

Case study
Review of
a new motorway project decision
Hungary

1.

The rules of the administrative consent procedure have been significantly modified since 1 January 2006. It is difficult to survey all the provisions connected with motorways. The special Act for the Development of the Motorway System (Act CXXVIII of 2003) establishes seven phases of the procedure:

a) lodging the preliminary environmental study (Here alternative lanes shall be provided, the engineer who prepares the plans has to be in permanent contact with the environmental authority.)

b) determining the lane by decree (The Ministry of Traffic announces the chosen lane of the road in a decree.)

c) lodging the detailed environmental impact study (The National Environmental Inspectorate, which as a main rule acts at the appellate instance, has first instance competence in the environmental consent procedure of motorways. At both stages of the environmental consent procedure (preliminary and detailed) the Inspectorate (hereinafter: environmental authority) shall ask for an expert opinion of the Central Traffic Authority. Based upon the petition and the preliminary environmental study the

environmental authority may initiate two kinds of procedure: either it requests a detailed environmental impact study or it issues a permit for the use of the environment. Preceding the above mentioned procedures it may carry out a preliminary examination where it announces the main data of the planned activity and based on the remarks of the public it holds an oral hearing. Thereafter it decides which procedure it shall carry out and what the content requirements of the detailed environmental impact study shall be. In case of a detailed environmental impact study there is a possibility to appeal against the decision to the leader of the environmental authority.)

d) submitting a request for expropriation (The leader of the county (regional) public administrative authority handles the expropriation procedure and establishes damages for restricting the use of real estates.)

e) submitting a request for construction (The Central Traffic Authority involves expert authorities into its procedure eg. fire protection, police, protection of soil etc. In the course of the procedure an examination on the spot is carried out. If there are more than thirty persons affected, they can be informed about procedural steps in public advertisements as well. The construction permit is valid for one to three years and can be prolonged twice for a maximum period of two years each time. The environmental authority has a special standing: since the environmental impact assessment precedes the construction consent procedure, the environmental authority cannot take part in the construction consent procedure as an expert authority. However, it may happen that there is a need to interpret the environmental impact assessment for the traffic

authority. Therefore the traffic authority can ask for an "expert opinion" of the environmental authority in which it gives an interpretation of the content of the environmental impact assessment.

f) issuing the construction permit (There is a possibility to submit an appeal to the traffic authority of second instance and after that the client can file a suit with the Capital Court which examines the lawfulness of the permit. The judgement of the Capital Court can be reviewed by the Supreme Court.

g) opening the motorway for the public.

2.a.

In the environmental consent procedure there are detailed rules regarding the involvement of the public: an intelligible summary of the petition and the relating documentation shall be made public on the authority's website and in newspapers. The documentation shall be forwarded to the local government. The environmental authority shall hold a public hearing at the affected local government(s). Remarks shall be examined with the involvement of the expert authorities and the environmental permit shall be made public. The traffic authority is not obliged to hold an oral hearing but if it thinks it necessary it may hold one. The affected real estate owners shall be informed about the examination on the spot.

2.b.

The examination on the spot, the public hearing and the oral hearing shall take place in the first instance

procedure but the second instance authority may also order them to be held.

2.c.

The affected person loses its right to appeal only if the administrative decision becomes final at first instance.

3.

Significant procedural interim orders of the authorities can be challenged with an appeal to the second instance authority and after that at the court just like in the case of a decision on the merits. The court shall examine the petition within thirty days and shall order deficiencies to be supplemented. Within another thirty days it shall determine the date of the first hearing, which is to be held within four months. At the request of the parties the court may suspend the execution of the permit.

4.

All six clients enlisted can be party to the case because any person whose right, obligation or interest is directly affected by a decision may challenge that decision. In addition, an authority can be party to the case if it is essential in order to be able to fulfil the tasks assigned to it. The Hungarian Act on the General Rules of Environmental Protection entitles associations formed by citizens to represent their environmental interests and other community organisation that do not qualify as political parties or interest representations - but are active in the impact area -

to have the legal status of being a party in state administration procedures of environmental issues.

An association of a neighbouring state can be a party only if it is active in the impact area.

5.

Plaintiffs can refer particularly to infringements of their individual rights, however, if it involves public interest, it may also be referred to. The plaintiffs may object to substantive, procedural mistakes and unlawful interpretation of the law applied.

6.

The scope of judicial review is not restricted. Courts examine infringements of national and community law as well. A procedural mistake shall lead to annulment of the decision only if it has an influence on the merits.

7.a.

Both the environmental impact assessment decision and the motorway construction permit can be challenged separately. Therefore, community environmental law aspects can be examined only in the judicial procedure initiated to review the environmental impact assessment decision. Of course infringement of the community law renders the decision unlawful and results in annulment.

7.b, c, d, e.

There have been no such cases up until now, so the question is mainly theoretical for Hungary. It is probable that the

court would annul decisions on project plans which are incompatible with the directives mentioned.

8.a.

There are no special provisions for environmental invalidity. The general rules of the administrative procedure concerning annulment are the following (Act CXL of 2004, Article 121):

The decision shall be annulled if

- a) based on community legislation, an international treaty or a provision by the law the Hungarian authority is not entitled to proceed in the given case;
- b) The case does not belong to the powers and territorial competence of the proceeding authority;
- c) the decision was brought without requesting the opinion of the expert authority or the expert opinion was neglected;
- d) the content of the administrative decision was influenced by a crime, supposing that commission of the crime was established in a final judgement or that lack of evidence does not exclude the possibility of rendering such a judgement;
- e) the body making the decision did not have a quorum or the decision did not get the necessary votes;
- f) the content of the decision is contrary to the judgement which was rendered in the same case earlier and in which the court instructed the authority to repeat the procedure.

In these cases decisions on project plans are completely void, therefore they shall be annulled.

8.b.

The procedural rules of administrative judicial review make the annulment of decision possible. Neither in cases of environmental protection, nor in cases of motorway construction entitles national law the courts to modify the administrative decision. (In some important types of cases, however, the law authorises the courts to act so.)

8.c.

The General Rules of Administrative Procedure (Act CXL of 2004) provide possibility for the authorities to modify their decision during the judicial procedure. This provides an opportunity to correct minor deficiencies.

8.d.

1. If the noise or air pollution is justifiably unbearable and the planning does not care for this problem, it shall be annulled.

2. According to the law local governments cannot have divergent project plans in the form of a local government decree because the Act on National Territory Development Plan sets forth that the lane of the motorway announced in a ministerial decree binds the local government.

3. The national environmental authority has the legal status of being party to the case.

4. The farmer can be a party to the environmental consent procedure but if the expropriation procedure is finished, the loss of a part of his farmland does not entitle him to take part in the motorway construction case.

5. National environmental associations can be party to environmental cases.

6. An association of the neighbouring state must be active in the impact area in order to be able to participate as a party.

9.

The General Rules of Administrative Procedure provide possibility for the authorities to modify their decision during the judicial procedure.

Article 114 stipulates the following:

- a) If the authority establishes that its decision infringes legal rules and it has not been examined by the competent body or by the court proceeding in administrative cases, it may modify or withdraw its decision.
- b) The authority can modify or withdraw its decision only once and within one year from the delivery of the decision unless law provides otherwise.
- c) The decision cannot be modified or withdrawn if it violates rights acquired and exercised bona fide.