

Citizen participation in Germany – some practical experiences

Author: Joachim Lohse

Why is citizen participation essential for good governance in modern democracies?

There is a growing trend in modern democracies towards giving the public the opportunity to participate in a wide range of decision-making processes. People are not satisfied with casting their votes in an election every four or five years. Rather, they also expect to be heard on specific issues during the legislative term between elections, and they want to hold their Member(s) of Parliament to account for how they are exercising the mandate that has been entrusted to them. In the absence of suitable mechanisms and instruments for citizen participation and dialogue, there is a significant risk of a rift between the political class and the rest of society, leading to a shrinking acceptance of representative democracy and to a rise in populist demagogues.

Public demand for participation is particularly strong when it comes to infrastructure and planning projects that will directly affect people's surroundings and their daily lives. Particular concerns include land-use projects (e.g. mining, farming, logging, hydroelectric dams); transport infrastructure (airports, motorways, railways); large industrial settlements and energy generation projects (e.g. the chemical and metallurgical industries, waste incinerators, power plants, wind energy); as well as urban development schemes such as new housing districts, urban expansion or new public transport systems. Individuals not only want to be informed early on about such projects, but they also want to understand why the projects are happening and present their point of view to ensure their interests are not overridden. With sufficient participation 'the way decisions are made should receive a higher degree of legitimacy' and, ideally, 'conflicts can be dealt with at an early stage and resolved before implementation' [1].

The development of citizen participation in Germany

Germany has seen a series of rather fierce conflicts between civil society movements and the government and administration, starting with the anti-nuclear protests in the early 1970s. These conflicts have been on a wide range of topics such as nuclear reactors and radioactive disposal sites, airport planning, air and river pollution, large industrial settlements and, more recently, the issue of coal mining as a major threat to our climate. Faced with these protests, politicians were forced to learn that these kinds of projects could no longer be imposed on most of society, and it was preferable to offer a structured and more 'civilised' opportunity to discuss these controversial plans with civil society.

The German Federal Emission Control Act was passed in 1974 and was one of the first laws containing a formal procedure that enabled the public to raise objections during the planning phase [2]. Two years later, a similar clause on early public involvement was introduced in the German Federal Building Code [3]. After similar developments in other European countries, the Aarhus Convention, which was adopted by the United Nations Economic Commission for Europe (UNECE) in 1998, was a major step forward in strengthening the rights of civil society. According to the Convention, civil society's right to participate is built on three pillars: i) the right to access information, ii) public participation in decision-making and iii) the right to obtain access to justice on environmental matters. In short, this Convention 'is not only an environmental agreement, it is also an agreement about government accountability, transparency and responsiveness' [4].

In 2003, the Aarhus Convention was transposed into European Law by Directive 2003/35/EC on public participation and access to justice [5]. Subsequently, several pieces of German legislation have further expanded on this issue: the German Environmental Appeals Act (2006) enables approved environmental NGOs to bring administrative decisions to court [6]. Directive 2011/92/EU on environmental impact assessments demands that any negative impact on the environment must be assessed during the planning process [7]. Last but not least, in 2013 the German Administrative Procedure Act was complemented by a new section 25 (3) on 'early public participation' [8] as a general requirement in a wide range of administrative procedures.

Today, Germany has a number of participation schemes that offer different ways and means for people to engage. In many cases, participation is formally required by law. Informal participation opportunities are also increasingly being developed, first at the local level, but more recently also at the national level. It is now widely accepted that planning can be improved if the population's local knowledge is integrated from the outset. Informal participation opportunities are, for example, offered by cities in the form of strategic urban mobility plans [9] or when planning new housing districts in urban developments [10]. More recently, the German national government opened up a nationwide participation process for civil society when it was trying to locate an urgently needed safe and final repository site for radioactive waste [11].

The expected benefits of participation, both in formal and informal procedures, include better transparency; integrating local knowledge, which leads to improved planning; and hopefully identifying and possibly resolving conflicts at an early stage, leading to faster and better decisions that will not be challenged in lengthy and tedious court cases at a later date.

Crucial aspects of participation – practical experiences in Germany

After more than 30 years of experience with citizen participation, there have been successful cases in which early citizen participation has made complex planning processes smoother and led to wide acceptance, thus improving planning and accelerating a project's achievement. In other cases, however, citizen participation has proved not to be very helpful. Rather, it has led to protracted discussions while failing to achieve consensus and ended in lengthy court cases or even in a project failing completely.

It is therefore important to realise that each case is different and that there is no guaranteed formula for successfully organising a participation scheme. Each case starts with a stakeholder analysis of who will be affected by a project (including both individuals and public interest groups), and a deliberation of what might be a suitable way of opening up a dialogue with these stakeholders. The methods used include the media (press, radio, TV, internet, social media) or distributing leaflets to households, shops and restaurants. Civil society's reactions can, for example, be gauged through public opinion polls, written objections and/or public hearings, which can take various forms.

Right from the outset, clarification is needed of what exactly is meant by 'participation': is it primarily about informing people, is it a consultation process with the aim of finding out people's views and possibly integrating them in the project, or is the aim to hand over (part of) the decision to the people through some form of collaborative decision-making or even a plebiscite? If this is not clear from the beginning, there is a high risk of both sides being disappointed because the attitude of those driving the project might be: 'Let's go out and explain to the people why our project is good for them', while the public might think: 'Oh,

they've come to ask us what we think and, if we don't like it, the project won't go ahead'. Neither attitude is a promising recipe for a successful participation process.

Every project has a series of planning phases, starting with some initial ideas during the design phase, followed by more concrete planning, then examining the alternatives until a final decision is reached to proceed with the project and the plan is implemented. For public interest groups or ordinary citizens, the chance of genuinely having an influence on the plan is greatest during the early phases and diminishes with each step as the project becomes more concrete. Therefore, if there is a serious plan to organise a meaningful participation process, those driving the project should not only provide information but also early opportunities for public consultation.

A specific dilemma lies in the fact that, in many cases, people do not really bother if the plans are vague and potentially do not affect them at all. However, once they learn that an important decision has been taken, that the project is happening and will significantly affect them, the demand for participation and for a change of direction becomes louder. Therefore, it is a learning process for both parties that it is worthwhile for those driving the project to offer information and participation as early as possible, and the public is wise to seize that opportunity and engage early on.

Involving people in a project's decision-making may lead to conflict between representative and direct democracy. There is also an underlying struggle between individual interest and common welfare. Residents of a certain urban quarter may not like the idea of more houses being built in their neighbourhood because green areas may be lost, it may lead to more cars, or 'different' people might move in. In such a situation, a public hearing, e.g. in the local school, will often present a distorted picture of the residents' interests: those who oppose the plan will attend the hearing in their droves and will use strong arguments to reject the project, whereas few of the families desperately looking for an apartment to live in are likely to be present. Unfortunately, the media are not always helpful in such a situation; they might report on a conflict between the authorities and the people, neglecting the fact that those attending the hearing are in no way representative of all of society's needs.

In conclusion, it is often recommended to offer participation and dialogue in the form of information and consultation, but to leave the final decisions to the bodies of representative democracy, i.e. parliament or elected committees, as they have the mandate to take political decisions for the common good rather than bluntly attempting to push through individual interests.

Success factors

Given the complexity of the issue and the specifics of each individual case, it would obviously not make sense to transpose the experiences in Germany, and the methods used, to any other country. However, some success factors can be identified that may be worth considering when it comes to setting up a participation scheme in another country and context.

If you are responsible for organising the participation process:

- As the project driver, be clear about your own goals, any flexibility in your plan and if there are any potential fallback positions should public resistance become too strong.
- Carefully consider which stakeholders you actively need to address and involve and spend some time thinking how you can quickly 'get them on board'.

- Be transparent about what is being discussed: is it 'if' or 'how' a project will be conducted?
- Check the institutional framework: are there legal participation requirements, are there guidelines to be met or are there specific framework conditions to be observed?
- Right from the start be very clear about the degree of participation: is it informative, is it consultative, is it meant to be a 'co-creation' exercise in which people are invited to cooperate with the planners over an extended period or are you proposing collaborative decision-making or even a plebiscite? Clarify the relationship between direct and representative decision-making, and ensure that the parliament or competent committee supports this.
- Make sure that the necessary resources are available in terms of staff, expertise, time and money.

In conclusion, although it may look complex, well-organised citizen participation has a huge potential to strengthen democracy, enhance the public's relationship with the political system, build trust in those who were elected and confidence that the decisions on important projects are being taken based on the correct procedures.

References

- [1] Achieving Success in Public Participation, GIZ 2020 (download from <https://www.reformgestaltung.de/infothek/publikationen/publikationen-details/achieving-success-in-public-participation>)
- [2] Bundes-Immissionsschutzgesetz [BImSchG] (<https://www.gesetze-im-internet.de/bimsg/>)
- [3] Baugesetzbuch [BauGB] (<https://www.gesetze-im-internet.de/bbaug/BJNR003410960.html>)
- [4] The Aarhus Convention. An Implementation Guide, United Nations Economic Commission for Europe, 2nd Edition, 2014 (<https://unece.org/environment-policy/publications/aarhus-convention-implementation-guide-second-edition>)
- [5] Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32003L0035>)
- [6] Umwelt-Rechtsbehelfsgesetz [UmwRG] (<http://www.gesetze-im-internet.de/umwrg/UmwRG.pdf>)
- [7] Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32011L0092>)
- [8] Verwaltungsverfahrensgesetz [VwVfG] (<https://www.gesetze-im-internet.de/vwvfg/>)
- [9] Sustainable Urban Mobility Plan Bremen 2025 (https://www.bauumwelt.bremen.de/sixcms/media.php/13/SUMP_Bremen2025_web.pdf)
- [10] Neues Hulsberg-Viertel, Bremen: documentation on 10 years of planning a new urban living quarter on a former hospital site (<https://neues-hulsberg.de/aktuelles/>)
- [11] Information platform for finding a repository site for nuclear waste https://www.endlagersuche-infoplattform.de/webs/Endlagersuche/EN/home/home_node2.html;jsessionid=A144413008CF979782166EDB7F82B2C9.2_cid349