

La buena gobernanza ambiental: el papel de las instituciones ombuds en la defensa de los derechos medioambientales

Vitoria, mayo de 2018

Papel de la ciudadanía y sus propuestas para la mejora de la protección del medio ambiente

La creciente incapacidad de la legislación para proteger el medio ambiente.

Normativa ambiental en regresión

Un caso practico, la Refinería de Petronor en Muskiz, Vizcaya

The growing inability of legislation to protect the environment.

Environmental regulation in regression

A practical case, the Petronor Refinery in Muskiz, Vizcaya

1. Información

Normas complejas y crecientemente técnicas

Dificultades para comprenderlas y para acceder a información sobre su cumplimiento.

Falta de control.

2. Participación

Consultar no es participar

La falta de recursos y de capacidad de las organizaciones sociales

3. Acceso a la justicia

¿Acceso a la justicia o acceso a los Tribunales?

Dificultades en el acceso (formal y práctico) a los Tribunales

1. Information

Complex and increasingly technical standards

Difficulties to understand them and to access information about its compliance.

Lack of control

2. Participation

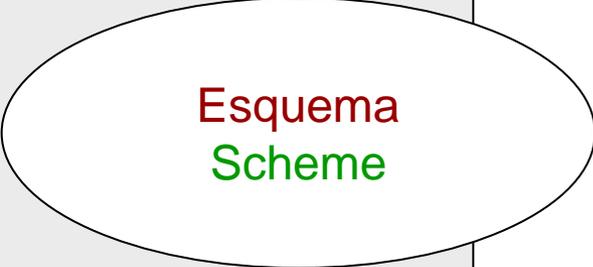
To consult is not to participate

The lack of resources and capacity of social organizations

3. Access to justice

Access to justice or access to the Courts?

Difficulties in access (formal and practical) to the Courts



Esquema
Scheme



Enlargement 2008:

Increase in emissions produced with the expansion

S02, 831.3 t / year, (7.0% of the previous ones)

NOx, 493.7 t / year, (14.7% of the previous ones)

Particles, 25.3 / year, (3.6% of the previous)

Health problems

The excess mortality in the area observed varies from 11% to 45% more deaths than expected (according to the basque average)

In particular for lung cancer and cancer of the upper air-digestive tract

the enlargement was authorized without consideration of its location or its effects on public health



Continuous incidents. At an average of 4 incidents a month, ten years ago. (about 500, for now)



1. Information

Complex and increasingly technical standards

the Court lacks technical knowledge that would allow it to conclude that the rules that are plead are applicable, since the reading of the rule can not be concluded if without expert evidence.

In other words, the Court says that it can not understand or apply the rule with a mere reading, without the help of an expert.

1. Information

Difficulties not only to understand the law but to access information about their compliance

European Pollutants Release and Transfer Register (PRTR)

Incomprehensible in Austria, Germany, Holland, Poland, Spain and the United Kingdom, according to a 2017 report on the BEE

Lack of control

In this way, the recognition of these rights of information, participation and access to justice in the technique of integrated control of pollution has caused the European Commission to consider its intervention in the control of compliance with regulations as less necessary (via the procedure of infringement), presuming that citizens and environmental associations have assumed their responsibilities in environmental protection and are effectively exercising them (Brussels, 4.12.2017 COM (2017) 727 final Report from the commission to the council and the european parliament on the application of Directive 2010/75 / EU)

lack of staff and adequate resources

These resources have decreased to varying degrees in all the countries of the Network. Their absence prevents any effort in favor of compliance with environmental legislation.

European Unión Network for the Implementation and Enforcement of Environmental Law , Repport of November 2017

2. Participation

To consult is not to participate

Participation should respond to the idea of "providing opportunities for stakeholders to influence decision from the early stages of a project or activity"

The lack of resources and capacity of social organizations

3. Access to justice

Access to justice or access to the Courts?
Difficulties in access (formal and practical) to the Courts

There have been (in Spain) regulatory reforms that make it difficult or impossible to access courts.

Free justice is not always effective, according to highly discretionary criteria.

And even when the fees are affordable and the professionals work for free or almost, in case of losing a lawsuit, the losing party must take care of

all the costs that this has generated to the counterparts.

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The complexity and technical nature of the standards require expert evidence to be carried out by qualified experts that are often simply impossible to find on industrial pollution issues.

Conclusions and proposals

Public information in terms of information on the content of environmental legislation should focus on the simplification of standards, the improvement of their legislative technique and even progress towards codification.

Public participation must go from being understood as a consultation to being a real possibility of influencing decision-making.

Those who suffer risks must be able to accept them with knowledge, or reject them.

The obstacles must be removed to obtain **Access to the justice** at reasonable cost and to guarantee that there are possibilities for citizens to have technical experts in legal proceedings.

Only Ararteko's work is useful in this process

By incorporating our case into its Annual Reports on several occasions, meeting with us and documenting itself, it has achieved, at least through Parliament, the creation of a Commission in which the six authorities responsible for the Refinery coordinate their actions in order to improve the surveillance of the Refinery.

It has not yet been able to get the affected citizens to be in any participation group, but it is possible that it will be in the future.

***“No other authority is presented with the case of
having to defend a person
or a group of people against an unobjectionable one - technically speaking,
application of the law.
I am speaking about the application of an administrative judicial resolution
that is adjusted to the law but that
may mean a violation of the fundamental rights of a person”***

Carlos Constenla
President of the Latin American Ombudsman Institute