

1. Administrative consent procedure:

Please give a short outline (no specific details) of the administrative consent procedure applying to project planning in your national legal order (procedural steps, time-limits, competent authorities, involvement of lobby groups and technical experts).

Key phases in site plan preparation and adoption procedure are the following:

- Proposal of the minister of transport concerning the preparation of a site plan submitted to the minister of environment and spatial planning,
- Site plan preparation program is identified by the minister of environment and spatial planning,
- Award of contracts to obtain providers of design and planning documentation,
- Drafting of expert documents for a comparative study of alternatives, including a proposal for the selection of an alternative,
- Production of a comparative study of alternatives, including a proposal for the selection of an alternative,
- Discussion and approval of the alternative by the Government of the Republic of Slovenia and the National Assembly of the Republic of Slovenia,
- Obtaining conditions from competent authorities for the production of a preliminary project and other expert documents necessary for the draft site plan,
- Production of preliminary project, environment impact report and other expert documents necessary for draft site plan,
- Production of draft site plan and modifications and amendments to municipal planning acts,
- Adoption of the decision concerning public presentation of the draft site plan and modifications and amendments to municipal planning acts at the Government of the Republic of Slovenia,
- Public presentation of the draft site plan and the modifications and amendments to the municipal planning acts at municipalities,
- Preparation of positions to comments and the decision of taking account of the comments from the public presentation, adopted by the minister of environment and spatial planning,
- Production of amendments to the preliminary project, environment impact report and other expert documents for the draft site plan, by taking into consideration the adopted positions to comments from public presentation,
- Production of draft site plan and proposal of modifications and amendments to municipal planning acts,
- Obtaining approvals and opinions to the draft site plan,
- Adoption of modifications and amendments to municipal planning acts at municipal councils,
- Adoption of a regulation on site plan at the Government of the Republic of Slovenia (“planning decision”).

2. Public involvement:

a) Is there any public involvement and/or hearing of individually affected parties

during the administrative consent procedure?

Public involvement (regarding the environmental impact of the project) is ensured during the Administrative consent procedure. In certain cases (when the conditions determined by General Administrative Procedure Act are met) a hearing of individually affected parties can also be held.

b) If yes, at which stage of the procedure and in which form?

Public involvement is ensured during the phase of the public presentation of the draft plan. The public is entitled to express comments and opinions and the results of the public participation are taken into consideration when making a decision about issuing environmental consent. During this phase it is also possible to hold a public hearing about the draft site plan.

c) Do affected parties lose their right to challenge the planning decision before the courts if they do not make use of this form of public involvement?

Yes, they do. Environmental consent (or the refusal of it) falls within the category of administrative acts (individual acts) and the review of administrative acts lies within the competence of the Administrative Court. Whereas the judicial review of the legality of the environmental consent is ensured in administrative dispute, legality of the Regulation on site plan may not be contested on the grounds of illegality of environmental consent.

3. Judicial process:

Please give a short outline (no specific details) of the judicial process applying to project planning decision (pre-trial proceedings, time-limits, competent courts, appeal, interlocutory injunctions).

In the case-law of Slovenian courts (The Supreme Court of the Republic of Slovenia) it has been established that a Regulation on site plan is a general act, which does not regulate individual relationship and therefore its legality may not be contested in an administrative dispute. It is the Constitutional Court of the Republic of Slovenia that decides on conformity of a Regulation on site plan with the Constitution and laws. For submitting an initiative to begin the procedure for the assessment of the constitutionality and legality Regulation on site plan no time-limit is prescribed. There is no appeal against the decision of the Constitutional Court. Pursuant to the Constitutional Court Act (Article 39) Constitutional Court may completely or partly withhold the implementation of a law, regulation or general act, if irreparable and damaging consequences may occur through its implementation, until a final decision is reached.

As it has been mentioned before the judicial control of legality of environmental consent is ensured in administrative dispute before the Administrative Court. An action must be filed within thirty days of the receipt of the administrative act. It is, however, necessary for a

plaintiff to file a complaint against the environmental consent before going to court. The administrative body of second instance (Ministry of environment and spatial planning) decides on the complaint against the environmental consent (or refusal of it), issued by administrative body of first instance (The Environmental Agency). In administrative dispute the administrative court would rule on the legality of individual final act. Court of appellate jurisdiction in cases of administrative review is The Supreme Court of the Republic of Slovenia. The Environmental Protection Act stipulates that Regulation on site plan cannot be adopted before the environmental consent becomes final.

4. Standing:

- a) Do all of the above-listed plaintiffs have standing before your national courts?
b) If not, which are the reasons for their exclusion?**

An inhabitant of the residential area who is afraid of unbearable traffic noise and air pollution may participate in environmental consent procedure and he may contest the environmental consent before the court. Municipality also has standing before court (the Constitutional Court). It is the national environmental agency (The Environmental Agency) that grants or refuses the environmental consent as an administrative body of first instance. By itself, however, it does not have standing before court. If the environmental consent is contested before the Administrative Court the Ministry of environment and spatial planning as administrative body of second instance may file an appeal against a ruling passed in such an administrative dispute in the first instance. If a farmer loses parts of his farmland on the grounds of a decision, made in expropriation procedure (expropriation procedure is an administrative procedure), he may contest such an act before the Administrative Court. A national association for the protection of the environment, which participated in the environmental consent procedure by giving comments and opinions (in accordance with the provisions of the Environmental Protection Act) can also contest the environmental consent before the court. The Environmental Protection Act allows for the possibility and procedure for participation of another Member-State in environmental consent procedure, but it does not stipulate that a non-governmental organization of another state could directly participate in environmental consent procedure.

5. Scope of claims:

Are the above-listed plaintiffs only allowed to claim infringements of their individual rights (e.g. illegal expropriation of farmland, pollution of their private property) or may they claim infringements of public interests (e.g. adverse effect on the environment) or the unlawfulness of the planning decision in general (e.g. because of procedural deficiencies) as well?

A farmer and an inhabitant are allowed to claim infringements of their individual rights. A national association for the protection of the environment claims infringements of public interests regarding the protection of the environment. In administrative dispute they may challenge administrative acts, issued in environment consent procedure and in expropriation

procedure, on the grounds of both procedural deficiencies and erroneous application of substantive law.

6. Scope of judicial review:

Do your courts review the lawfulness of a planning decision in every procedural and substantive respect or is the scope of judicial review restricted (e.g. to procedural aspects or clear and serious infringements of national or Community law)?

When deciding on conformity of a Regulation on site plan with the Constitution and laws, the Constitutional Court reviews the legality of the Regulation in procedural and substantive respect.

7. Which decision will your court take, if

a) the environmental impact assessment prescribed by Community law has not or not duly been carried out in connection with the project in question?

If the administrative court renders a decision that the environmental impact assessment procedure related with the planned motorway, prescribed by Community law and transposed into national legal order has not or not duly been carried out, it shall set aside the environmental protection consent and remand the case to the administrative authority that issued the contested administrative act.

Until the administrative court decision becomes final, the government of Republic of Slovenia is prevented from passing the Regulation on site plan, which represent one of the requirements for passing a construction license.

b-d) the project adversely affects a natural habitat in the sense of the EU-“Habitats Directive” or a birds sanctuary in the sense of the EU Birds Directive?

Both the Directive 92/43/EEC and Directive 79/409/EEC have been transposed into national legal order with Nature Conservation Act that place a special area of conservation (designated or potential) and a birds sanctuary area under the same category of special protection areas. Thus, the same answer applies to questions 7.b), 7.c) and 7.d).

Court’s finding that the projected motorway adversely affects a special protection area could be considered as a violation of substantive law or as a erroneous or incomplete determination of state of facts. In both cases the administrative court shall generally set aside the environmental protection consent and remand the case to the administrative authority that issued the contested administrative act. Only under certain conditions, however, the court shall modify the environmental consent issued by the administrative authority.

e) the project is likely to exceed the limit values of the EU-“Ambient Air Directive” (esp.

those for PM10/particulate matter)?

The administrative court shall generally set aside the environmental protection consent and remand the case to the administrative authority that issued the contested administrative act. Only under certain conditions, however, the court shall modify the environmental protection consent issued by the administrative authority.

9. Consequences of procedural and substantive deficiencies of the planning decision:

10. Are there - in your national legal order - any procedural and/or substantive deficiencies which regularly render a planning decision completely void?

The Constitutional Court shall annul an unconstitutional or illegal Regulation on site plan when it discovers that harmful consequences arising from this unconstitutionality have to be abolished. This abolition shall be retroactive.

11. For which kinds of rulings does your national legal order provide in this case (e.g. cassation of the planning decision or declaratory ruling establishing its nullity)?

The Constitutional Court Act provides for the declaratory ruling establishing its nullity.

12. For which kinds of rulings does your national legal order provide if the planning decision has only minor deficiencies /is not completely void (e.g. modification of the planning decision by imposing additional requirements such as noise barriers, speed limits or reforestation)?

If Regulation on site plan has only minor deficiencies, the Constitutional Court shall set aside unconstitutional or illegal Regulation on site plan. Invalidation shall be valid from the day after the publication of the provisions of the Constitutional Court on its abrogation, or after the time-limit determined by the Constitutional Court expires. Since the Constitutional court has only negative legislative powers, it cannot modify the Regulation on site plan by imposing additional requirements.

13. Which rulings are likely to be given in the cases of the above-listed plaintiffs?

Under the presumption that the plaintiffs will prove that the challenged Regulation on site plan resulted in harmful consequences for the environment in general and for the special protection areas in particular, the Constitutional court shall annul the Regulation on site plan.

14. Remedy of deficiencies

May procedural or substantive deficiencies of the planning decision be remedied during the judicial process? If yes, on which conditions?

As explained above, the procedural or substantive deficiencies of the planning decision in a form of Regulation on site plan cannot be remedied before the Constitutional Court. Such deficiencies may only be remedied in a prior environmental Impact Assessment procedure resulting in a final environmental consent.