



Public participation at measures to reduce noise in Germany

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ABSTRACT

An essential part of a modern noise reduction strategy is the involvement of the public. This important approach is implemented in the European Environmental Noise Directive. According to this Directive, noise action plans will be developed with the participation of the public. In Germany, the individual participation in planning processes is increasingly in the focus of public interest and in political discussions. Especially, in context of large-scale infrastructure projects such as the expansion of an airport. The goal-oriented implementation of the participation process and the challenges of an effective participation are demonstrated at prominent examples. Moreover, proposals for a further development of the legal requirements of the public participation at EU as well as international level will be presented. In this context, special consideration is given to measures of a clear and effective participation. The aim of these activities is to achieve a higher acceptance for official decisions of great importance. The involvement of the public in the decision-making process could also have a positive effect on their annoyance reaction because noise is often perceived as less loud if people are directly involved in the process.

Keywords: Noise

1. INTRODUCTION

Public participation is increasingly in the focus of legal interest in recent years. The main reason for this was the Aarhus Convention (1) which came 2001 into force and contributed very much to the European policy on public participation. These activities on EU level led to an important Directive on this topic (Directive 2003/35/EC) (2). Public participation is not only characterized by the need to balance conflicting interests and to conduct appropriate participation processes, but also through the mediation of acceptance and legitimacy (3). On an administrative level, an adequate compensation in the form of effective cooperation created by the progressive development of public participation is the consequence. The background to this is the positive development resulting from civil protests in the last years. It clearly shows that the claim of the citizens in participation has steadily grown, especially if their residential area or essential environmental aspects are concerned. A particularly striking example of this is the planned significant expansion of the main rail station in the German city Stuttgart. This large-scale infrastructure project is known under the name "Stuttgart 21" and caused in 2012 considerable civil protests. The policy has subsequently recognized that public participation is absolutely necessary. It is not only a necessity because of democratically and constitutionally reasons but also offers a chance to compensate potential weaknesses of judicial protection (4, 5). The public participation is therefore a valuable contribution to a compact and generally accepted outcome (5). The individual is able to defend its substantive position, so that the realization of its fundamental rights is protected (6).

Citizens who are directly involved in a decision-making process can contribute their interests and insights in the process and therefore are often more willing to accept even negative decisions (7). Research on this topic has shown that noise is often perceived as less loud if people are directly involved in the decision-making process. The mutual trust of those involved in the process is also a very important factor. A series of investigations have shown that there is a correlation between the trust people have in the goodwill of those in positions of responsibility, or conversely their lack of trust in them, and their annoyance reaction. Trust is therefore a key element to the acceptance and successful implementation of noise reduction measures. Once trust has been established with those affected, the likelihood of the relevant measure being effective is much greater. An essential part of a modern transparent noise reduction strategy is therefore the direct involvement of as many members of the public as possible.

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2. REQUIREMENTS FOR PUBLIC PARTICIPATION

Generally, the process of public participation should be transparent, adjusted to the noise problem and based on a scientific methodology. On the other hand a method is sometimes not optimal to fit to question or raises unrealistic expectations of the public regarding its influence. The legislation therefore has to deal with the structure of protest movements. The protests have mainly three typical characteristics closely relating to planning projects carried out in the recent years or envisaged in the future:

- Expectation of the citizens is that they renounce in favor of an alleged Community, adding value on personal amenities and at least need to temporarily accept a deterioration of their situation in life.
- The alleged common good can become controversial or disproportionately communicated.
- The decision-making process is perceived by those involved as questionable, not comprehensible or corrupt, mostly due to the complexity and variety of political planning processes.

As a result a comprehensive communication is absolutely necessary, but not sufficient for a balanced decision. A successful decision needs participation and involvement of everyone.

3. PUBLIC PARTICIPATION IN THE EU ENVIRONMENTAL NOISE DIRECTIVE

Many people in Europe are exposed to high levels of noise that adversely affects their health and quality of life. To improve the noise situation, the EU issued the Directive 2002/49/EC “relating to the assessment and management of environmental noise” (Environmental Noise Directive) in 2002 (8). It became law in Germany in 2005. The aim of the Directive is to avoid and to reduce environmental noise and prevent an increase in noise in quiet areas. The strategic instruments of the Directive are the creation of noise maps and subsequently action plans.

The first stage of noise mapping in Germany showed that large parts of the general population are affected by noise. Just the data for the motorways and major trunk roads included in this stage showed that about 6.8 million people are exposed to noise levels of above 55 dB(A). In 2012 the second stage of the Environmental Noise Directive was carried out. This stage covers significantly more areas than the first stage and therefore provides an even more comprehensive picture of noise situation. In Germany, this involves 71 metropolitan areas with about 24.5 million inhabitants, 45,000 km of main roads, 13,700 km of major railway lines, and all eleven major airports (9). For these areas, the noise exposure is calculated and displayed in noise maps. On the basis of these maps, noise action plans will be developed including the participation of the public. The Environmental Noise Directive is a good example for enhancing the public participation.

A particular concern of EU bodies is an appropriate public participation. For this reason the Directive requires Member States to ensure that the public is consulted about proposals for action plans and that they receive the documents in time and have effective opportunities to participate in the process. Moreover, the public must be informed of the decisions taken.

In Germany, there exists no comprehensive environmental law, which deals with all relevant aspects for environmental protection. However, there is an act in which all significant provisions to mitigate the impacts of noise and air pollutants are concentrated. This act is called Federal Immission Control Act (BImSchG) (10). Within the framework of the transposition of the Environmental Noise Directive into national law in Germany the Federal Immission Control Act has become the central law for noise abatement planning. Provisions on technical details are laid down at the sub-legislative level. For instance, there is an ordinance on noise mapping (11). However, there are significant issues in context with the Environmental Noise Directive still unclear, such as the regulation of noise limits or the legal classification of quiet areas. On the other hand, the obligatory participation of the public in respect of the drawing noise action plans is a real advantage of the Environmental Noise Directive. Furthermore, it is envisaged to generally integrate public participation in policy processes. Although not generally the concept of public relations public participation is still explicitly defined in the EC environmental planning regulations. In theory, the concept of participation is frequently equated with participation and democratization, with terms that are borrowed from the state's theory of ideas (12).

In contrast to traditional German noise protection law (13) the Environmental Noise Directive pursues no regulatory approach. Instead of this a so-called management approach is applied. It is goals via the development and execution of a graded long-term action concept as the basis of a

dynamic noise action plan. Therefore, it also requires a certain pressure from the public to help the noise abatement plan to become successful. An effective public participation is important.

In Germany, on the basis of §§ 47 of the Federal Immission Control Act, the involvement of the public into the decision-making process is carried out in four steps:

- Firstly, the public will be consulted about proposals for noise action plans. This hearing shall be documented in accordance with point 1 of Annex V of the Environmental Noise Directive and accompanied by the particulars and documents of noise action plan.
- In a second step, the public has an early and effective opportunity to participate in the preparation and review of the noise action plans. This participation involves not only the initial implementation of the noise action plan, but also its review and if necessary a revision after five years in accordance with § 47 d V p 5 d BImSchG. The extent to which the public makes use of her right is theirs. In addition, the provision contains stipulations about the type of investment: there is still enough time left until decisions are to be made, and it shall be performed effectively
- According to the Federal Immission Control Act, the results of public participation are to be taken into account. The competent authority shall adjust the results of the participation so far in the decision on the content of the noise action plans. But it is not necessarily tied by the results, but may also - ignore it - under the leadership of reasons.
- After the competent authority has decided on the consideration of the results of public participation, the public will be informed about the decisions taken.

This specific form of participation makes a so-called placebo participation dwindle impossible. It is designed to accuracy and effectiveness, and is applied where the public actually still can do something and the contributed interests, concerns and suggestions are relevant for the results potentially (14). Before the implementation of the Directive, the involvement of the public for the communities was voluntary and therefore has regularly taken place; this is now integrated as a new step. In this context, the question may arise if it would be helpful for the competent authorities, if these requirements (§ 47 III BImSchG) would be concretized by the law or legislature. This is not yet the case, but there is a publication for the national environmental authorities, which contains detailed recommendations for noise action planning (15).

Whether from the German rules and from the directive a subjective right to public participation follows and hence possibly also a right of action is to derive, is debatable (16). Contradicted by the fact that the noise action plan is not listed in the Annex to the Public Participation Directive (2003/35/EC). But the argument is to be used, that it is a so-called absolute procedural law, which can be permitted a lawsuit (17).

Practically - relative to Germany - the public participation is handled differently depending on the size of the community. The social science research has developed constructive ways to involve the public in the decision-making process. For this purpose a portfolio for each type of problem and planning activity exists which can be applied. Often-used tools are information about the preparation of a noise action plan in local press releases, publications via the Internet, discussions with residents as well as a public hearing in an Environmental Committee. Moreover, scenario workshops, round tables and mediation could be used. The German Federal Environment Agency has supported these important activities by a model project (18). In this project, a novel cooperation procedure was tested at the city of Leipzig, which followed a bottom-up approach. Within the project, various workshops and citizens' forums have been successfully performed.

4. CONCLUSIONS

The involvement of the public into decision-making processes is an essential part of a modern noise reduction strategy. The activities for the realization of public participation are convincing. In many cases, it is an analytical task, to determine the possible consequences of different options in all its complexity and elaborate proposals for improvements. On the other hand, the deliberative task to find on the basis of an exchange of arguments an effective, efficient and above all acceptable solution of a complex problem is a challenge which can be solved. Summing up, the respective activities during the last years reveal that we are on the way to a planning culture based on cooperation and integration. The broad public participation as possible is therefore a core element of a noise reduction strategy that should be continually further developed. Only on this basis, the citizen-sided confidence in decisions as well as the neutrality of the decision makers is enhanced and if damaged, little by little recovered.

REFERENCES

1. 13rd Convention on Access to Information, Public Participation in Decision-Making and Access to

- Justice in Environmental Matters, Entry into force: 30 October 2001.
2. Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC - Statement by the Commission Official Journal L 156, 25/06/2003 P. 0017 - 0025.
 3. Erbguth W, DÖV 2012, 821.
 4. Ekardt F. NVwZ 2012, 530 (534).
 5. Gurlit E. Neue Formen der Bürgerbeteiligung? - Planung und Zulassung von Projekten in der parlamentarischen Demokratie, JZ 2012, 833-841.
 6. OVG Rheinland-Palatinate, decision of 25.01.2005, 7 B 12114.04, Rn. 22 f.
 7. Kopp/Ramsauer (fn. 6), introduction I, Rn. 36.
 8. Directive 2002/49/EC of the European Parliament and of the Council of 25 June 2002 relating to the assessment and management of environmental noise, Official Journal EC L 189 of 17.07.2002, p. 12, last amended on 22 October 2008, Official Journal EC L 311, p. .1
 9. Lärmkartierung und Lärmaktionsplanung (noise mapping and noise action plans) Federal Environment Agency, Germany, www.umweltbundesamt.de.
 10. Gesetz zum Schutz vor schädlichen Umwelteinwirkungen durch Luftverunreinigungen, Geräusche, Erschütterungen und ähnliche Vorgänge (Bundes-Immissionsschutzgesetz – BImSchG) Act on the Prevention of Harmful Effects on the Environment Caused by Air Pollution, Noise, Vibration and Similar Phenomena (Federal Immission Control Act - BImSchG) in the version promulgated on 17 May 2013 (BGBl. I p. 1274), as last amended by Article 1 of the Act of 2. July 2013 (BGBl. I p. 1943).
 11. 34. Verordnung zur Durchführung des Bundes-Immissionsschutzgesetzes (Verordnung über die Lärmkartierung – 34. BImSchV) (Thirty-fourth Ordinance on the Implementation of the Federal Immission of Control Act (Ordinance on noise mapping – 34. BImSchV)) of 6 March 2006, Federal Law Gazette I p. 516
 12. BVerwGE 22, 343 (344).
 13. Schröer T, Segmentierte Lärmbetrachtung - ein Auslaufmodell?, NZBau 2007, p. 568-570.
 14. Sauer J, DVBl. 2012, 1082 (1088).
 15. Bund/Länder-Arbeitsgemeinschaft für Immissionsschutz (LAI), Hinweise zur Lärmaktionsplanung (Federal / State Working Group for Pollution Control (LAI), Notes on the noise action planning) amended on 18. Juni 2012
 16. Schulze-Fielitz H. GK-BImSchG (Stand 2007).
 17. VG Hanover, decision of 16.06.2010 – 4B522/10.
 18. Supplies T, Elsässer R, Mothes F. Lärminderung durch Bürgerbeteiligung, Das Modellprojekt: Mach's leiser - Mitwirken bei der Lärmaktionsplanung in Leipzig (Noise reduction through citizen participation, the model project: Mach's quieter - Assist with the noise action planning in Leipzig, texts 23/2013, Federal Environment Agency, Dessau-Roßlau.