Public participation and policymaking in Hungary

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In a democracy, the government needs to be held to account by citizens. Citizens exercise this control indirectly by selecting elected representatives who make policy and delegate decisions to government ministries. But much government policymaking occurs in ministries that are controlled by the legislature and are poorly monitored. There are good reasons for delegating decisions, such as the expertise of officials and legislators’ lack of time, but the justifications for delegating to ministries do not vitiate the need for public officials to consult with businesses and worker and civil society groups. Officials may have the ultimate authority to make policy under delegations of legislative authority, but they need to make these choices in a transparent way after listening to those with an interest in the outcome.

Introduction

The transition to democracy in central and eastern Europe should include reforms that promote public comment on draft policies and that hold public officials to account when they exercise delegated authority. Yet in practice public participation is a weak link in this transition. Democracy is not fully consolidated. Environmental policies are particularly salient because they are often of great concern to ordinary people, impose costs on existing businesses and require the aid of expert professionals. This area is also of considerable interest to the European Union, which has made compliance with its policies a condition of accession and has supplied crucial organisational, professional and financial support to the Ministry of the Environment and Water.

As a case study, this article looks at environmental policymaking in Hungary, a relatively advanced transition economy but one in which challenges to public participation in policymaking remain. The article examines the important role of a handful of Hungarian civil society organisations, but stresses the relative weakness of the organisational landscape and of the groups’ legal rights to participate in policymaking.

It also outlines the policymaking process in Hungary, looking at how citizens and organisations can participate, briefly discussing the overall organisation and efficacy of environmental groups, then focusing on the behaviour of environmental organisations in Hungary.

Public participation

The problem of implementing a multitude of vague laws has been particularly acute in central and eastern Europe during the transition period. Legislatures have been described as “law factories” – producing many laws rapidly in areas where the parliamentarians are uninformed about the technical details. That is why the Hungarian government, like others in the region, has faced a massive problem of implementation that requires the government to promulgate general rules to give clarity and specificity to legal mandates.
Public participation in the formulation of these rules would enhance their legitimacy. However, public participation outside of elections is not well institutionalised. Although Hungary has an administrative code and recognises the need for reasoned decision-making within the government, there is no legal requirement to publish draft rules or give outsiders general participation rights.

However, the environmental area is relatively open; draft laws are routinely accessible to the public either through the official web site of the Environmental Ministry or through postings on sites maintained by civil society groups. Public input is aided by a new Parliamentary Commissioner (Ombudsman) for Future Generations who accepts petitions from individuals and groups and “shall express an opinion on drafts of statutory instruments and other governmental motions connected with his tasks, and may make a proposal for legislation in his sphere of tasks.” He “may also participate in obligatory public hearings” within his sphere of tasks.

Formal hearings open to the public are uncommon, and even when they do take place, appear to be of limited importance to the outcome. The constitution authorises the government to issue decrees, but they must not conflict with statutes or with higher ranking legal norms. Fundamental rights cannot be regulated by executive decrees alone.

Hungary’s Law on Normative Acts, originally passed in 1987 at the end of the socialist period, specifies that the government must consult with “citizens – directly or through their representative bodies (art.19).” Unfortunately, the Law does not create legally enforceable rights, and the Constitutional Court has not been sympathetic to attempts to build consultation requirements into the constitution. In 2001 it held that consultation was not constitutionally required unless the groups to be consulted were explicitly listed in the statute. So the Law is essentially advice to the government to consult broadly. It has not been a way for civil society groups to claim legal rights to participate in policymaking.

Advisory councils
Advisory councils are permanent bodies with shifting individual membership that review a range of government proposals and sometimes initiate studies on their own. For example, the National Environmental Council (NEC) reviews all draft laws and rules with an environmental impact and reports to the government. It consists of seven members representing the environmental movement, seven from business groups, plus the Minister of the Environment. The members are chosen by each of the three groups so the government has no role in appointing members.

In practice, the NEC has limited effectiveness. Although the government is obligated to provide drafts to the NEC and give it time to respond, this does not always happen. Frequently, the time given to respond is a week or two, even though the Act specifies 30 days for the review of environmental assessments. More fundamentally, the NEC cannot be characterised as a public forum and is not equivalent to an open hearing process. Rather, the interests and the people consulted are defined ex ante, not issue by issue.

Role of the constitution
The constitution gives citizens the right to learn about and disseminate information of public interest. The 1992 Freedom of Information Act (FOIA) codified this right and the Environmental Protection Act also contains a freedom of information provision. Civil society groups use the FOIA to push for the disclosure of internal government drafts but with mixed results. The Act has an exception in article 19(5) stating that: “working documents and other data prepared for the authority’s own use, or for the purpose of decision making are not public within 30 years of their creation. Upon request, the head of the authority may permit access to these documents or data.” In 2000 the Ombudsman, responding to complaints from civil society, pointed out that some ministries treat drafts circulated to outsiders as exceptions while others do not. He argued that the line between public and private drafts needs to be clarified.

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11. 10. See its web site at: www.oktt.hu/?p=okt.
13. 12. Hungarian constitution, article 61 (1).
in light of the public interest in understanding and debating proposed rules and laws.

In short, mechanisms for consultation exist, especially for environmental policy. They mostly take the form of consultation committees with an advisory role that are more or less independent as far as membership is concerned. Overall, there are no general legal requirements governing notice, participation and reasoned justification with respect to government strategic policymaking and the issuance of decrees and rules. However, environmental policymaking is relatively open to input from non-governmental organisations (NGOs) although, as a recent study documents, it is still weakly institutionalised and subject to tensions between government and non-governmental participants.\textsuperscript{15}

Organised groups are key

Improved participation rights would mean little, however, unless there are organised groups willing to be part of the process. If groups simply organise street protests or engage in self-help, a more open administrative process will have minimal impact. This concern is a real one in central Europe. Businesses and trade unions have umbrella organisations, some with official status. Statutory self-governing institutions exist for regions and municipalities and for groups such as students, professionals and academic researchers. Organised political parties contest elections, and those in opposition are active critics of the incumbents. Nevertheless, there is one important weakness: only a small portion of the non-profit sector engages in advocacy, and it is poorly funded and lacks broad-based membership.

To have staying power, civil society groups need professional staff and fairly stable budgets. Only a small number of organisations appear to be in that category. This means that on any given issue the groups capable of monitoring government and participating in policymaking is small. Professional advocacy, beyond grassroots mobilisation over particular issues, is weak and may face more serious problems if foreign support falls without an increase in domestic funding.

Advocacy for environmental issues in Hungary

Environmental activism in Hungary began at the end of the socialist period with a small core of activists able to mobilise large numbers of people to protest particular issues. During the 1990s many new groups were formed but most are small, volunteer organisations with few funds. Several more professional organisations play a key role in government policymaking. The most active are members of several specialised umbrella organisations dealing with issues such as air pollution, waste management, energy and nature conservation. The key members of most of these groups have interacted for most of the transition period. They have an annual National Gathering of Environmental and Nature Protection NGOs and are advised by the Environmental Management and Law Association (EMLA).\textsuperscript{16} But even these groups depend on the energy of a few committed people, have few funds and rely on grants from public and private sources that may be cancelled after a few years.\textsuperscript{17}

Case studies by Pickvance in the mid-1990s, the author’s own interviews in 2002, and more recent work by Aron Buzogány, confirm that it is possible to establish non-partisan NGOs that gain the attention of political bodies through a reputation for expertise and for responding to genuine citizen concerns.\textsuperscript{18} Relations with public officials are sometimes rocky, but the groups’ access to the media and public sympathy for their efforts have helped to sustain them and have given them some influence. Some politicians support these groups as a way to increase the salience of environmental issues inside government, and there is some movement of people back and forth between government and NGOs.\textsuperscript{19} In contrast, some groups distrust the state, limit their dealings with public officials and claim to be “anti-political.”\textsuperscript{20}

Opportunities in the environmental sector

In the environmental sector the legal framework establishes that the basic statute requires consultation, and an executive decree provides more specifics. The most

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detailed provisions, however, are directed at participation in decisions about individual projects at the local level. Legal provisions concerning participation in policymaking are vague and not judicially enforceable.

However, pressure from the international arena also encourages participation. The Aarhus Convention of the United Nations Economic Commission for Europe was ratified by Hungary in 2001, and it requires strengthened democratic environmental governance. European Union directives require information to be provided to the public and environmental impact statements to be prepared. The European Union has also provided funds and expert advice on consultative processes, but its emphasis is on expert input and neo-corporatist structures.

So there are relatively good opportunities for civil society to take part in the formation of environmental policy, and these may increase over time. However, the most important problem may not be opportunities for participation so much as the vulnerability of civil society groups, with their dependence on government and international funding and on the energy of a small number of unusually committed individuals.

NGOs face three interlinked difficulties:
- financial and human capacity
- credibility
- effective access to the policymaking process.

Each is summarised in light of the author’s interviews conducted in the autumn of 2002 with leading members of most of the major policy-oriented groups and umbrella organisations. More detail is available in Rose-Ackerman, and, of course, the specifics of the findings would need to be modified to reflect current conditions.

The groups fall into five broad categories:
- a group in decline but that was a key player in the transition process
- a moderate membership-based group founded in the midst of the Socialist period
- the branch of a moderate international environmental group
- umbrella groups and professional staff
- local groups with national visibility.

Financial backing is crucial for effectiveness
The groups receive equal funding from the Hungarian government, foreign foundations and public bodies, with small contributions from individuals and domestic businesses. Typically, neither membership fees nor the 1 per cent tax check-off is a major source of funds. Multinational firms with business interests in Hungary provide some project funding to a few groups. Some groups run related businesses that bring in considerable revenue. None appeared to have a sizeable endowment.

Government funding comes from several grant programmes administered by the Ministry of the Environment with non-profit input and through project funds from various ministries, the government and parliament. The consequences of failing to receive government funds can be harsh. For example, consider Danube Circle, a well-known group that mobilised mass protests in the 1980s to protest against the government’s plans to build a dam on the Danube. In the autumn of 2002 it did not have any paid staff, a small membership base, an annual budget of about HUF 1.5 million (just over €6,000) and it shared an office. It failed to receive government funding for professional development in 2002 and did not apply for funds from the ministry. It sees its mission as being a critical voice that provides competent technical assessments of policies.
and projects. Nevertheless, it has limited impact simply because of lack of funds.

The other groups were all struggling financially and depended heavily on government funds. The funding picture that emerged from the interviews was not very secure. Domestic private donations from individuals provided only a tiny share of revenue. Business support was generally weak and mostly project-based. Support from abroad, from both official sources, such as the European Union, and foundations, was critical for several groups but had no long-term staying power. Government support was essential. Even if some funds were given with no strings attached, the ability of these groups to carry out independent advocacy activities may have been compromised. These groups must attract local private funds if they are to survive as strong voices for environmental causes.

**Credibility**

A second concern is whether the government has any reason to take environmental groups seriously. The groups followed two overlapping strategies: the first is to develop grassroots support and to educate people about environmental problems – access to the media is a key resource here and has been used creatively by several groups. The second is to gain credibility by providing expert opinions to public officials.

The major environmental groups are not mass organisations. Most of them work to mobilise public support for issues and seek publicity in the media to increase the salience of issues. For example, Green Future was founded by scientists in 1989 to raise awareness of the problem of hazardous pollutants in a mixed industrial/residential district of Budapest. The group worked to persuade people of the health problems they faced and it eventually attracted large numbers of neighbourhood residents to its meetings. Although Green Future tries to mobilise people around particular issues, it is not a mass membership or client-based organisation. Instead, in 2002 it had 20-30 members of whom 8-10 were active.

The alternative strategy of providing expert advice and critiques of draft laws and regulations is the focus of the umbrella groups and the World Wildlife Fund (WWF), for example, although they also sponsor public events and forums. Only the WWF has enough resources to carry out original research designed to put new issues on the government’s agenda.  

**Effective access to the policymaking process**

The groups’ relations with government are a function both of legal and political practice and the shifting personalities inside government. When a policy is under consideration, a group will request a copy of the draft law or regulation. If the ministry stalls the group can go to the media, and the threat of bad publicity has sometimes been effective. For example, HuMuSz, a group concerned with waste and recycling, staged a media event in which they used a catapult to shoot waste paper at the Environmental Ministry in a successful effort to embarrass the ministry and obtain a copy of a draft law dealing with waste and packaging.

Going to court to force greater openness or to challenge decisions after they are made is not a fruitful approach. In principle, it is possible to ask a court to order the Environmental Ministry to release a draft but, in practice, this is not a realistic option. It remains to be seen if the Parliamentary Commissioner (Ombudsman) for Future Generations will have enough leverage to open up the process.

However, legal challenges are sometimes worthwhile. EMLA, whose long-time head is now the Ombudsman, has brought several hundred cases and has assisted on many others. In one 18-month period EMLA initiated 42 new cases and provided advice on 200 smaller cases. Its annual reports and web site outlines its activities. The cases appear mainly to be challenges to particular development projects or pollution from particular sources.

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27. The WWF is apparently still among the more well-funded and staffed groups in Hungary, according to Buzogány (2005).
Conclusion

The environmental sector in Hungary has some relatively well-established civil society groups, some of which date back to before transition to democracy began. Environmentalism is associated with opposition to the previous (socialist) regime and gains public support as a result. However, the economic strains of transition have made strong environmental protection seem a luxury as they are perceived to preclude economic development. Furthermore, sensible environmental policy requires participants in the debate to be informed about scientific and technical issues. The environmental groups try to be technically competent themselves and to involve ordinary people in protests and educational events. They have been only partly successful, which is hardly surprising given the difficulties of securing funding, motivating ordinary citizens, educating their own staff and getting effective access to government processes that are themselves in flux.

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