providing for the third runway. At that time it was planned that the process provider would accompany the communication process between Vienna Airport AG and the population: moderate information events, prepare employees, and examine the written communication material. The goal was to convince the population of the necessity of an airport expansion and to strengthen Vienna Airport's position until summer 2001 when the environmental impact assessment would probably start. In addition to several public relations companies, the airport management also asked the Viennese lawyer Helmut Prader, who is well-known among citizens' initiatives, to submit an offer. Prader, together with the mediators Gerhard Fürst and Ursula König, offered a strategic concept for an open dialogue with all stakeholders – an entirely different idea, instead of public relations or an expensive advertising campaign only.

Pre-Mediation

In March 2000, the Vienna Airport AG asked Prader to take on the coordination. Prader had many preliminary conversations with the managing board, people from citizens' initiatives and political parties, provincial representatives and communities. In May, he proposed to undertake a mediation procedure with representatives of the airport, local politicians, administrative authorities and citizens' groups, and the managing board agreed. A preparatory group was established to prepare the actual mediation procedure. The group consisted of two representatives of Vienna Airport, two persons from citizens' groups, four persons from the neighbourhood advisory board and one representative each of the Provinces of Vienna and Lower Austria and the Environmental Advocacy Office of Vienna and Lower Austria.

On 18 January 2001, the first meeting of the mediation forum took place. More than sixty representatives of fifty different groups participated – making it the biggest mediation procedure ever undertaken in Europe. It was agreed that the most urgent issues to be dealt with were the expansion plans of Vienna Airport and the issue of noise pollution. A separate work group should draft a mediation agreement.

On March 1st, 2001, all fifty stakeholders participating in the process signed a mediation agreement, with two key objectives to be negotiated:

- Airport expansion project of the Vienna International Airport
- Flight movements in the two-runway system; existing noise pollution

The mediation procedure was welcomed and supported by all stakeholders. Not a single group voted against it. The goal was that binding and enforceable agreements among the parties should be achieved, and a balance be found between the economical and ecological interests.

The Institute for Interdisciplinary Research and Civic Education (IFF) of the University of Klagenfurt was asked to do the accompanying research

The Mediation Process – Work Structure

The largest entity was the mediation forum where all parties were represented. It was the highest board that made all binding decisions. It held 15 sessions in total.

The process steering group had about 20 members and held 49 sessions. It discussed all procedural questions, collected all information, established and disbanded work groups, determined the process design and the next steps to be taken – always with the consensus of all parties involved.

Work groups existed for various issues. In more than 100 work sessions, the actual work was carried out. Some work groups created sub-committees.

All minutes of meetings and work documents were published on the website www.viemediation.at, after having been approved by the appropriate group. The procedure managers regularly prepared summaries, especially for the sessions of the mediation forum.

The procedure managers, especially Dr. Prader, regularly held face-to-face conversations with various parties and informed the process steering group of the essence of his informal talks.

After the mediation agreement was concluded on 1st March 2001, the real mediation procedure about the disputed issues began. First, the focus was on the required transfer of information and knowledge.

In December 2001, a first intermediate report was presented to the public, and in the 8th session of the mediation forum in April 2002, the first year was reviewed. The mediation agreement contained a provision that participants would decide after one year if and in what form the procedure would be continued. The panel decided unanimously to continue the mediation. During 2002 and half of 2003, the mediation procedure dealt almost exclusively with the exposure to aircraft noise. In November 2002, the 9th session of the mediation forum accepted the results of the work group dealing with noise, and found a preliminary consensus about the final report regarding noise limits. In May 2003, the parties agreed on a partial contract about „Current Measures“, reorganising the actual air traffic. Almost all parties signed that partial contract about “Current Measures”. Thus, the first part of the mediation procedure was completed.

Starting in fall of 2003, the focus shifted to the expansion plans of Vienna International Airport and all related issues (the third runway, environmental fund, night-flight regulation,

technical noise protection, regional conflict management, setting an upper limit on aircraft noise, land allocation questions, etc.).

The First Result: A Partial Contract

On 27 May 2003, the first partial contract was concluded. The mediation agreement in 2001 had provided that solutions found in a limited area could be signed off in partial contracts before the final mediation contract would be signed.

The partial contract dealt with all demands about “current measures”. The goal was to ameliorate the current situation, in particular with regard to noise. The number of regionally affected people should be decreased, and the most heavily affected people should get a noise reduction by time limitations. Especially noise resulting from night flights should be reduced. Representatives of the airport accepted certain limitations to advance solutions for the whole region. The agreements included a prolongation of the time period forbidding over-flights by three hours, no landings at night for approaches from the South, and a distribution of flight movements to the lesser affected areas.

Furthermore, agreements about new landing and departure routes were made, the distribution of traffic worked out, and noise-reduced landing and departure procedures explored. The contract contained also regulations about financial support for sound-proof windows to be provided by the Vienna Airport, noise measurement, monitoring, ground noise and sewage disposal.

Final Outcome

On 22 June 2005, more than 50 contractual partners signed a whole package of contracts and a general final declaration. The package contains legally binding contracts, furthermore a non-binding summary of the process and final statements by the participants of the mediation procedure. The legally binding agreements between the contractual parties do not, as a matter-of-course, interfere with the rights of the authorities (public law).

In the **General Mediation Contract** – one of the legally binding contracts – the following agreements were made:

Environmental impact assessment: If the Vienna Airport AG wants to build the third runway, it must be guaranteed that the project submitted to the authorities will contain all regulations agreed upon during the mediation process.

Procedural agreements: It is agreed that all problems and conflicts regarding flights shall be resolved in a constructive way in the future as well. As some problems could not be

resolved now while other problems are still unknown, the participants agreed on procedures whose payment is secured and that will guarantee that all affected persons will be involved, and solutions will be found by keeping to certain criteria.

Regulations for night flights: Health and quality of life shall be protected while taking the economic interests into consideration. The night flight regulations will permanently limit the burden on the population; the burden will be predictable. The night flight regulation must always be seen in connection with technical measures of noise reduction, especially at night. Medical experts consulted during the process have judged the regulation positively. The agreements concluded in the General Mediation Contract must always be considered in their entirety. The municipalities and the “Union of Citizens' Initiatives and Residents' Associations surrounding Vienna International Airport” have waived their right to fight the approval of a third runway with all possible legal and political means; instead, they will let an eventual permit come into force, which is an irreversible concession. Therefore these circumstances must be taken into consideration in an eventual arbitration regarding night flights.

Technical measures for protection from noise: As air traffic is a fact and causes noise pollution, the agreements were made to protect the health of affected people, to secure and increase the quality of residential areas and to find replacement for limitations of use.

Upper limits for the zones of noise: The agreement shall limit noise pollution and therefore prevent air traffic from growing uncontrollably. The municipalities shall be protected from an expansion of the zones of noise from air traffic and resulting limited development opportunities; in lieu thereof, air traffic is protected from ever advancing new residential buildings.

Agriculture: To compensate for the land utilization caused by the airport expansion, agreements were made to secure the economic viability of the farmers – for example, by creating a good network of roads and caring for a sufficient size of land.

Establishment of an environmental fund: The fund shall provide financial support to those municipalities that suffer the most under the air traffic noise. Annually, three million euros will be distributed as follows:

- 37.5 % for communities affected in their development perspectives by air traffic;
- 37.5 % for communities, depending on their noise burden (day/night);
- 25 % for funding of projects promoting a sustainable development in the region.

The fund is directed by a managing board of three persons and an advisory board representing the Vienna Airport AG, the communities and citizens' initiatives. A contract

between the Environmental Fund and the Vienna Airport AG determines and secures the endowment.

Establishment of the Dialogue Forum Vienna International Airport:

The Dialogue Forum Vienna International Airport is primarily responsible for regional conflict management. It is also the custodian of the concluded contracts and will decide on procedural issues of how to deal with future problems.

Members of the managing board are representatives of Vienna International Airport, Austrian Airlines, Austro Control, municipalities, provinces, district conferences and citizens' initiatives.

If this forum is unable to reach a generally acceptable solution on disputed issues, the partners to the general mediation agreement and the founding members of the Association Dialogue Forum Vienna International Airport have concluded an arbitration agreement.

Arbitral tribunal: A solution including an arbitral tribunal was chosen because

- Decisions can be made that reflect the spirit of the whole mediation process;
- Decisions can be made fast and in a trusting atmosphere;
- Citizens' groups and the association "Union of Citizens' Initiatives and Residents' Associations surrounding Vienna International Airport" can initiate procedures to claim their rights without having to fear incalculable costs;
- The arbitral tribunal contract guarantees that not only the parties to the dispute will be heard but other contractual partners will be included in the procedure too.

Conclusions

What do conflicting parties mean when they speak about *participation*? Hand out information? Have a say in a decision? Be involved? Or be part in the decision-making process? And when a decision is accepted, is the acceptance due to silent suffering, sheer tolerance or joyful consent?

The participants in the mediation procedure for the Vienna airport experienced participation in all its variants: from the simple dissemination of information to being a part in the decision-making. However, accepting to take part in a mediation procedure about the development of a region also implies the whole spectrum of possible reactions to the outcome: from sighing, pragmatic tolerance to joyful agreement. This did not happen because of some cunning, wily convincing. Rather, it was acceptance due to cooperation.

At the beginning, the mediators had to deal with serious resistance and blockade. Stereotypical images of the opponent dominated (“managers don’t care about our health” versus “those gripers won’t understand a thing”). The path was to find a constructive dealing with the conflict and to turn all creative energy that had been used to build the blockades into a search for solutions. For that, the conflict partners needed to get some distance – distance to themselves, to the conflict, to their own endearing solution.

Trust was at a low point at the beginning of the procedure. Simple questions – when to start a meeting –, and big issues – whether the airport needed an extension at all – were intermingled.

The participants developed three principles:

1. Cooperation – give and take are inseparable
2. The greatest burden deserves the highest attention.
3. The solution must take into account the whole picture instead of individual aspects.
4. For the decision-making, consensus is required to protect minority opinions and weak parties. However, tyranny by the power of veto will not be accepted.

This mediation procedure for the Vienna International Airport was – as far as we know – the largest ever performed mediation. After five years of work, the participants achieved a consensus about the future development of the airport and the distribution of exposure to aircraft noise. The advantage for the Vienna International Airport is that presumably the construction permit for the third runway will be approved faster in the subsequent environmental impact assessment, and the political resistance against it will be significantly weaker. The advantage for the involved communities, the citizens’ initiatives and the affected population is that by way of mediation they got concessions, impact reductions and substitute benefits they would never have achieved in the course of an environmental impact assessment.

The specific problem of aircraft noise is that everybody aims at not being exposed to it, but due to the high settlement density, such an exposure is unavoidable and even rises

due to the steadily increasing number of flights. The specific challenge in the procedure was the enormous number of parties and contradicting interests. Each community was in conflict with all its neighbouring communities while discussing the distribution of the aircraft noise. The procedure was eminently political also for the fact that all political parties from Vienna and Lower Austria were involved. For the provinces of Vienna and Lower Austria, aircraft noise is a political problem, but at the same time both provinces are shareholders of the Vienna International Airport, each of them holding 20 % of the shares. They also have other economic interests, such as tourism, jobs, keeping Austria as the Central and East European headquarter for corporations, etc.), having therefore an eminent interest in the airport being upgraded.

Therefore it was of particular importance that the mediation procedure was suggested by a third party. From the very beginning, the procedure management had been entrusted to a third party (process provider, mediation team), serving equally the interests of all parties. The process provider Dr. Prader has enjoyed the trust of all parties and was in permanent contact with them. The entire process preparation, the course and structure of the procedure were all jointly constituted by the procedure management and the parties involved.

The citizens' initiatives have enjoyed a high standing from the very beginning. On the one hand, they were the driving force in the process, being tightly involved in it; they proved great competence as of the contents and were able to gain the respect of all parties. On the other hand, regarding the issues, they were the driving force pushing Austrian Airlines and the Vienna International Airport. A particular role was assigned to the air traffic control (Austro Control) who was also devoted to the procedure and proved willing to cooperate.

The Vienna International Airport was ready to pay for the procedure costs and never exerted pressure on the procedure or its management. Thus, the participants had ample time to develop the procedure, to raise all issues and discuss them thoroughly.

A team of social researchers observed and accompanied the procedure, doing 'intervention research' and giving valuable feedback to the procedure management, to various parties, to the mediation forum and the procedure steering group.

This procedure proved that even extremely controversial issues that generally do not lead to a win-win situation can finally be satisfactorily solved by means of a mediation procedure. However, it is clear that fundamental societal conflicts between economic and ecologic interests cannot be solved within the framework of a mediation procedure.

Finally, some parties, for varying reasons, did not or at least did not entirely support the outcome of the mediation. Only one party single-handedly rejected and criticised the procedure and all results in their entirety (the citizens' initiative "Citizens' Noise against Aircraft Noise", Zwölfaxing). Some political parties did not approve the results – either because of fundamental reflections (Green Party) or because of politics (upcoming municipal council elections in Vienna). All other parties, except for the mentioned citizens'

initiative, stressed that this procedure was reasonable and fair and has led to positive results.

Unfinished business

Some things could not be achieved. Consensus on everything with everybody was not possible – and realistically it could not be expected either.

It remains to be seen whether the political climate will be improved permanently.

The limits of mediation became clear. General issues – whether permanent economic growth is compatible with sustainable development – could not be answered while searching for a solution for a very specific project. Mediation participants have no influence on the taxation of kerosene or ownership of the airport in Bratislava, Slovakia – therefore, it was impossible to look for solutions in a mediation process.

Costs

At the end, a question comes up: Was it worth it? Considering the dimension of the conflict, all participants say yes. Costs are not just monetary costs, such as court fees, planning costs, expert fees, work time, but also social costs.

Undoubtedly the mediation procedure was much work: 15 sessions of the mediation forum (the biggest group), about 50 sessions of the process steering group, more than 200 working sessions with 3 to 30 people, certainly more than 10,000 emails, two public events and several press conferences.

Information on the provider of information and his/her institution

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Fact Sheet

**Future use and development of the green area
in the west of Telfs, Austria**

Type of procedure

- Mediation procedure Procedure including mediation elements
 Other:

Topic area

- | | |
|---|---|
| <input checked="" type="checkbox"/> Urban and land use planning distribution | <input type="checkbox"/> Water management/supply and distribution |
| <input type="checkbox"/> Waste management | <input type="checkbox"/> Industry, trade, enterprises |
| <input type="checkbox"/> Power industry | <input type="checkbox"/> Telecommunications |
| <input type="checkbox"/> Traffic, transportation | <input type="checkbox"/> General environmental policies (genetic engineering, nuclear policy etc.) |
| <input checked="" type="checkbox"/> Nature conservation | <input type="checkbox"/> Neighbourhood conflict |
| <input checked="" type="checkbox"/> Tourism | <input type="checkbox"/> Other: |

Initiator(s)

Municipality of Telfs

**Participants (number of individuals, names of participating public authorities,
institutions, interest groups etc.)**

5 municipal officers, 2 persons representing a citizen's action committee, one person each representing agriculture and forestry; social issues, family, and youth; issues of tourism and gastronomy; the federal forestry; the local economy and one representing the municipality of Telfs as the project initiator; one expert for traffic planning and one for area planning; the advocate for the environment of Tyrol, one expert from the construction authority of the community; the mediator – in total 20 persons.

Client / financial sponsor

Municipality of Telfs

Procedural guidance by (e.g. mediators, environmental advocacies etc.)

Mediator

Geographic dimension

- local regional state-wide

country-wide

international

EU-wide

Status of process

concluded

in execution

Start, end, duration of the process (if still in execution: estimated end)

September 2002 - November 2003

Future Use and Development of the Green Area in the West of Telfs Austria

Background of the Conflict

Zimmerberg is a recreation area in the west of Telfs (a Tyrolean community with about 13.000 inhabitants), owned by the Austrian Federal Forestry.

An international firm owning a building machines factory in Telfs as well as hotels in different countries wanted to invest in tourism. In cooperation with the landowner the firm presented a project that suggested a new 27-hole golf course as the core of a newly designed recreation area, including also playgrounds, little lakes, cross-country ski runs, etc. The public presentation of the project caused protests and a citizens' action committee against the project was founded. In a public opinion poll with a turnout of voters of 37%, 82% voted against and 18% for the new golf resort. It became clear, that carrying out the project would disunite the whole community. Moreover, the discussions had brought up a lot of questions concerning the further development of the recreation area that could not be answered merely by public opinion polls.

A way to harmonize differing interests and to answer the arisen questions had to be found. The mayor of Telfs and the provincial advocate for the environment of the Province of Tyrol suggested a mediation procedure. This suggestion was adopted unanimously by the municipal council and a neutral mediator was asked to start the mediation procedure. The other possibility would have been to make a decision without involving the affected parties.

The mediation procedure aimed to achieve the following objectives:

- Better integration of the involved persons in decision-making processes.
- Development of the recreation area regarding different needs.
- Enlargement of the scope for actions in a constructive way and increasing the number of possible solutions.
- Strengthening of the identification with the community.
- Higher legitimation through transparency in decision-making processes.
- Less appeals in the approval procedure.
- Avoiding legal proceedings and related costs.
- Improvement of the relations and fostering mutual respect between the involved persons.

- Consensus regarding the further development of the region or, if not obtainable, at least consensus in fields where it is possible.
- If disagreement on some points remains and political decisions have to be made, they should be based on clear, objective information gathered in this process.

Based on the existence of the results of the mediation procedure, the further development of the Zimmerberg area should be discussed again in the municipal council.

Preparing for mediation

The mayor of Telfs and the provincial advocate for the environment of the Province of Tyrol initiated the mediation procedure. Whereas the provincial advocate for the environment took part in the procedure, the mayor did not. He explicitly was given the role of a “godfather” of the procedure, to back up the procedure and to assure that the results will be discussed in the municipal committee.

The further development of the Zimmerberg area is important for the whole community and it concerns different issues like agriculture, forestry, tourism, social issues etc. For the mediation procedure 20 people were chosen as representatives of different issues and positions. They represented the public authorities of Telfs, the citizens’ action committee, the Austrian Federal Forestry as land owner, stakeholder groups like the local economy and the firm which wanted to invest. Moreover, each political party sent one representative to the mediation procedure to secure that all political parties get equal and first hand information about the procedure and it’s progress, to back up the procedure and to avoid misuse of information obtained within the process.

The involved stakeholders and their interests:

| Stakeholders | Interests |
|---------------------------|---|
| Austrian Federal Forestry | land owner; interested in high revenues from the land-use; the golf course project promised much higher revenues than forestry use |
| Farmers | one group of farmers favored the golf course project, because they would be able to obtain higher revenues from the rent of land; the other group wanted to strictly protect the agriculturally used land |
| Hunters | be able to hunt, either in the area in question or somewhere near; were cooperative |
| Citizens’ Action Group | conserve the area in the existing way as a free-of-charge recreation area for everyone |

| | |
|--|---|
| Local authority of Telfs | promote the golf course project; have municipal tax income by the proposed project, not needing to spend money for restoration works on a little river in the area, because the investor would have overtaken this duty |
| People representing tourism-related issues | attract as many golf-tourists as possible, because they are a group which usually spends much money for their sport, recreation, accommodation,... |
| People representing sporting issues | one group was content with the existing sporting possibilities of the area, the other group promoted the golf course project as they hoped to expand the sporting possibilities in general |

These interests were revealed at the beginning by discussion in the mediation forum.

Moreover, 19 experts provided expertise and knowledge.

The process was supported by the mayor of Telfs, the provincial advocate for the environment of the Province of Tyrol and the municipal department of planning and building of Telfs. The municipal office of Telfs funded the procedure.

A mediation agreement was signed by all involved parties. The mediation was the preparation for the decision taken in the municipal council.

Process design

The first meeting of the mediation forum was dedicated to find agreements about which shall be the topics dealt in the mediation, about the rules and the methodology of the procedure. As a result, the topics were clustered in three fields that were discussed separately.

In the second meeting strengths, weaknesses, opportunities and threats as well as ideas for the further development of the area were gathered. About 40 different project ideas were discussed, but of course the highest attention was given to the presented golf-course project.

In the following meetings the crucial points concerning the further development of the Zimmerberg area were elaborated. Moreover, information and data needed to build decisions upon were collected by searching of files, contacts with involved persons and stakeholders and by expertise. Comments within the procedure could be made orally and in written form (letter, e-mail, and fax).

The process started in September 2002 and ended in November 2003, after 14 meetings and a one-day closed meeting.

Outcome

Finally, the mediation procedure showed that it would be technically possible to implement the golf course in the Zimmerberg area, but that the acceptance of this project is very low.

The motto of the company which wanted to invest in the golf course is “You and We together”. As the company wanted to act in accordance with this motto, it withdrew the project. No golf course will be built.

A mediation contract (about 100 pages; not strictly a civil law contract) about the consent and the dissent obtained in the procedure was signed by all members of the mediation forum. It was presented to the mayor and the political parties by the mediation forum. The investor withdrew the golf course project, thus no decision concerning this project had to be made.

In addition to the golf course project, approximately 40 other projects were examined, too. These projects as well as crucial factors for the future development of the area had been intensely discussed. Therefore the mediation contract also contains a list of projects and their not legally binding evaluations, intended as a guide line for local authorities and politicians.

As a further result of the mediation procedure, communication between the involved parties had improved dramatically. The involved persons stated that the intense exchange of information during the process had been very important and that appreciation, trust and frankness could have been developed, which fostered the success of the procedure.

It was perceived as a success by all parties, that a solution had been found, although different parties – like the land owner – had hoped for an other outcome of the mediation procedure. But all realized the complexity of the topic and were content, that unnecessary expenditures like for examples costs for legal disputes could have been saved.

Moreover, the authority of the Province of Tyrol has adopted mediation as an optional tool within the province legislation.

Conclusions and lessons learnt

The mediation procedure on the further development of the Zimmerberg area was a pilot project in Tyrol. A lot of public attention was given to it and the case was discussed in local and even national media, so the pressure of expectations was high.

One year after the mediation process had been finished an evaluation showed that the process had been useful for all parties involved. The mediation process had been

perceived as being fair and just by the involved parties. The mediator had been perceived as neutral by all stakeholders.

The specific benefit of the procedure is that

- all parties involved were heard and could present their position and ideas,
- it showed, that the rejection of a golf course in the Zimmerberg area does not mean a denegation of golf in general,
- questions could directly be discussed with the people concerned,
- everybody got a clearer image about the amount of expenses, possible costs of a conflict and the rights of citizens,
- the procedure fostered thinking on alternatives.

In general, the procedure showed how complex the context of such a project is. This fact as well as the complexity of the different interests were the major difficulties in the process.

A highlight in the process was when the parties began to understand the positions and interests of the other parties without having to share these ideas.

For procedures in the future it proved important to

- invest in the preparatory phase of a mediation procedure. A good preparation is crucial for the success of a mediation process. The preparation includes among others the development of a process-design that fits to the circumstances, the development of a time schedule, a stakeholder analysis, and so on.
- agree on a common time schedule (start, end, milestones) for the process, that is binding for each participant. This is important to conclude the process in time and to avoid delays.
- ensure political support of the mediation at an early stage, like in Telfs for example through the unanimous decision of the municipal council to support the mediation.
- find an agreement with all the involved stakeholders, how public relations shall be handled, who is in charge of that, who informs whom and when. In Telfs, for example, the involved persons agreed, that as long as the procedure lasts, the whole PR will be organized commonly. Exceptions from this rule had to be discussed and agreed upon in the mediation forum. Following each meeting, the mediation forum had the possibility to commonly inform the public or interested third parties, if necessary.
- apply an evolutionary planning model for projects instead of using the old mechanistic model.

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**Conflict Management 110KV Power Line Schrammbach
Austria**

Type of procedure

- | | |
|--|--|
| <input type="checkbox"/> Mediation procedure | <input checked="" type="checkbox"/> Procedure including mediation elements |
| <input type="checkbox"/> Other: | |

Topic area

- | | |
|--|---|
| <input type="checkbox"/> Urban and land use planning distribution | <input type="checkbox"/> Water management/supply and distribution |
| <input type="checkbox"/> Waste management | <input type="checkbox"/> Industry, trade, enterprises |
| <input checked="" type="checkbox"/> Power industry | <input type="checkbox"/> Telecommunications |
| <input type="checkbox"/> Traffic, transportation | <input type="checkbox"/> General environmental policies (genetic engineering, nuclear policy etc.) |
| <input type="checkbox"/> Nature conservation | <input type="checkbox"/> Neighbourhood conflict |
| <input type="checkbox"/> Tourism | <input type="checkbox"/> Other: |

Initiator(s)

Herbert Beyer, mediator, Environmental Advocacy of Lower Austria

Short description of the case

The electricity company of Lower Austria was planning a new 110 KV power line through part of the province of Lower Austria. In the village of Schrammbach there was discontent about the course of the line and a citizens' action group started to mobilize against the plan. A mediation-like procedure was started with the involvement of all stakeholders where several variants of the line were discussed and proved. After three months the procedure ended with a consensus on a marginally altered course of the line and the legal procedures of approval went on without any objection.

Participants (number of individuals, names of participating public authorities, institutions, interest groups etc.)

Citizens' action group (3 representatives), mayor of Lilienfeld (1), forest authority (1), property owners (8), electricity company (3)

Client / financial sponsor

Government of Lower Austria

Procedural guidance by (e.g. mediators, environmental advocacies etc.)

Herbert Beyer (professional mediator) as facilitator

Geographic dimension

- | | | |
|---|--|-------------------------------------|
| <input checked="" type="checkbox"/> local | <input checked="" type="checkbox"/> regional | <input type="checkbox"/> state-wide |
| <input type="checkbox"/> country-wide | <input type="checkbox"/> international | <input type="checkbox"/> EU-wide |

Status of process

- | | |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> concluded | <input type="checkbox"/> in execution |
|---|---------------------------------------|

Start, end, duration of the process (if still in execution: estimated end)

November 2003 – February 2004, 3 months

Conflict Management 110 KV Power Line Schrammbach Austria

Background of the Conflict

The electricity company of Lower Austria, EVN, was planning a new 110 KV power line instead of the 40 year old 60 KV line. The motivation for the planning process was to provide security of supply of electricity for the whole region. The project was submitted to the regional authorities. The legal procedures for approval comprise various steps. In the first – the pre-examination procedure of the project - it was proved by the experts to be qualified for realization. To realize the structural measures, the electricity company needs the agreement of the affected municipalities and of property owners who get a compensation for the land along the course of the power line. The electricity company has also the possibility – if there is no amicable settlement with the land owners - to expropriate land but this takes a long time and causes conflict and bad publicity for the company.

When the company started with surveying the land in the run of the development of the detailed project which was finally submitted for approval according to forestry, nature conservation and energy law, resistance against the project started to arise. In one part of the village Schrammbach, which belongs to the Community of Lilienfeld, there was discontent with the projected course of the power line. The inhabitants and especially the land owners, mostly farmers, did not agree with the construction of the power line through their land. Fears started to arise that the power line would spoil the landscape and have negative effects on the landuse of agricultural land. A citizens' action group was formed and the conflict started to get public and was presented twice in the local press.

Representatives of the Citizens' Action Group came to the provincial Advocacy for the Environment to ask for support of the resistance against the project.

Preparation and organization of the process

To find a solution to the conflict, Herbert Beyer, the provincial Advocate for the Environment of the Province of Lower Austria, a professional mediator, suggested a conflict-managing process with the involvement of all stakeholders. He has been contacted by the Citizens' Action Group. He has already been familiar with the project because he was one of the experts involved in the first step of the legal procedure for approval. He asked all involved parties, if they were willing to participate in a voluntary process explaining the advantages of the procedure and the consequences if there is no

amicable settlement. The authority would then have the power to decide and that includes the means of expropriation with a much lower compensation for the affected land.

The procedure was supported by all stakeholders. The costs for the moderator and the room were paid by the Provincial Government of Lower Austria as the mediator is employee of this authority.

Stakeholders involved and their interests

The process involved the following stakeholders:

| Stakeholders | Persons | Interests |
|---|----------------|---|
| Citizens' Action Group – inhabitants of Schrammbach | 3 | prevent negative effects on landscape |
| Property owners | 8 | prevent negative effects on landscape, on landuse of agricultural land and on the value of the land |
| Mayor of Lilienfeld | 1 | conserve attractive building land for the future; avoid/solve conflicts within the community |
| Central Authority, District Lilienfeld - Forest Authority | 1 | no bad publicity and no conflict |
| EVN – electricity company of Lower Austria | 3 | no bad publicity and a quick solution and realization of the project |
| Total | 16 | |

The Citizens' Action Group collected 2000 signatures of supporters for their concern in the forefront of the process.

Conflict resolution process – Process Design

The procedure was not a mediation in the strict sense, but many mediative tools were applied. The goal was to find a consensus on the course of the power line that would be accepted by all stakeholders involved.

In the first meeting the electricity company presented the project and explained the technical details. Topics to be discussed were collected. The different interest groups articulated their positions, fears and ideas and the different interests became clear. Then different variants for the power line, their advantages and disadvantages and their

technical feasibility were discussed and the electricity company offered to prove other variants. In the second meeting again there was the discussion on several alternative solutions together with a technical expert from the forestry department of the Regional Authority of Lilienfeld. It was agreed to do an inspection of the respective site to be able to decide the possibility of realization of one variant suggested by the citizens' action group. In the inspection the proposal turned out to be not feasible due to technical problems. In the third meeting all involved stakeholders agreed on a variant for the power line that was very similar to the originally proposed by the electricity company. The result was the consensus of all involved. It was not put down in a contract, but the company committed itself to realize the project that way.

The process lasted 3 months and included 3 meetings of at least three hours length and one inspection in the field.

Outcome

The procedure has been carried out while the legal procedures of approval of the power line were going on except for this small part of the power line in Schrammbach. After the end of the consensus-building process the submission project had been modified in the agreed way and presented to the authorities. The legal steps of approval were finished in 2005. There haven't been any conflicts on that project after the conclusion of the process.

The new course of the power line have been accepted by all parties and no expropriation were necessary. Regarding the outcome some expectations could not be met but the process secured that everybody understood the technical details and advantages and disadvantages of the different solutions and was taken serious with their concerns and their different interests.

Conclusions and lessons learnt

The major benefits of the procedure were:

- an accepted power line by all involved stakeholders
- no expropriations were necessary and therefore
- no time loss for the realization of the project and
- no bad publicity for the company and the authorities.

It was very important that all representatives of all parties of the conflict were involved.

It was a new experience for all participants to participate in such a process and in the beginning many of them were sceptical that it would be possible to get a good result based on a consensus.

For the citizens' action group and for the property owners it was very important to experience that there is a balance of interests, that their opinion has the same value as the arguments of the big company or the authority. In the beginning there were concerns that the hidden agenda of the process could be to conciliate and calm without responding seriously to the concerns and proposals of the local population. So one of the keys for the success was, that a frank and trustful atmosphere has been able to establish in the first session. As the mediator was very well accepted and proved to be neutral in the first meeting, the confidence in the process and in a good outcome grew and the discussion turned from very emotional to very issue-related. It was a dynamic and an intense learning process for all participants.

Comment of a participant in the process

Statement of one representative of the citizens' action group:

This procedure was a milestone of democracy politics. The concerns of the affected people have been taken serious. We could exchange ideas and discuss with the authorities and the company until we found a solution that is acceptable for all of us.

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**Voluntary and advanced civic participation procedure
S10 Mühlviertel Expressway, Austria**

Type of procedure

- Mediation procedure
 Procedure including mediation elements
 Other: a mediative conflict resolution process like the Cooperative Discourse.

Topic area

- | | |
|---|---|
| <input type="checkbox"/> Urban and land use planning distribution <input type="checkbox"/> Waste management <input type="checkbox"/> Power industry <input checked="" type="checkbox"/> Traffic, transportation <input type="checkbox"/> Nature conservation <input type="checkbox"/> Tourism | <input type="checkbox"/> Water management/supply and distribution <input type="checkbox"/> Industry, trade, enterprises <input type="checkbox"/> Telecommunications <input type="checkbox"/> General environmental policies (genetic engineering, nuclear policy etc.) <input type="checkbox"/> Neighbourhood conflict <input type="checkbox"/> Other: |
|---|---|

The S10 Mühlviertel Expressway is one of Austria's largest road construction projects currently in the planning process. The Autobahnen- und Schnellstrassen-Finanzierungs-Aktiengesellschaft (ASFINAG) (Highway and Expressway Financing Corporation) is the developer of the project. The State of Upper Austria, Department of Strategic Road Planning and Extension, is in charge of the project planning.

Initiator(s)

Office of the Upper Austrian Provincial Government, Department Construction

Participants (number of individuals, names of participating public authorities, institutions, interest groups etc.)

The following interest groups participated in the concensus building process (total number of persons: 135):

- Mayors of 10 municipalities
- Representatives of the political parties represented in the municipal council of the 10 towns and villages
- District representatives of the political parties ÖVP, SPÖ and FPÖ
- Farmers' representatives of the 10 municipalities

- Representatives of the Chamber of Agriculture, Economic Chamber and Chamber of Labour
- Labour Market Service
- District Authority of Freistadt
- Regional Management of Mühlviertel
- Representatives of 12 citizens' groups from the region

Client / financial sponsor

Office of the Upper Austrian State Government, Department Construction

Procedural guidance by (e.g. mediators, environmental advocacies etc.)

Institut Retzl Gemeindeforschung & Unternehmensberatung: DDr. Helmut Retzl, Head, Otto Kriegisch, Mediator

Geographic dimension

- | | | |
|---------------------------------------|--|-------------------------------------|
| <input type="checkbox"/> local | <input checked="" type="checkbox"/> regional | <input type="checkbox"/> state-wide |
| <input type="checkbox"/> country-wide | <input type="checkbox"/> international | <input type="checkbox"/> EU-wide |

The 40 km long, toll-payable, four-lane expressway S10 will lead from the end of the highway A7 Mühlkreisautobahn near Unterweikersdorf to the Austrian-Czech border near Wulowitz. The topography of the region is quite challenging. An area of 83 km² is being examined. The projected route traverses the land of ten towns and villages with a population of approximately 30,000 persons. The following municipalities are affected (from South to North): Wartberg, Unterweikersdorf, Hagenberg, Neumarkt, Kefermarkt, Freistadt, Lasberg, Grünbach, Rainbach, and Leopoldschlag.

Status of process

- | | |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> concluded | <input type="checkbox"/> in execution |
|---|---------------------------------------|

Start, end, duration of the process (if still in execution: estimated end)

July 2001 - July 2004

The civic participation process was completed when the decision about the route was made during the preliminary project phase.

ASFINAG promised to also involve the region in the detailed planning process while the submission project is being developed (environmental impact assessment). However, Institut Retzl, who has been the facilitator until now, is not informed about the details of the planned involvement.

Contact information of person/s providing information

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Voluntary Civic Participation in the Planning of an Expressway in Mühlviertel Austria

Background of the Conflict

The expressway no. S10 in Mühlviertel in Upper Austria (S10 Mühlviertler Schnellstrasse) is one of Austria's largest road construction projects currently in the planning process.

The Autobahnen- und Schnellstrassen-Finanzierungs-Aktiengesellschaft (ASFINAG) (Highway and Expressway Financing Corporation) is the developer of the project. The State of Upper Austria, Department of Strategic Road Planning and Extension, is in charge of the project planning.

The 40 km long, toll-payable, four-lane expressway S10 will lead from the end of the highway A7 Mühlkreisautobahn near Unterweikersdorf to the Austrian-Czech border near Wullowitz. The topography of the region is quite challenging. An area of 83 km² is being examined. The projected route traverses the land of ten towns and villages with a population of approximately 30,000 persons. The following municipalities are affected (from South to North): Wartberg, Unterweikersdorf, Hagenberg, Neumarkt, Kefermarkt, Freistadt, Lasberg, Grünbach, Rainbach, and Leopoldschlag.

At the beginning of the project, ARGE B310, a team of planners from various disciplines, conducted a corridor study on behalf of the Federal Ministry of Transportation, Infrastructure and Technology, ASFINAG and the State of Upper Austria. Its goals were to do a traffic analysis covering all means of transportation, to determine the level of expansion and to find corridors with the least possible conflicts of interest.

When the results of this corridor study were presented in the affected towns and villages, massive resistance developed against the project from within the region. Also the various departments of the Upper Austrian state government (environmental protection, water management, forestry, regional and local planning) and the Upper Austrian Environmental Advocacy Office could not find a consensus regarding method and conclusions of the study.

Above all, the location of the projected route corridors was criticized. It was feared that both residential area and nature would be severely impaired. Also the dimension of the project and the expected transit traffic, noise and air pollutants arose fears. Furthermore, the predetermined route layout at the Neumarkter Tunnel and the by-pass of Freistadt East were considered problematic.

Demands were rising that the region's population should participate in the decision-making process and, as an alternative, the Summerau railway and the existing roads should be expanded instead, a general traffic concept for Austria (considering the Kyoto

Protocol and climate protection) should be made, and a West variant around Freistadt should be examined.

Preparation and organization of the process

In view of these events, the State of Upper Austria decided to start a participation process in the region. The Institut Retzl, located in Linz, was charged with the development, implementation and monitoring of a consensus building process. The goals of this mediation process, as agreed upon with the institute, were as follows:

- Equal consideration of environmental, economic and social aspects
- Best possible information and communication
- Efficient planning by a timely, binding and equitable consideration of all interests
- Solutions-oriented settlement of conflicts and decision-making based on clear rules
- Creation of surplus value for the region.

First, the institute started with a comprehensive conflict analysis. It established contacts with all essential parties and won them for the planned participation process, and it made an inventory of the region's various interests.

After finishing the preparatory works, a common „Agreement about the voluntary and advanced participation of interested parties and population regarding the planning of the S10“ was concluded; ASFINAG was integrated in the consensus building process. It was agreed, however, that the State of Upper Austria would represent ASFINAG in the civic participation meetings.

The agreement comprised in particular:

- Definition of a goal (= planning of an efficient road system)
- Rules for the decision-making, for example:
 - Joint determination of criteria
 - Joint selection of experts
 - Planning with concerned parties (= frame agreement with the Chamber of Agriculture)
 - Working groups: „railways“ and „regional economy“
- Rules for the representation of interests (133 representatives of interests from 70 interest groups from 10 towns and villages)
- Rules regarding the organisational structure and administration of the participation process

Participating interest groups

The following interest groups participated in the concensus-building process:

- Mayors of 10 municipalities
- Representatives of the political parties represented in the municipal council of the 10 towns and villages
- District representatives of the political parties ÖVP, SPÖ and FPÖ
- Farmers' representatives of the 10 municipalities
- Representatives of the Chamber of Agriculture, Economic Chamber and Chamber of Labour
- Labour Market Service
- District Authority of Freistadt
- Regional Management of Mühlviertel
- Representatives of 12 citizens' groups from the region

Bodies of the participation process

The 133 representatives were organised in three bodies:

- **Regional conference** (= „plenary session“): for the decision-making in all issues affecting all interest groups
- **Regional committee**: for the discussion of issues having an impact on the whole region, and for the preparation of consultations in the regional conference.
- **Regional planning groups**: actual work and decision-making regarding the routes in the sections „South“, „Middle“, „North“
 - Planning group „North“: Grünbach, Rainbach, Leopoldschlag
 - Planning group „Middle“: Freistadt, Grünbach, Lasberg, Kefermarkt
 - Planning group „South“: Hagenberg, Neumarkt, Unterweikersdorf, Wartberg

Work with the region and the participating actors

The sheer dimension of the participation process became visible when counting the number of meetings which took place in the region - apart from the numerous internal meetings within ASFINAG, planners, representatives of the State of Upper Austria, the office ILF and the Institut Retzl.

| | |
|--|----------|
| Meetings with Upper Austrian administrative departments/ Upper Austrian Environmental Advocacy Office | appr. 18 |
| Meetings with bodies of the mediation process | 33 |
| Media briefings | appr. 10 |
| Individual meetings with various interest groups | 58 |

In total **119**

E-mails of the Institut Retzl in the course of the project 1800

Process design

Development of a three stage procedure for the reduction of variants and selection of the route

An important phase in the participation procedure was to put all desires, demands and interests of the region on the table. Together with the planners, a model for the decision-making had to be developed subsequently, based on a joint definition of the issues and criteria.

In spring 2002, the civil engineering office ILF joined the process. ILF took over the interdisciplinary project coordination and the organisation of the planning procedure, especially the coordination of the technical planning.

After an intensive development phase during which the departments of the State of Upper Austria, the Environmental Advocacy Office of Upper Austria and representatives of the regional interests participated, a „Three stage model for the reduction of variants and selection of the route“ was presented in August 2002. The model takes the legal, technical and planning aspects as well as social and societal indicators into consideration. ILF and Institut Retzl took the lead in developing the model.

First stage: Elimination of corridors

During the first stage, poorly rated corridors were eliminated. This process was based on data and information material gathered in the corridor study which was supplemented and amended in some areas (e.g. forest evaluation).

First, the area was divided into portions. In each portion, comparable corridors were put in contrast to each other, and those corridors which were rated poor were eliminated. If two comparable corridors were rated equal and none as a clear loser, then both corridors were taken to the second stage for verification. All pre-existing corridor proposals were examined as well as those proposals made by representatives of interested parties in the course of the inquiry.

Participation of the region during the first stage

Also during the first phase, the planners established a list of criteria which included all wishes and demands already expressed by the regional population.

Simultaneously during the first and second stage, an evaluation model was established that would facilitate the evaluation (which might differ from region to region) and weighting

of the various issues (forest, water/bodies of water, agriculture/forestry, residential area/permanent residence, spare time/recreation/culture, etc.) during the third stage of the decision-finding procedure.

The region was, of course, also heavily involved in the decision-making regarding the elimination of corridors.

Second stage: Elimination of route variants based on more elaborate data

During the second phase, the existing data were further elaborated. Possible routes were eliminated according to the list of criteria for the efficiency analysis created in cooperation with the region and the departments of the Upper Austrian state government and the Environmental Advocacy Office of Upper Austria. During this stage, route variants were planned and examined in terms of location and altitude, and optimizations of routes were taken into consideration wherever possible.

This second stage could be completed by end of June 2003 as scheduled. In each of the sections „North“, „Middle“ and „South“, only two variants at the most remained - all of which fulfilled the criteria of each individual department or issue and were well within the tolerance limits.

After completion of the second stage, the entire planning between Unterweikersdorf and Wullowitz was aligned, and the number of possible routes was reduced so that the third phase of the route selection procedure could begin in summer 2003.

Participation of the region during the second stage

In a first round, all route variants (axis in location/altitude) were presented and discussed in the regional planning groups. After an efficiency analysis of the route variants (according to the list of criteria) and optimization of the route in cooperation with the departments of the Upper Austrian state government and the Environmental Advocacy Office of Upper Austria, the result (evaluation and elimination of routes) was again presented and discussed in the regional planning groups.

Third stage: Development of a preliminary project and route selection

In the third stage, the remaining routes were developed into preliminary projects. For the final decision about a route, the remaining variants were evaluated not only according to technical criteria but according to the weighting of various other issues (space and environment, traffic and technology, costs, etc.) by the region. Thus, the immediate participation of the region in the decision-finding was strengthened once again. The goal of the third and last stage of the process was to find one route which would be chosen for ASFINAG's project submission to the authorities.

Participation of the region during the third stage

The regional planning groups discussed and evaluated the planners' proposals for the route evaluation and route selection for the preliminary project. In particular, the planning groups „blended“ the weighting introduced by the regional interest representatives with the results of the technical evaluation in order to get an additional decision guidance. If this process did not result in a clear-cut decision for one particular variant, ASFINAG would decide according to efficiency criteria. However, this would occur only if the variants were very similar or if the consequences were very heterogeneous.

Outcome

On July 2, 2004, the results of the decision-finding process for the route of the S10 Mühlviertel Expressway were presented to the public in the Technology Center Freistadt. On the agenda were the presentation of the route selection for the entire planning corridor between the end of the A7 near Unterweikersdorf and the border crossing near Wullowitz, as well as a debate about and adoption of a documentation of the results from the perspective of the civic participation process.

In the **documentation of the results** of the civic participation, the statements and positions of the region's representatives regarding the routes in the various planning sections were recorded. The finally selected routes mostly corresponded with the wishes and demands of the region's representatives - with the exception of two planning sections: „Middle B“ (between Neumarkt and the connection Freistadt South) and „Middle C“ (between the connections Freistadt South and Freistadt North).

The documentation of the results of the civic participation also mentioned the issues to be examined during the subsequent planning phase (e.g. extension of the subsurface routes, accompanying road system).

All representatives of the ten municipalities affected by the route reached a basic consensus about the demands and framework conditions for the subsequent planning stages (submission of the project) and the proceedings by the authorities (environmental impact assessment),

Conclusions and lessons learned

All stakeholders expressed their satisfaction about the positive atmosphere in the civic participation process. The region's representatives declared their clear support for the manner in which a decision had been found.

All participating actors (representatives of the region, planners, departments of the Upper Austrian state government, Environmental Advocacy Office of Upper Austria and the project management) showed competent, professional and constructive cooperation and thus contributed to the positive result.

What is the success of the civic participation?

The civic participation's organisation created **clear communication structures** and disclosed the **competence and responsibility** of all actors in a transparent and comprehensible manner. The interdisciplinary work and integration of all competent departments of the Upper Austrian state government and the Environmental Advocacy Office of Upper Austria led to a high **procedural and planning security**. The involvement of all essential actors in the decision-finding process allowed the timely **recognition of influential factors**. The timely and fair integration of all regional interests resulted in **democratic decision-making**.

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Environmental mediation process for restoration of the protective forest above the village of Hinterstein, Germany

Type of procedure

- | | |
|---|---|
| <input checked="" type="checkbox"/> Mediation procedure | <input type="checkbox"/> Procedure including mediation elements |
| <input type="checkbox"/> Other: | |

Topic area

- | | |
|--|--|
| <input checked="" type="checkbox"/> Urban and land use planning distribution | <input checked="" type="checkbox"/> Water management/supply and distribution |
| <input type="checkbox"/> Waste management | <input type="checkbox"/> Industry, trade, enterprises |
| <input type="checkbox"/> Power industry | <input type="checkbox"/> Telecommunications |
| <input type="checkbox"/> Traffic, transportation | <input type="checkbox"/> General environmental policies (genetic engineering, nuclear policy etc.) |
| <input checked="" type="checkbox"/> Nature conservation | <input type="checkbox"/> Neighbourhood conflict |
| <input checked="" type="checkbox"/> Tourism pasture | <input checked="" type="checkbox"/> Other: Forestry, Hunting, Mountain |

Initiator(s)

The department of protective forest restoration of the Forest Office Sonthofen initiated the project.

Participants (number of individuals, names of participating public authorities, institutions, interest groups etc.)

Representatives of forest, hunting, nature conservation, water management and tourism issues participated in the mediation process, furthermore official representatives of the municipality of Hindelang and affected individual. The mediation group consisted of 23 persons representing 13 stakeholders (1-2 representative(s) per stakeholder). All participants were male.

Client / financial sponsor

The project was designed as a research project and financed by the Curator of the Bavarian State Institution for Forestry.

Procedural guidance by (e.g. mediators, environmental advocacies etc.)

Forestry expert Gaby Müller from the Technical University of Munich, Chair of Forest Policy

Geographic dimension

- | | | |
|---|--|-------------------------------------|
| <input checked="" type="checkbox"/> local | <input checked="" type="checkbox"/> regional | <input type="checkbox"/> state-wide |
| <input type="checkbox"/> country-wide | <input type="checkbox"/> international | <input type="checkbox"/> EU-wide |

Status of process

- | | |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> concluded | <input type="checkbox"/> in execution |
|---|---------------------------------------|

Start, end, duration of the process (if still in execution: estimated end)

October 2002 - November 2003

Environmental mediation process for restoration of the protective forest above the village of Hinterstein Germany

Background of the Conflict

In the forest use plan, the project area (673 hectares) is registered as a soil protection and avalanche barrier forest; it protects the village of Hinterstein. Due to its exposed location and bad state, the protective forest urgently needs restoration. The municipality of Hindelang owns most of the project area; other owners are the Bavarian State Forest Administration and an alpine cooperative. The slopes face south-west; in a normal winter they offer shelter for game. In the past few years, however, storm damage, beetle calamities and too much browsing by deer decreased the protective effect of the forest even though investments of about one million euros for forest restoration had been made.

Furthermore, the social and economic conditions made a successful completion of the restoration works difficult. Many of the affected actors did not see the problem, repressed it or downplayed its size. Several groups of stakeholders were directly or indirectly involved with the problems (23 persons from 13 different stakeholders). At the beginning of the mediation procedure, no open conflict became apparent. The various actors had a different awareness of the problems which varied sometimes widely. The starting position was characterized by old traditions, informal hierarchies as well as antipathies and sympathies among the inhabitants of a small village in the Allgäu, Germany.

In a conflict analysis, the problems were categorised in predominant issues: protective forest, hunting, tourism, and relationships:

Protective Forest

The main problem in the protective forest area in need of restoration was the insufficient forest regeneration. Deer browsing does the least damage to spruces and the most damage to silver firs. The rejuvenation of spruces, firs, maples and beeches was an official goal. Various methods can be applied for regeneration; the costs of the methods and the success rate vary as well. Also the amount of damages the hunting cooperatives have to pay for damages by deer browsing depends on it. Hunters, therefore, demand that only trees which are the most resistant to browsing should be planted (firs in particular should, thus, be avoided), and more natural regeneration should be chosen instead of container plants – which is the most expensive but also most successful method.

Hunting

There was no elaborate concept dealing with the various problem levels with regard to hunting. Once again, one of the issues was the browsing situation. Since self-hunting was started in 1991, the browsing situation got better at the beginning but has stagnated on a high level for the last seven years. Firings which are an important income source for the hunters' association, were an issue; a hunting concept for red deer that should be developed with neighbouring hunters aiming at deer reduction was another issue, as well as the illegal feeding of red deer that had already come up for discussion several times.

Tourism

Ski hikers, ice climbers, snowshoe hikers, paragliders and balloonists use this area. People going on a ski tour are the biggest source of anxiety for deer in winter. Many people use a ski lift on the Austrian side as a starting point for their ski tour that runs above the protective forest. Because of this disturbance, the deer withdraws to the mostly snow-free slopes of the project area.

Relationships

Furthermore it was criticized that there was too little direct and open contact between decision-makers to address unclarity and problems. Usually the needs and basic conditions of the others were considered as „so well known“. However, some people said that they lacked information.

The situation was characterized by:

- Mutual prejudices
- Impenetrable relationships overlaid by old conflicts
- Situation of a small village, and therefore many informal contacts between the parties (also during the mediation process)
- Hardly any clear and realistic goals and expectations at the beginning of the procedure
- Expectation not to have to revise one's own position
- Ideologically laden issue
- Confusion of factual conflicts with interpersonal conflicts
- Limited willingness of many participants to change their perspective
- Diversified societal and intellectual background of the participants
- Composition of the group: male only

Almost every even remotely involved group participated in the process. Only the “neighbouring hunters” were not represented because the participating groups also hunted in all neighbouring areas, except for one.

Preparation and organization of the process

The head of the department of protective forest restoration initiated the mediation procedure. He wished for mediation because the department had not been able to find a solution with its own means for 15 years. Although the department was responsible for the creation of the protective effect of the forest it hardly had any possibility to enforce measures, and therefore its position was weak. Also the division of competencies between the department of protective forest restoration and other authorities, e.g. the hunting authority (regarding the number of allowed shootings of animals) aggravated the situation. If departments have a good relationship with each other, it allows a positive development – and if the contrary is the case, everything can be blocked.

It was hoped that a neutral mediator and a joint decision by all affected people in a mediation procedure would end the impasse. The mediator suggested the concrete procedure and discussed it with the whole mediation group.

At first, exploratory talks took place with the initiators of the mediation, then with the involved administrative departments. After having identified all participants, the mediator made a conflict analysis: In separate meetings with each group, participatory methods were used to identify the conflict.

The inhabitants of the village of Hinterstein were the most endangered by the unsolved problem and ought to participate in the mediation process. But they had no direct contact person. Hinterstein belongs to the municipality of Hindeland, and Hindeland’s mayor was a participant in the mediation. However, the direct effect of a destroyed protective forest would hit only those twenty families from Hinterstein who might have different priorities than a mayor who had to represent the interests of the whole population. Therefore the mediator invited all affected families to a workshop to do a joint conflict analysis. Almost all invited persons participated in the workshop and decided to also participate in the mediation process: they named two representatives.

All participants were open-minded towards the procedure and willing to participate. However, some people thought at the beginning that the time needed was somehow exaggerated.

The project was designed as a research project and financed by the Curator of the Bavarian State Institution for Forestry.

Process design

The classic steps of an environmental mediation procedure were taken. About once a month, meetings took place: 13 meetings of the whole group between October 2002 and November 2003.

After initiating the mediation process and identifying the affected groups, the mediator worked with each group to find out their view of the problem, their interests, positions and ideas. In joint meetings new ways of communication were supported and information deficits reduced (for example by joint inspections on site). In a meeting at the beginning of the process, all groups had ample time to describe their situation, living conditions and background of their interests. Most people used the occasion the meeting offered, which helped tremendously to get to the factual basis of the conflict and to reduce prejudices. The participants also made joint inspections on site.

Then the next steps could follow: uncover the problems and interests of the various stakeholders, classify the problems and interests, describe these basic conditions of each group, detect the potentials of everybody, look at the social and economic situation, deal with the problems and interests, work on control mechanism, agree on the wording of a contract and sign it. Now the participants themselves implement, control and evaluate the measures in an iterative, adaptive joint management. The whole process was analysed by the Technical University of Munich.

All participants were from the Allgäu, a region in Bavaria, Germany. It was a prerequisite that also the mediator was a native from the Allgäu and could speak and understand the dialect. Communication was thus perfectly adapted to the region.

Outcome

Although the protective forest in the municipality of Hindelang urgently needed restoration, no progress in regeneration had been achieved for many years. Through the mediation process, all actors were made aware of the precarious situation. In the course of the negotiations, old relational conflicts were getting solved, and a solution of the factual problems was agreed upon in a package of measures. All participants are included in the package of measures, and the responsibility of everybody was stressed.

The most important factual results of the action plan (all within the legally allowed boundaries)

- Hunting: increased shootings; the hunting possibilities will be extended;
- Restoration actions: At first, those areas of the protective forest which directly protect objects (e.g. houses) will be restored; as a concession to the hunters,

no silver firs will be planted because browsing on silver trees creates the worst damage, which leads to higher compensation payments by the hunters. Start of the actions in 2007

- Tourism: The tourists' support of the measures shall be won by giving them better information. A project planned by the German Alpine Association about "Environmentally-friendly ski tours" will be started earlier. The goal of the project is to give information to ski hikers and to present ski tours planned and negotiated with hunters and nature conservationists who have good knowledge of the site. The ultimate goal is to leave the animal world as undisturbed as possible.
- Relationship between the participants: further meetings and exchange of information are planned.
- Information to the media and population to make them aware of the measures.

The catalogue of measures/mediation contract was put in writing (in a simple, comprehensible and clearly structured form showing goals, responsibilities and controls), was signed by everybody and given as a copy to all participants. The agreement is binding on a voluntary basis. However, a high commitment could be reached because the results were made public and presented to the whole population. Therefore the results are traceable and controllable and create a pressure of expectations. Also the new group feeling of all participants contributes to compliance with the contract. The outcome was perceived as a success by all parties.

Protective forest restoration is a long-term goal; therefore the measures must be and remain effective for a long time. For the next ten years, the contract shall be a basis for all activities of all participants on that area.

All measures have already been started. But as these actions are a long-term project, they cannot be considered completed.

In September 2004 and July 2005 meetings of the mediation-group took place, to examine the state of implementation.

Conclusions and lessons learnt

The composition of the participants was special: All participants are local people and knew each other at the beginning of the mediation process – they deal with each other on a regular basis. The intellectual differences between some of the people were big. This was reflected in the communication style, which might sound rough for many ears but was quite suitable there. It became also evident that some participants had only little orthographic knowledge. The mediator took care that when group work had to be done, people with orthographic knowledge were spread equally among the groups, or that people could express themselves with pictures instead of words.

Furthermore, all participants were men – not surprisingly, as all organizations represented in the process were men-only domains.

Especially at the beginning it was important to inform the participants about the reasons, goals and procedure of mediation. The issue was introduced in phone conversations right at the beginning, during the conflict analysis and the first joint mediation meeting – and even then, it was still a mystery to some people why the group would have to spend so much time to talk about such an issue. Only when the problems, interests and different points of view were laid open, people started to comprehend that mediation intends to tackle the root of the problem and solve it, instead of talking at a superficial level. Simultaneously, the participants became more willing to contribute something to an all-encompassing solution and in return get “concessions” in other areas. It became clearer that solutions are not just a burden on the participants but are searched for to their advantage.

The biggest obstacles were the conflicts on an interpersonal level between some of the participants. The mediator had the impression that these conflicts were very old and may even have grown over generations, and sometimes not even the participants understood the reasons for it. The exchange of information in the course of the mediation procedure helped participants to focus on the factual level and to create a constructive way of proceeding on that level.

In retrospect, the question arises whether the group of neighbouring hunters should have been involved as well. In principle, the mediation participants represented that group as well because they hunted also in the neighbouring areas – except for just one neighbouring hunter. At the beginning of the mediation, the group of neighbouring hunters had not been considered important. It was also feared that the atmosphere in the mediation process would be less open if that particular neighbouring hunter, who did not belong to the village, would participate. However, after completion of the mediation and

presentation of the results to the public, the whole village was proud of the mediation process and some people, including that hunter, were angry that they had not been there.

Important and successful elements were:

- The mediator's language competence regarding the regional dialect
- The participants' decision to inform the public only after the end of the mediation process, after the mediation contract was signed – to avoid being influenced.
- A time distance of about four weeks between the meetings, which turned out to be very reasonable.
- The mediator's professional background – she is a graduated forestry expert and could lead and understand the discussion about the facts; therefore, the participants respected her.
- A female mediator as a chair for the exclusively male group; at the end of the process, the participants said that they had refrained from swearing and strong verbal expressions at the beginning, which contributed to a constructive atmosphere.

Most important was that all participants were brought to the table, that the mediator created a factual-based atmosphere and that individual participants received information they had lacked before. The “informational evening” and the joint inspections on site were very important.

In total, the measures were perceived as target-oriented, effective and fair by a high percentage of the participants.

In retrospect, the procedure turned out to be ideally suited for the existing problems. The time spent was justified, and the pressure at the beginning just right to motivate everybody to participate. The reason why the conflict had not been resolved earlier is precisely that there had not been a procedure like the mediation that would have brought everybody to the table. All participants would do it all over again and participate in a mediation procedure.

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Finding the Site for the Low and Intermediate Level Radioactive Waste Repository, Slovenia

Type of procedure

- Mediation procedure Procedure including mediation elements
 Other

Topic area

- | | |
|--|--|
| <p><input type="checkbox"/> Urban and land use planning <input checked="" type="checkbox"/> Waste management <input type="checkbox"/> Power industry <input type="checkbox"/> Traffic, transportation</p> <p><input type="checkbox"/> Nature conservation <input type="checkbox"/> Tourism</p> | <p><input type="checkbox"/> Water management/supply and distribution <input type="checkbox"/> Industry, trade, enterprises <input type="checkbox"/> Telecommunications <input type="checkbox"/> General environmental policies (genetic engineering, nuclear policy, etc.) <input type="checkbox"/> Neighbourhood conflict <input type="checkbox"/> Other:</p> |
|--|--|

Initiator(s)

Agency for Radwaste Management (ARAO)

Short description of the case

Slovenia does not have a disposal facility for any type of radioactive waste. The current storage capacities are limited and will soon run out, which is especially true for the LILW storage at Krsko Nuclear Power Plant (NPP).

The Agency for Radwaste Management (ARAO) was founded by the Slovenian Government in 1991 and assigned the task of providing conditions for final disposal of radioactive waste. It was decided that ARAO will start with the disposal of low and intermediate level radioactive waste (LILW). A mixed-mode siting procedure that allows flexibility, transparency and public involvement was chosen. Its main characteristics are:

- All decisions should be made with public consent.
- Local communities volunteer potential sites for the repository.
- Local communities can withdraw from the procedure whenever they wish.
- Governmental and local interests have to be balanced.

In 2002 an independent mediator was introduced to communicate with local communities that were interested in participating in the siting procedure. The mediator's main tasks were to prevent possible future conflicts between decision makers in local communities

and the general public, as well as to help the local community to find the potential benefits that it might receive if it accepted the LILW repository.

A broad communication campaign was initiated before the official start of the administrative procedure of the LILW repository siting. It continued while ARAO collected applications from local communities willing to participate in the siting procedure. Publications, TV broadcasts, workshops, and contacts with non-governmental organisations supported the work of the mediator. Efforts proved successful as eight local communities of the 193 invited volunteered as a site or area for the first run.

Parties and other participants

Agency for Radwaste Management on one side and all **local communities** (initially 193, i.e. almost 2 million people) in Slovenia on the other side.

Several **environmental NGOs** in cooperation with **REC Slovenia** were involved in related informational campaigns and public participation events.

Client/financial sponsor

The mediator has a contract with ARAO, but it only defines that the mediation has to be carried out according to the mediator's judgement. The mediator's work was paid for by the Fund for Decommissioning and Radioactive Waste Disposal from the NPP Krsko. The fund is prescribed by a separate law.⁵

Procedural guidance by (e.g. professional mediators, etc)

The professional mediator, an independent expert, was chosen by ARAO with the help of experts. She has a technical background, with experience in management and politics. She is educated in mediation techniques and receives expert technical support from ARAO.

Geographic dimension

- | | | |
|--|-----------------------------------|--|
| <input type="checkbox"/> local | <input type="checkbox"/> regional | <input checked="" type="checkbox"/> state-wide |
| <input type="checkbox"/> international | <input type="checkbox"/> EU-wide | |

Status of process

- | | |
|------------------------------------|--|
| <input type="checkbox"/> concluded | <input checked="" type="checkbox"/> in execution |
|------------------------------------|--|

⁵ The monetary resource of the fund is the price of electricity produced in NPP Krsko (0.3 euro cent/kWh). Both Slovenia and Croatia have to participate in the fund because both are using the energy from NPP Krsko. The management board of the fund has five members (two appointed by the government, two by NPP, and one by the local community of Krsko).

Start, end, duration of the process (if still in execution: estimated end)

The mediation process started in February 2002. The first phase of the mediation finished in April 2005. At that time ARAO finished collecting applications from local communities willing to cooperate with ARAO in the LILW repository siting procedure. The mediation took place in numerous contacts with the municipality councils in the entire screening area, i.e. throughout Slovenia. The second phase will continue until the site confirmation in 2007/2008.

Finding the Site for the Low and Intermediate Level Radioactive Waste Repository Slovenia

Synopsis

This ongoing case shows that openness, transparency and a well arranged mediation/participation process can help to find a non-confrontational resolution to such a complicated issue as site selection for the radioactive waste disposal. Valuable lessons were learned from the previous site selection process, which had ended in failure.

After a technical and environmental area survey the selection process is continuing towards the identification of potentially suitable sites. For this most difficult step, the local communities have been invited to participate in the selection process through an independent mediator who is representing the links between two parties and facilitating the communication and negotiations between the investor and the local communities. She has double task: helping with the site selection process and presenting mediation itself as a new tool for solving potential environmental conflicts.

Background of the conflict

Slovenia's nuclear power plant meets more than a third of the country's energy demand. The radioactive waste from the power plant is being stored at the site, and the radioactive waste from other applications of radioactive materials is being stored in the Central Interim Storage Facility.

The first siting procedure for the permanent repository for low and intermediate level radioactive waste (LILW) took place from 1990 to 1993. In that time a technical approach was selected and several potential sites were announced without public involvement in the procedure. The public objected virulently and the procedure was stopped. Local residents were particularly enraged; they believed the government wanted to put the hazardous waste in their community because the region was less developed and poorer than elsewhere in the country. Public opinion polls show that most Slovenians realise that the country needs an LILW repository, but at the same time most of them do not want to live near it. A slightly more positive attitude has been perceived in recent years due to better public information.

All the analyses showed that the conflict between the environmental and waste management interests and the interests of local communities to expel any kind of waste

from their environment is profound. Almost no willingness to cooperate was present on the side of public, and the government reacted by completely withdrawing from the process for several years. Meanwhile, a new procedure and some legislative measures to support the public acceptability of the LILW repository were prepared. An intense public information and communication campaign was also organised.

After the failure of the first site selection for the LILW repository a detailed analysis of the experiences showed that the main reason for the failure was inadequate public participation. Information about the project was insufficient, public participation in the process was not established and representatives of local communities were not regularly informed about the results.

The analyses also revealed that the site selection process had insufficient political support. A waste management policy that could have provided the needed link between the politicians and the investor did not exist. In fact, the period of the site selection process coincided with the time of tremendous changes that occurred in Slovenia in the late 1980s and early 1990s. The changes in the political, social and economic system, in combination with the growing opposition to the peaceful use of nuclear energy, would require a different approach to the problem.

The main characteristic of the new process is the mixed mode approach that combines technical criteria with volunteer siting. In order to avoid having the process rejected at the end, ARAO applied the strategy that no intermediate decision or advancement of the process could be made without public consent. This is achieved through public presentations and workshops for the general public and NGOs supported by local media and other informational activities.

The siting process is integrated with the administrative spatial planning procedure of adopting a detailed plan of national importance. It also includes the process of strategic impact assessment and environmental impact assessment where the public has a right to participate. There is a plan to include the mediator into these activities as well.

Parties and stakeholders to the process

One of the parties in the conflict is the **government**, which works in the public interest by providing the best solution for radioactive waste management. The other parties are the different **local communities** that are considered suitable to host the repository.

In some cases political conflicts were also present. In the local communities of Lenart, Trnovska vas, Velika Polana and Smartno pri Litiji, **civil initiatives** were launched because they opposed the decisions by the mayor and local decision makers. They tried to achieve either a withdrawal of the application or the resignation of the mayor. In two cases they achieved a withdrawal from the process. No mediation was planned or applied

on the side of the repository investor in these cases because it was considered to be a local issue.

Conflicts also arose between the **general public** and the local decision makers who found that governmental incentives can be in the interests of their community.

Conflict resolution process

The conflict resolution process in this case can be classified as a mediation led by an independent mediator who received technical support from one party (ARAO). The process was initiated in 2002 and the main task of the mediator at this stage was foreseen as informing and laying the groundwork for future steps in the siting procedure to which the local communities would be invited to volunteer a specific site or area for site investigations. The mediator facilitates the process of finding a suitable location for the LILW repository that will be accepted by society. She also deals with potential conflict and presents basic information to local communities.

Why was this tool used?

It has been considered that one of the main tasks of the facilitator/mediator is to give informative presentations to local communities, especially to municipal councils and to mayoral staff. Objective information was chosen as being the most important because it was found that general knowledge of the problem is poor and there are considerable prejudices and misconceptions. In this stage of the process local communities are welcomed to volunteer if they take interest in the project. Later in the process the mediator will also be obliged to help to resolve conflicts, but at this stage it is more important that local communities know and accept her work.

Description of the process

The goal of the mediation is to improve the likelihood of local communities volunteering to the siting procedure. The mediator's work included the following:

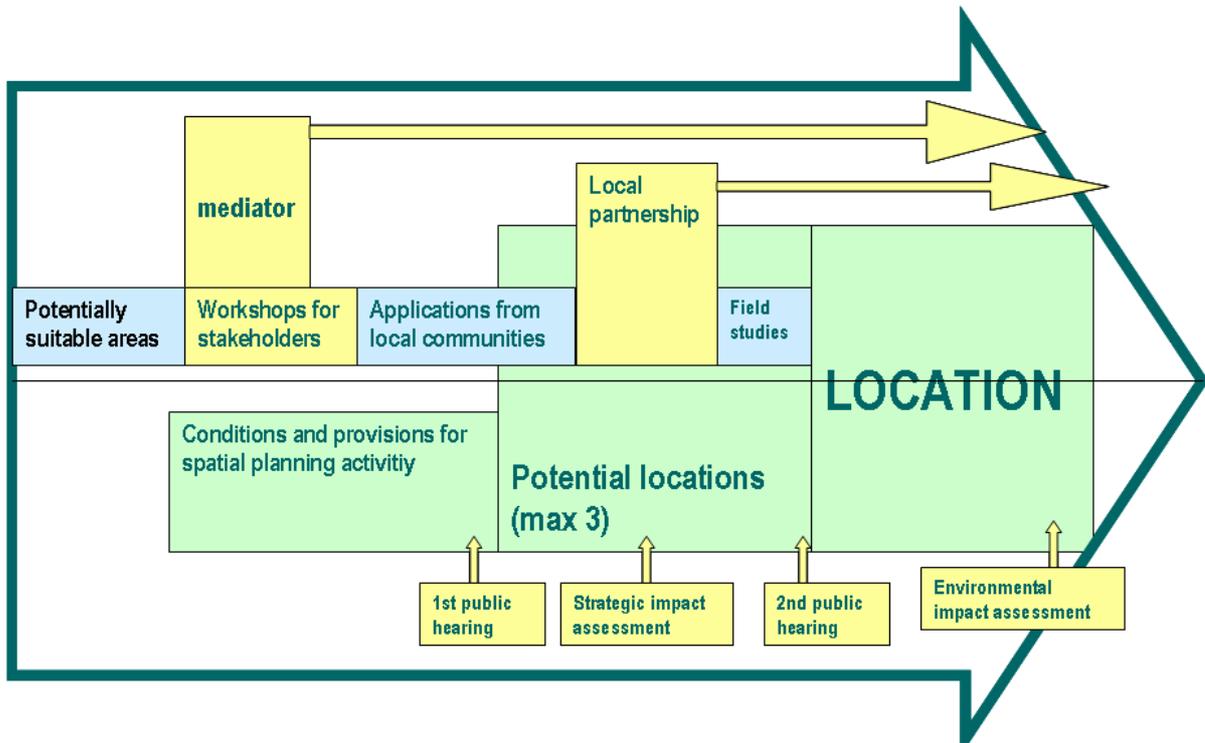
- personal communication with mayors or directors of the municipal administration;
- presentations of the siting project for the municipal councils;
- interviews for local media; and
- organisation of meetings with ARAO representatives upon request of the local communities.

Contacts with interested public also took place on the basis of expressed interest. No special methodology was set because the mediator could potentially work with all 193 local communities in Slovenia, which are very diverse and have different requirements and wishes. In this way, the mediation process was made flexible and accommodative to a wide variety of needs. Stakeholders were selected according to personal acquaintance or expression of interest.

No special programmes were in place for increasing the capacity for conflict resolution or negotiating with local communities. Only informational activities were carried out under the assumption that people can only make wise decisions if they are properly informed. All costs were covered by the Nuclear Power Plant Decommissioning Fund.

The public was invited to express their attitudes via e-mail, free phone line, or some radio broadcasts. Written opinions of the public were collected in special boxes in municipal buildings. Little response was received, though both positive and negative reactions were expressed.

Diagram 1 — Process of the site selection



Output of the process

No final agreement has been reached yet, but the results are obvious, as eight local communities volunteered for the siting process. In most cases the mayor proposed the application to the municipality council, and after the approval the mayor signed the application. In one case the mayor applied without consulting the council, and in two cases the municipality council agreed even though the mayor did not. Nevertheless, the mayor sent the application.

ARAO made a pre-feasibility study to evaluate the volunteering local communities. Based on the study, the three most promising local communities were chosen, and the government has confirmed the three sites where the process will continue. An actual area that will be influenced by the facility is in the radius of 500 metres, and the siting foresees no settlement is in this area. As the prospective sites are situated in the river system of the Sava that flows to Croatia, this country will probably be involved in the environmental impact assessment due to the potential transboundary impacts.

ARAO will sign a local partnership with three of the local communities in the near future.

The mediator was successful in securing the public's interest in the process and in diminishing the chance that the public will reject the LILW repository. She succeeded in transforming the opposition of local decision makers into cooperation. By showing the decision makers that a LILW repository could be a development incentive for the local communities, local political conflicts arose in some cases. Some local communities rejected the possibility of mediation and they were left out of the procedure. This exclusion

increased the feeling of security in local communities because they realised that their will is being respected.

The final outcome of the mediator's work will be the local partnership as an overall cover to provide public participation in decision making concerning the repository's siting.

Local partnership will be established to provide a healthy environment for continuous communication. The local communities have the right to withdraw at any time with no obligations, while the process continues in other communities. A local referendum is foreseen before the final decision on the site will be made in the procedure of the adoption of a detailed plan of national importance. It also includes the environmental impact assessment. The public is actively involved in the EIA and public hearings, and a possibility for comments and demands is provided by the procedure. A detailed plan of national importance is to be adopted by the government.

Related actions and campaigns

Already before the beginning of the mediator's work various information and communication activities were carried out by ARAO. A public opinion poll is made every year, informative leaflets, posters, CD-ROMs, and newspaper articles are produced, an information centre on nuclear technology is maintained, and workshops for NGOs and other interested public are organised. The objective of these activities is to improve understanding and decrease the irrational fear of nuclear technology among the general public. All these activities run in parallel with the mediator's work and supported each other.

In 2003, REC Slovenia cooperated with ARAO on the organisation of two workshops and a round table for environmental NGOs. About 20 NGO representatives participated in the preparation of recommendations for public involvement in the decision-making process. The second phase of activities took place in 2005 and was aimed at informing the public about their legal right to participate in environmental decision making, as well as to offer them the possibility to discuss with an independent legal expert and representatives of ARAO. By autumn 2005, two regional round tables were organised where participants raised several questions and expressed their appreciation for such events.

Civil initiative groups (*see above — main parties and stakeholders*) also organised activities. For example, a press conference was arranged to announce that their opposition to the siting of a LILW repository because of the risks involved. In another case they demanded the resignation of the mayor, and in the other they threatened to block the mayor's re-election. In this stage of the process the mediator did not have the opportunity to have more contact with them as no conflict arose.

Usually these groups have a small number of members and environmental issues are abused to reach some other political goals. Their activities are not supported heavily by the general public.

Final outcome of the case

Because the conflict in this case is an abstract one, no direct resolution can be expected. Nevertheless the mediator has helped a lot to decrease the social tensions. The experience was that people are more willing to listen to somebody that is not directly tied to the investor of the repository but has a neutral role. The mediator also received a completely negative response, either from some of the decision makers or from the public in some communities. This was not considered a failure but rather as information about the local communities that do not want to participate, and their will was respected. The mediation/facilitation procedure will continue to the end of siting procedure, presumably in 2007 or 2008.

Conclusions

It was found that it is much easier to mediate the decision makers than public opinion leaders or the general public. The public that is involved in the conflict often does not perceive the issue as its real interest. It is easier to mediate the conflict when each party really fights for its interests. The public does not always have direct interest in some environmental issues (e.g. waste management facilities) but only a wish to participate. People may also be easily misled by other interests that are only connected to environmental or health issues or concerns. A clear distinction between the right to participate and the possibility of being manipulated has to be borne in mind.

Comments of participants in the process

Discussions that were organised within the regional round tables provided local residents with an additional opportunity to express their opinions and suggestions. Their main comments were the following:

- They appreciate neutral forums where they can get additional information and express their opinions.
- They lack dialogue with local decision makers.
- They would appreciate an operational plan for public participation in the siting process.
- They lack broader national discussions on nuclear energy in Slovenia, not only limited discussion on the radioactive waste repository.
- They would appreciate having representatives of the public on monitoring bodies.
- They stressed that NGOs could play a stronger role in helping local people to express their opinions, as well as in raising awareness on environmental problems and solutions.

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Returning the Protected Status to Natural Areas in the Lviv Region Ukraine

Type of procedure

- | | |
|--|---|
| <input type="checkbox"/> Mediation procedure <input checked="" type="checkbox"/> Other procedure: Round Table | <input type="checkbox"/> Procedure including mediation elements |
|--|---|

Topic area

- | | |
|---|--|
| <input type="checkbox"/> Urban and land use planning <input type="checkbox"/> Waste management <input type="checkbox"/> Power industry <input type="checkbox"/> Traffic, transportation <input checked="" type="checkbox"/> Nature conservation <input type="checkbox"/> Tourism | <input type="checkbox"/> Water management/supply and distribution <input type="checkbox"/> Industry, trade, enterprises <input type="checkbox"/> Telecommunications <input type="checkbox"/> General environmental policies (genetic engineering, nuclear policy, etc.) <input type="checkbox"/> Neighbourhood conflict <input type="checkbox"/> Other: |
|---|--|

Initiator(s)

WETI, an NGO of environmental journalists

Short description of the case

In December 1999 the Lviv Regional Council decided to remove the status of several protected areas. For some areas they removed the protected status of part of the territories and changed their borders (about 4,000 hectares in 11 protected areas altogether).

Several environmental NGOs and scientists protested the decision, which they considered illegally without a scientific basis. Since 1999, several administrative actions and media-campaigns have taken place without a satisfactory outcome.

In June 2005 WETI, a journalism NGO, organised a press-tour, and about 40 people (journalists, scientists, governmental officials, environmental prosecutors, NGOs and foresters) visited the former reserves of Kornalovychy and Boryslavsky. Participants of the press-tour proposed to organise a round table discussion. They also signed a petition to the Lviv Region Council requesting the cancellation of the decision of December 1999 and reinstatement of protected status to the valuable natural territories. The petition was disseminated during the meeting of the Lviv Region Council, and the issue was widely publicised in local and national mass media.

In early July 2005, a facilitated round table was held. As a result, a commission of stakeholders was created. The main goal of the commission was to inspect the areas and suggest which areas should regain protected status.

In August 2005 the commission visited the former reserve Kornalovychy and agreed to prepare the scientific conclusions for the decision to return protected status to the territories that had not been harmed yet.

Parties and other participants (number of individuals, names of participating public authorities, institutions, interest groups, etc.)

- Lvivlis, the Lviv regional state forestry company
- Environmental NGOs (WETI, Ecopravo-Lviv, Nature Protection Society)
- Lviv Region Council (the environmental committee)
- Lviv Regional Department of Environment and Natural Resources
- Scientists from the Lviv Forestry University, the Lviv National University, and the Institute of the Ecology of the Carpathians (the Academy of Science of Ukraine).
- Legal adviser (lawyer) of environmental NGOs
- Journalists

Client/financial sponsor

The sponsor of the press tour was ISAR Ednannia, a Ukrainian not-for-profit non-governmental organisation. Ednannia provides a variety of services to NGOs and other interested parties, including grants, consultations, trainings, information, research, analysis and networking. In addition, Ednannia carries out several programmes and activities encouraging NGO activity in Ukrainian communities.

Other resources were covered by participants of the process: the State Forestry Company provided the meeting room, transport for the commission visit to the reserve, as well as lunch for the participants. WETI used its own resources for the dissemination of information and preparation of information materials after the press tour. Scientific work was carried out by the scientists without any additional compensation. Legal advises were provided by the lawyer free of charge.

Procedural guidance by (e.g. professional mediators, etc.)

Legal adviser advised WETI on how to organise negotiations, as well as on possible ways to comply with the legal procedure of establishing the protected areas. The round table was facilitated by representatives from both sides of the conflict, a representative of NGO WETI and the head of the State Forestry.

Geographic dimension

- | | | |
|---|-----------------------------------|-------------------------------------|
| <input checked="" type="checkbox"/> local | <input type="checkbox"/> regional | <input type="checkbox"/> state-wide |
| <input type="checkbox"/> international | <input type="checkbox"/> EU-wide | |

Status of process

 concluded in execution**Start, end, duration of the process**

The conflict started in December 1999. The preparation for the press tour started in spring 2005 and negotiations started in June 2005. Negotiations were held in August 2005

Returning the Protected Status to Natural Areas in the Lviv Region Ukraine

Synopsis

This case study was chosen to show that alternative dispute resolution can be a more effective use of time. In this particular case it saved a forest that might have otherwise been cut down during the long period of administrative or judicial process. It was easy to find an agreement and take small steps forward when the parties in the conflict met and worked to solve the dispute.

In this case the media was a powerful tool for stimulating negotiations. Moreover, the media played the role of informal or “virtual facilitator” and did not let the more influential party dominate and ignore the other stakeholders. The media also contributed to increasing the involvement of different stakeholders in the discussions, kept the local community informed and reflected its position.

Background of the conflict

In December 1999 the Lviv Regional Council decided to remove the status of several protected areas. For some areas they removed the protected status of part of the territories and redrew their borders (about 4,000 hectares in 11 protected areas altogether). As most of the protected territories were forests, the decision opened the doors for commercial exploitation of the forests (i.e. timber cutting) by Lvivlis, Lviv’s regional state forestry company.

This decision was made after a proposal of Lvivlis and was supported by the Lviv Regional Department of Environment and Natural Resources.

The Law on the Natural Reserved Fund of Ukraine defines the procedure for the cancellation of the status of protected areas as well as the procedure for changing their borders. This procedure of cancellation requires an interested person (applicant) to submit an application to the Ministry of Environment and Natural Resources or its local department (in case of local protected areas). This application should include scientific conclusions and a description of the reasons for the cancellation. If the ministry or its local department (in this case, the Lviv Regional Department of Environment and Natural Resources) approves the application, it has to prepare the project documentation and submit the documents to the decision maker (in this case, the Lviv Region Council), which adopts the final decision.

Lvivlis in collaboration with the Lviv Forestry University prepared the scientific conclusions for the cancellation of the protected status of several areas. For some areas scientific conclusion were missing. As a main reason for the cancellation of the protected status it was stated that the forest is losing its economic value and tree felling is needed to maintain its healthy condition.

Several environmental NGOs and scientists protested the decision, which they considered illegally without a scientific basis. Since 1999, several administrative actions and media-campaigns have taken place without a satisfactory outcome.

Biodiversity issues and other environmental issues were not properly taken into account. Some areas that lost protected status were valuable not only from an economical perspective but primarily for their unique nature and habitats of endangered species. The Kornalovychy reserve, for example, was established in the 1970s to protect old oak tree forest (now about 200-210 years old). It is also a habitat of “red book” species.

The first protests and actions started in 2000 immediately after the decision was passed. They were organised mainly by NGOs in the form of media campaigns. Scientists had not realised the full ramifications of the decision (as at that time it was only on paper and there were no visible consequences), or they chose not to participate openly in the conflict (scientists specialising in forest issues often need to collaborate with the Lviv Forestry University and Lvivlis). The problem was that accusation from the media that failed to refer to prominent scientists had little result, so the media ran a few scandalous stories and did follow up.

Only when Lvivlis started cutting old oak trees in the former Kornalovychy reserve did some scientists raise their protests against the cuttings in the media and demand that the territory of the former reserve be protected again.

To start legal actions NGOs needed the support of scientists as well as the documents related to the decision-making process. In the public interest, environmental law organisation Ecopravo-Lviv (EPL) spent approximately two years collecting documents and evidence that the decision was illegal, violating the procedure and without proper scientific grounds. EPL made the legal analysis of the adopted decision and violations of the decision-making process and presented it to the competent authorities.

After the publication and the analysis, two inspections from the Ministry of Environment and Natural Resources were carried out but the result was not satisfactory. However, in 2002 the Lviv Regional Department of Environment and Natural Resources announced that they are considering the idea of returning the protected status to the Kornalovychy reserve.

In June 2005 the journalist NGO WETI organised a press tour and about 40 people (journalists, scientists, governmental officials, environmental prosecutors, NGOs and foresters) visited the former Kornalovychy reserve, where they had an opportunity to see huge, recently cut, old oak trees. They also visited another former reserve and found timber cuttings as well. The legal analysis of the decision of December 1999 and

violations made during the decision-making process in 1999 was disseminated at the press tour.

There was wide representation from different national and local media (TV, newspapers, and radio) and this story was broadly disseminated by the media.

The next day after the press tour the environmental prosecutor began inspecting recently visited areas.

The main goal of the tour was to raise public awareness, place pressure on the local government, and demand a reversal of the 1999 decision and a return of the status to the valuable natural territories. It was also important to show the damages that had been already caused and introduce people (including scientists and decision makers) who were responsible for the illegal decision.

It was also a good opportunity and time because the new Ukrainian government declared that development of the ecological network and increase of the territories of the protected areas was one of its priorities.

Parties and stakeholders to the process

State companies and public authorities

Lvivlis (the state forestry company) was interested in commercial use of forest resources, responsible for the protected areas that were established on their territory.

The Lviv Region Council cancelled the status of several protected areas in December 1999. When the decision was made as well as when the negotiation process was started, the Environmental Committee of the Council consisted primarily of foresters and people involved in forest management.

The Environmental Committee of the Council is part of the Lviv Region Council. The council is an elected body and creates committees in different areas. It is believed that foresters were quite powerful and took positions on the Environmental Committee at the time of the conflict. The council does not consist primarily of foresters or people involved in forest management, but the committee does.

The Lviv Regional Department of Environment and Natural Resources is responsible for the protection of nature. They supported the proposal of Lvivlis in 1999. (The head of the department worked for Lvivlis before he was appointed as head of the department).

Environmental NGOs and other interested stakeholders

WETI is interested in the protection of nature. They want the 1999 decision cancelled and the status of the natural territories reinstated. WETI collaborated with an expert ecologist and a public interest lawyer who provided legal advice.

Ecopravo-Lviv (EPL) is a public interest environmental law organisation interested in the protection of nature that also wants the decision cancelled and the status of the natural territories reinstated. EPL is responsible for the legal analysis of the 1999 decision and pointed out violations that were made throughout the decision-making process of 1999.

The **Nature Protection Society** is interested in the protection of nature and wants to return protected status to the former Kornalovychy reserve.

Scientists of the **Lviv Forestry University**, the **Lviv National University**, and the **Institute of the Ecology of the Carpathians (the Academy of Science of Ukraine)** prepared a document stating the scientific basis for the cancellation of the protected status. Others were opposed it and carried out research at the Kornalovychy reserve and applied to the Lviv Regional Department of the Environment and Natural Resources to re-establish the area's protected status.

Journalists

Journalists played an important role in raising public interest in the issue and published NGO viewpoints widely in local and national mass media.

Conflict resolution process

Why this tool was used

First of all, some participants proposed to organise a round table discussion bringing together stakeholders to discuss the cancellation of the decision of December 1999 and the future status of the valuable natural territories. Participants in the press tour also signed a petition to the Lviv Region Council asking to cancel the Decision of December 1999 and return the status to the valuable natural territories. The petition was disseminated during the round table of the Lviv Region Council. The head of Lvivlis (who is also head of the Environmental Committee of the Lviv Region Council) agreed to hold a joint round table on this issue.

Description of the process

It was agreed that WETI — initiator of the press tour — and Lvivlis – as the entity responsible for the management of the forests and the initiator of the Decision of the Lviv Region Council of 1999 — would arrange the round table and the participation of different stakeholders.

Originally, the round table was supposed to be held on “neutral territory” in the Museum of Nature, but the museum facilities were not available for the planned date. Instead, the round table was held in July 2005 in the conference hall of Lvivlis. At the meeting, representatives from all stakeholders were present except for representatives of the Lviv Regional Department of the Environment and Natural Resources.

At the beginning of the meeting, the head of Lvivlis, who also represented the Environmental Committee of the Lviv Region Council, took the initiative of facilitating the meeting, but WETI proposed that the meeting could be facilitated by representatives from both sides. Both sides agreed, and a WETI representative and the head of Lvivlis facilitated discussions. Such facilitation was more efficient as foresters sometimes tended to lead discussions to more general issues while NGOs kept their attention on the status of the protected areas.

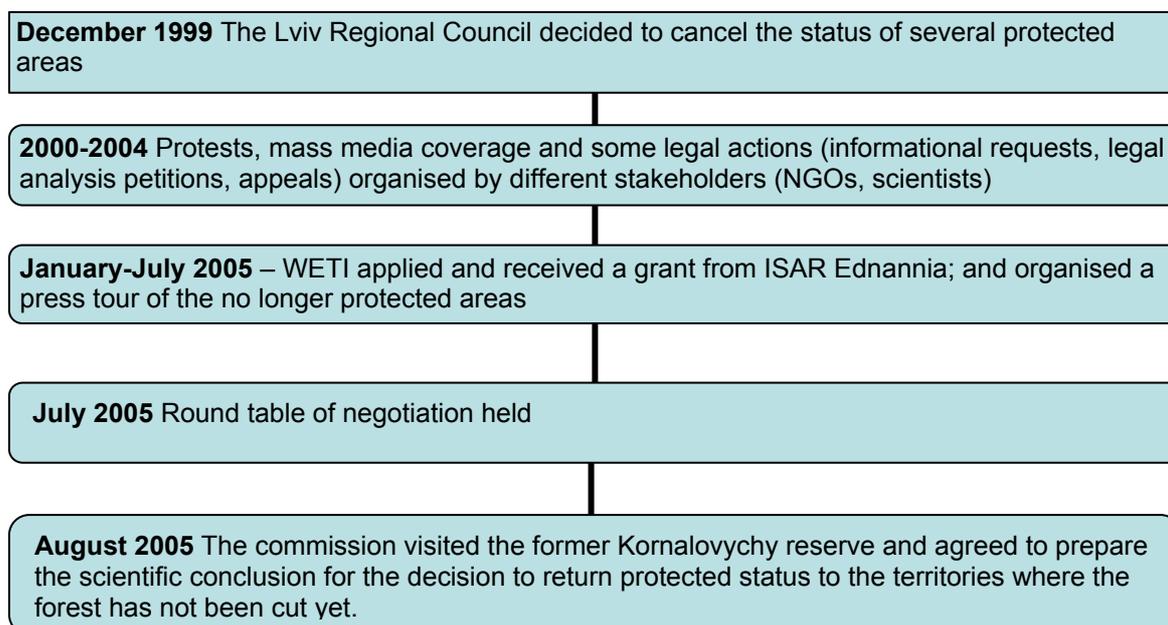
During the round table, Lvivlis did not accept that the 1999 decision was passed in violation of the law, but some journalists and NGOs insisted of the officials and scientists who prepared the decision. Additionally, representatives of NGOs requested a moratorium on tree cutting in the former protected areas until an agreement on their status could be reached.

The scientists who argued for the cancellation of the protected status tried to defend themselves and explain reasons for their conclusion. Some other scientists supported the idea of establishing new protected areas on the territories which had not lost their value after the cuttings.

After the speeches and arguments of different participants of the round table a consensus was reached on the former Kornalovychy reserve. All agreed that part of it had to be protected.

Everyone also agreed that a commission composed of different stakeholders needed to be created. Such a commission was created taking into account proposals from different stakeholders, and it included 15 members (eight scientists, two NGOs, one journalist, one legal expert, two representatives from Lvivlis, and one representative from the Lviv Regional Department of Environment and Natural Resources). It was also agreed that the main goal of the commission was to inspect the areas and propose decisions on some areas that would regain protected status.

Table 1 — Timeline of the process



Output of the process

During the roundtable a consensus was reached: the former Kornalovychy reserve should be protected.

As a result of the process, the **commission from different stakeholders** was created with 15 members (eight scientists, two NGOs, one journalist, one legal expert, two representatives from Livilis, and one representative from the Lviv Regional Department of Environment and Natural Resources) in order to inspect the areas and propose decisions on some areas that would regain protected status.

In August 2005, the Commission visited Kornalovychy and agreed to prepare a scientific conclusion in favour of returning protected status to the forest territories that had not been cut yet.

Related actions and campaigns

- Media campaigns before and during negotiations;
- Press tour of the area;
- Petition to the Lviv Regional Council, sent by NGOs;
- Petition to the Ministry of the Environment sent after the press tour;

- Legal analyses and other related documents given to the environmental prosecutor and other participants of the press tour by organisers (WETI) of the event.

Final outcome of the case

In August 2005 the Commission visited the former Kornalovychy reserve and agreed to prepare a scientific conclusion recommending the return of protected status to the forest territories that had not been cut yet. Also the draft conclusion was prepared by scientists and sent to other stakeholders. The conclusion proposed that a new protected area in the Kornalovychy forest be created. Lvivlis agreed and established a protected area there.

The final decision has not yet been adopted yet. It has to be approved by the Lviv Regional Department of the Environment and Natural Resources first and submitted to the Lviv Regional Council. The estimated end of the negotiations is autumn 2005.

The conflict has not been completely solved yet as NGOs insist on protected status for other areas cancelled in the 1999 decision.

Conclusions

In the case of the Kornalovychy reserve the alternative dispute resolution method was a useful tool. Administrative or judicial process might take so long that by the end there might not have been any forest left to protect. Before negotiations began, about 25-30 percent of the Kornalovychy forest had been cut.

The process of negotiations took much less time than administrative or judicial processes and Lvivlis agreed to a moratorium on forest cutting during negotiations, which also preserved trees.

One of the main obstacles during negotiations was that one of the stakeholders – Lvivlis – had a major influence over other participants. Most of the scientists who played a crucial role in the process preferred to keep good relations with Lvivlis, which controls most of the forests in the region, as well as with the head of the Environmental Committee of the Lviv Region Council. Some of them received some funds for their work from the local budget or from Lvivlis. On the other hand, scientists did not want to lose face and credibility. In this case, the openness of the negotiation process to the media as well as publicity helped to overcome this obstacle.

One of the main lessons learned was that publicity in some cases is a very powerful tool for stimulating negotiations. In particular, it is quite efficient in countries with high levels of corruption. In this particular case, when WETI organised a media campaign and the conflict received publicity, the governmental authorities (including Lvivis) became interested in negotiations.

Moreover, the media played the role of informal or “virtual facilitator” and prevented one of the most influential parties from dominating the negotiations at the expense of other stakeholders. The media also contributed to the involvement of different stakeholders outside of the negotiating room to the discussion, and informed and reflected the position of the local community to protect the forest.

In case of the Kornalovychy reserve, the result of negotiations was satisfactory for the parties.

Comments of participants in process

“We understand that if the Decision of 1999 was admitted as illegal several people responsible for it might be punished. But our main priority was to save valuable natural territories as soon as possible because every day of delay cost us a decrease in territory of old growth oak forest. Even if some people were punished we would never be able to return trees that were cut. We had a compromise on the Kornalovychy reserve but still need to find a solution for other protected areas that lost their status. I believe that publicity and mass media played a crucial role in this process.”

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Fact sheet

**Ukraine:
Znesinnia Regional Landscape Park
Versus Electric Power Supplier**

Type of procedure

- | | |
|---|---|
| <input type="checkbox"/> Mediation procedure | <input type="checkbox"/> Procedure including mediation elements |
| <input checked="" type="checkbox"/> Other: negotiations | |

Topic area

- | | |
|---|---|
| <input checked="" type="checkbox"/> Urban and land use planning | <input type="checkbox"/> Water management/supply and distribution |
| <input type="checkbox"/> Waste management | <input type="checkbox"/> Industry, trade, enterprises |
| <input checked="" type="checkbox"/> Power industry | <input type="checkbox"/> Telecommunications |
| <input type="checkbox"/> Traffic, transportation | <input type="checkbox"/> General environmental policies (genetic engineering, nuclear policy, etc.) |
| <input checked="" type="checkbox"/> Nature conservation | <input type="checkbox"/> Neighborhood conflict |
| <input type="checkbox"/> Tourism | <input type="checkbox"/> Other: |

Initiator(s)

Znesinnia Regional Landscape Park and Lvivoblenergo Open Joint Stock Company, a local state electric power supplier

Short description of the case

On November 4, 2002 Lvivoblenergo, in accordance with the Rules of Electricity Supply Networks Maintenance, applied to the director of the Znesinnia Regional Landscape Park with a letter requesting a permit to cut 374 trees in a corridor under a 110-kilovolt high voltage electric line (HVEL-110 kV) situated in the park. The director of the park, concerned about the cutting of such a large number of trees, particularly in a core protection zone of the park, initiated a meeting of the Public Council at the Lviv Oblast State Administration on Environment and Natural Resources (henceforth "Public Council") to settle this issue. During its meeting on January 10, 2003 the Public Council agreed to a proposal by the park and decided to approach the mayor of Lviv with a request to create a special working group that would develop a proposal to replace the high voltage electric lines with cable lines.

The deputy Lviv mayor on urban and land use planning and the Lviv City Council Commission on Nature Management, Environment Protection and Urban Development have also supported these decisions. The result was a reallocation of the trees, and only

115 trees — instead of the initial 374 — have been cut and the rest – undergone the crown formation only . The decision of the Public Council on the need to replace the power lines with underground cable lines has been taken into consideration by the developer of the General Plan of Lviv City, which will be adopted in November 2005.

Parties and other participants (number of individuals, names of participating public authorities, institutions, interest groups, etc.)

The main parties of the conflict were the Znesinnia Regional Landscape Park and the local electric power supplier, Lvivoblenergo JSC.

Other participants in the conflict included the local state and self-governmental bodies authorised to make decision on the approval of the clearing of the corridor under the HVPL (the Lviv Oblast State Administration on Environment and Natural Resources and the Lviv City Council), local citizens (36 people) and non-governmental organisations (notably the NGO Znesinnia Renaissance from Lviv), the Public Council of Lviv Oblast State Administration on Environment and Natural Resources (organizing a meeting of concerned parties, which helped to find a solution) and the Ecopravo-Lviv charitable foundation (which provided free legal advice and guidance to the director of the park and NGOs).

Client/financial sponsor

The process did not involve any financial sponsor. The parties of the conflict acted within their own budgets while defending their interests during the conflict resolution process.

Procedural guidance (e.g. professional mediators)

The procedural guidance for protecting nature conservation interests (to the park, NGOs and citizens) was provided by **Ecopravo-Lviv**. It consisted of free legal consultations and guidance, as well as preparation of letters and documents.

The negotiations at the Public Council were facilitated by the **head of the Public Council**.

Geographic dimension

- | | | |
|---|-----------------------------------|-------------------------------------|
| <input checked="" type="checkbox"/> local | <input type="checkbox"/> regional | <input type="checkbox"/> state-wide |
| <input type="checkbox"/> international | <input type="checkbox"/> EU-wide | |

Status of process

- | | |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> concluded | <input type="checkbox"/> in execution |
|---|---------------------------------------|

Start, end, duration of the process (if still in execution: estimated end)

The conflict started on November 4, 2002 and was partially solved on January 10, 2003, when during the Meeting of the Public Council a decision was reached on the need to decrease the number of trees to be cut and to replace the power lines with cable lines. In February 2003 the reallocation of trees to be cut was made and the agreed number of trees (115 out of 374) were cut.

The conflict came to a close in May 2003 when the proposal of the park and decisions of the Public Council were taken into consideration by the Urban Plantation Institute, which was working on the development of the General Plan of Lviv City. It is expected that the Lviv City Council will adopt the plan in November 2005.

Znesinnia Regional Landscape Park versus Electric Power Supplier Ukraine

Synopsis

This case study was chosen because it shows a good example of how the parties of the conflict did not take any administrative or court measures to resolve the problem but instead they found an alternative way to resolve the disagreement. The high level of interest in the case by the public proved to be an important motivation for the parties to find a satisfactory compromise.

Background of the conflict

The conflict originated when on November 4, 2002 the Director of the Znesinnia Regional Landscape Park, Oles Zavadovych received the letter from the local power supplying company, Lvivoblenergo JSC, requesting a permit to clear a corridor under a 110-kilovolt High Voltage Power Line (HVPL-110kV) situated in the park in order to prevent a serious accident involving visitors to the park.

On November 11-12, 2002 representatives of the park and Lvivoblenergo marked the trees to be cut: a total of 374 trees covering 103.42 square metres.

The administration of the park refused to approve the cutting of such a large number of trees within the park, particularly in the core protection area. In its objection to the tree-cutting, the administration argued that such a clearing would cause considerable damage to the park, which has recreational and nature protection purposes, and also may encourage erosion, as many of the trees are situated on steep slopes. The cutting would also prevent the use of certain areas of the park in accordance with its recreational and nature protection purposes, and would be a violation of Art. 7 of the Law on Nature Protection Fund of Ukraine, which prohibits such activity.

At the same time the paragraph 8.61 of the State Sanitary Rules of Urban Planning, approved by the Order of the Ministry of Health Protection of Ukraine on June 19, 1996 (No. 173) requires that HVPLs with a tension of 35-110 kV and higher shall only be placed outside residential territories or be replaced with underground cable lines. The park is an element of residential territory in accordance with the paragraph 3.4 of these Sanitary Rules. Referring to this requirement, the park also argued that the HVPL shall be removed from the park territory or replaced with underground cable lines.

The situation was, however, complicated by the fact that the HVPL had been erected before the park was established.

Lvivoblenergo explained that the cutting of trees under the HVPL is a forced measure and is only carried out to prevent accidental power failures and accidents. Moreover, the cutting needed to be carried as soon as possible, as the state of the HVPL in the park is critical and requires urgent clearing (letter of January 14, 2003). Furthermore, Lvivoblenergo was obliged to cut the trees that endangered the HVPL by February 20, 2003 by the Order of the Territorial Administration of the State Committee on Labour Protection Supervision of January 21, 2003. Otherwise the Administration would prohibit the exploitation of the HVPL.

Lvivoblenergo received the permit for the cutting of all 374 trees from the State Administration on Natural Resources in Lviv Oblast of December 28, 2002 (No. 04-05-6619). However the Lviv City Council, whose approval for the cutting of trees in such case is needed, prohibited the cutting. The session of the Lviv City Council Commission on Nature Management, Environment Protection and Urban Development was authorised to investigate the situation and advise the Council session. According to the session record of December 18, 2002 (No. 21), it decided that tree-cutting under the HVPL-110 shall not be allowed and allowed only the formation of the crowns of trees in order to enable the “temporary” functioning of the line.

During the conflict resolution process, the parties did not take any administrative or court measures to resolve the problem. However, the park was initially considering addressing the court to request the removal of the HVPL from the park. For its part, Lvivoblenergo could have appealed the refusal of the park to provide the permit (either through the court of in administrative proceedings).

The parties, however, found an alternative way to resolve the conflict.

Parties and stakeholders of the process

Main parties

The main parties of the conflict are Lvivoblenergo JSC and the Znesinnia Regional Landscape Park.

Znesinnia is a Nature Preservation Fund object of local importance that was established in accordance with the decision of the Lviv Oblast (district) Council of December 2, 1993 (No. 327) and serves recreational and nature preservation purposes.

The legal status of the park, as well as requirements and restrictions regarding the use of its lands and natural resources are set in the Law on Nature Protection Fund of Ukraine of June 16, 1992 (No. 2456-XII). Any activity that negatively impacts or may impact natural

or historical and cultural complexes and units on its territory or prevent them from being used in accordance with their purpose is prohibited (Art. 7).

Its main interest in the conflict was to prevent the unnecessary cutting of trees and removal of the HVPL from the territory of the park or their replacement with underground cable lines.

Lvivoblenergo is an open joint stock company formerly known as the State Joint Stock Energy Supplying Company. It is a local electric power supplier for Lviv oblast (district). It acts within the legal framework of the requirements of safe maintenance of high voltage power lines, in accordance with the Rules of Electric Supply Networks Protection, approved by the Cabinet of Ministers of Ukraine of March 4, 1997 (No. 209). The rules stipulate that the distance between the crown of the trees and an HVPL-110kV shall be no less than 4 metres, and no trees, except for fruit trees not higher than 4 metres, are allowed to be planted under an HVPL.

Lvivoblenergo's position in the conflict was based on the requirements of safe exploitation of an HVPL and its main interest was compliance with these rules. It also wanted to fulfil the requirements of the Order of Territorial Administration of the State Committee on Labour Protection Supervision, and therefore cut the trees in the corridor under the HVPL as soon as possible.

Stakeholders — Local authorities

The State Administration on Natural Resources in Lviv Oblast

At the beginning of the conflict, the State Administration on Natural Resources in Lviv Oblast was on the side of Lvivoblenergo and approved the cutting of the initial amount of trees (374). After the negotiation process, however, and under pressure from public opinion and regular coverage of the events in the local press, it changed its mind and supported the proposal of the park administration to decrease the number of trees to be cut. In accordance with its order, the reallocation of trees was carried and only 115 trees were considered as accidentally hazardous and thus subject to cutting. The rest were subject only to crown shaping.

Lviv City Council Commission on Nature Management, Environment Protection and Urban Development (henceforth Lviv City Council Commission)

From the beginning of the conflict the Lviv City Council has been on the side of the park, i.e. against the cutting. The Lviv City Council Commission decided on illegality of cutting trees under the HVPL-110 and allowed only the formation of the crowns of trees in order to enable the "temporary" functioning of the line.

Stakeholders — Non-governmental organisations

The Public Council at Lviv Oblast State Administration on Environment and Natural Resources (henceforth **Public Council**) is an advisory body for the state administration that consists of the representatives of the state administration, NGOs and mass media. This is not an NGO and is not the governmental structure, as it combines representatives of both NGOs and government. It is a permanent “public hearing” structure, and is an advisory body. Its decision is not obligatory to the Administration however the Administration usually consider them as they represent the broad public opinion.

Ecopravo-Lviv Charitable Foundation is an environmental law organisation that provided free legal support (consultations, help in preparing letters and documents) to the administration of the park and all other parties defending the interests of nature protection. It also carried out its own actions in requesting relevant information from state authorities.

It also helped to collect information on replacing HVPL with cable lines and requested information on practices and economic and ecological benefits of this type of replacement in Ukraine. It also requested the relevant documents from the Ministry of Energy and Fuel of Ukraine and the Dnipropetrovsk City Council, which carried out the replacement, and also the decisions on development of the General Plan of Lviv City by the Lviv City Council.

Ecopravo-Lviv participated in the Meeting of the Public Council as a member (the Ecopravo-Lviv representative was a secretary of the Public Council at that moment).

Znesinnia Renaissance, Lviv NGO was created with the aim of protecting the park. It supported the position of the park and applied to the mayor of Lviv, the head of the Oblast State Administration, and the head of the Lviv Administration on Architecture and City Building with a request to support the proposal of the park and carry out the HVPL replacement with cable lines.

Lviv city inhabitants

Thirty-six people signed the letter to the mayor of Lviv supporting the park and requesting the halting of the tree cutting and the replacement of the HVPL.

Conflict resolution process

Why was this tool used?

The decision to negotiate a compromise, rather than turning to the courts or administrative proceedings, was primarily motivated by the strong public interest in the case and the heavy coverage by mass media. Any unilateral decision for one side would have had repercussions, as both sides had legal grounds to protect their interests: the park was acting in the framework of the legislation on natural reserves, which prohibits any activity that may cause damage to the park, while Lvivoblenergo was acting within the framework of the rules on safe exploitation of HVPL, which required the prevention of any crossing of a line by trees branches. For their part, the national authorities, on whom the final decision rested, were interested in finding a compromise that appeased a public that was paying close attention to the case. It was therefore critical to involve the public in the process through the Public Council, as an important stakeholder, in order to find a solution acceptable for all sides.

Description of the process

The conflict resolution process did not have any formal mediator. The process may be described as negotiations that were carried out in two rounds (*see chart*):

- 1) the non-facilitated negotiations and consultations between the parties of the conflict and the state authorities involved, which mainly took the form of correspondence and special meetings; and
- 2) open discussion involving all stakeholders, in particular the involvement of the public, in the form of the Meeting of the Public Council facilitated by the Head of the Council.

First stage of conflict resolution (November 2002 – January 2003)

The first stage took the form of **negotiations** and **consultations (discussions)** between the park, Lvivoblenergo and the state authorities authorised to give permits for tree cutting (Lviv City Council, Lviv Oblast State Administration on Natural Resources) and in forming public opinion through local mass media. During this round no formal mediator or facilitator was involved, and the two sides of the conflict, the park and Lvivoblenergo, presented their cases to state and local authorities.

The first compromise was suggested by the park administration. Understanding the necessity to prevent accidents, the park proposed that only those trees should be cut that directly endangered the visitors of the park and that prevent the safe exploitation of the

HVEL. They suggested trimming the tops of the rest of the trees. They also proposed to settle this issue at the Meeting of the Public Council at the Lviv Oblast State Administration on Environment and Natural Resources with the participation of all interested parties and other stakeholders in a letter dated December 9, 2002 (No. 1660/175)⁶.

The proposal of the park was supported by the NGO Znesinnia Renaissance and by Lviv residents, who wrote to the Lviv mayor and the head of Oblast State Administration.

The representatives of Lvivolenergo did not agree with this proposal, considering it a way to delay the approval of the tree cutting and managed to receive an approval for cutting all 374 trees from the State Administration on Natural Resources in Lviv Oblast on December 28, 2002 (No. 04-05-6619).

The first negotiations took place at the Lviv City Council during the session of the Lviv City Council Commission. According to the session record of December 18, 2002 (No. 21), it decided that the tree cutting under HVPL-110 shall not be aloud and allowed only the trimming of tree crowns in order to enable the “temporary” functioning of the line. However, the tree cutting in this situation required a permit from the Lviv City Council.

The Meeting on Clearing of the Corridor Under the HVPL-110 from the Trees took place in the park. According to the record of December 25, 2002, Lvivoblenergo was recommended to acquire the land plots under the HVPL for a paid restricted use (easement) from the Lviv mayor and only then to raise the issues of a permit for clearing the corridor taking into account the decision of the Lviv City Council.

During these meetings only the parties (the park and Lvivoblenergo) and the members of the commissions mentioned above (deputies of the Lviv City Council and specialists) were involved. This stage of negotiation did not engage the public or NGO representatives and no facilitators were involved. The first meetings took the form of a discussion and took place at the Lviv City Council, and the second was a trip to the park to view the actual site. Public opinion was not formally taken into account. However, due to coverage by the local mass media, the members of the meeting took into account that the conflict had sparked the interest of the public and may result in protests.

The high interest of the local public in this case was, in fact, one of the most important reasons why the parties and the involved state/local authorities worked amicably to find a compromise.

However, this round did not bring the conflict to a close because the resolution of the problem required the involvement of the public as an important stakeholder. Therefore, in

⁶ The letter was addressed to the deputy mayor of Lviv on urban and land use planning, the Lviv City Council Commission on Nature Management, Environment Protection and Urban Development, the Lviv City Council Commission on Land Use, Construction and Architecture, the Lviv Oblast State Administration on Environment and Natural Resources, the Public Council at Lviv Oblast State Administration on Environment and Natural Resources, Ecopravo-Lviv and to the Lvivoblenergo.

order to resolve the conflict in favour of the nature protection the park needed to gain the support of the public and produce strong evidence of this support. It was also a reason for the second round of negotiations, mainly aimed at involving NGOs and other representatives of the public to find out and record their opinions with the help of the Meeting of the Public Council.

Second stage of conflict resolution (January 10, 2003)

The second round of conflict resolution took place in form of direct negotiations during the meeting of the Public Council and involved the wide public.

An important stakeholder of this conflict was the Lviv public. In order to involve it in the conflict settlement, to receive its support, and, most important, to legally record this support the special meeting of the Public Council was scheduled for January 10, 2003. The meeting was facilitated by the Head of the Public Council (elected by the members of the Public Council, an NGO representative), who reported on the proposal of the park and chaired the meeting. The Head of the Public Council had no special training in mediation or facilitation. However, his facilitation techniques were acquired from his previous experience of chairing the previous meetings of the Public Council.

Output of the process

The meeting, with participation by representatives of all concerned parties, the general public and mass media decided:

- upon the necessity to replace the procedure of tree cutting with the treetop shaping;
- upon the necessity to remove the HVEL from the park in the future;
- to apply to the mayor of Lviv with a proposal to create a special working group to develop a way to replace the HVEL with cable lines and to remove all HVEL equipment from the park territory.

The decision of the Meeting and the whole discussion were formalised in the form of the Public Council Meeting record, taken and signed by the secretary of the Public Council. This record served as a formulation of public opinion and had a strong power over the parties as it was a document that the authorities involved in the conflict would take into consideration.

After the negotiation process and under the pressure of public opinion, as the whole conflict was accompanied with resonant coverage in the local press, the State Administration on Natural Resources in Lviv Oblast supported the proposal of the

administration of the park to decrease the amount of trees to be cut. In accordance with this proposal the State Administration on Natural Resources in Lviv Oblast ordered the reallocation of trees, dividing them into two categories: hazardous and therefore subject to cutting, and subject to crown formation.

Table 1 — timetable of the process

| Conflict resolution stage | Nov 2002 | Dec 2002 | Jan 2003 | Feb 2003 | Apr 2003 | 2004 | Nov 2005 |
|--|----------|----------|----------|----------|----------|------|----------|
| Origin of the conflict: | | | | | | | |
| Lvivoblenergo requests a permit from the park to cut 374 trees under the HVPL | 4.11.02 | | | | | | |
| Negotiations and consultations between conflict parties and authorities | | | | | | | |
| Letter of the park to Lvioblenergo and relevant state authorities with a proposal to summon a meeting of the Public Council to discuss a solution if the case | | 9.12.02 | | | | | |
| The session of the Lviv City Council Commission on Nature Management, Environment Protection and Urban Development decide not to allow the trees cutting, but only crown trimming | | 18.12.02 | | | | | |
| The Meeting on the Clearing of the Corridor Under the HVPL-110 from the Trees in the park decides that Lvivoblenergo shall first acquire the land plots under the HVPL for a paid restricted use Recommended Lvioblenergo to acquire the land plots under the HVPL for a paid restricted use (easement) from Lviv mayor, before requiring the permit for tree cutting | | 25.12.02 | | | | | |
| The State Administration on Natural Resources in Lviv Oblast issues a permit for cutting 374 trees | | 28.12.02 | | | | | |
| Open discussion | | | | | | | |
| The Meeting of the Public Council decides on the | | | 10.01.03 | | | | |

| | | | | | | | |
|--|--|--|----------|----------|---------|--|--|
| need to replace the HVPL with cable lines | | | | | | | |
| Implementation of decisions | | | | | | | |
| Reallocation of the trees, only 115 allocated for cutting | | | 24.01.03 | | | | |
| Lviv City Council Engineering Administration issues permit for cutting 115 trees | | | | 19.02.03 | | | |
| The Public Council requests Lviv mayor to replace the HVPL with cable lines | | | | 3.02.03 | | | |
| The developer of the General Plan of Lviv City informed Public Council that its decision is taken into consideration | | | | | 7.05.03 | | |
| Development the General Plan of Lviv City | | | | | | | |
| Approval of the General Plan by Lviv City Council | | | | | | | |

Related actions and campaigns

The conflict resolution process generated considerable interest from Lviv's public and mass media. During the process, local newspapers routinely covered the events, commenting on the issues and interviewing the parties involved.

The process was conducted under the legal guidance to the side representing the nature protection interests by Ecopravo-Lviv.

Outcome of the case

The decisions of the Public Council at the Lviv Oblast State Administration on Environment and Natural Resources were supported by the Deputy Mayor of Lviv on Urban and Land Use Planning, Permanent Commission on the Use of Natural Resources, Environment Protection and Accomplishment. The decision took the form of an oral agreement to support the solution made during the meeting about the further procedures (on decreasing the number of the trees to be cut and replacement of the HVPL) and provide the approvals needed for the implementation of this decision.

The reallocation of the trees took place on January 24, 2003 in the presence of representatives of the park, Lvivoblenergo and the State Administration on Natural Resources in Lviv Oblast. The result was the reallocation of only 115 trees (instead of 374) designated for cutting. It led to the issuance of a permit for cutting on February 19, 2003 (No. 3) by the Lviv City Council Engineering Administration.

On February 3, 2003 the Public Council asked the Mayor of Lviv to consider the decision of the Public Council expressing the necessity to replace the HVPL with underground cable lines and to remove it from the residential area of Lviv when developing the General Plan of Lviv City. It also called for the involvement of representatives of the Public Council in the special working group on developing a proposal for that replacement.

In reply to this request, the Lvivmistooproect, a state enterprise of the Urban Planning Institute, informed the Public Council by letter on May 7, 2003 (No.279/12-1) that it has taken into consideration the decision of the Public Council on the replacement of the HVPL and invited it to participate in the development of the Lviv City Development Concept.

The General Plan of Lviv City will be approved by the Lviv City Council in November 2005.

The compromise found was satisfactory to all parties. The park, despite the loss of some trees, realised that it was necessary and was satisfied with the solution of the problem in a more sustainable way, as it led to a decision on the future removal of the HVPL from the park.

Lvivoblenergo was able to remove the danger to the HVPL and fulfil the HVPL safety requirements.

The state/local authorities, the Lviv City Council and the public managed finally to solve in this process the long-lasting problem of the HVPL being in the park, as well as the problem of HVPLs in Lviv generally, as the resolution of the conflict led to the development of proposals to replace all HVPLs in Lviv in the new General Plan of Lviv City.

Conclusions

The problem of the HVPL in the park is a common problem for all inhabitants of Lviv , and not just of the park. Therefore, the negotiations in this case were fruitful and satisfactory to all participants. The negotiation process offered a possibility to solve not only the urgent problem of saving the trees and preventing accidents, but also to tackle this problem in a more sustainable way, as well as to settle the more general issue of removing the HVPL from the territory of the park.

The main obstacle in this case was the strong opposition of Lvivoblenergo to reaching a compromise. On the other hand, the desire of the public authorities to find a better and more satisfactory solution that made it possible to reach the decision.

In similar situations, when the state and local authorities on which the solution of the issue depend are ready to negotiate and choose a means of conflict resolution that seeks a compromise, it is more effective to negotiate than to settle the issues in court or other similar ways. In this case, clear mediation procedures may also be of help in effectively and quickly finding a compromise.

Comments of participants in process

Director of the park:

“We would not be able to avoid the clearing of the corridor, so we decided to approach the oblenergo with our proposals: in particular, not to cut the trees completely but only to shape their crown, not to touch the trees on steep slopes and also those that do not reach the Line. And in general a deep thinking shall be made on how to prevent the regular trees cutting, as this is nonsense.”

Head of Lviv NGO Znesinnia Reneissance:

“It is now, in hard environmental situation when began the action of Lvivoblenergo on clearing the territory for the overhead power line. A lot of trees will be destroyed, that would cause a worsening of environment. It will cause the increase of the illnesses of population... In this case it would be wise to listen to the proposal of the public and lay the underground electric power line.”

Head of the Lviv Highvoltage Region of Power Lives:

“We stress that the forced clearing of the corridors of the overhead power lines, in accordance with the Rules of Electric Supply Networks Protection, approved by the Cabinet of Ministers of Ukraine of 04.03.1997 #209, is carried out to prevent the accidental cutoff of the Power Lines and de-energising the users. In this case these are the user of the Power Line 110 kV Lviv-3 – the maternity hospital, City and Oblast (district) Councils, 22 boiler-houses, Galytsky Region Department Of Internal Affairs, museums, theatres, hotels and other objects of the central part of the city. Apart form that, the clearing of the corridor is carried out also to prevent the accidents with population, that may happen in case of strike of the electric current during the crossing of the 110 kV power the trees. . . The terms of land use have nothing to do with the provision of safe exploitation of the Power Line. In case of delaying or putting off the permit issuing for the clearing of the line in a designated, according to the law, corridor that is showed in the Project of park “Znesinnia” Territory Arrangement, all the responsibility for possible negative consequences lays on the authorities and organizations, that do not permit the clearance of the corridor and cutting of the trees.”

Contact information of the parties

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**Mediation to release the entrance of the Łubna landfill
Poland**

Type of procedure

- | | |
|---|---|
| <input checked="" type="checkbox"/> Mediation procedure | <input type="checkbox"/> Procedure including mediation elements |
| <input type="checkbox"/> Other procedure | |

Topic area

- | | |
|--|--|
| <input type="checkbox"/> Urban and land use planning | <input type="checkbox"/> Water management/supply and distribution |
| <input checked="" type="checkbox"/> Waste management | <input type="checkbox"/> Industry, trade, enterprises |
| <input type="checkbox"/> Power industry | <input type="checkbox"/> Telecommunications |
| <input type="checkbox"/> Traffic, transportation | <input type="checkbox"/> General environmental policies (genetic engineering, nuclear policy etc.) |
| <input type="checkbox"/> Nature conservation | <input type="checkbox"/> Neighbourhood conflict |
| <input type="checkbox"/> Tourism | <input type="checkbox"/> Other: |

Initiator(s)

Góra Kalwaria commune

Short description of the case

Łubna is a landfill near Warsaw, named after the village in the commune of Góra Kalwaria where it is located. Since 1978 when it was built until 1998 when the first conflict occurred the landfill had been gathering waste from the whole capital city of Warsaw. When the landfill filled up, the municipality of Warsaw together with Góra Kalwaria commune decided to build a new landfill, Łubna II, near the existing one, re-cultivating an old landfill. Local people, having previous negative experiences with living close to the old landfill, started to protest against a new one.

The conflict escalated when the developer (consortium called Łubna II) initiated procedures for issuing the necessary permits⁷ in order to start the building process. The

⁷ Permits were needed on the bases of Geodesy Foundation and Hydro-Geological and Geological Documentation. Also, Plant Project Conception and Environmental Impact Assessment (EIA) report which are the necessary documents for the Plant Location Consent, had to be conducted. The EIA was conducted by PROEKO Sp. z o.o., on behalf of "Łubna II" consortium, and it was approved by the Department of Environmental Protection of Mazovia Provincial Office. The EIA was made for all projects.

developer moved forward without initiating an adequate public participation procedure. (At that time Polish legislation had no requirements for public participation.)

Alternative sites for the new landfill were not considered either because no other commune agreed to build the landfill on its territory. On the other hand, Warsaw municipality didn't carefully investigate other possible places for plant locations, failing to consider that there might be any problems with placing a new plant in Łubna village.

The conflict worsened in 1998 when the Mayor of Góra Kalwaria issued the Plant Location Consent for Łubna. In response, the local people blocked the entrance and road to the landfill. As a result, Warsaw started to sink in garbage. In efforts to get garbage moving again and establish the conditions of the new landfill Góra Kalwaria commune sought to negotiate with protesters.

Similar mediation processes took place also a year later, at 1999 in response to protests who blocked the road again as the Municipality of Warsaw and other public authorities did not keep their promises agreed during the 1st mediation process.

These processes resulted in the dismantling of the road blocks, although the overall problem of locating a new municipal waste utilisation plant remained.

Parties and other participants (number of individuals, names of participating public authorities, institutions, interest groups etc.)

- The Social Committee of Environmental Protection (SKOŚ) - represents protesters, initiators and coordinators of the blockades.
- Investor named Łubna II.
- Commune of Góra Kalwaria – represented by the Mayor, Mr. Ryszard Baj, as a decision-maker granting the Decision of Location of Investment to the investor Łubna II. The commune has a double status in the conflict: it is also an administrative authority which is competent of issuing the location consent for the landfill on the basis of the Act on Spatial Management.
- The Club of Villages` Administrators – consists of administrators of villages bordering the Łubna landfill. They represent the interests of the local inhabitants. However, they showed willingness to cooperate with the investor, when, as it turned out, that the villages administrated by them could profit from the operation of the new landfill.

Client / financial sponsor

The mediation process was not financed by any party – the mediator was working voluntarily in order to be neutral. The commune of Góra Kalwaria wanted to pay the mediator, but he preferred to stay financially impartial. No independent source of financing was available.

Procedural guidance by (e.g. professional mediators etc.)

Dr. Andrzej Kraszewski (Ph.D. Eng.) from the Institute of Environmental Engineering Systems, Warsaw Technical University was a mediator, and was assisted during the 2nd mediation by Dr. Pawel Moczydlowski (Ph.D., social psychology) from the Institute of Applied Social Sciences, Warsaw University.

Geographic dimension

- | | | |
|---|-----------------------------------|-------------------------------------|
| <input checked="" type="checkbox"/> local | <input type="checkbox"/> regional | <input type="checkbox"/> state-wide |
| <input type="checkbox"/> international | <input type="checkbox"/> EU-wide | |

Status of process

- | | |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> concluded | <input type="checkbox"/> in execution |
|---|---------------------------------------|

The process of mediation is concluded (in terms of convincing the protesters to unblock the entrance to the landfill), but the background problem of the location of the landfill still exists.

Start, end, duration of the process (if still in execution: estimated end)

Two mediation procedures were organised to solve the same problem: the first one started at 08.02.1998 and finished at 10.02.1998, and the second one started at 23.11.1999 and finished at 30.01.2000.

Mediation to End the Blockade of the Lubna Landfill Poland

Synopsis

This case has been chosen to show how poorly organised public participation activities, as well as avoidance of possible conflicts regarding such a sensitive issue as the establishment of a new landfill, can make local residents feel desperate enough to barricade the entrance and road to an old, badly maintained landfill near their homes.

Activities were organised to stop all progress related to the opening of the new landfill, but the situation is becoming critical for Warsaw as its garbage piles up. In efforts to get the rubbish moving again and establish conditions for the new landfill local, the commune turns to the mediator to help to negotiate with the protesters.

Mediators face the classical “not in my backyard” (NIMBY) syndrome — a stalwart resistance by a local community to new development plans that place unwanted facilities in their vicinity, even though everyone accepts that the facilities have to go somewhere. These kinds of projects, plans and buildings are seen as a danger to neighborhood property values, health or security. The mediators have to deal with a variety of conflicts between neighbours, values and beliefs, taking into consideration emotional and behavioural dimensions.

Background of the conflict

The Municipal Waste Collection Unit has been operating the Lubna I landfill on the territory of Gora Kalwaria since 1978. Due to the lack of proper preparation of the site of the landfill as well as faults in exploitation it had a negative impact on the surrounding environment.

In April 1994 the Gora Kalwaria commune and the Warsaw municipality signed an agreement to utilise and modernise the landfill. Based on the agreement, on June 12, 1995, the Gora Kalwaria commune and the Warsaw municipality decided to undertake a joint investment: building a modern municipal waste utilisation plant, Lubna II. In December 23, 1997 the Lubna II consortium was established.

The consortium decided to build a new landfill near the village of Lubna since it would solve the municipal waste problem from Warsaw and because Gora Kalwaria was the only commune which was interested in building a landfill on its territory. It is possible that if the negotiations with other communes had been more intensive, another location might have

been found as an alternative, but Warsaw authorities considered that the possible difficulties with the local communities in Gora Kalwaria would be overcome.

A strongly rooted sentiment of disapproval came from local communities that did not want a new landfill in their neighbourhood.

The majority of local inhabitants were troubled for the following reasons:

- many years of experience with the existing landfill, which was badly maintained, smelled bad, and reduced the value of their land;
- a lack of trust towards decision makers in terms of whether the new plant will be friendly to the environment and healthy for the local population; and
- no benefits/profits coming from the fees paid by the Warsaw municipality to the Gora Kalwaria commune for accepting Warsaw's municipal waste. If the commune had promoted some social benefits from operating the landfill to the villagers, (for example, villages around the landfill did not have proper water supplies) there would likely have been more support for the landfill.

Reasons why the Gora Kalwaria commune and Warsaw municipality were devoted to the idea of building a new landfill exactly in that place:

- Gora Kalwaria commune profited enormously from the operation of the landfill. The authorities of Warsaw were paying the commune for each tonne of waste brought to the landfill. It was the main source of income for the budget of the commune, which was one of the richest communes in Poland at that time. So the commune still wanted to profit from the landfill, which would be re-cultivated from the old site in order to replace the recently filled one.
- In that time the Warsaw municipality was structured as an alliance of communes, so there was no integrated policy for waste management. When the municipality found a commune interested in having the landfill in its territory, it stopped searching for other places. The Warsaw municipality did not consider that there would be a problem with the village of Lubna.

In 1998 an Environmental Impact Assessment for Lubna II was carried out, and on the basis of its outcome showing that there are not any obstacles of starting the investment the consortium submitted a request to the mayor of Gora Kalwaria to issue plant location consent. The EIA procedure was carried out by PROEKO Sp. z o.o. on request of Łubna II consortium, and it was approved by Department of Environment Protection of Mazovia Province's Office.

Several activities were undertaken by the “Lubna II” consortium to encourage public participation. These included:

- festivities for commune inhabitants;
- a study tour to Belgium for village administrators to show them the modern technologies used in building and operating waste utilisation plants;
- the dissemination of materials containing a description of the technologies that would be used in the plant on the Lubna site; and
- a presentation of informational materials in a variety of media.

Nevertheless, the public participation activities were poorly organised, showed no actual interest in convincing local people to accept the investment, and increased the mistrust of the developer. Although local people took part in public meetings, they were not persuaded that the new waste treatment plant would not have a negative impact on their health and the value of property.

The consortium of Lubna II made many mistakes during the preparation process of the new landfill. For example, they:

- excluded local residents when making preparations for future investments for Lubna II;
- did not have enough knowledge about public participation requirements and ignored the need for careful execution of public participation; and
- failed to share the profit from the landfill (money paid by the Warsaw municipality to the commune for handling the waste) with the villages surrounding the landfill. If the Gora Kalwaria commune had shared the profit, villages would have had the possibility to build water and gas supplies, renovate roads, and build public institutions like schools and local cultural centres, which would have likely increased interest in accepting the landfill.

Conflict broke out when, after the EIA had been conducted, the mayor of Gora Kalwaria issued the Plant location consent. Though the mayor is a legal body in terms of issuing location consent for investment on behalf of the commune, the local inhabitants claimed that according to existing opposition he did not have the right to issue this decision.

Legal issues at stake

After receiving the Plant Location Consent based on the Act on Spatial Management about the location of the investment, the developer had to obtain a construction permission. The developer did not receive permission to start the investment, because the Social Committee of Environmental Protection (SKOS) appealed the decision about the

location of the investment to the Administrative Court. Finally, in 2004, the Supreme Administrative decided that the Plant Location Consent was invalid. The grounds of the court decision reasoning came from the Administrative Procedure Code, which stipulates that the side of the proceeding cannot be at the same time the decision maker in his own case. The court proceedings took place at the same time the conflict occurred.

SKOS erected the first blockade in 1998 on the basis of first court decision, which recognised that the EIA had been properly carried out and announced that there was no legal basis to claim that the investment was illegal. It also stated that the consent was ungrounded or issued in conflict with the relevant administrative procedures. Only in 2004 the Supreme Administrative Court issued a decision about the invalidity of the investment relating to its planned location.

Court proceedings timeline

21.05.1999 – an appeal for the Plant Location Consent was submitted to the Mayor of Gora Kalwaria by Lubna II

6.12.2001 – The Mayor of Gora Kalwaria issued Plant Location Consent for carrying out the investment of Waste Utilization Plant Lubna II

10.01.2002 – aforesaid decision was sued in Local Government's Appeal Council by two village's leaders of Lubna and Brzesce and Social Committee of Environmental Protection (SKOŚ)

29.05.2002 – a decision of Local Government's Appeal Council held up Mayor of Gora Kalwaria's Plant Location Consent

29.05.2002 – SKOŚ sued the final decision of Local Government's Appeal Council in Provincial Administrative Court

18.02.2004 – by the decision of the Provincial Administrative Court the decision of Local Government's Appeal Council was fully averted.

04.05.2004 – the Starosty of Piaseczno officially suspended the legal proceedings for authorizing the construction.

14.05.04 – the firm filed a cassation claim in the Provincial Administrative Court which was transferred to the Supreme Administrative Court on 2.07.04

Table 1 — Description of Polish territorial administration and their competence in the area of waste management

| Administration Unit | Name of the relevant authority | Competence in the area of the waste management |
|------------------------------|--|---|
| province consists of ↓ | → Voivode (in this case voivode of Mazovia province) | → Local authorities consult with the voivode about the decisions (to guarantee that the local decisions are in accordance with Spatial Management Plan for the province) |
| districts consist of ↓ | → district administrator | → |
| communes consist of | → Mayor (in this case mayor of Gora Kalwaria commune) | → Charge of the local spatial plan and EIA taking into consideration Local Spatial Management Plan of the commune, issues permits regarding to spatial management (for investors, etc.) |
| villages | → Village administrator (in this case administrators of six villages: Lubna, Baniocha, Brzesce, Tomice, Solec and Szymanow) | → Take part of the public participation procedure |

Dimensions of the conflict

Conflict around the Lubna landfill can be described as a strong opposition between the parties' demands and interests. Conflict was perceptual, because the local inhabitants were unhappy with the landfill that had existed in their neighbourhood for thirty years. It was poorly maintained, it smelled badly, and garbage often escaped. The locals did not believe that the old landfill could be re-cultivated and the new landfill can be operated with higher quality. There was also a perception that the main developer in the consortium, Solucom, perceived the local people as uneducated villagers whose concerns were not worth taking into consideration and who did not understand the real meaning of investment. Local residents perceived the developer as wanting to profit at their expense.

Emotional and behavioural dimensions

The problem also had an emotional and behavioural dimension. Both sides of the conflict had hostile attitudes towards each other that made the conflict more difficult to solve. There were offensive words from both sides, and the local community did not hesitate to block the entrance to the landfill when they felt ignored by decision makers (the first time), and when they realised that decision makers would not fulfil the terms of the agreement (the second). The Social Committee of Environmental Protection initiated and coordinated both blockades — in 1998 and in 1999.

The conflict occurred at many different levels. The first was between the local residents and the “Lubna II” consortium. The second was an intergroup conflict between the Social Committee of Environmental Protection (SKOS) and the Club of Village Administrators. Both were claiming to be the real representatives of the local communities, but the administrators expressed more will and determination to collaborate with the investor in order to obtain an advantage in the shape of benefits like water and gas supplies, and new school buildings, from the landfill’s operation. SKOS was diminishing the role of the administrators because it was easy to accuse them of selling out.

This intergroup conflict enabled the mediators to succeed during the second process of mediation because during this process, it turned out that the majority of local inhabitants were not against the building of the landfill. This fact showed that the real representative body is the Club of Village Administrators. SKOS, when it realised that it had lost its social backing (the majority of the people agreed to the landfill), stepped out of the conflict, so the conflict/mediation was easy to resolve. Nevertheless, SKOS was determined to block the investment, so it kept appealing the administrative decision of the mayor of Gora Kalwaria to the court until 2004, when the decision of the Supreme Administrative Court stopped all investments.

Conflict of values

Both sides argued about values: local residents wanted to preserve health conditions, the value of their land and the quality of the air. The developer recognised that the commune was the only good location for the landfill, which would serve the whole city of Warsaw.

It was also a conflict between neighbours: the landfill was serving Warsaw inhabitants, but inconvenienced the village near Warsaw. The conflict is long-standing and repeating; the situation has not yet been solved.

How the conflict was treated?

The conflict was treated in two different ways: the local people treated the conflict as a “win or die” matter. They did not hesitate to use radical means. The investor tried to use avoidance tactics, hoping that after some time the anger of local people caused by economic and political trends would alleviate the situation on its own, and did not make any efforts or devote time to explain the advantages of building the landfill nearby. Conflict started to escalate very quickly when local people organised the blockade — the investor could not pretend that they did not see them — this was the time for mediator intervention. Both sides were determined to realise their interests; they were competing with each other, though not openly. When the situation reached a stalemate, both parties easily agreed to use mediation and showed willingness to collaborate.

Parties and stakeholders in the process

| Party/ stakeholder | Nature | Interest | Persons involved |
|---|---|--|---|
| <u>Social Committee of Environmental Protection (SKOS)</u> | Association of the local (six villages) inhabitants against the landfill. There are approximately 1,500 people living in these villages altogether. | Stop the investment or move it elsewhere. Protect their health and value of the land. They do not believe that Lubna II would be modern and safe for health and the environment, and they also do not expect much financial profit from building it. Not willing to compromise. | Mr. Bogdan Stelmach, chairman of the committee |
| <u>Lubna II</u> | The investor, aim at building the landfill. Consortium consisted of the developer Solucom (33 percent of shares, wants to build a new landfill), Gora Kalwaria commune (33 percent of shares, profits from the landfill and interested in building a new one), Warsaw municipality (33 percent of shares, a policy maker who has to deal with the municipal waste) and mazovian voivode (1 percent of shares). | Aim to build a new landfill (Lubna II) close to the existing landfill, a well suited place for gathering municipal waste from Warsaw. The old landfill was planned to be recultivated. | Mr. Ryszard Baj, Mayor of Gora Kalwaria Mr. Zdzislaw Potkanski, chairman of Lubna II Mr. Andrzej Wojtynski, vice-president of Warsaw Mr. Antoni Pietkiewicz, voivode of Mazovia province |
| <u>Club of Village Administrators</u> | Association of administrators of villages bordering the Lubna landfill. | Represents the majority of local inhabitants (who did not oppose the new plant). Assures that the investment coming from the new landfill benefits their villages. Represents the interest of the local inhabitants, also willing to cooperate with the investor when it turned out that the villages administrated by them could profit from the operation of the new landfill. | Mr. Jan Konopka, chairman of the Club |

| | | | |
|--|---|--|---|
| | | At the beginning of the conflict they were not fully engaged, because the opinions concerning the new landfill inside the Club were different. They wanted to know the real advantages and disadvantages of the new landfill. | |
| <u>Commune of Gora Kalwaria</u> | Local government as a decision maker granting plant location consent to the investor. | Having the landfill on its territory in order to profit from its operation. Has a double status in the conflict: is a side of the conflict, as well as an administrative authority in charge of issuing the location consent for the landfill. Decided to engage a mediator to step out from the critical situation. | Mr. Ryszard Baj, Mayor of the commune and city of Gora Kalwaria |

Conflict resolution process

Why was this tool used?

The authorities of Gora Kalwaria initiated the process of mediation. As an alternative to the mediation, force could have been used to remove protesters from the entrance to the landfill. Considering this fact, both parties were fully agreed to use mediation. In this situation the court or other normative proceedings were rather impossible because there was no time and there was an urgent need for quick steps.

The mediator, Mr. Kraszewski, was working on a voluntary basis and also remained independent financially. During the first procedure of mediation, the mediator had to convince the protesters to stop their blockade of the entrance to the landfill, otherwise the situation would have become critical. The only solution that was acceptable by local inhabitants to get off the road was to get a promise from decision makers that their opinions would be taken into consideration in further negotiations and both sides would work together to reach an agreement satisfying all parties.

The mediator talked with both sides, convincing them that the meeting where conflicted parties meet each other is necessary. This meeting was the main part of the mediation process.

The goal of the process of the mediation procedure was to persuade local people to unblock the entrance to the landfill and allow Warsaw's municipal waste to still gather there and NOT to reach an agreement as to whether Lubna II should be built or not.

This dilemma was planned to be solved in further negotiations between parties involved in the conflict.

First mediation procedure

On February 10, 1998 the protesters met with Mr A. Wojtynski, vice-president of the city of Warsaw. At the meeting:

1. The Board of Warsaw welcomed the initiative of the Board and Council of Gora Kalwaria Commune, who, in collaboration with its neighbouring Konstancin-Jeziorna Commune try to find another place for Lubna II other than in the village of Lubna.

2. The vice-president assured that the Board of Warsaw (representative body of the city) will immediately begin searching alternative locations for the municipal waste landfill. He reminded everyone that it might take a few months.

3. The vice-president stressed that the law in force enables SKOS to have the right to take part in a possible administrative proceeding concerning issuing a plant location consent — a decision to locate the investment based on the Act on Environmental Protection.

4. The vice-president assured SKOS that the re-cultivation of Lubna I landfill, which began in 1996, will be continued until its estimated end date in 2001.

5. The city of Warsaw declared to SKOS that its Waste Collection Board would finance expertise if SKOS would like to verify monitoring data for surrounding areas of the landfill or the plans for its re-cultivation.

6. Other important requests of SKOS concerning health impact assessment, compensations, etc. will be negotiated after the direct protest action is finished.

Output of the first mediation process

Under these agreements the protesters decided to stop the blockade. All of the agreements were put into written form, in order to make them clear for all parties rather than create any official document.

The mediator also managed to organise a group of independent experts who concluded later that the landfill would not be harmful to the health of the local inhabitants.

Also part of SKOS was engaged as supervision inspectors during the re-cultivation of Lubna I. This involvement was not part of the agreement. They were paid about PLN 1,500 (about EUR 375) monthly, and it looked like it would diminish their radical attitude towards the investment. But they have clearly expressed that being inspectors would not impact their views. Moreover, wanting to show their colleagues that they had not been bribed, they manifested an even more radical attitude.

Second mediation procedure

In December 1999, the conflict arose again because the decision makers failed to keep their promises and locals became frustrated that their opinions had not been taken into account. This time the mediators during the process, Mr. Kraszewski and his associate Mr. Moczydlowski, had more time to operate because the Warsaw municipality had found a temporary place for waste storage.

The goal of mediation was again to remove protesters from the entrance to the landfill and it was realised due to the promises made by decision makers. While preparing for the mediation events the mediator realised that at that time the majority of people in the commune were open to the idea of building the new landfill. This was interpreted to mean that the Social Committee of Environmental Protection had lost its meaning and the Club of Village Administrators became the main negotiating party of the mediation. The mediators encouraged the Club of Village Administrators to express their opinion, convincing them to openly express their viewpoints at the expense of the legitimacy of the representativeness. Given the willingness to negotiate on the part of the Club of Village Administrators, and the decreasing support of the Social Committee of Environmental Protection, the talks proceeded smoothly, especially given that the protesters dismantled the barricade, seeing that their role had diminished.

Although the mediator continues to be very interested in alternative conflict resolution processes, he is not a professional mediator. This is why he invited Mr. Moczydlowski, a social psychologist that has more knowledge and experience in leading mediation procedures, to collaborate with him.

The mediators met protesters and investors separately in order to acknowledge their aims, demands, and expectations. At these were informal activities rather than organised meetings, the mediators also advised the parties on how to communicate in order to be more easily understood. During the joint meeting he served as a facilitator and also advised parties to express their needs in order to be better understood and be able to reach an agreement.

As the role of mediator was to persuade the protesters to unblock the entrance of the landfill, his task was not a neutral one; his aim was to change the attitude of one side of the conflict. But there was no other way to solve the conflict. The mediator did not succeed in initiating financial compensation for the local residents. Compensation was conceived in terms of compensating local communities for any inconveniences that could arise from the operation of the landfill.

Time-line of steps made by mediators during the second mediation process

1999

Nov. 23 – faced by the threat of blocked the entrance of the landfill, the Mayor of the Gora Kalwaria commune asks mediators to intervene.

Nov. 24-30 – mediators contact SKOS and receive acceptance of the Committee for their mediating activities. They also receive positive support from the Board of Warsaw and from administrators of the protesting villages.

Dec. 2 – mediators meet Mr. B. Stelmach, chairman of SKOS, to get to know the views and statements of SKOŚ. Attempts aiming at working out a compromise begin.

Dec. 3 – mediators meet with Mr. J. Konopka, administrator of Brzeece village, and acknowledge the views of the Club of Village Administrators, and demonstrate a willingness to work out a compromise solution.

Dec. 9 – mediators meet with Mr. R. Baj, mayor of Gora Kalwaria, acknowledging the views of the Commune with a view to working out a compromise.

Dec. 15 – efforts to acknowledge and discuss the points of view of the Board of Warsaw concerning the conflict, mediators meet with Mrs C. Pelka, Director of the Municipal Waste Management Unit, who is in charge of managing the landfill.

Dec. 16 – in a meeting with the vice-president of Warsaw, Mr O. Dziekonski, the mediator continues to acknowledge the point of view of Warsaw in the conflict.

Dec. 22 – the mediator meets with administrators of the villages bordering the Lubna landfill in an attempt to prevent the blocking of the landfill entrance.

Dec. 28 – the mediator meets with administrators of the villages bordering the Lubna landfill and Board of the County in further attempts to prevent blocking the entrance to the landfill, which at this point appears inevitable.

Dec. 29 – formulating official letters to the Province's Sanitary Inspector and the Province's Environmental Protection Inspector, the mediators request that the Environmental Impact Assessment report for Lubna II not be approved in order to convince the Board of the Commune (against the location of the new landfill) of his good will.

2000

Jan. 3 – the blockade begins. The mediators visit the blockade, talk with local interveners, the Board of the Commune, and village administrators.

Jan. 5 – mediators meet with Mr A. Hetman, director of the Municipal Waste Collection Company to acknowledge the possibility of accepting municipal waste from Warsaw.

Jan. 6-8 – the mediators are constant fixtures at the place of conflict and mediation meetings trying to develop possibilities for agreements.

Jan. 8 – the landfill entrance is unblocked.

Jan. 10-30 – taking part in meetings, advisory activities for the Board of the Commune and village administrators, mediators work at drafting the agreement of the commune authorities, village administrators, and village inhabitants. The mediators provide the presence of experts from Warsaw Technical University during the village meetings. During this period the mediators meet several times to coordinate mediation tactics and discuss outcomes.

Output of the second mediation process

Participants in the blockade released the entrance to the landfill, mainly because after mediators' activities helped to clarify the conflict, the protesters realised that approval for their protest among local inhabitants was smaller than they had expected and they had lost their representative importance.

No agreement was reached but Gora Kalwaria denied issuing the decision about the location of the investment, arguing that they could not issue decisions which are in clear opposition to the wishes of their inhabitants.

Since the developer has refused to carry out public participation activities, the conflict continues to this day. In 2004, the Supreme Administrative Court announced that Gora Kalwaria commune did not have the right to be both a party in the conflict and the decision maker in their own case, so the court annulled all the decisions made so far, and the situation is back to square one.

Table 2 — Timetable of the process

| Conflict resolution stage | 1978 | 1994 | 1995 | 1996 | 1997 | 1998 | 1999 | 2000 | 2004 |
|--|------|-------|------|------|--------|--------|------|------|------|
| Lubna I landfill is in operation in Gora Kalwaria (in village of Lubna) commune | 1978 | | | | | | | | |
| An agreement is made between Gora Kalwaria commune and the Warsaw municipality concerning the rules of exploitation and modernisation of the landfill | | April | | | | | | | |
| As a consequence of the agreement, on June 12, 1995, the Gora Kalwaria commune and the Warsaw municipality agree to undertake a joint investment – building the modern municipal waste utilisation plant, Lubna II | | | June | | | | | | |
| The Lubna II consortium is established | | | | | Dec 23 | | | | |
| Environmental impact assessment of Lubna II for entire project | | | | | | 1998 | | | |
| Local inhabitants construct the first blockade of the entrance to the landfill | | | | | | Feb. | | | |
| At a meeting of the protesters with Mr A. Wojtynski, vice-president of Warsaw, an agreement is signed between both parties, unblocking the landfill | | | | | | Feb.10 | | | |

| | | | | | | | | |
|---|--|--|--|--|--|--|-------------------------------|------|
| Outbreak of the second conflict and second mediation procedure – the commune didn't issue the permit for starting the investment | | | | | | | Nov. 23, 1999 – Jan. 30, 2000 | |
| Supreme Administrative Court announces that the Gora Kalwaria commune does not have a right to be a party in the conflict and the decision maker in its own case – all decisions thus far are cancelled | | | | | | | | 2004 |

Related actions and campaigns

Before the initiation of mediation, conflicted parties were communicating with each other, but it did not lead towards mutual understanding. The representatives of protesters participated in the meetings of the Council of the Gora Kalwaria Commune, actively speaking in their own names, so that both parties were well informed about their respective attitudes. The Commune knew that the protest would take place because protesters were open about their intentions. At the same time, no efforts were made to reach any kind of an agreement or compromise. The compromise reached during the first process of mediation was the outcome of mediator intervention.

Warsaw authorities, especially Warsaw's vice-president, A. Wojtynski, (in 1998) and voivode of Mazovia Mr. Pietkiewicz (in 1999/2000), were strong supporters of the idea of using mediation. No other actions and campaigns accompanying the mediation process were undertaken.

Though the investor organised many public participation activities for local inhabitants (like festivities for commune inhabitants and a study tour to Belgium for village administrators to show them modern technologies used in building and operating waste utilisation plants) and disseminated relevant info materials, the conflict was unavoidable.

Final outcome of the case

Parties in the conflict agreed that the protesters would unblock the entrance to the landfill, and the investing company and Warsaw authorities would continue to communicate and negotiate on the plans to build a new landfill. Warsaw authorities never kept their promise (which they had put in writing) during the first mediation.

The Lubna II Consortium considered the outcome of the mediation procedure an end solution to their problems, and estimated that after some time local inhabitants would become tired of protesting. After termination of the mediation process, no other steps were taken to solve the real problems behind the public opposition.

After the conclusion of the process, the problem behind the mediation was solved — the protesters unblocked the entrance to the landfill. But the overall conflict, which was the

reason the local people blocked the entrance to the landfill in the first place, remained. The city and investing company, however, did not keep their promises, and as a consequence the new landfill was never built.

Now the situation has come full circle. The developer has not started negotiating with the local community, so the community refuses to approve of the building of a new landfill nearby. The developer has not started building yet, and has not found another location for the landfill. Decision makers have not done anything in terms of social consultation, which could offer a chance to convince a part of local community that the new landfill might not be harmful to their health and the environment.

The only two things that have been done include building water supplies in the villages and taking broad surveys of public health. Comprehensive surveys made by the Institute of Labour Medicine from Lodz have shown that the health level of local inhabitants is no different from the average citizen.

But these have been the only agreements realised by decision makers. The present situation is at an impasse: Lubna II is not being built, and if construction begins in the same fashion as before, the conflict will likely break out again.

Conclusions

Mediation was a useful tool compared to the use of force for opening the entrance of the landfill. If the police had been engaged in the conflict, the situation would have negative consequences for all parties.

Though both parties in the conflict agreed to mediation, the conflict was strong and difficult to negotiate because of the attitude of the Lubna II consortium towards local residents. The major obstacle in the process was also the intransigent position of the villages — the “win or die” attitude.

When managing environmental conflicts, great care should be taken to avoid conflict or at least to avoid escalating a current conflict. The best way to do this is to ensure social consultations, which should be carefully conducted. When there are no social consultations or they are done poorly, a conflict is very likely to arise.

The specific benefit of the mediation procedure included educating each side of the conflict about their real attitudes: that local inhabitants are not knowledgeable farmers who are mainly money-driven and the developer is not a merciless profit maker. But unfortunately, these lessons were not acknowledged by both sides to further the process; both came back to their original attitudes after some time.

Comments of participants in process

Mr. Andrzej Kraszewski, the mediator

„Mediation was useful, because people did not know how the investment will be made, Łubna I made a lot of harm, some time had to pass in order to let people convince that Łubna II will be safe for the environment.”

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Warsaw University, Poland

Fact sheet

**Putting Toyota MC. and PSA Peugeot Citroen Corporate Social
Responsibility Promises into Practice
Czech Republic**

Type of procedure

- | | |
|--|--|
| <input type="checkbox"/> Mediation procedure | <input checked="" type="checkbox"/> Procedure including mediation elements |
| <input type="checkbox"/> Other procedure: | |

Topic area

- | | |
|---|---|
| <input checked="" type="checkbox"/> Urban and land use planning | <input type="checkbox"/> Water management/supply and distribution |
| <input type="checkbox"/> Waste management | <input checked="" type="checkbox"/> Industry, trade, enterprises |
| <input type="checkbox"/> Power industry | <input type="checkbox"/> Telecommunications |
| <input type="checkbox"/> Traffic, transportation | <input type="checkbox"/> General environmental policies (genetic engineering, nuclear policy, etc.) |
| <input type="checkbox"/> Nature conservation | <input checked="" type="checkbox"/> Neighborhood conflict |
| <input type="checkbox"/> Tourism | <input type="checkbox"/> Other: |

Initiator(s)

Kolin Municipality and GARDE – Global Alliance for Responsibility Democracy and Equity – programme of the Environmental Law Service.

Short description of the case

The Toyota Motor Company and PSA Peugeot Citroen joint venture plant is the biggest foreign direct investment in the Czech Republic. A special Memorandum of Understanding was signed on February 12, 2002 between Toyota and PSA, as well as with various Czech ministries. A similar memorandum was also signed with the city of Kolin. The Czech government's effort to accommodate this big investment resulted in insufficient evaluation of the Kolin Production Plant's environmental impact, leading to failures in the permitting procedures, proven negative impact on residents living in the nearby neighborhood of the plant and traffic complications.

GARDE-ELS prepared a legal analysis of the irregularities of the permitting process of the plant. Simultaneously, GARDE-ELS was contacted by affected neighbours, small municipalities and other civil society representatives, asking it to represent them in negotiations with the investors. GARDE-ELS prepared a Proposal for Putting Corporate Social Responsibility into Practice for Toyota Peugeot Citroen Automobile Czech, s. r. o. (hereinafter "Proposal"). More than 30 non-governmental organisations, including local

community NGOs and local people supported the demands included in the proposal and called Toyota M. C. and PSA Peugeot Citroen to behave in a socially responsible manner. The company accepted to implement some of the demands contained in the Proposal.

Parties and other participants (number of individuals, names of participating public authorities, institutions, interest groups etc.)

- Toyota MC, PSA Peugeot Citroen and their joint venture company – Toyota Peugeot Citroen Automobile Czech, s. r. o.
- Municipalities: City of Kolin, City of Kbel
- State agency: CzechInvest – Investment and Business Development Agency
- Four local NGOs (see Annex I for complete list)
- 33 NGOs from across the Czech Republic
- GARDE-ELS, the Global Alliance for Responsibility Democracy and Equity – programme of the Environmental Law Service (an environmental legal advocacy organisation) acting as main negotiator

Client/financial sponsor

The activities of GARDE-ELS on this case were financed through a grant from the Czech Environmental Partnership Foundation.

Procedural guidance by (e.g. professional mediators, etc.)

No procedural guidance

Geographic dimension

- | | | |
|--|--|--|
| <input type="checkbox"/> local | <input checked="" type="checkbox"/> regional | <input checked="" type="checkbox"/> state-wide |
| <input type="checkbox"/> international | <input type="checkbox"/> EU-wide | |

Status of process

- | | |
|------------------------------------|--|
| <input type="checkbox"/> concluded | <input checked="" type="checkbox"/> in execution |
|------------------------------------|--|

Start, end, duration of the process (if still in execution: estimated end)

August 2004 – estimated end: December 2005

Putting Toyota MC. and PSA Peugeot Citroen Corporate Social Responsibility Promises into Practice in the Czech Republic

Synopsis

This case was chosen to show how an environmental legal advocacy organisation from the Czech Republic, EPS, negotiated on behalf of a local community measures to be put in place by of the biggest corporations in the country — the joint venture between Toyota M.C. and PSA Peugeot Citroen — in order to put into practice the principles of corporate social responsibilities. Following the actions initiated by EPS, the corporation implemented several of the demands of the local community.

Background of the conflict

Factual situation

GARDE-ELS's main topic is corporate accountability. Since 2001, GARDE-ELS monitors the legal aspects of the activities of the big corporations in the Czech Republic. No wonder that GARDE-ELS became interested in the development of the biggest foreign direct investment (FDI) – the joint venture between Toyota MC and PSA Peugeot Citroen known as TPCA. As a first step, ELS requested the city of Kolin to give us a copy of the Memorandum of Understanding signed with TPCA. GARDE-ELS has also requested access to the Memorandum of Understanding signed at Government level. Initially, the city of Kolin refused to disclose this information. Nevertheless, following ELS appeal to the mayor, GARDE-ELS received a copy of the Memorandum and the mayor suggested a meeting with TPCA.

A first meeting took place between representatives of GARDE-ELS on one side and representatives of TPCA, the City of Kolin, and the Czech governmental agency CzechInvest on the other. The GARDE-ELS representatives presented the concept of corporate social responsibility (CSR) and called on TPCA to begin negotiating on concrete steps that will lead to meeting the declared standards. GARDE-ELS representatives presented sample proposals for such steps. The TPCA representatives rejected these proposals, stating they were insufficiently concrete, and requested they be expressed in more detail. Simultaneously, they declared that they are willing to further negotiate on any eventual proposals of ELS's GARDE programme.

Meanwhile, the residents of Ovcarecka Street (approx. 80 people), living in the immediate

neighbourhood of the plant, contacted GARDE-ELS asking for legal assistance. They expressed their concerns over the direct negative impact caused by transport connected with the operation of the TPCA plant. Also, citizens of the village of Ovcary turned to GARDE-ELS complaining that property owners at the village's west end are those most affected: they have seen a dramatic drop in the water level, and a drying out of their wells. Last but not least, the city of Kbel asked ELS for legal help because of Toyota Central HUB Project Kolin, estimating that the location of the hub in their city will generate problems related to transportation, mainly noise pollution and nuisances caused by pollutants and light pollution. GARDE-ELS was also in contact with other citizens living around the TPCA plant and facing a rapid increase of transport connected with TPCA operations.

Most of the above mentioned citizens had previously tried to negotiate with TPCA on their own but without any result.

GARDE-ELS offered to prepare a *Proposal for Putting Corporate Social Responsibility into Practice for Toyota Peugeot Citroen Automobile Czech, s. r. o.*, spelling out the demands of affected citizens and municipalities. Special consultations took place with the citizens to collect their demands. In parallel, GARDE-ELS carried out a legal analysis of the permitting process, emphasising the irregularities related to these procedures. The Proposal was sent to the affected citizens, local NGOs and also to civil society community all around the Czech Republic with a suggestion to support and sign the Proposal. In the end, the Proposal was endorsed by more than 30 non-governmental organisations, including local community NGOs and local people supported the demands included in the proposal.

Legal issues at stake and legal framework for this special case

Toyota MC and PSA Peugeot Citroen signed a Memorandum of Understanding with various Czech ministries. Among its obligation is one to build access communications connecting the TPCA plant to the D 11 highway (roads no. II/125 and II/328). The costs for this construction should be borne by the Czech Republic. At the time of signing of the Memorandum, no EIA had been conducted and therefore there was no knowledge of the effects of the planned roads on the inhabitants of the affected villages or on the nature within the Libický luh nature reserve. Furthermore, the planned highway No. II/125 runs along the border of the territory of the Libický luh nature reserve, which benefits from the highest degree of protection pursuant to the Act no. 114/1992 Sb., the Nature and Landscape Protection Act. This nature reserve is a territory planned to be included in the NATURA 2000 network. Yet during the consent procedures related to the reconstruction of II/125, which links the plant with the D 11 highway, the potential impact on nature in Libický luh was not assessed.

The Memorandum itself was when Act no. 72/2000 Coll. on Investment Incentives was in effect, and the two memoranda are an exceptional solution in the favour of both corporations.

These facts reveal a series of irregularities:

- a conflict of interest among the decision-making authorities.⁸ Furthermore, the obligations arising from the Memorandum might represent a breach of certain public law norms;⁹
- potential conflict with European legislation;¹⁰
- conflict with Article II paragraph 2 and Article V paragraph 3 of the *OECD Guidelines for Multinational Enterprises*.¹¹

The Memorandum of Understanding signed at the cabinet level, together with the one signed with the city of Kolin, contain provisions suggesting evident illegality in the building permit and land-use decision regarding the plant. These memoranda list the people involved in the coordination and implementation of the TPCA investment plan. Within the project team are individuals “responsible for the smooth implementation of the project, approval proceedings, construction and commencement of the production,” including the head of the project EIA team at the Ministry of Environment, who is responsible for issuing the final EIA statement on the matter in question. Likewise the head of Kolin’s Building Office, responsible for issuing the land-use decision and the building permit, is also a member of the team.

These facts indicate:

- a conflict of interest among the decision making authorities,¹² which could result in illegality of the decisions issued — especially the EIA statement, construction permit, and land-use permit; and
- conflict with Article II paragraph 2 and with Article VI of the *OECD Guidelines*.¹³

⁸ Per the definition given in § 9 and following of Act no. 71/1967 Sb., the Czech Administrative Code

⁹ Domestic legal norms contained primarily in the following legal regulations: Act no. 100/2001 Coll., the Environmental Impact Assessment Act, Act no. 50/1976 Coll., the Construction Act, 71/1976 Sb., Act no. 76/2002 Coll., the Integrated Pollution Prevention Act, Act no. 114/1992, the Nature and Landscape Preservation Act, and others

¹⁰ Primarily the EIA and the IPPC Directives

¹¹ Art II para 2 provides: “Enterprises should [...] Respect the human rights of those affected by their activities consistent with the host government’s international obligations and commitments.” Art V para 3 provides: “In particular enterprises should [...] Assess, and address in decision-making, the foreseeable environmental, health, and safety-related impacts associated with the processes, goods and services of the enterprise over their full life cycle. Where these proposed activities may have significant environmental, health, or safety impacts, and where they are subject to a decision of a competent authority, prepare an appropriate environmental impact assessment.”

¹² As defined in § 9 and following of Act no. 71/1967 Sb., the Czech Administrative Code

¹³ Art. VI sets measures for combating bribery.

The different agreements concluded between TPCA and the City of Kolin include numerous provisions that impose obligations for the city of Kolin to proceed in conflict with the law. Agreement on the future purchase contract and the contract on cooperation in preparing the construction grounds, concluded between TPCA and the city of Kolin, contains a number of obligations in the multinational's favour, which could be qualified as provisions in conflict with business ethics, as they bind the city to not fulfil the obligations assigned to it by law and represent a threat to the public rights of all entities that should have the right to take part in administrative processes. The contractual provisions entirely put into doubt the independence of the relevant public administration bodies in the course of their decision making regarding the TPCA plant, and render the issued decisions illegal. They are also entirely against the letter and spirit of corporate social responsibility for multinational corporations, and under certain circumstances, the actions of both the state employees and corporate employees could be considered as qualifying for the filing of a criminal suit.

According to GARDE-ELS's findings to date, the documentation assessing environmental impact was not prepared specifically for the TPCA plant, but for a general plan for an automobile production plant, without the concrete production technology being known. Therefore, no proper environmental impact assessment for the Kolin Production Plant has been performed.

The cumulative environmental impacts of the extra freight and passenger transport made necessary by the plant's operation in the zone have not been evaluated. The noise and dust studies prepared for the different other operators situated in the industrial zone where the TPCA plant is located were done individually, without analysing the overall impact of all activities. Thus it is not in any case believable that their conclusions on whether or not legal noise and emissions limits will be exceeded are credible.

The facts point towards:

- a conflict over domestic legislation — both existing legislation¹⁴ and the legislation effective when the EIA procedure was completed;¹⁵
- a conflict with European legislation;¹⁶ and
- a conflict with Article V, paragraph 3 of the *OECD Guidelines for Multinational Enterprises*.

If GARDE-ELS had access to all decisions of the state agencies related to this investment more illegalities would be revealed. Unfortunately state agencies were not willing to disclose the information once the Proposal was made public. GARDE-ELS initiated the necessary legal steps to enforce the right to access to information.

¹⁴ Act no. 100/2001, the Environmental Impact Assessment Act

¹⁵ Act no. 244/1992, the Environmental Impact Assessment Act

¹⁶ EIA Directive

Procedural history

The alternative dispute resolution process started after all important administrative procedures concerning the permitting of the plant were finished. The local community did not take part effectively in the different procedures, either because it was not properly informed or because it was not aware of the implications of these procedures. Later on, when the plant was built and began to function, they were subject to different impacts and decided to take actions to defend themselves.

Before GARDE-ELS' involvement in the case, the citizens tried to negotiate on their own with the vice-president of TPCA without any results. TPCA refused to address any problems connected to their facility, arguing that city of Kolin is responsible for the negative impacts resulting from the plant's operations.

During the negotiation process, land use and building permitting procedures were initiated for the increase of the throughput of road no. II/328 and its planned connection to highway D 11. The residents of Ovcarecka Street were concerned that they would be directly and negatively affected by transport connected with the operation of the TPCA plant. GARDE-ELS negotiated on behalf of the residents and included their demands into the Proposal.

The Memorandum of Understanding signed between Toyota and PSA on the one hand, and the city of Kolin on the other hand contains, among others, the obligation to rebuild road no. II/328 by October 2005. The residents of Ovcarecka live and own properties along this road and therefore must be included in decision-making procedures — land use procedures and building permit procedures. TPCA unofficially helped to finance part of the residents' demands under the condition that they would not use their rights to slow down both procedures needed to start rebuilding the road. The residents pledged not to appeal against land use decisions and building permits provided that their demands were accepted. The process has not been completed.

GARDE-ELS provided the residents with free legal help in both procedures, preparing an appeal against the land use decision that was withdrawn after the agreement was closed.

Parties and stakeholders to the process

| Party/stakeholder | Nature | Interest |
|---|---------------------------|--|
| Toyota MC, PSA Peugeot Citroen and their joint venture company – Toyota Peugeot Citroen Automobile Czech, s. r. o. | Business | Avoid negative publicity, avoid being held liable for the environmental problems related to its functioning |
| City of Kolin | Municipal organisation | Avoid negative publicity, fulfil obligations derived from the MoU, maintain good relations with TPCA |
| City of Kabel | Municipality | Stop the Toyota Central HUB Project Kolin in their administration |

| | | |
|--|---|---|
| | | district |
| CzechInvest – Investment and Business Development Agency | State agency | Protect TPCA against any legal actions initiated by the civil society organisations, control the decisions of the Kolin authorities |
| Sdruzeni Obyvatele Ovcarecka | Local NGO | Representing the residents of Ovcarecka Street in their demands to get compensation for damages resulting from the increased noise pollution and to implement anti-noise measures |
| Sdruzeni Staralka | Local NGO | Review the decision about road system in Kolin |
| Sdruzeni Stitary | Local NGO | Review the decision about road system in Kolin |
| Sdruzeni obyvatel Ovcary | Local NGO | Representing the residents of the Ovcary in their request to obtain compensation for the drop of the water level and drying out of wells and to reduce noise pollution |
| Czech NGOs (approx. 33) | NGOs from all over Czech Republic | Raising accountability of multinational corporations and setting up good practices |
| GARDE-ELS | Environmental legal advocacy organisation acting as main negotiator | Helping affected citizens, creating a positive example of corporate social responsible by requiring corporations to fulfil their own voluntary obligations, reveal to the general public the negative effects of interconnection between private sector and public sector |

Conflict resolution process

Why was this tool used?

Since 2001, GARDE-ELS has monitored how large corporations in the Czech Republic put into practice the principles of corporate social responsibility. The activities of the TPCA suggested that all the tools for administrative and judicial actions could no longer be used, given the fact that the terms for introducing such actions have expired. Therefore, GARDE-ELS decided that the only way to reach a result was to negotiate with TPCA directly and point out to them the different failures in the permitting and land use procedure.

Conflict resolution procedure

As a first step GARDE-ELS arranged a meeting with TPCA, the city of Kolin, and the Czech governmental agency CzechInvest. The representatives of EPS gave a presentation on the principles of corporate social responsibility and called TPCA to comply with them. GARDE-ELS presented as an example several proposals for activities to be undertaken by TPCA which would ensure compliance with CSR principles. The TPCA representatives rejected these proposals, stating they were insufficiently concrete, and requested that they be rewritten more concretely. Simultaneously, they declared that they were willing to negotiate further on any proposals of ELS's GARDE programme.

For the second round of negotiation, GARDE-ELS consulted with the affected citizens and

municipalities and collected their demands towards TPCA. The citizens specified their needs and empowered GARDE-ELS to negotiate on their behalf. GARDE-ELS did a legal analysis of TPCA's activities in the Czech Republic as well as of the CSR obligations of Toyota MC and PSA Peugeot Citroen. GARDE-ELS gathered all relevant information and created the *Proposal for Putting Corporate Social Responsibility into Practice for Toyota Peugeot Citroen Automobile Czech, s. r. o.* The Proposal was sent to the affected citizens, local NGOs and to the civil society community throughout the Czech Republic with the suggestion to support and sign the Proposal.

The general goals of the negotiation process were:

- to help affected citizens;
- to create a positive example of corporate social responsible approach from big corporations;
- to open discussion about CSR and corporate accountability among the general public in the Czech Republic;
- to force corporations to fulfil their own voluntary obligations;
- to show the general public the negative effects of interconnection between the private and public sectors; and
- strengthen the Civic Sector and Local Communities.

Based on the feedback of affected citizens and local communities, GARDE-ELS formulated specific demands towards the TPCA:

- Put into practice the CSR principles and the Global Reporting Initiative.
- Meet EMAS standards.
- Prepare a new independent study of external impacts of the plant used by TPCA and its subcontractors, with emphasis on the traffic burden.
- Ensure active reduction of the traffic burden.
- Withdraw the request for an exception to the “restriction on the travel of certain vehicles” defined in § 43 paragraph 5 of Act no. 361/2000 Sb., the Road Transport Act.
- Meet the legal obligation to cover the costs connected with necessary road improvements.
- Provide compensation measures for the residents of Ovcarecka.
- Undertake reparations and protective measures for the citizens of Ovcary.
- Implement anti-noise measures and structure stability measures for affected citizens in Velky Osek.
- Change the location of the Toyota-Central Hub Project Kolin — Logistics Center for New Automobiles—Ratibor.

- Provide conservation support for the Libický luh Wetland.

The main stages of the negotiations process were:

- request for information about the Memorandum of Agreement to City of Kolin (April 2004);
- proposal of the mayor of the city of Kolin to meet TPCA (June 2004);
- gathering preliminary information about the TPCA case and preparing a presentation on the application of CSR principles by TPCA (July - August 2004);
- meeting between representatives of the GARDE-ELS and representatives of TPCA, the City of Kolin, and the Czech governmental agency CzechInvest (August 11, 2004);
- consultations with affected and active citizens in city of Kolin, (August 11, 2004 and several times during September and October 2004);
- submitting a project proposal for financing of GARDE-ELS' work on the case to a grant programme of the Czech Environmental Partnership Foundation (proposal submitted on September 2004, accepted on November 2004);
- research on Toyota MC and PSA Peugeot Citroen voluntary obligations and preparing a legal assessment of the permitting process of the TPCA plant, revealing several irregularities (October, November 2004);
- cooperation with affected citizens: asking for their demands and receiving confirmation to negotiate on behalf of them (October, November 2004);
- drafting of the Proposal (October, November 2004);
- gathering support letters from civil society organisations (November 2004);
- sending the Proposal to top management of both corporations and to the management of the TPCA plant (December 2004);
- press release about the Proposal and short description of the case (issued in the Czech Republic and also abroad, December 2004);
- accepting the offer of the meeting by TPCA (January 2005);
- press release about the planned meeting with TPCA (January 2005);
- meeting TPCA representatives (February 2005);
- providing residents of Sendražice with legal help (continuous).

Methodology

A combination of tools was used to put pressure on the corporation. GARDE-ELS' lawyers used their special know-how and prepared a legal analysis emphasizing the failures in the

observance of the permitting procedures. They revealed that both corporations did not act lawfully. The findings became inconvenient for both corporations, because the automotive care industry is sensitive to any negative publicity. Although no intention to start legal proceedings against the TPCA was expressed, GARDE-ELS' reputation for strong legal organisation was relatively deterrent.

In parallel, GARDE-ELS represented the residents of Sendrazice in administrative procedures related to land use and building permitting procedures.

To put as much pressure as possible, GARDE-ELS also asked the support of NGOs throughout the Czech Republic and made the Proposal public. Concerned about ensuring a transparent process and correct representation of the interests of the people directly affected, GARDE-ELS tried to involve local communities and civil society organisations as much as possible.

A key element of the strategy was the fact that GARDE-ELS did not want to negotiate with the city of Kolin or with the CzechInvest agency, but with the company itself, considering that it is their responsibility to behave in a socially responsible manner and obey the principles they claim they put into practice. Therefore, GARDE-ELS set up meetings with the company and sent the Proposal to all key managers of both corporations.

Outputs of the process

No formal agreement was reached in any phase of the process. This is the most serious aspect of this case. Even though TPCA accepted some of the demands, they never officially admitted that it was done because of GARDE-ELS' activities. GARDE-ELS strongly believes that TPCA did not want to accept them as equal partners.

As a result of the negotiations, TPCA undertook several activities. They ordered the preparation of a strategy proposal for a grant-making procedure from an institution specialising in this, and one with the appropriate level of experience and credit. Based on the results of this strategy, TPCA established a special grant-making procedure for the Civic Sector and Local Communities

They also retracted the request for an exception to the "restriction on the travel of certain vehicles" defined in § 43 paragraph 5 of Act no. 361/2000 Sb., the Road Transport Act. If approved this request would have allowed TPCA lorries to supply the plant during weekends and national holidays. Instead of making use of this exception, TPCA decided to build a special warehouse for these purposes.

During the land use procedure for road No. II/328, the city of Kolin signed contracts with residents of Ovcarecka providing the obligation for the city to finance special anti-noise measures. Unofficially it was confirmed that these special expenses are covered by TPCA. Finally, they started using special silencers to reduce the plant's noise pollution as protective measures for the inhabitants of Ovcary.

During the land use procedure for the road No. II/328, the city of Kolin signed contracts with residents of Ovcarecka providing the obligation for the city to finance special anti-noise measures. Unofficially it was confirmed that these special expenses are covered by TPCA. Finally, they started using special silencers to reduce the plant's noise pollution as protective measures for the inhabitants of Ovcary. This special protective measures include exchanging of 251 windows for new ones with the highest possible noise insulation and microventilation, and of their parapets. Special anti-noise walls will be built in several cases, where needed. 21 houses will be provided with special form of insulation for their facades as anti-noise measures.

These outcomes alone do not qualify the programme as a success. Even though GARDE-ELS did not expect all of the demands to be met, TPCA agreed to implement very few of the requirements. This is hardly the attitude of a social responsible enterprise. The real disadvantage of the process is the fact that TPCA did not want to accept civil society representatives as equal partners in negotiations. TPCA representatives tried to cast doubt upon GARDE-ELS' legitimacy for negotiations by claiming that the demands relate to the local community and they want to have direct negotiations with them. Nevertheless, GARDE-ELS emphasised that they were given power of attorney by the local community to negotiate on their behalf. It has to be said that Toyota, MC and PSA Peugeot Citroen do not take their own CSR voluntary obligations seriously and therefore it is legitimate to say that their CSR provisions are nothing more than greenwash. This is also an important result of the case.

Related actions and campaigns

GARDE-ELS solicited a large number of civil society organisations in the Czech Republic for support for its Proposal to TPCA. As indicated before, GARDE-ELS earned wide support and this strengthened its negotiating position. It also tried to stimulate synergistic efforts of local NGOs with a view to encouraging them act together rather than independent from each other. The main tool used to reach the public at large was press releases in several important newspapers.

In parallel with the negotiations, GARDE-ELS provided legal assistance to the residents of Ovcarecka Civic Association in administrative procedure for rebuilding road No. II/328 (see 1.3.3).

Final outcome of the case

During the land use procedure for road II/328, the city of Kolin signed contracts with residents of Ovcarecka containing obligations for the city to finance special anti-noise measures. Unofficially it was confirmed that this special expense would be covered by TPCA.

Conclusions

The alternative dispute resolution method was used when the administrative procedures were over. Therefore, it is hard to estimate if the method was more effective than the administrative or judicial review tools. Nevertheless, it is unclear what would have happened if GARDE-ELS had initiated administrative procedures for the construction of the plant and industrial zone when the opportunity arose. TPCA was so interested in proceeding with the construction of the plant that it is unclear what would have happened if GARDE-ELS had mustered support from local citizens and drawn on all procedural rights available to slow down the whole process. The situation was so unique that it is difficult to say definitively whether the alternative process was more effective or not. The process was the most effective in the situation when the time for all important administrative procedures had passed.

Considering TPCA's absolute unwillingness to take any responsibility for the negative impacts of its operation that without uncovering the illegalities, TPCA would probably not have accepted any of the demands.

Toyota M. C. and PSA Peugeot Citroen CSR provisions are used primarily for improving their brand and therefore have to be taken with certain distance. General conclusion from

this case: corporations take seriously a problem of negative impact of their business activities only in case of negative publicity or being threaten by legal law suits.

Recommendations:

- Citizens should be active as soon as possible when any investment occurs in their vicinity. They should participate actively in administrative procedures whenever possible and monitor state agencies' work.
- After all administrative procedures have been exhausted, the only way to create any pressure is to uncover all illegalities and make them public. However, this technique is only effective if the perpetrator (investor etc.) is sensitive to negative PR.
- Always address the organisation (or individual) directly responsible for the negative impact and try to prove causality.

Comments of participants in process

GARDE-ELS' activities helped to force TPCA to start behaving more responsibly. Without these efforts, no progress would have been made in the case.

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Mobile: +420-608 362-596

Fact sheet

**Negotiating the conditions of IPPC permit
for the Kunda Pulp Plant factory
Estonia**

Type of procedure

- | | |
|--|--|
| <input type="checkbox"/> Mediation procedure | <input checked="" type="checkbox"/> Procedure including mediation elements |
| <input type="checkbox"/> Other procedure | |

Topic area

- | | |
|---|--|
| <input type="checkbox"/> Urban and land use planning | <input type="checkbox"/> Water management/supply and distribution |
| <input type="checkbox"/> Waste management | <input checked="" type="checkbox"/> Industry, trade, enterprises |
| <input type="checkbox"/> Power industry | <input type="checkbox"/> Telecommunications |
| <input type="checkbox"/> Traffic, transportation | <input type="checkbox"/> General environmental policies (genetic engineering, nuclear policy etc.) |
| <input checked="" type="checkbox"/> Nature conservation | <input type="checkbox"/> Neighbourhood conflict |
| <input type="checkbox"/> Tourism | <input type="checkbox"/> Other: |

Initiator(s)

Estonian Fund for Nature

Short description of the case

In December 2001 AS Estonian Cell decided to build a pulp plant in Kunda on Estonia's northern shore. For starting the construction, AS Estonian Cell needed an integrated environmental permit (IPPC) which should have determined the conditions to prevent pollution. The IPPC was issued in January 2003, but was disputed by Estonian Fund for Nature (ELF) in administrative court, because it did not determine adequate measures to prevent pollution. Therefore, there was serious threat to marine environment of Baltic Sea. After negotiations between ELF and Estonian Cell, mediated by attorney of AS Estonian Cell, and with participation of Norwegian parent company of Estonian Cell in negotiations, an agreement was made to change the conditions of IPPC. ELF made an application to end the court proceedings and the new IPPC was issued in April 2003.

Parties and other participants (number of individuals, names of participating public authorities, institutions, interest groups etc.)

Estonian Fund for Nature (non-governmental environmental organisation; 4 individuals)
AS Estonian Cell (developer, 1)
Larvik Cell (Norwegian parent company of the developer, 1)
OÜ Ecoman (environmental impact assessment expert, 1)
Lääne-Viru Department of Ministry of Environment (public authority, 1)
Law firm Raidla & Partners (attorneys, 2)
Marine Systems Institute at Tallinn Technical University (marine environment scientists, 2)
European Bank for Reconstruction and Development

Client / financial sponsor

The negotiations were financed by following sources:

- AS Estonian Cell (Larvik Cell) as developer financed services of attorney;
- the activities of Estonian Fund for Nature were financed from following sources:
 - o the participating lawyer was working in environmental legal help project, financed by Phare ACCESS programme of European Commission;
 - o the work of members of executive committee in general was financed in different Estonian and foreign funds, not possible to determine in regard to this particular process;
 - o the chairman of the board was participating voluntarily and his work was not financed at all.

Procedural guidance by (e.g. professional mediators etc)

Jüri Raidla, attorney (law firm Raidla & Partners) – the negotiator

Geographic dimension

- | | | |
|---|-----------------------------------|-------------------------------------|
| <input checked="" type="checkbox"/> local | <input type="checkbox"/> regional | <input type="checkbox"/> state-wide |
| <input type="checkbox"/> international | <input type="checkbox"/> EU-wide | |

Status of process

- | | |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> concluded | <input type="checkbox"/> in execution |
|---|---------------------------------------|

Start, end, duration of the process (if still in execution: estimated end)

Whole process: 2001-2004 (4 years)

Mediation process: 3rd January 2003 – 20th February 2003 (1,5 months)

Negotiating the conditions of ICCP permit for the Kunda Pulp Plant factory Estonia

Synopsis

This case study was chosen because it shows a good example of how environmental non-governmental organisations can negotiate with developers and reach agreements. Compared to administrative procedure, it was clearly more efficient as both parties had interest to collaborate and make compromises which is not the case in administrative proceedings.

Background of the conflict

The plan to build a pulp plant to Estonia has history of several years. Since year 2000, AS Estonian Cell has been looking for appropriate location for the plant, discussing locations at several places (Kehra, Türi, Maardu, Paldiski). The elements of a conflict were encoded in this plan from the beginning as a pulp plant may have enormous environmental impacts, but in 2000 Estonia did not even have proper legislation on environmental impact assessment (EIA) yet. In 2001, the environmental impacts were reasons for failing in plans to build the plant in Türi because environmental activists and experts predicted ecological catastrophe in Pärnu River to where the sewage from plant was planned to be conducted. The plan to build the plant in Kehra also failed because the possible effluent recipient, Jägala River, was already contaminated on such level that plan to conduct more pollution into it was not acceptable. In beginning of 2002, Kunda was chosen by developer as new possible location for the plant.

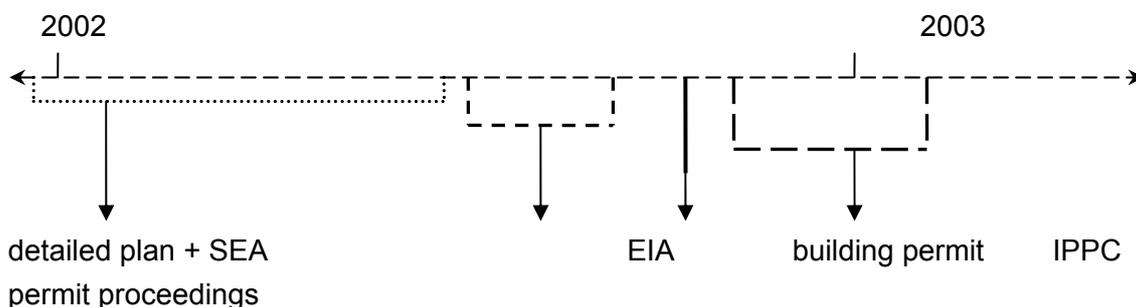
Diagram 1 — The alternatives location as shown on map of Estonia



In Kunda, the effluent recipient was planned to be the Baltic Sea. A strategic environmental impact assessment (SEA) was carried out in process of detailed land-use plan; an EIA was also carried out in order to assess the impacts of establishing and operating the plant. Due to its complex nature, the plant needed integrated environmental permit (IPPC permit) which among other conditions prescribed emission requirements for sewage, monitoring activities etc. The administrative proceedings took place in following timeline:

- detailed plan together with SEA / December 2001 - June 2002
- EIA / July - August 2002
- Issuing the building permit / October 2002 (no public participation involved)
- IPPC permit proceedings / November 2002 – January 2003

Table 2 — Timeline of the administrative proceedings

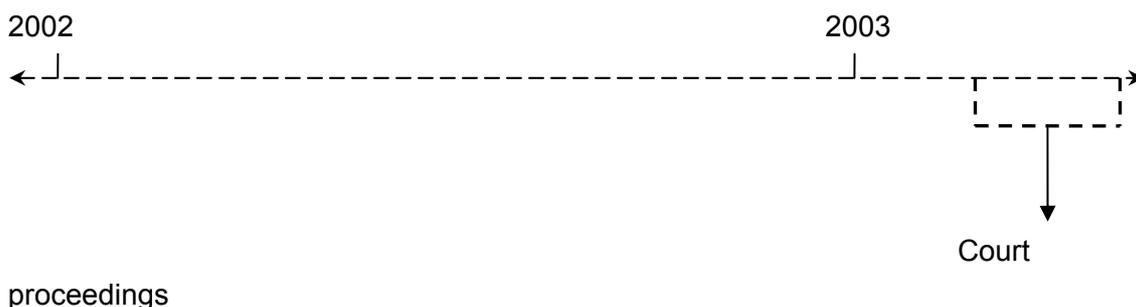


From environmental organisations, Estonian Green Movement (Friends of Earth Estonia) participated in EIA process, but their comments were not taken into account. Because of lack of resources and capacity, ELF did not participate directly in the administrative proceedings, but in September 2002, ELF sent a letter to the relevant authorities and developer, indicating threats that may arise from operation of the plant: biological pollution, additional pressure to aspen woods and need for electricity that also brings along environmental damage due to its national source – oil shale mines. In this letter ELF listed conditions on which establishment of the plant would be acceptable from environmental point of view. These conditions were not taken into account in administrative proceedings.

On 3rd January 2003, Lääne-Viru Department of Ministry of Environment published an announcement about issuing the IPPC permit to the plant. This was last of all administrative acts necessary for building activities. At the same time IPPC permit contained false information saying that according the scientific studies of Marine System Institute (MSI), the extraction of the plant's process water into the sea does not affect marine environment on larger area, but there is only local negative effect. The IPPC permit also said that in case there will be severe damages (destroyed marine fauna and flora, worsening of the water quality etc) measures should be taken, violating therefore the precautionary principle by not avoiding the damages, but adopting measures in stage of process where damages may be irreversible. In reality, the study of MSI did not contain assessment to effects of the plant's process water to bay of Letipea or to beach of Letipea, nearby of the plant's location. MSI study said that no certain assessment about impacts to marine environment is possible because of insufficient initial data. In addition to false information, the IPPC permit allowed emissions of chemical oxygen demand in the plant's process water that were not in accordance with law, exceeding the allowed emissions six times.

ELF disputed the IPPC permit in court on 3rd February 2003, declaring that since it contained false information and the allowed emission of chemical oxygen demand was exceeding the norms six times, there is high risk of contamination in very sensitive area, in result of which and due to lack of oxygen the marine fauna and flora may be destroyed. Marine Systems Institute supported ELF's complaint with confirmation that their study did not give basis for assessing the impacts of the plants process to the marine environment.

Table 3 — Duration of court proceedings on timeline



Parties and stakeholders to the mediation or other alternative dispute resolution process

The dispute resolution process involved following parties and other stakeholders:

| Party/stakeholder | Nature | Interest | Persons involved |
|---------------------------------------|---|---------------------------------------|--|
| Estonian Fund for Nature (ELF) | Non-governmental environmental organisation | Environmental protection | Marek Strandberg (chairman of the board) Robert Oetjen (chairman of the executive committee) Toomas Trapido (director, member of the executive committee) Urmo Lehtveer (member of the executive committee, PR) Kärt Vaarmari (lawyer) |
| AS Estonian Cell | Business company, developer | Building and operating the pulp plant | Peeter Lodi (member of the management board) Roald Paulsrud (member of the management board) |
| Larvik Cell | Business company, Norwegian parent company of Estonian Cell | Building and operating the pulp plant | Roald Paulsrud |
| OÜ Ecoman | Environmental | To guarantee | Heino Luik |

| | | | |
|---|--|---|---|
| | expert | that EIA, carried out by Ecoman, would be considered as correct and of high quality | |
| Lääne-Viru Department of Ministry of Environment | Public authority | To guarantee that by issuing the IPPC permit requirements of law were fulfilled | Aivar Lääne (Head of the Department) |
| Law Firm Raidla & Partners | Law firm | To protect their clients (Estonian Cell) interests | Jüri Raidla, attorney Martin Triipan, attorney |
| Marine Systems Institute at Tallinn Technical University (MSI) | Marine environment scientists | To avoid misuse of their expert studies and name | Jüri Elken Tarmo Kõuts |
| European Bank for Reconstruction and Development (EBRD) | Bank, owned by 60 countries and two intergovernmental institutions | Financing a project which is in accordance with environmental requirements and provides no risk of being declared illegal | |

The local citizens did not participate in the conflict resolution process and it was not open for them as the timeline, pressed by AS Estonian Cell to negotiation process, was so tight that involving more parties would have exceeded resources of Estonian Fund for Nature (other parties were not interested in involving public or local citizens as they were protecting only their interests).

Conflict resolution process

Why was this tool used?

The conflict resolution process was initiated by AS Estonian Cell, represented by Law Firm Raidla & Partners, shortly after AS Estonian Cell found out about Estonian Fund for Nature's court suit (in beginning of February 2005). Mr. Jüri Raidla, attorney, contacted Mr. Strandberg, chairman of the board of Estonian Fund for Nature, and proposed to negotiate about possibilities to end the court proceedings. Interest of Estonian Cell to

solve the conflict quickly lied in possibility to get a loan from European Bank for Reconstruction and Development (EBRD), but the possibility would have been destroyed in case there was a court dispute about negative environmental impacts of the projects.

Description of the process

The process started on 4th February 2003 and the parties reached an agreement on 18th February 2003. The process was very intensive short, being constantly pushed by the developer.

The timeline and form of negotiations was following:

| Timeline | Activities | Form | Persons involved |
|-----------------------------------|---|--|--|
| 4 February 03 – 12 February 03 | AS Estonian Cell expresses interest to start negotiations about out-of-court settlement to Estonian Fund for Nature | Personal contacts, phone conversations | AS Estonian Cell: - Mr Raidla, attorney Estonian Fund for Nature: - Mr Strandberg, chairman of the board |
| 13 February 03 | Meeting of the negotiating parties | Personal meeting in office of Law Firm Raidla & Partners | AS Estonian Cell: - Mr Lodi, chairman of the executive committee - Mr Raidla, attorney - Mr Triipan, attorney Estonian Fund for Nature: - Mr Strandberg, chairman of the board - Mr Trapido, member of the executive committee, director - Mr Lehtveer, member of the executive committee, PR - Ms Vaarmari, lawyer Lääne-Viru Department of Ministry of Environment - Mr Lainjärv, Head of the Department OÜ Ecoman - Mr Luik, expert of environmental impact assessment Marine Systems |

| | | | |
|------------------------------------|--|---|---|
| | | | Institute - Mr Elken, marine scientist |
| 13 February 03 – 17 February 03 | Preparation of conditions for possible agreement by Estonian Fund for Nature | E-mail and phone discussions between experts from Marine System Institute and Estonian Fund for Nature; internal phone and e-mail discussions in Estonian Fund for Nature | Estonian Fund for Nature: - Mr Strandberg, chairman of the board - Ms Vaarmari, lawyer Marine Systems Institute: - Mr Elken, marine scientist |
| 17 February 03 – 18 February 03 | Discussions between Law Firm Raidla & Partners and Estonian Fund for Nature about procedures of concluding the agreement | E-mail discussions | AS Estonian Cell: - Mr Raidla, attorney - Mr Triipan, attorney Estonian Fund for Nature: - Mr Strandberg, chairman of the board - Ms Vaarmari, lawyer |
| 18 February 03 – 20 February 03 | Further discussions about conditions of the agreement | Personal meetings in office of Law Firm Raidla & Partners | AS Estonian Cell: - Mr Paulsrud, member of the executive committee and representative of Larvik Cell, the Norwegian parent company - Mr Raidla, attorney Estonian Fund for Nature: - Mr Strandberg, the chairman of the board |
| 20 February 03 | Signing the agreement by parties and posting the applications of parties to relevant authorities, according to the agreement | Personal meeting in office of Law Firm Raidla & Partners | AS Estonian Cell: - Mr Lodi, chairman of the executive committee - Mr Raidla, attorney - Mr Triipan, attorney Estonian Fund for Nature: - Mr Strandberg, chairman of the board - Mr Oetjen, chairman of the executive committee - Ms Vaarmari, lawyer Lääne-Viru Department of Ministry of Environment - Mr Lainjärv, Head of |

| | | | |
|----------------|---|----------------------------|----------------|
| | | | the Department |
| 25 February 03 | The Jõhvi Administrative Court issues an order to end the court proceedings | Written order | |
| 25 April 03 | Lääne-Viru Department of Ministry of Environment makes changes in the IPPC permit | Administrative proceedings | |

Mr Raidla as attorney of AS Estonian Cell acted as facilitator of the whole process (with assistance of another lawyer or his firm) in following way:

- he was guiding the negotiations;
- he offered solutions that would satisfy all the parties;
- the meetings took place in his law firm office;
- he also offered legal support by shaping the final agreement.

The process cannot be considered as mediation process as Mr Raidla acted on behalf and in interests of his client; nevertheless he sought for solutions that would satisfy Estonian Fund for Nature as well and persuaded his client to make compromises in some issues, important for Estonian Fund for Nature.

Output of the process

The concluded agreement consisted of three main parts:

- 1) obligation of AS Estonian Cell to present an application **to change the IPPC permit**, concerning following conditions:
 - a. AS Estonian Cell took an obligation to work out and implement measures for control of the timber, used for production so it would be possible to determine the origin sources of timber and legality of woodcutting. AS Estonian Cell obligated to refuse to accept illegally cut wood. In 3 years, AS Estonian Cell was obligated to certify at least 50% of its annual production with FSC certificate;
 - b. AS Estonian Cell obligated to implement environmental management system accordingly to standard ISO 14001 in 1 year of obtaining the user permit for the plant;
 - c. AS Estonian Cell obligated to immediately implement measures when the monitoring results show significant worsening of environmental conditions in area of 1000 m from the place of discharge;
 - d. The false information about results of surveys of Marine Systems Institute was to be left out from the permit;

- e. The frequency of monitoring the condition of marine environment was changed from initial annual obligation to monthly obligation.
- 2) obligation of Estonian Fund for Nature to present an application to the court **to end the court proceedings**.
- 3) all three parties declared that they have **no claims for possible legal costs** against each other.

The agreement was put into practice in way that both obligated parties posted applications of another party – this way it was ensured that neither of them could elude from the obligation. On basis of these applications, the administrative court ended the proceedings on 25th February 2003 and the IPPC permit was changed by Lääne-Viru Department of Ministry of Environment on 25th April 2003.

Related actions and campaigns

There were no other related actions or campaigns connected to the process. Only two press releases were made by ELF:

- 1) on 4th February 2003 about filing the complaint to court;
- 2) on 12th March 2003 about reaching an agreement with Estonian Cell.

It was hard to press the developer to allow announcement of the conditions of the agreement publicly, so it was a concession to ELF's interest to protect its reputation as public interest guardian.

Final outcome of the case

The conflict resolution process was followed by subsequent negotiations already in autumn 2003 when Estonian Cell wished to mitigate its obligations in IPPC permit.

On 16th September 2003 ELF suddenly received an e-mail from Law Firm Raidla & Partners with proposed amendments to the IPPC permit. The developer wanted to change following conditions:

- increase the production capacity;
- withdraw obligation to certificate the timber by FSC standards;
- prolong the period to start implementing environmental management system from 1 year to 3 years etc.

In result of the followed negotiations, an agreement was made to change the IPPC permit in several parts, except for the conditions to increase the frequency of monitoring the environmental condition in sea where the plant's process water was conducted. The made amendments were not crucial as Estonian Fund for Nature accepted the new terms about increasing production capacity on condition that adequate monitoring of environmental condition will be carried out a year before the activities were started and also periodically during the activity of the pulp plant. Other conditions were changed in way that served purposes of Estonian Fund for Nature in same way as the former conditions (e.g. according the new terms, the developer was not obligated to use FSC as timber certification system, but obligated to use a system that corresponds to criteria of FSC).

On 10th December 2004, the cornerstone of the pulp plant was put into place. Building of the plant is proceeding and is planned to end soon. According to the agreement between ELF and Estonian Cell, developer obligated to carry out environmental studies about condition of marine environment in 1 year before the exploitation, but at present ELF has no information about such studies being made.

Conclusions

The conflict resolution process had its benefits and flaws.

Benefits:

- 1) the process was very useful for Estonian environmental non-governmental organisations as it proved that there is a possibility to negotiate with developers and reach agreements;
- 2) compared to administrative procedure, it was clearly more efficient as both parties had interest to collaborate and make compromises which is not the case in administrative proceedings;
- 3) compared to judicial procedure, the process was more intensive, but altogether still less painful for all the parties and nobody of the stakeholders was left totally unsatisfied as it may happen in court proceedings.

Flaws:

- 1) the final outcome (after the subsequent change of the permit) was not totally satisfying for any of the parties as all of them had to make big compromise with their real expectations and wishes.

Main obstacles for Estonian Fund for Nature were:

- 1) lack of time – the time frames were pushed by AS Estonian Cell and the intensiveness of the process did not allow discussing the positions thoroughly inside of organisation;
- 2) lack of experience – it was hard to negotiate with professional lawyers and stick to the initial demands so that the compromise would not damage the interests of party significantly.

Suggestions:

- 1) to agree on reasonable time frames in the beginning of the process;
- 2) to agree inside the organisation the conditions for representation and authorisation of the negotiators;
- 3) it would be best to have personal meetings in presence of all involved parties instead of exchanging e-mails, concerning complicated (legal or substantial) issues.

Comments of participants in process

Statement of one participant, Toomas Trapido:

“The agreement shows that such working method is possible when protecting the interests of nature, but you have to be ready for surprises and compromises. It was the first precedent that showed that it is possible to reach an agreement between so forceful interest groups and with involvement of Ministry of Environment. As a matter of fact, these things do not have to go through court as it is very troublesome for our kind of organisations and cannot be everyday practice.”

Contact information of the parties

| Name | Organisation | E-mail | Phone |
|------------------|--|--------------------------------|----------------------------|
| | | | |
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| Peeter Lodi | AS Estonian Cell | rebruk@hotmail.ee | +372 385 1062 |
| Heino Luik | OÜ Ecoman | hluik@ecoman.ee | +372 626 3307 |
| Aivar Lainjärv | Lääne-Viru Department of Ministry of Environment | Aivar.lainjärv@l-viru.envir.ee | +372 58400 |
| Jüri Elken | Marine Systems Institute | elken@phys.sea.ee | |
| Jüri Raidla | Raidla & Partners | email@raidla.ee | +372 640 7170 |

Contact information of person/s providing information

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+372 742 8443
kart@elfond.ee

Fact sheet

**Negotiations over the Establishment of Saaremaa Deep Harbour
Estonia**

Type of procedure

- | | |
|--|---|
| <input type="checkbox"/> Mediation procedure | <input type="checkbox"/> Procedure including mediation elements |
| <input checked="" type="checkbox"/> Other procedure: | Negotiations |

Topic area

- | | |
|---|---|
| <input type="checkbox"/> Urban and land use planning | <input type="checkbox"/> Water management/supply and distribution |
| <input type="checkbox"/> Waste management | <input type="checkbox"/> Industry, trade, enterprises |
| <input type="checkbox"/> Power industry | <input type="checkbox"/> Telecommunications |
| <input checked="" type="checkbox"/> Traffic, transportation | <input type="checkbox"/> General environmental policies (genetic engineering, nuclear policy, etc.) |
| <input checked="" type="checkbox"/> Nature conservation | <input type="checkbox"/> Neighbourhood conflict |
| <input checked="" type="checkbox"/> Tourism | <input type="checkbox"/> Other: |

Initiator(s)

Estonian Fund for Nature

Short description of the case

Estonian environmental organisations opposed the plan of AS Tallinna Sadam to build a harbour on the island of Saaremaa inside a bay that is an important bird area and designated as a Special Protected Area (SPA) and proposed Site of Community Interests (pSCI) according to the Habitats and Birds EC Directives.¹⁷ The NGOs disputed the acceptance of the statement of environmental impact assessment (EIA) and water use permit, both issued by the Ministry of Environment (MoE). AS Tallinna Sadam and NGOs negotiated the possible settlement and in fact reached one, but the MoE, being the real respondent in court proceedings, refused to be involved with the settlement. The NGOs lost the court case in January 2005.

¹⁷ Directives 79/409/EEC (Birds Directive) and 92/43/EEC (Habitats Directive)

Parties and other participants (names of participating public authorities, institutions, interest groups, etc.)

Estonian Fund for Nature (NGO)
Estonian Green Movement (NGO)
AS Tallinna Sadam (100 percent state-owned company)
Ministry of Environment
Law firm Pohla & Hallmagi (representative of AS Tallinna Sadam)
Law firm Raidla & Partners (representative of MoE)

The inhabitants of Saaremaa were directly affected, but did not participate in the process of negotiations between NGOs, AS Tallinna Sadam and the Ministry of Environment.

Client/financial sponsor

The legal activities of Estonian Fund for Nature and Estonian Green Movement were carried out in course different projects, financed by the European Commission and the Baltic-American Partnership Programme of the Open Society Foundation.
The legal activities of AS Tallinna Sadam were financed by the developer itself.

Procedural guidance by (e.g. professional mediators, etc.)

There was no strong procedural guidance in the process. There were direct negotiations among the parties and each of them was represented by lawyers.
On behalf of AS Tallinna Sadam, the initiator of the negotiations, the process was guided by the lawyer of Tallinna Sadam and legally advised by two attorneys, hired for the court proceedings.

Geographic dimension

- | | | |
|---|-----------------------------------|-------------------------------------|
| <input checked="" type="checkbox"/> local | <input type="checkbox"/> regional | <input type="checkbox"/> state-wide |
| <input type="checkbox"/> international | <input type="checkbox"/> EU-wide | |

Status of process

- | | |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> concluded | <input type="checkbox"/> in execution |
|---|---------------------------------------|

Start, end, duration of the process (if still in execution: estimated end)

The whole process:
April 2003 – February 2005 (nearly 2 years)
Negotiations about out-of-court settlement:
April 2004 – July 2004 (4 months)

Negotiations over the establishment of Saaremaa Deep Harbour Estonia

Synopsis

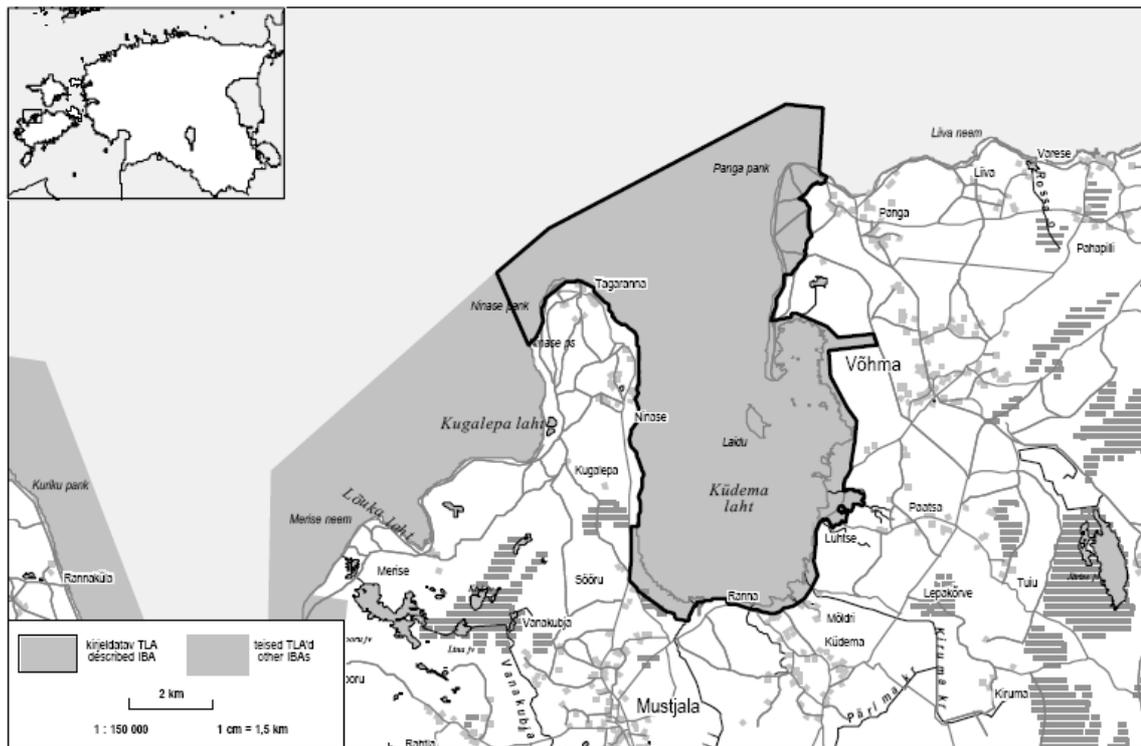
This case study was chosen to show that sometimes the outcome of negotiations does not satisfy any of the parties. Their failure was partly caused by the fact that one party (Ministry of the Environment) was not willing to conclude any kind of agreement. The lesson is to determine at the very beginning whether all parties actually want to hold negotiations and are ready to make compromises or not.

Background of the conflict

The company Tallinna Sadam wanted to build a harbour on the biggest island of Estonia, Saaremaa, to host cruise and passenger traffic. The idea to build a harbour there had come up before: between the years 1999-2001 there was a plan to build a new harbour in Undva (western coast of Saaremaa), but the plan failed due to resistance from environmental organisations. Because the nature found in Saaremaa is rare and relatively untouched, environmental organisations are concerned about plans that may impact the environment.

This time the location of harbour was to be the cove of Kudema, an important bird area and designated as a Special Protected Area (SPA) and proposed Site of Community Interests (pSCI) according to the Habitats and Birds Directives.

Table 1 — Location of harbour site



The environmental organisations (ELF and Estonian Ornithological Society) turned to the courts and disputed the general land-use plan for the Ninase peninsula, where the harbour would be built. The administrative court declared on November 24, 2003 that the local government acted illegally and declared that the general plan is invalid. However, the local government immediately enforced a new general land-use plan, as well as a detailed land-use plan. Since the main reason for declaring the general land-use plan invalid by administrative court was lack of motivations, the local municipality only added several pages of motivations to the general land-use plan whereas in other parts the plan was left unchanged.

An EIA was carried out during the proceedings of the water use permit, but it declared that the negative impacts of the harbour may not be extensive and that it is possible to allow the harbour to be built. The Minister of Environment (MoE) approved the EIA report in January 2004. In March 2004 the MoE issued a water use permit with the condition that the harbour only be used from May until September, and only by cruise ships. At the same time the water use permit allowed the construction of all three quays that were meant for different kind of ships.

Table 2 — Timeline of administrative proceedings

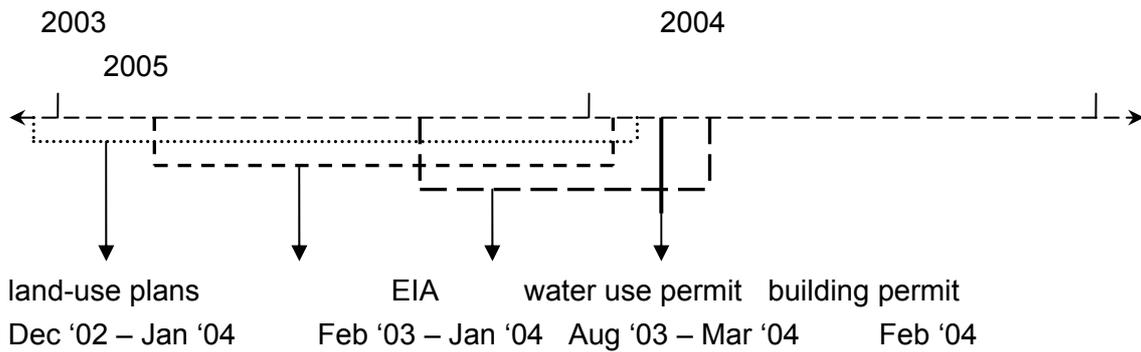
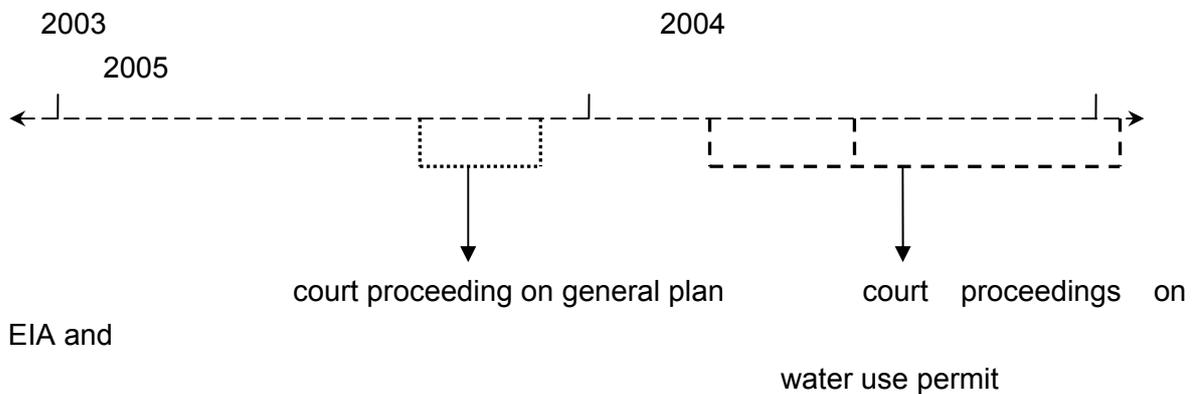


Table 3 — Timeline of court proceedings



As the Kudema Bay is a Natura 2000 site and therefore under the protection of the Habitats Directive, articles 6.3 and 6.4¹⁸ of the Habitats Directive should have been applied and the European Commission consulted as well as compensatory measures offered before issuing any permit to the harbour. This was not done, although the EIA statement stressed the obligation clearly.

¹⁸ Article 6(3): Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.

Article 6(4): If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted.

Where the site concerned hosts a priority natural habitat type and/or a priority species, the only considerations which may be raised are those relating to human health or public safety, to beneficial consequences of primary importance for the environment or, further to an opinion from the Commission, to other imperative reasons of overriding public interest.

NGOs participated in all public proceedings, but their objections were not taken into account. Finally, the environmental organisations — ELF and Friends of Earth Estonia (Estonian Green Movement, ERL) — disputed the acts of the MoE in court, saying that the EIA assessment did not assess the environmental risks sufficiently and the proposed measures were not sufficient to avoid possible damages to birds.

Parties and stakeholders of the process

Estonian Fund for Nature (ELF)

- NGO
- interest: nature protection organisation
- plaintiff in court proceedings about general land-use plan of the Ninase peninsula
- plaintiff in court proceedings about EIA and water use permit

Estonian Green Movement – Friends of Earth Estonia (ERL)

- NGO
- interest: nature protection organisation
- plaintiff in court proceedings about EIA and water use permit

Estonian Ornithological Society (EOU)

- NGO
- interest: protection of avifauna
- plaintiff in court proceedings about general land-use plan of Ninase peninsula

Local government of Mustjala

- public authority
- interest: create jobs for local people
- defendant in court proceedings about general land-use plan of Ninase peninsula

AS Tallinna Sadam

- 100 percent state-owned company
- interest: to build a harbour and get all the necessary permits
- third person in court proceedings, general land-use plan of Ninase peninsula
- third person in court proceedings about EIA and water use permit

Ministry of Environment

- public authority
- defendant in court proceedings, general land-use plan of Ninase peninsula
- defendant in court proceedings about EIA and water use permit

The local people of Saaremaa were interested in the whole plan of establishing the deep harbour, but were not involved in the court proceedings or the negotiations. The NGOs involved represented the public interest in the court proceedings, on the basis of the Aarhus Convention¹⁹ and their statutes that contain environmental protection as purpose of their activities.

Conflict resolution process

Why was this tool used?

The negotiations about settlement were initiated by AS Tallinna Sadam. The negotiations were held mostly via phone and e-mail discussions and involved mainly ELF, ERL and AS Tallinna Sadam. NGOs also consulted ornithologists (EOU) on bird issues. Several meetings also took place, always in the office of AS Tallinna Sadam. The process was legally guided mainly by a lawyer of AS Tallinna Sadam, who was also instructed by two attorneys from the office of Pohla & Hallmagi, hired for the court proceedings.

Description of the process

The negotiations were divided into the following stages:

- April 2004 – May 2004 negotiations mainly about the substantial conditions of the agreement

May 25, 2004 – first instance court session

June 9, 2004 – first instance court's decision, NGOs lost

The reason for continuing the court proceedings during negotiations was the clear lack of trust that the parties could reach any kind of agreement. The court proceedings were the only guarantee for NGOs to hold AS Tallinna Sadam interest in negotiations.

- II. July 2004 – negotiations about substantial conditions and procedural issues (guarantees)

Output of the process

At the end of July 2004, NGOs and AS Tallinna Sadam reached an agreement that more or less satisfied both parties. AS Tallinna Sadam agreed to carry out environmental

¹⁹ Art 2 and 9 of the Aarhus Convention consider environmental NGOs as capable of representing public interests in decision-making processes and court proceedings concerning environmental matters.

studies about the condition of the environment (including monitoring of birds) around the harbour, provide sufficient protection against oil spills and include special measures in the water use permit to protect the fauna and flora. AS Tallinna Sadam promised to negotiate the conditions with the MoE and made an appointment to discuss the possible conclusion of the agreement. At the appointed time, the MoE announced that it was not possible for the ministry, as a public authority, to participate in this agreement between private persons and impose obligations on AS Tallinna Sadam over the legal requirements. As the MoE was the only body in power to give legal force to the agreed additional conditions (with the possibility to add these conditions in the water use permit), this announcement ended the negotiations.

Related actions and campaigns

There were no related campaigns connected to the process. However, the court proceedings and negotiations were covered routinely in the media, helping to raise public awareness of the issues.

At the time, NGOs discussed approaching the European Commission on the question of breach of EU directives, but decided not to because it was not clear whether the EU directives were legally binding for Estonia before accession (as all the permits and consents were given right before May 1, 2004, when Estonia became a member state of the European Union).²⁰

Final outcome of the case

After the announcement by the Ministry of Environment about not participating in the agreement between the NGOs and AS Tallinna Sadam, the MoE contacted the NGOs several times through their attorney, Juri Raidla of Raidla & Partners. Raidla met ELF's chairman of the board, Marek Strandberg. Due to misunderstandings in communication, no clear conclusions came from this meeting.

After the negotiations failed, court proceedings continued and ended in loss for the NGOs in January 2005. In February 2005, the NGOs declared they were not applying for cassation to the Supreme Court because of the prohibitive legal costs involved.

On August 16, 2005 the cornerstone of Saaremaa harbour was put into place and construction is now taking place.

Conclusions

²⁰ However, a complaint to the European Commission is under preparation as of September 13, 2005.

The negotiations were unsuccessful because one party (MoE) was not willing to conclude any kind of agreement. Therefore it would be useful in the future to determine at the very beginning whether all parties actually want to hold negotiations and are ready to make compromises.

Other obstacles in the process were a lack of time and knowledge. A pattern of behaviour emerged whereby the negotiations sped up before the court session or the date for appealing the court's decision, reaching a high point just a few days before the session or deadline for appeals. The further these dates are the harder it is to maintain the attention of the other party and make progress in the negotiations.

Comments of participants in process

Statement of Mati Kose, representative of Estonian Ornithological Society (EOS):

"I had a previous unsuccessful experience while trying to achieve an extrajudicial solution during the first court case against the harbour building process at the Undva location, on the Saaremaa coast. In both cases the opponent had no real willingness to achieve any compromise between the developer's interests and nature conservation. The negotiations were instead used as a tool to force their opponents to be bound by agreement to development. Developers in both cases tried to reach an agreement which does not avoid or mitigate any environmental risks but offers some cosmetic changes in their project or adds some irrelevant measures that have no connection with the planned projects.

In the case of Kudema harbour, the Minister of the Environment accepted the harbour development in the middle of the SPA designated area before the EIA had been completed. Due to political reasons and conflict over the grounds of the EIA judgement, the MoE had no political will to solve the problem or take part in the negotiation process. Without even the potential for MoE commitments, it is hard to find legal grounds for an agreement between the developer and NGOs. MoE resistance and reasoning for refusing to take part in the negotiations was pretty strange, because the MoE has several years of practice in mutual and voluntary agreements with private enterprises for substituting environmental taxes with pollution reducing investments.

Instead of negotiations and agreement, the MoE hired the top lawyers against the ELF to prove that the permission to develop the harbour in a Natura 2000 area is an entirely legal and ecologically harmless decision. It is sad to mention that ELF has to compile an appeal to the European Commission against decisions of the MoE to get adequate judgement of compliance of these decisions with EU environmental legislation."

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**Negotiating the Conditions of the Mining Permit
for the Merko Oil-Shale Mine
Estonia**

Type of procedure

- | | |
|--|---|
| <input type="checkbox"/> Mediation procedure | <input type="checkbox"/> Procedure including mediation elements |
| <input checked="" type="checkbox"/> Other procedure: | Negotiations |

Topic area

- | | |
|---|--|
| <input type="checkbox"/> Urban and land use planning | <input type="checkbox"/> Water management/supply and distribution |
| <input type="checkbox"/> Waste management | <input type="checkbox"/> Industry, trade, enterprises |
| <input checked="" type="checkbox"/> Power industry | <input type="checkbox"/> Telecommunications |
| <input type="checkbox"/> Traffic, transportation | <input type="checkbox"/> General environmental policies (genetic engineering, nuclear policy etc.) |
| <input checked="" type="checkbox"/> Nature conservation | <input type="checkbox"/> Neighbourhood conflict |
| <input type="checkbox"/> Tourism | <input type="checkbox"/> Other: |

Initiator(s)

Estonian Fund for Nature

Short description of the case

OU Merko Kaevandused is going to open a new oil-shale mine near the Puhatu wetlands, a protected area under the Ramsar Convention. The environmental impact assessment (EIA) stated that mining could drop the water level of the wetland, but did not design any particular measures for protecting the swamp. The Ministry of Environment issued a mining permit without preventive measures. The Estonian Fund for Nature, an environmental non-governmental organisation, disputed the permit in court. After implementation of the injunctive relief by the court, OU Merko Kaevandused initiated negotiations about a possible settlement. The parties reached an agreement about changing the conditions of the mining permit and the court proceedings were ended.

Parties and other participants (number of individuals, names of participating public authorities, institutions, interest groups, etc.)

- Estonian Fund for Nature (ELF)
- OU Merko Kaevandused
- Ministry of Environment
- Law Firm Lepik & Luhaaar (representative of OU Merko Kaevandused)
- Attorney Ain Alvin (representative of Ministry of Environment)

Client/financial sponsor

The legal activities of Merko Kaevandused were financed by the developer itself. Legal activities of the Estonian Fund for Nature were financed through different ongoing projects, financed by European or Estonian funds.

Procedural guidance by (e.g. professional mediators etc)

The negotiations were guided by attorney Toomas Luhaaar, representing OU Merko Kaevandused

Geographic dimension

- | | | |
|---|-----------------------------------|-------------------------------------|
| <input checked="" type="checkbox"/> local | <input type="checkbox"/> regional | <input type="checkbox"/> state-wide |
| <input type="checkbox"/> international | <input type="checkbox"/> EU-wide | |

Status of process

- | | |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> concluded | <input type="checkbox"/> in execution |
|---|---------------------------------------|

Start, end, duration of the process (if still in execution: estimated end)

Whole process: February 2003 – February 2004 (one year)

Negotiations: October 2003 – February 2004 (five months)

Negotiating the Conditions of the Mining Permit for the Merko Oil-Shale Mine Estonia

Synopsis

This short case was chosen to show how parties were able to find an agreement about changing the conditions of a mining permit after the implementation of injunctive relief by the court.

Background of the conflict

The mining company OU Merko Kaevandused applied for a mining permit to open a new oil-shale mine near one of the most valuable Estonian protected areas: the Puhatu wetlands. Oil-shale mining has major negative side-effects to the environment as it demands a great deal of water to be pumped from the ground, causing depression of the groundwater and therefore the draining of wetlands. The environmental impact assessment (EIA) statement pointed to the depression of groundwater in the Puhatu area as a possible threat but did not offer preventive measures. Such measures were also missing from the mining permit issued by Ministry of Environment (MoE). Therefore, the EIA and mining permit were not in accordance with the law. After the objections of the Estonian Fund for Nature (ELF) were not taken into account in the EIA proceedings, ELF disputed the mining permit in court.

2. Parties and other stakeholders to the mediation or other alternative dispute resolution process

- Estonian Fund for Nature – non-governmental nature protection organisation
- OU Merko Kaevandused – private company, developer
- Ministry of Environment – public authority
- Law Firm Lepik & Luhaaar (attorneys Toomas Luhaaar and Martti Kalas) – representative of Merko Kaevandused

- Attorney Ain Alvin – representative of the Ministry of Environment
- Uudo Timm – environmental expert
- Mati Ilomets – environmental expert

There were no local people directly affected as the area in dispute is uninhabited.

Conflict resolution process

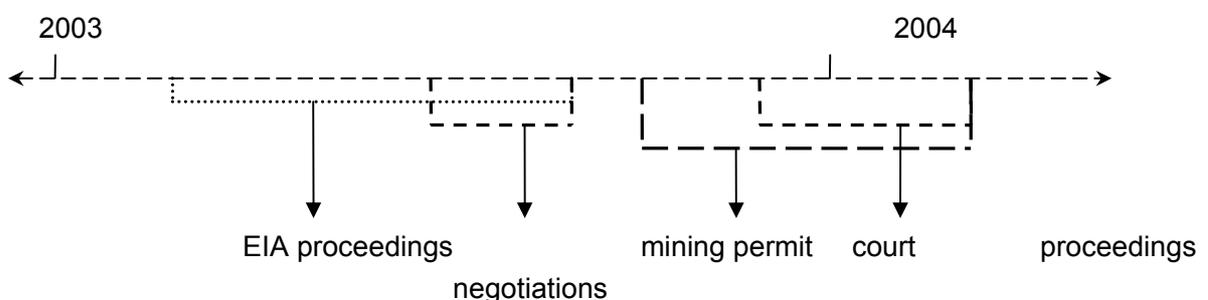
The negotiations were initiated by Merko Kaevandused after the court of first instance had granted injunctive relief and prohibited the mining for the time of the court proceedings. Merko Kaevandused was represented by attorney Toomas Luhaaar of Luhaaar & Lepik, who contacted the chairman of the board of ELF, Marek Strandberg, in October 2003.

In December 2003, the first court session took place, after which negotiations started in the form of personal meetings between Strandberg and Luhaaar.

In January 2004 the law firm expressed their client's desire to settle out of court. A period of exchanging drafts of the agreements followed. A seminar with all the parties (listed above) and environmental experts took place, helping to explain the need for changing the conditions of the mining permit to the developer. The seminar was organised by ELF, but took place in office of Lepik & Luhaaar.

The final agreement was concluded on February 13, 2004. According to the agreement, Merko Kaevandused was obliged to present an application to the MoE with a request to change the conditions of the mining permit (mainly measures for monitoring the water level were added with the obligation to stop the mining when negative effects appeared), and ELF was obliged to withdraw the court suit.

Table 1 — Timeline of the administrative proceedings, court proceedings and negotiations



Toomas Luhaaar guided the negotiations as a representative of OU Merko Kaevandused, but naturally acted in interests of his client. At the same time, his advice was professional and helped ELF to overcome problematic legal issues like the procedure for concluding the agreement (as opposed to other similar negotiations in which ELF participated, the agreement was affirmed by the court).

Related actions and campaigns

There were no related actions or campaigns.

Final outcome of the case

As a result of the agreement, the court proceedings ended on February 16, 2004. The permit was changed in March 2004. ELF has no information about the further activities of Merko Kaevandused in fulfilment of the conditions of agreement as ELF had no resources or capacity to monitor the developments.

Conclusions

The outcome was a compromise for both parties, which means that neither of them was fully satisfied with the outcome. For ELF the important issue of new oil-shale mines was left unsolved.

The most problematic issues were the lack of time and expertise on environmental issues (hydrological in this case). A pattern of behaviour appeared whereby the negotiations speed up before the court session or date for appealing the court's decision, reaching a high point just a few days before the session or deadline for appeals. This rush represented a great deal of pressure for the Estonian Fund for Nature, making the entire process quite painful and troublesome.

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| Fact sheet |
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**Szentgál Regional Landfill
Hungary**

Type of procedure

- | | |
|---|---|
| <input type="checkbox"/> Mediation procedure | <input type="checkbox"/> Procedure including mediation elements |
| <input checked="" type="checkbox"/> Other procedure: | facilitated negotiation |

Topic area

- | | |
|---|--|
| <input type="checkbox"/> Urban and land use planning | <input type="checkbox"/> Water management/supply and distribution |
| <input checked="" type="checkbox"/> Waste management | <input type="checkbox"/> Industry, trade, enterprises |
| <input type="checkbox"/> Power industry | <input type="checkbox"/> Telecommunications |
| <input type="checkbox"/> Traffic, transportation | <input type="checkbox"/> General environmental policies (genetic engineering, nuclear policy etc.) |
| <input type="checkbox"/> Nature conservation | <input type="checkbox"/> Neighborhood conflict |
| <input type="checkbox"/> Tourism | <input type="checkbox"/> Other: |

Initiator(s)

- EMLA (Environmental Management and Law Association, Környezeti Management és Jog Egyesület)
- HUMUSZ (Waste Working Group, Hulladék Munkaszövetség)

Short description of the case

Waste disposal problems faced by Hungary around the date of EU accession necessitated the creation of a renewed solid waste disposal system in the country. As part of this system, new landfills were planned and permitted at numerous locations, including at the village of Szentgál. The so-called Northern Lake Balaton Regional Waste Disposal Facility was supposed to be built near Szentgál and was granted an environmental permit by the Regional Environmental Inspectorate in April, 2004. Three neighboring settlements, the town of Herend and the villages of Csehbánya and Városlőd, opposed the siting and both appealed in the administrative procedure and filed a lawsuit at the county court against the permit of the landfill. EMLA and HUMUSZ initiated a facilitated negotiation among the stakeholders i.e. the

project developer and those interested in the realization of the landfill, the opposing municipalities, the Ministry of Environment and the Regional Environmental Inspectorate, and the local NGOs. The facilitated negotiation took place in the village of Szentgál on June 17, 2004. No substantial agreement was reached among the stakeholders during the meeting. The landfill is not built yet nor the preparatory works have begun, and a court case against the permit of the landfill is still pending at the county court.

Parties and other participants

- project developer: the town of Veszprém
- municipality of the planned location: the village of Szentgál (approx. 2 500 inhabitants)
- opposing municipalities: the town of Herend, the village of Csehbánya and the village of Városlőd,
- coordinator of ISPA grants: the Ministry of Environment Directorate General of Development
- author of the environmental impact statement: Ökohydro Ltd.
- environmental authority: Regional Environmental Inspectorate
- independent expert: MÁFI (Hungarian State Geological Institute)
- expert NGOs: EMLA, HUMUSZ
- local NGOs: Clean Spring Association of Szentgál, Anglers' Association of Herend
- locals (approx. 5) of the village of Szentgál

Client / financial sponsor

Financing of the landfill: EU ISPA Programme (50%), Government of Hungary (40%), consortium of participating municipalities (10%)

Financing the facilitated negotiation: EU Phare Micro Programme

Procedural guidance

László Szilágyi (HUMUSZ) on the facilitated negotiation

dr. Csaba Kiss (EMLA) on the permitting procedure

Geographic dimension

- local
 international

- regional**
 EU-wide

- state-wide

Status of process

 concluded in execution**Start, end, duration of the process (if still in execution: estimated end)**

The call for the negotiation meeting was sent out to the stakeholders mid-Spring 2004 and the meeting among the stakeholders took place on June 17, 2004. Currently, judicial procedures against the permit decision are on going.

Szentgál Regional Landfill Hungary

Synopsis

Two NGOs in Hungary tried to facilitate a conflict over the siting of a landfill by providing information to the conflicting parties on the different procedures available. None of the parties agreed to enter a mediation procedure and the NGOs organized a facilitated negotiation meeting. Despite the fact that not all the conflicting parties were present at the meeting, a few important steps have been agreed as an outcome of this procedure. The Ministry of Environment undertook to commission a new geological survey on the siting of the landfill, while the opposing municipalities agreed not to submit a complaint to the European Commission regarding the planned project. Meanwhile, legal proceedings are ongoing against the decision to grant an environmental permit. This case illustrates the reticence of conflicting parties to use alternative dispute resolution tools to solving such conflicts and the need for enhanced capacity building activities to promote the use of mediation and other similar processes.

Background of the conflict

The town of Veszprém (capital of the county of Veszprém) as leader of a consortium initiated the permitting of a new regional landfill on the territory of the village of Szentgál. Although planned to be placed on the area of Szentgál, the landfill was closer to three other settlements, the town of Herend, the village of Csehbánya and the village of Városlőd, who all opposed the project for environmental reasons. After the first level Regional Environmental Inspectorate granted an environmental permit for the project, the opposing three municipalities appealed and later filed a lawsuit at the county court. In the latter two cases (appeal and lawsuit) the municipalities were represented by an environmental attorney of EMLA. Apart from these actions, HUMUSZ also appealed against the first level administrative decision but did not file a lawsuit against the second level administrative decision.

The parties to the conflict are:

- the project developer (the town of Veszprém),

- the municipality of the planned location,
- the opposing municipalities (later plaintiffs in the court proceeding), and
- the environmental authority (the Environmental and Nature Conservation Inspectorate General (later defendant in the court proceeding)).

Promoter of dispute settlement is NGO HUMUSZ.

Other stakeholders are 160 beneficiary municipalities, 305 000 people as an affected population, the EU ISPA Programme as co-financing partner, the Ministry of Environment Directorate General of Development as coordinator of ISPA grants, the Clean Spring Association of Szentgál and the Anglers' Association of Herend as local NGOs and the locals of the village of Szentgál.

Parties and stakeholders supporting the landfill project are:

- the project developer,
- the environmental authority, and
- the Ministry of Environment, Directorate General of Development (managing the grant received for the landfill from the EU ISPA Programme).

The parties and stakeholders opposing the idea of the landfill project are:

- the municipality of Szentgál, Herend, Csehbánya and Városlőd,
- the local NGOs and locals of the village of Szentgál.

Although the results of a local referendum conducted in 2003, led to a positive answer to the landfill project, the ratio of supportive votes was 56% within a participation rate of 59% (which is altogether 33% of the total constituency that voted *yes*). Nevertheless, later on, the individuals who either did not vote or voted *no*, supported the municipalities in their actions of appealing against the permitting decision.

The conflict reveals a strong competition over natural resources -- i.e. while the planned location of the landfill is only a place for the project developer; it has environmental significance for the directly affected 4 municipalities. While the project developer is only looking for a space with a sufficient size and in the planning phase of the project all the siting options are still open, the locals of Szentgál have only one given natural surrounding that, once it gets connected with a landfill in the minds of the people, is lost forever for any other type of development. The conflict exists on an intergroup level, has a material component,

happens between neighbors and has a long standing nature. The intergroup character of the conflict comes from the fact that colliding municipalities represent groups after all. The material component of the conflict is clear: what is the compensation that can balance the losses to be suffered by Szentgál in order that Szentgál gives its full consent to the project. It is obvious that neighbors are involved in the conflict since these are neighboring villages that disagreed over a regional landfill. Finally, the long lasting nature of the conflict is on the one hand proven by the fact that it has been going on for years already; on the other hand, its outcome will define the fate of the micro-region for a long time. The municipalities opposing the landfill are also motivated by a fear of loss (of environmental values because the landfill is supposed to be built on a picturesque hilltop, visible from distances as well; of chances to develop since the name of a small village like Szentgál can not be afforded to get affiliated with a landfill – it is simply too big a burden that nothing else can balance; of a good image, etc.).

Legal issues at stake and legal framework for this special case

The permitting of the landfill falls within the responsibilities of the Regional Environmental Inspectorate. The main argument of the appeal of the plaintiff's was that the underground water table of the area is highly sensitive to pollution and the landfill can not exclude the possibility that pollution would reach those subsurface waters.

The Regional Environmental Inspectorate issued the first level environmental permit on April 19, 2004. The appeal was filed by the three opposing municipalities on May 5, 2004. The higher environmental authority, the Environmental and Nature Conservation Inspectorate General issued the second level permit on August 30, 2004²¹. The lawsuit was filed at the county court on October 18, 2004 against the latter administrative decision. The Environmental and Nature Conservation Inspectorate General partly agreed with the arguments of the opposing municipalities being plaintiffs in the court proceeding and withdrew its second level environmental permit on November 17, 2004 and also ordered the reconsideration of the case on second level. Based on this decision, the Fejér County Court deleted the procedure from the files on December 16, 2004. The Environmental and Nature Conservation Inspectorate General issued a second level environmental permit (for the

²¹ Environmental administrative proceedings are mostly two-level processes: generally, on first level the Regional Environmental Inspectorate has powers to decide while appeals filed against such decisions go to the second level environmental administrative authority, the Environmental and Nature Conservation Inspectorate General. After the delivery of the first level resolution, those who have standing can file an appeal within 15 days, while after the delivery of the second level resolution that is final in the administrative process, those having standing have 30 days to go to court. The court proceeding is a one-level process with a judgment that is final at its delivery.

second time) on December 7, 2004. The lawsuit was filed again by the same three opposing municipalities at the county court on February 1, 2005. The arguments of the municipalities were the same in both the appeal and in the court action. The court procedure is still pending and practically nothing happened in the process since February.

Parties and stakeholders to the process

Taking into account the nature of the conflict, the following players were considered stakeholders, therefore they were invited and should have come to the facilitated negotiation.

- the project developer (the town of Veszprém),
- the municipality of the planned location (Szentgál),
- the opposing municipalities (Herend, Csehbánya and Városlőd),
- the environmental authority (the Environmental and Nature Conservation Inspectorate General)
- the Ministry of Environment Directorate General of Development as coordinator of ISPA grants
- the Clean Spring Association of Szentgál and the Anglers' Association of Herend as local NGOs

Invitations to the meeting were sent to the stakeholders, including the local NGOs who organized the participation of local inhabitants.

The following parties and stakeholders participated at the facilitated negotiation on June 17, 2004 in Szentgál:

- municipality of the planned location, the village of Szentgál

The village has a newly elected mayor after the death of the former. Although the former mayor supported the idea of the landfill and even a local referendum voted yes for the landfill on December 7, 2003, the new mayor is against the landfill. It can not be discovered how much it is only a tactical standpoint that once brought votes for him and later can not be given up without losing face.

- opposing municipalities: the town of Herend, the village of Csehbánya and the village of Városlőd

Although not planned on their territories, the landfill would be located much closer to the inhabited zones of these municipalities than to the one of Szentgál. Also the chance to

develop the image of these settlements as places for ecotourism would be lost for ever probably if the landfill came to this area, since the names of these municipalities would be affiliated with the notion of waste. They oppose the project and even go to court for halting it.

- coordinator of ISPA funds: the Ministry of Environment Directorate General of Development

Interested in the realization of the project both for material reasons (co-financer of the project is the Government of Hungary) and for image reasons (as coordinator of ISPA grants, a successful project would shed the light of success on the Directorate General as well). Let alone, the Ministry of Environment is responsible for the waste management of Hungary.

- independent expert: MÁFI (Hungarian State Geological Institute)

At the time of the meeting, MÁFI was undertaking a country-wide research in Hungary on areas potentially suitable for locating a landfill. Later on they published their findings on the internet. They do not have a direct interest in the case, but could provide scientific support to the decision making process.

- local NGOs: Clean Spring Association of Szentgál, Anglers' Association of Herend

The local NGOs are afraid of the pollution of ground waters and its impacts on fishing ponds and wetlands. Therefore they oppose the project.

- locals of the village of Szentgál

They oppose the transformation of the now-silent little village into a widely known location of a regional landfill, losing the image of the municipality as a potential destination of ecotourism for ever.

- expert NGOs: EMLA, HUMUSZ

EMLA and HUMUSZ have been awarded a grant under the EU Phare Micro Programme. Originally, the application for grant had an overall aim of promoting public participation in the local waste management decision-making. It included a broader goal of raising environmental awareness of the affected population and a narrower one of watchdogging the waste management investments. Awareness raising also encompassed capacity building activities, which logically entailed conciliation between conflicting interests through mediation or facilitated negotiation. During the execution phase of the aforementioned project, EMLA and HUMUSZ initiated a facilitated negotiation for the representatives of the diverse interests in the case.

Conflict resolution process

Why was this tool used?

EMLA and HUMUSZ aimed at initiating a process where all the interested parties could bring forward their pro or con arguments regarding the planned waste management project. In order to ensure a high level of participation and also gather factual information on the project, the meeting was planned close to the location of the proposed landfill. By initiating this process, EMLA and HUMUSZ wanted to test whether this type of conflict can be solved other than by going to court. Thus, the two organizations started fundraising and they won a grant which allowed them to undertake this initiative. As a first step, EMLA presented to the stakeholders the option of having the conflict solved through mediation, but none of the parties agreed to enter such a process. Therefore, the two organizations decided to initiate a facilitated negotiation meeting among all the stakeholders.

Both EMLA and HUMUSZ are interested in improving environmental protection in Hungary and as such felt concerned about the outcome of the conflict itself. EMLA is a pro bono public interest environmental law office of Hungary, serving the environmental NGOs and the general public with mostly free legal advice and legal representation in litigation. HUMUSZ is an environmental NGO specialized in waste management issues, undertaking waste management actions and public awareness raising campaigns, including environmental education in schools.

Process description

The two organizations sent an invitation letter to all the relevant stakeholders, describing the project EMLA and HUMUSZ are running, the purpose of the meeting and the possible outcome, i.e. an alternative approach to the underlying conflict situation. Consequently, it was not the parties to the conflict who asked for the meeting but two independent NGOs that undertook this task. These two NGOs did not have a formal mandate from the parties to mediate the conflict.

The goal of the process was clear: to make stakeholders meet in person and try to discuss the conflict, thus promoting a solution to the conflict. Basically, all stakeholders agreed that entering a court proceeding with a risky outcome, also consuming lots of resources (both human and material) is a worse solution to the settlement of the dispute; therefore the facilitated negotiation was a chance given to alternative dispute resolution. After an invitation

letter, the meeting was held in Szentgál, in a local pub (the only place open and suitable for hosting such a meeting at that time). Sadly, when listing the stakeholders present, it became obvious that neither the project developer, nor the author of the EIA, nor the local environmental authority came, thus the only player representing an opinion in favor of the landfill was the Ministry of Environment Directorate General of Development.

László Szilágyi (HUMUSZ) gave a brief description of the project itself and the purpose of the meeting and Csaba Kiss (EMLA) gave presentation on the legal aspects of the permitting procedure of the landfill). Then a short round of introduction of the persons present followed, and stakeholders presented their views, in the following order: mayor of Szentgál as host of the meeting, mayors opposing the landfill, independent expert geologist from MÁFI, local NGOs, and Ministry of Environment Directorate General of Development.

The arrangement of chairs imitated a roundtable discussion, therefore there were no physical “sides” during the meeting. The order of speeches created an atmosphere at the end of the first round of views where the representative of the Ministry of Environment (being the last to speak and the only stakeholder from the opposite side) was already almost after a 45 minute constant attack and naturally found itself in a defensive position. This jeopardized the fruitful outcome of the meeting to a certain extent. After the presentation of views, a direct question-answer discussion started, only sporadically facilitated by the representatives of EMLA and HUMUSZ. There were several moments during the meeting, when the facilitators had a more difficult role, trying to maintain a professional debate.

The meeting did not end with an agreement, not even a formal offer was made by any party to submit a proposal for agreement. However, there was a point at the meeting that again hindered peaceful solution of the problem: a past offer (i.e. three years of free waste removal, three more years of half-price waste removal, 5 million HUF for eliminating illegal landfills, 300 million HUF for general development purposes) made by the project developer consortium to the opposing municipalities was mentioned as a basis for a deal. This offer had once been refused by the opposing municipalities, and this refusal was again reaffirmed by the latter. There was no exact agreement that either the organizers, or the participants wanted to achieve, since any step further on this path of dispute settlement would have been welcome by all. What was the agreement the organizers of the meeting wanted to achieve? Later, the participants, except the Ministry of Environment representative who explained his not coming with shortage of time, visited the planned location of the landfill and – not surprisingly because they were all against this landfill from the beginning – all agreed that the site is not suitable for a landfill for the aforementioned reasons: the underground water table

is highly sensitive to contamination, the view of the landscape would be lost for ever and the villages could not develop toward eco-tourism one the landfill would be there.

The costs of the entire meeting were covered by a budget line under the EU Phare Micro Programme financed joint project of EMLA and HUMUSZ called WATCHDOG.

The facilitator's role was divided between László Szilágyi (HUMUSZ) and Csaba Kiss (EMLA). They both familiarized with the details of the case, Mr. Szilágyi being an expert on waste management issues and Mr. Kiss being the legal expert. The facilitator(s) tried to stimulate a professional debate, that sometimes required intervention when participants diverted from the merit of the dispute and the facilitators asked the participants to use only well-based (either environmental, or economic but not emotional) arguments. Overall, the facilitators acted as independently as possible, and impartial, and prohibited parties from using the process to abuse one another. It is not sure if they could prevent parties to obtain an advantage in future litigation because numerous arguments were raised and some could even be valuable in future lawsuits, as well. The facilitators did not provide assessments, preconditions or proposals but emphasized options (e.g. alternative siting locations for the landfill, alternative waste management methods, etc.).

Outcome of the process

The meeting did not lead to a written or formal verbal agreement. We consider that nevertheless a gentlemen' agreement has been reached, where the municipalities opposing the project agreed not to submit a notification to the European Commission regarding the landfill project, while the Ministry of Environment agreed that a new independent geological expert opinion should be done. In the same time, the Ministry of Environment representative decided to reconsider certain aspects of the project since new information was revealed by the mayors of the opposing municipalities to it regarding the tender dossier sent to EU ISPA Programme (i.e. mistakes made while counting the population of the affected area, thus the mass of waste produced, consequently the lifespan of the landfill). A report was prepared on the meeting by Mr. Szilágyi from HUMUSZ and posted on the website of the project <http://emla.hu/watchdog/index.shtml?x=237>.

Related actions and campaigns

There were numerous campaigns related to the case of the landfill, on both sides. First of all, on December 7, 2003, a local referendum voted yes to the landfill, therefore this even must

have been preceded by an enormous public information and communication campaign on both sides. There is no detailed information available on the single events of the communication campaign of the landfill, however, based on the experiences, the Ministry of Environment published a PR handbook in October 2004 called „Guidelines for Municipalities: How to Organize a Public Information Campaign, Part 1, Waste Management Projects Financed by the EU”. This mostly contains advice on crisis management where crisis is characterized as a situation where there is massive public resistance against the idea of a project, e.g. a landfill. EMLA and HUMUSZ used media and internet for communicating an unbiased message, i.e. consensus can only be reached through discussion and communication of parties is essential. All the known campaigns preceded the facilitated negotiation and did not substantially influence its success.

Advocacy activities keep running, and did not play a vital role in the success or failure of the facilitated negotiation. As was said, the discussion took place between the first and the second level decisions of the environmental authority; therefore no court procedure was pending at that time. Court proceeding started only after the meeting and continues still.

Final outcome of the case

As parties to an agreement, both the Ministry of Environment and the opposing municipalities did their part in promoting the solution of the problem. An independent geologist expert opinion was made by the expert commissioned by the Ministry of Environment and the opposing municipalities did not report the miscalculation discovered in the tender dossier to the EU ISPA Programme management unit not to risk the future success of the landfill at a possible other location.

The judicial procedure is ongoing; the court has not designated the date of the first trial yet. The first trial is expected for Fall 2005; the judgment – that is first instance and final – is supposed to be made Spring 2006. The decision of the court can either be a dismissal of the claim of the plaintiffs or the annulment of the environmental permit combined with ordering the environmental administrative authority (first or second level) to reconsider the case along the lines defined in the reasoning to the judgment.

Conclusions

Obviously, because of the lack of interest from certain stakeholders and a general unwillingness to give up positions, no agreement was reached during the meeting and no

stakeholder really changed its point of view. Both the Ministry of Environment upheld its view that this is a geologically suitable place for locating the landfill and the referendum voted yes, and the opposing municipalities, backed up by the local NGOs and some locals insisted that the area will be in peril and the development chances of the village lost once the landfill will have been completed. In this respect we could even call the process a failure, since no formal agreement was made at the meeting. But because of the approaching of the sides (the stakeholder clearly got to know the other's view more), and because at the end a concrete deal (renewed geological assessment of the site by the Ministry of the Environment and the decision of the municipalities not to submit a complaint to the European Commission) was made, its partial success can not be disputed. Basically, these points could well have been put into an agreement to be reached at the end of a mediation if the parties would have had agreed to participate in one such process. The interests of the parties were expressed anyway, and somehow standpoints got closer, too. It was probably a little fear of each party of a structured process still unknown (unlike the court process) that caused that no party really agreed to enter mediation in this conflict.

The major obstacles to the process were the absence of the project developer and other key stakeholders, the very emotional attitude of the stakeholders opposing the project during the meeting and the absolute unwillingness of parties to give up positions.

Since the deal finally made at the facilitated negotiation was quite a small scale one, it was accepted for all the parties present.

The lessons learned are:

- All stakeholders must be present, to ensure a balanced representation of all interests at stake
- all parties to the process must understand the role of the process and the role of the facilitators
- One facilitator has to guide the entire process, otherwise a gap can evolve and responsibilities may disappear.
- Even small scale but realistic results are good, and are a good basis for further discussions.
- the conclusions of the meeting should be formally endorsed by all the participants, immediately at the end of the meeting.

Contact information of persons involved

- the municipality of Szentgál: Mayor Mr. Ferenc Vecsei, 8444 Szentgál, Fő u. 11., tel.: 88/238-513
- the municipality of Herend: Mayor Mr. Nándor Rieth, 8440 Herend, Kossuth u. 97., tel.: 88/ 513-700
- the municipality of Csehbánya: Mayor Ms. Renáta Ádám, 8445 Csehbánya, Fő u. 39., tel.: 88/ 241-009
- the municipality of Városlőd: Mayor Mr. Károly József, 8445 Városlőd, Kossuth u. 23., tel.: 88/240-003
- the Ministry of Environment Directorate General of Development: Mr. Zoltán Jamniczky, jamniczky@mail.kvvm.hu
- MÁFI: Mr. György Tóth, geo@mafi.hu
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Contact information of person/s providing information

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| Fact sheet |
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Route 10 Hungary

Type of procedure

- | | |
|--|--|
| <input type="checkbox"/> Mediation procedure | <input checked="" type="checkbox"/> Procedure including mediation elements |
| <input type="checkbox"/> Other procedure | |

Topic area

- | | |
|---|---|
| <input checked="" type="checkbox"/> Urban and land use planning | <input type="checkbox"/> Water management/supply and distribution |
| <input type="checkbox"/> Waste management | <input checked="" type="checkbox"/> Industry, trade, and enterprises |
| <input type="checkbox"/> Power industry | <input type="checkbox"/> Telecommunications |
| <input checked="" type="checkbox"/> Traffic, transportation | <input type="checkbox"/> General environmental policies (genetic engineering, nuclear policy, etc.) |
| <input type="checkbox"/> Nature conservation | <input checked="" type="checkbox"/> Neighbourhood conflict |
| <input type="checkbox"/> Tourism | <input type="checkbox"/> Other: |

Initiator(s)

The Clean Air Action Group (a national federation of Hungarian environmental NGOs) and the Society for Piliscsaba (local NGO)

Short description of the case

The environmental protection permit for the construction of the first section of a new national road (Route 10) was issued at the end of 2004. The Clean Air Action Group and the Society for Piliscsaba turned to the court to ask for an annulment of the permit.

Building the 5.5-kilometer road would cost Hungarian taxpayers HUF 13 billion. The four lane section of the road (2x2) would run no more than 100 metres (and for a long section, at a distance of only 20 metres) from the existing Route 10. At one end it would lead into the 2x1 lane Bepsi Road in Budapest, and at the other end into the main street of Pilisvorosvar, a similarly 2x1 lane, causing even bigger congestion than what exists today.²²

A huge shopping mall is being built at the site of the planned road. Although the mall is not related directly to the road construction project, environmental NGOs find it quite strange that

²² Maps of the project can be found at <http://www.levago.hu/media/10-es/10Out.htm>

among the many road building plans, the one that has priority leads to a huge new shopping mall and does not solve any real traffic problems.

Several mayors in the region spoke up with one voice for the construction of the road section, which they qualified as a "bypass road relieving the region's towns and villages from the enormous traffic." The Clean Air Action Group (CAAG) opposes the project because it would only aggravate the transport and environmental problems of the region. CAAG's view is supported by the vast majority of environmental NGOs in the region. A number of meetings and conciliatory discussions have been organised by various stakeholders (mayors, citizens' groups, road authorities, and the minister of environment). These meetings were either forums for direct negotiations between the parties or facilitated negotiations. In one case the Ministry of Environment facilitated the discussion, in another case by a municipality perceived as impartial, and in another case by a local NGO, again perceived by the parties as impartial. However, none of these meetings led to any change in the viewpoint of the stakeholders.

Parties and other participants (number of individuals, names of participating public authorities, institutions, interest groups, etc.)

The main players:

- the project developer: the road construction company, and the Ministry of Transport
- a coalition of NGOs and some municipalities acting against the project
- municipalities supporting the project
- Auchan, intending to build a shopping centre
- the local inhabitants affected by the project effects (at least 150,000 people, but if one considers also the population of Budapest, then nearly 2 million people)

Client/financial sponsor

The funding for the public forums organised by the Clean Air Action Group came from the National Civic Fund, and the Ministry of Environment through its Environmental Fund, in which NGOs have a decisive voice in decisions.

Procedural guidance by (e.g. professional mediators, etc)

The negotiations were facilitated by the Ministry of Environment, a local NGO and one municipality. EMLA lawyers initiated legal actions on behalf of the Clean Air Action Group against the environmental permit. There were no lawyers acting as facilitators at these meetings.

Geographic dimension

 local regional state-wide international EU-wide**Status of process**

 concluded in execution**Start, end, duration of the process (if still in execution: estimated end)**

The process started more than 10 years ago, but it gained momentum in 2004 and continues to date.

Route 10 Hungary

Background of the conflict

This conflict is centred on the planned construction of a new Route 10, 4 kilometres of road in the Pilis area (northwest of Budapest) between Budapest and Pilisvorosvar. The road would run parallel to the old Route 10. It is planned that in the future this road segment would be part of a longer road continuing in the direction of Dorog.

This long-standing conflict was caused by a profound difference in values and in the assessment of the short-term and long-term effects of the project to:

- the quality of life of the inhabitants who live in the area as well as those in Budapest;
- the natural resources of the region;
- the future of local businesses; and
- the evolving structure of the regional and nationwide transportation system.

There are also different financial interests in the project.

The stakeholders who support the project are the majority of local mayors, the road authorities and the Ministry of Economy and Transport. They are adamant that the environmental NGOs involved are just a hindrance in the way of the project that, according to them, will alleviate the traffic congestion that now continually afflicts passengers along Route 10.

The supporters claim there are three reasons to push forward on the construction:

- It will relieve the traffic congestion along Route 10.
- There is money available to finance the project (a loan from the European Investment Bank), so they should seize the opportunity while it is still open.
- It will contribute to economic development in the region.

The NGOs that oppose the project, however, maintain that it will, in fact, worsen the current situation and generate even more severe congestion at both ends of the old and the planned new Route 10. They also hold a firm conviction that the 4-km section of Route 10, which would cost HUF 13 billion (about EUR 52 million) of taxpayers' money, serves only one purpose: to

create better access to the shopping mall that is currently under construction in close proximity to the planned road.

The opponents are urging a halt to the project on six grounds:

- It will not remove the traffic congestion on Route 10, but will further aggravate it.
- Budapest should be spared from new roads bringing more traffic into it.
- It is a road that springs up from nowhere and leads to nowhere, and the only party that derives profit from it is a new shopping mall.
- The money should be used to construct a bypass for Pilisvorosvar (the town most affected by through-traffic of cars and heavy lorries) and to modernise the public transport system in the region.
- An alternative transit route should be worked out to create a north-south thoroughfare far to the west of the vicinity of the capital that links up with Motorway 1. This route would serve southbound and northbound cars and lorries that currently pass through Budapest for lack of an alternative to bypass it.
- Since the remaining section of the planned new Route 10 would run through a national park and Natura 2000 regions in the Pilis hills, its continuation is inconceivable under current legislation, so it is futile and morally wrong to build a section of a road which is unlikely to be completed.

It has to be said that the local governments alongside the planned new road are not in possession of a complete road map (they did not receive the project documentation). Each and every one of them has just that section of road that happens to be in their administrative district. Towns and villages that do not have the planned road crossing through their administrative region do not have any information about the planned road. Yet, if built, the road would affect them in many ways (airborne pollution, noise levels, damage to nearby natural resources, etc.). These towns and villages have not been part of the arbitration process, nor do they possess adequate information about the plans.

So far, efforts to move the two sides closer have not been successful, and there is a stalemate as both sides await the court's decision.

Parties and stakeholders to the process

The conflict involves two parties. One consists of:

- a group of a dozen or so local mayors united in the informal association of the region KOTET, which decided to back the construction of the first section of Route 10;

- the county road management company PEMAK, which is responsible for launching the construction of the 4-km section of Route 10; and
- the Ministry of Transport and Economy, which is responsible for the trunk road network of Hungary and promoting the construction of Route 10.

On the other side is the NGO Society for Piliscsaba, the environmental NGOs of Pilisvorosvar, Pilisborosjeno, Solymar and Urom, and NGOs from Obuda and Bekasmegyér (Budapest's 3rd District) brought together under the umbrella of the Clean Air Action Group, a national federation of environmental NGOs.

It is not clear how much Auchan, the company opening the shopping mall, is involved in the issue. However, it is strange that the building of this road segment became urgent for the authorities and some local mayors when Auchan applied for a construction permit.

| Party/stakeholder | Nature | Interest | People involved |
|---|---|--|---|
| Clean Air Action Group | Non-governmental environmental organisation | Environmental protection | Andras Lukacs, president, Maria Schnier and Erzsebet Beliczay (vice-president), Other members of CAAG |
| Society for Piliscsaba | Non-governmental environmental organisation | Environmental protection | Istvan Borzsak, president, Arpad Deli, member of the board, Erika Laszlo, secretary |
| Society for better MnUII in Pilisborosjeno and Urom | Non-governmental environmental organisation | Environmental protection | Gabor Turi, president, Peter Keresztessy, member of the board |
| Society SOS Bekasmegyér (Budapest 3rd District) | Non-governmental environmental organisation | Environmental protection | Tibor Richvalski, President |
| Green Globe Society (Budapest 3rd District) | Non-governmental environmental organisation | Environmental protection | Zoltan Ujj, President |
| Environmental Management and Law Association | Non-governmental environmental organisation | Environmental protection, helping environmental NGOs | Csaba Kiss, lawyer |
| Conservative Circle of Solymar | Local non-governmental organisation | Local affairs | |

| | | | |
|---|--|--|---|
| Local Government of Pilisvorosvar | | The investment would affect the town | Erzsebet Grosz Krupp, mayor |
| Local Government of Solymar | | The investment would affect the town, the shopping mall Auchan is being built on its territory | Laszlo Enczmann, mayor |
| Local governments of Dorog, Piliscsaba, Pilisszentivan, Pilisborosjeno, Urom, Budapest 3rd District, Pest | | The investment would affect the town, the district, and Pest County | Mayors |
| Ministry of Economy and Transport | | The investment is promoted by the ministry | Zsolt Csaba Horvath, deputy state secretary and other staff of the ministry |
| UKIG Road Management and Coordination Directorate | Road authority | Responsible for planning and general management of roads | Laszlo Horvath, chairman |
| PEMAK | Regional road management organisation | Responsible for maintenance and managements of roads in Pest County | Janos Kenderessy, director, Viktor Duma, deputy director |
| Ministry of Environment and Water | | Responsible for the state of the environment and the environmental inspectorates | Miklos Persanyi, minister |
| Chief Environmental Inspectorate | National environmental authority | Responsible for deciding on the appeal against the decisions of the regional inspectorate | |
| Central Danube Valley Environmental Inspectorate | Regional environmental authority | Responsible for issuing or refusing the environmental permit for the road | |
| Auchan Hungary | A French multinational company that operates "hypermarkets" and shopping centres | The company is building a new shopping mall along the planned new road | |

The stakeholders who support the project had kept the final and most decisive stages of the process closed to the public at large. The reason for this was not given. (This would become one of the main elements of the appeal and the lawsuit by CAAG.) The authorities had issued all the necessary permits by the time the project and its timeframe became known. Therefore the only option left open for the environmental NGOs was to appeal against the environmental permit to the National Environmental Inspectorate in June 2004, and, after this was refused, to take court action in January 2005 to halt the process.²³

From the beginning, CAAG has been in close contact with its local member organisations in the region and cooperating closely with all of them throughout the process. The activity was coordinated mainly by CAAG, but the Society of Piliscsaba and the Society for Better MnUII in Pilisborosjeno and Urom also performed a great deal of the coordination.

Conflict resolution process

June 2004

The Clean Air Action Group (CAAG) appealed against the environmental permit of the first section of Route 10. The permit was issued by the regional authority Central Danube Valley Environmental Inspectorate.

December 2004

The Chief Environmental Inspectorate dismissed the appeal of the Clean Air Action Group.

January 10, 2005

CAAG and the Society for Piliscsaba filed a lawsuit to the Capital Court of Budapest demanding that the court annul the environmental permit.

January 29, 2005

Several mayors of the region (but no mayors from any of Budapest's 23 districts) held a press conference where they demanded that the Clean Air Action Group and the Society for Piliscsaba withdraw their lawsuit. Representatives of CAAG learned about the press conference just before it happened, so, two people from CAAG participated in the event and had the opportunity to expound their views. **After the press conference it was agreed that the parties would try to reach a compromise.**

February 1, 2005

The Clean Air Action Group wrote a letter to the mayors concerned, proposing that the standpoints of both sides should be made known to the public in the towns and villages

²³ According to the National Environmental Inspectorate, no laws had been violated during the permission process. The environmental NGOs did not agree with this.

concerned, and a final decision should be taken only after thorough information was disseminated and wide public participation was engaged.

February 10, 2005

The mayor of the 3rd District of Budapest (the most affected district by Route 10) organised a conciliatory meeting. Several NGOs, three mayors and several deputies of local governments took part in the meeting.

During the meeting it was pointed out that:

- The two-lane Becsí Road, as Route 10 is called as it enters Budapest, is already overloaded by inbound and outbound traffic, and the new section and the new shopping mall will further aggravate the situation there.
- Budapest has no plans to add more lanes to Becsí Road, neither is it in the interest of the 3rd District to push for this.
- There are no alternative plans in place for the redirection of the flow of traffic from a new Route 10 and its four lanes in and out of Budapest.
- Under such circumstances, the viability of the project is highly questionable.

The mayor of the 3rd District proposed that all parties accept the proposal of CAAG. He made it possible for CAAG's perspective to appear on two pages of the local government's newspaper, which was distributed in 62,000 copies to all households in the district.

March 17, 2005

The local mayors did not accept CAAG's proposal. Instead of pursuing an informal dispute resolution process or facilitated negotiations, the local mayors staged a highly biased "village meeting" in Pilisvorosvar. This meeting included several mayors from affected villages as well as a member of the Parliament from the region. The mayor of Budapest's 3rd District, although invited, did not attend. Before the meeting, the mayors distributed a leaflet to all households in Pilisvorosvar and some neighbouring villages, referring to the planned road segment as a bypass, and saying that everyone supported the road except CAAG.

During the meeting it became clear that the event was organised to discredit CAAG. The meeting quickly became a heated event, with the majority of the 200 member audience fiercely attacking the environmental NGOs. The latter were accused of being inhumane, backward, a few maniacs who wanted to halt the progress and modernisation of the region. Emotions ran high and thus barred the possibility for a reasoned debate. The language of those in favour of the project emphasised how meritorious it was for all parties concerned. The facts given to underline this were fragmented and often false. The negative aspects of the project were simply omitted. The supporters maintained that the new road section would remove the heavy traffic flow from the main road of Pilisvorosvar and kept referring to it as a bypass. They said the opponents of the project were against the people of Pilisvorosvar. They said that due to the opponents' actions the inhabitants would not be able to breathe clean air.

The impartial presentation of the views of those who supported the project outweighed the timeframe given to the environmental NGOs ten times over. The representatives of the Clean Air Action Group and the Society for Piliscsaba were given five minutes each to state their views. They both argued that the new section of the road would not bypass anything, but would create even greater congestion at both ends, with cars piling up on six lanes instead of the current two in their attempt to get back onto Route 10's old route. They pointed out that the only beneficiary of the new road section would be the new Auchan shopping mall and stated that no taxpayer money should be spent on dubious projects such as this. It was almost impossible for them to deliver their address as the audience continually booed and had no ear for reasoning.

Instead of being a dispute resolution process, it was a show directed by the mayors to ridicule the environmental NGOs. The press coverage of the event bears testimony to the manipulative nature of the event.

March 18, 2005

A day after the village meeting, the Society for Piliscsaba organised a series of lectures to inform the public about the history, the current position and alternative plans of the development of the road and railway systems of the region. The event, attended by an audience of about 120 was unbiased, factual and highly informative. Nobody from the audience questioned the correctness of the reasoning of the environmentalists.

April 15, 2005

Upon a complaint lodged by the local mayors against the environmental NGOs, another meeting was called by the minister of the environment with the participation of the Ministry of Economy, the local mayors and the environmental NGOs. (According to the complaint, CAAG is causing damage to the environment and the economy by filing the lawsuit against the planned road section.) The minister acted as a mediator in the debate based on questions put forth by the environmental NGOs and answered questions presented by the representatives of the Ministry of Economy and the mayors.

The questions raised were:

- Why is the mayor of Pilisvorosvar adamantly against the construction of a bypass that is incorporated into its road development plan and would, in fact, remove the congestion from its main street?
- What interest does she have in supporting the construction of a road section that will not alleviate the traffic burden the town has to bear at the current time?
- Why does she insist on calling it a bypass, when it is clearly not bypassing any built-in area?
- Why have the environmental authorities issued a permit for just a 4-km section of the road and a separate permit for the large junctions leading into the shopping mall?

- To what extent have they considered the synergistic effects of the influx of new traffic into the region created by the shopping mall?
- What happens to the second section of the new Route 10 (planned to stretch between Pilisvorosvar and Kesztohc), which would cut through a national park and Natura 2000 regions, and therefore no environmental permit could be issued under current legislation?
- If the second section cannot be constructed for the said reasons, what is the point of building just a 4-km section of it?
- How can they believe Budapest can cope with more traffic flowing into it?
- Why do the planners insist on forcing traffic through Budapest instead of providing an alternative transit route to the west of the Pilis hills that could easily link up with the motorways M1 and M0, and thus take the traffic burden away from the capital?

The answers were less than satisfying. The representatives of the Ministry for the Economy and Transport stated that the new road was no bypass but a transit route designed to direct traffic from the northwest of the country into Budapest. The mayors said nothing in substance but rather repeated their view that it was a bypass that Pilisvorosvar so badly needed. The meeting ended without resolution. The minister of environment said that he will be a neutral mediator in the conflict, but at the end of the meeting he called on the mayors to take into consideration the demands of the environmental NGOs.

At the meeting the environmental NGOs put 23 questions in written form to the minister of environment. These were later answered but in the usual bureaucratic eloquence that produces nothing of substance.

April 22, 2005

The mayor of Pilisborosjeno organised a village meeting on the issue of Route 10 and the planned section of Motorway M0 that would lead to Route 10. About 50 local residents participated. There were also two representatives of CAAG and three other representatives of NGOs from other nearby towns. All participants at the meeting opposed the projects.

April 28, 2005

The Conservative Circle of the town of Solymar called a meeting where the environmental NGOs and the mayors were invited to present their case. After the factual presentations the audience turned overwhelmingly against both the road project and the construction of the shopping mall on their administrative territory. They feared that more hypermarkets would spring up at the site, pushing local companies and individuals out of business, and that the influx of traffic created by shoppers would be detrimental to the town. The futility of building a 4-km road section was also often mentioned. A Parliamentary deputy, who is a former chairman and presently a member of

the Parliamentary Committee on the Environment, also spoke strongly against the project and advised the audience against being gullible and allowing themselves to be beguiled by promises.

May 6 and 10, 2005

At the request of the deputy state secretary of the Ministry of Economy and Transport (i.e., the deputy minister responsible for transport) there were intensive discussions between him and the president of CAAG. Although there were no concrete results that could help to solve the conflict, these two meetings did help to inform the deputy state secretary about the views of the NGOs concerning the project.

June 16, 2005

The mayor of Budapest's 3rd District organised a public forum in Bekasmegyér (the northern part of the 3rd District) about the section of Motorway M0. This section is supposed to take up a large part of the traffic coming from and going to the new Route 10. Several hundred people crowded into the large hall of the Community House. The representatives of the motorway construction company and the Ministry of Environment and Transport were also present. The forum lasted six hours. Every resident speaking at the forum fiercely opposed the plan of the motorway.

A few days later the local government made a decision that it disagrees with the building of the motorway on the territory of the 3rd District.

June 23 and July 12, 2005

A mediation effort has been made by the Road Coordination Directorate. Two sessions were held (in June and July) between the representatives of the directorate, the road planners and the environmental NGOs. During these two meetings the sides learned each others' standpoints, and an upcoming meeting is expected to embark on more concrete proposals and arbitration. The environmental NGOs considered the efforts of the directorate positively. However, they also knew that the directorate is an executive body, not a decision-making one, so their efforts will not have substantial effect on the outcome of the process.

September 7, 2005

The Capital Court held its first trial on the case. The plaintiff was the Clean Air Action Group, represented by its president, András Lukács, and lawyer Csaba Kiss of the Environmental Management and Law Association. (The Society for Piliscsaba withdrew from the case under enormous pressure from the local government of Piliscsaba. However, they continue to actively support the efforts of CAAG.) The defendant was the Chief Environmental Inspectorate, with PEMAK and the mayor of Solymar on its side. The second trial will take place on December 7, 2005.

Related actions and campaigns

The Clean Air Action Group has circulated a leaflet among the villages and towns concerned. It also relied on the local and nationwide press to bring its message home. The viewpoint of CAAG was widely publicised.

Five environmental NGOs have sent a letter to the prime minister asking for a new, modern and complex regional plan to be drawn up and a commissioner to be appointed to overlook the case since there are several governmental agencies involved. Their request has been turned down.

CAAG and the Society for Piliscsaba regularly update their websites with information on the case.

Final outcome of the case

The case is not yet closed. The first trial of the court took place on September 7, 2005, and the second trial (where the judgement is expected) will take place on December 7, 2005. It is not clear yet whether the discussions with the Road Directorate and the Deputy State Secretary will lead to any resolution of the conflict.

Conclusion

Looking back on the evolution of the conflict, it is clear that the planners have overlooked the importance of arbitration at each and every level. The planning process has a history of 15 years in which, at various stages, a few “village meetings” were held, during which the plans were presented to audiences who might or might not have understood the essence of what was presented to them. Also, the actual road map has considerably changed over time, so that which was accepted by one audience might not tally with what was accepted by another, and certainly not with the final plans.

The mediation and alternative dispute resolution methods have not proved to be useful tools for solving the problem. Those who support the project do not form a coherent group. They are at different levels of administration and jurisdiction, and there are too many actors involved without real power. The stubborn determination of the supporters not to listen to what the environmental NGOs have to say seems to be an insurmountable obstacle. The supporters do not envisage them as partners in the game. They do not wish to give up the project nor are they ready to make alternative plans.

On the other hand, the environmental NGOs believe that the project was ill-conceived from the start. They maintain that it is illegal on many grounds. It is also futile and costly, and would not bring about any positive change. On the contrary it would create more problems than what the region faces now and would be detrimental to the quality of life for many people in the region.

The mediation was useful only as far as the participants could learn better each other's views and thus could further develop their arguments.

The main obstacles during the process were the completely different values and interests of the various stakeholders. The Ministry of Economy and Transport is eager to build as many motorways and new roads as possible. The road authorities must implement what the ministry orders them to do, even if the latter might not agree with it. The environmental authorities are much weaker than the road authorities, and they fear falling into conflict with the government's policy, so they often approve projects even if they contradict environmental regulations.

It is not clear what really motivated the majority of the mayors who supported the project. It is hard to find any rational argument unless we suppose that they are committed to Auchan.

The Mayor of the 3rd District is in a different situation. The new road would burden the already existing and congested roads of the district, and therefore he is clearly not interested in the new road. This is all the more so because the new shopping mall would ruin a number of businesses in the district. However, he, understandably, must be very diplomatic in his actions.

CAAG, as a collection of environmental NGO, protects environmental interests. The local NGOs that are member organisations of CAAG are deeply concerned about the local detrimental effects of the new road and the huge shopping mall.

The real solution would be to make it possible for the public to learn about the position of both sides. Unfortunately, the NGOs had much less opportunity to make their views known than the supporters of the project.

Although both sides put a lot of effort into achieving their aims, none of the parties are satisfied with the outcome.

Lessons Learned

- The institutional framework serving democracy must be strengthened.
- The public's access to information must be ensured.
- Environmental regulations must be enforced.
- Environmental authorities should be strengthened.

Contact information of main persons involved

Clean Air Action Group, President Andras Lukacs, www.levego.hu

Society for Piliscsaba, Secretary Erika Laszlo, www.piliscsabaert.net

Local government of Budapest's 3rd District, Mayor Istvan Tarlos, www.obuda.hu

Local government of Pilisvorosvar, Mayor Erzsebet Grosz Krupp, www.pilisvorosvar.hu

Local government of Solymar, Mayor Laszlo Enczmann, www.solymar.hu

Pest County road management organisation, PEMAK, Director Janos Kenderessy, www.pemak.hu

Road Management and Coordination Directorate, UKIG, Director Laszlo Horvath, www.ukig.hu

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