



Implementation of the ELD – the civil society experiences

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Background

- In 2016, Justice and Environment (J&E, a 12 country network of public interest environmental lawyers) has performed two projects in the field of ELD: a comparative practical case analysis (in 4 countries) and a toolkit for raising the capacity of NGOs and local communities in ELD matters (6 countries participated)

Ways of fitting ELD into national laws

- a) new, single ELD law prevails;
 - b) amending existing laws according to ELD;
 - c) parallel use.
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- old laws : broader scope, better elaborated responsibility of the operators
 - new laws: stronger public participation provisions, better focus on prevention

ELD authorities

- a) single (environmental) authorities;
 - b) other authorities, such as disaster prevention authorities, water management authorities, fire departments and municipal level authorities;
 - c) authorities that are responsible for permitting and „peace time“ monitoring of the relevant operations.
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- more authorities might mean more resources, different professional contributions and also mutual control;
 - a satisfying level of harmonisation of their efforts are needed

Strict liability

A civil law concept (for dangerous activities):

- a) No need to prove the causal link (the harm was caused in connection with the operation)
- b) No fault shall be established (but *vis maior*, third persons' crime)
 - use in administrative law is not clarified
 - materials, effects, prevention etc. are clarified by the authorities *ex officio*

„Environmentally harmful environmental protection”

- E.g. waste management (especially waste water treatment) or alternative energy production
- A stringent financial sanction, obligation of application of new protective instalments or banning the operation would entail serious environmental consequences
- They typically consider themselves as immune from the legal consequences of environmental harm they cause by their activities

Stakeholders

- The operator: economic control above the activity (the closest ones in the causal link or those who seem to be the best debtors) or the holders of certain administrative permits (economic and administrative logic)
- Municipalities (wearing at least two hats)
- Others, e.g. local businesses and insurance companies

Experts

- timely,
- thorough,
- not prohibitively expensive,
- trustworthy and unbiased.

Role of the chambers of experts, detailed reasoning to the expert opinions, more resources or independent fund for NGOs, local communities and other stakeholders to apply their own alternative experts

Public participation

- Conservative national implementation laws: “concerned”, “interested” or “having rights”, and other conditions (time of operation, field of activity, territorial scope of activity etc.)
- Hesitant implementation: clarification of the conditions in almost every cases
- Both the relevant laws and the authoritative legal practice change frequently
- The results of these factors ranges from notifier or observant through having certain participatory rights (access to information) to full legal standing

Timeliness

- first measures after revealing the environmental emergency come quite quickly
- the whole ELD procedure that establishes the legal responsibility and implement the decision takes years
- legal remedies (annulation of the first instance decision, new decision, annulation again etc.)

Factors are: interpretation of strict liability, complicated technical issues, multi-authority and multi-stakeholder features of the ELD cases, procedural tricks of the operator etc.

Capacity building, publicly available databases

- Publicly available databases
- Business secret, intellectual property
- Prestige viewpoints at the investors and at the operators