Serbia Mining: Guide for Investors, Importance of Public Debate in Mining Exploitation Projects

Categories : Mining

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In the Article 41, obligatory organization of a public debate is envisaged in two very broadly and not precisely defined cases (if “the regulation of certain issue is significantly changed” by the law or if the law “regulates an issue in which the public is particularly interested“).

We do not have an anwer to the question on which basis it is estimated whether the issue which is being regulated “is particularly interesting for the public“, i.e. who determines whether the draft law ”the regulation of certain issue is significantly changed“? Formally, it is envisaged that the law proponent proposes, and the competent board makes the decision. So basically the law proponent himself assesses on the basis of certain criteria whether either of the stated two conditions is fulfilled. In fact, he does not even need to consider this at all with the existing solutions. In the latest amendments to the Rules of Procedure there was an attempt to eliminate these dilemmas, but certain inaccuracies still remained.

A spatial issue is linked to the fact the “possibility” of public debate is envisaged only in the case of preparation of laws, and not in the case of bylaws. We should not remind that in certain fields, bylaws regulate the issues in which the public is much more interested, i.e. they are of greater and more particular public concern (case “aflatoxin” can illustrate this only to a certain extent). This is also supported by the by the fact that the observed practice, particularly in certain areas, is that also due to the need for an accelerated adjustment of the national regulations with the EU regulations, in certain cases, only some basic issues are regulated by the law wording, and that everything else (often the most complex parts of certain subject matter) is left to be regulated by bylaws later on.

In our practice, there is an attempt to represent the ”public debate“ as the participation of the public, which is a narrowing down of the content of this concept. So, the participation of the public cannot be narrowed down to the “public debate” nor to the “public hearing” that is held in the National Assembly afterwards. The participation of the public is a wider concept and it includes various activities through which a partnership with the public is built. It would probably be best to apply the relevant provisions of the Aarhus Convention as consistently as possible, which, though realtively generalized themselves, in certain parts can serve as a signpost for interpreting the sense of the concept of the “participation of the public”. This particularly in the part that obliges the “public authorities “ to carrie out certain activities “in the early phase of the procedure when all possibilities are open.“

In accordance with the existing normative solutions, the participation of the representatives of the local self-government in the preparation and adoption of the state regulations is still just a “possibility” and nothing more. The delicacy of such state is particularly visible with respecrt to the laws by which certain powers are transferred to the units of local self-government, or other obligations and rights are prescribed to them.

The coordination of activities of the authorities (both horizontally and vertically) is partially lefto to the assessments of the authorities officials whose competence a significant part of the public has serious reasons to not believe (primarily considering the manner in which they are nominated by the political parties). The existing regulations governing these issues are mostly at the level of general norms in which several points can be identified in which the competences of various authorities overlap. In the case of the activities referring to the procedures for issuing exploration permits, i.e. permits for the exploitation of mineral resources, inconsistencies of the existing coordination system are clearly manifested, particularly when it comes to the relations between ther republic and local levels of government.

The issue of responsibility of entities carrying out activities that refer to the exploration and exploitation deserves special and much more detailed analysis. The obligations regarding the recovery, i.e. remediation of locations are governed by various regulations (Law on Environmental Protection, law on Mining and Geological Exploration, regulations within the field of planning and construction, etc.), but the practice shows significant problems in the interpretation and application of relevant norms).

The possibilities for participation of the representatives of economy in the process of preparation and adoption of regulations can be also considered limited, with all the consequences that such state carries along. It is incredible that, according to the existing provisions of the Government’s Rules of Procedure, the proposant of regulations is not obliged to obtain the opinion of the business sector (or economic association), at least for certain kinds of regulations. In a little bizarre way, the case “Aflatoxin“ illustrates various flaws in the existing system for bringing the national regulations in accordance with the EU regulations and lack of consultation with the interested entities, regardless of the manner in which various government representatives (former and present) are trying to explain this.

The transparency of the procedure is a separate issue. The issue of accessibility of information about the conformity of the national regulations with the EU regulations also remains open, also including the tables of conformity. The public is concerned with and interested in seeing how and on which basis the authorities have been assessing if certain national regulation is in conformity with the relevant EU regulation. The previous practice in this respect is not satisfactory, and the Proposal for Regulatory Reform Strategy 2013-2016 does not contain a separate part related to this issue.