

**ACTIVISTS EXERCISE THE CONTROL OVER THE ACTIONS OF LOCAL ENTERPRISES:
ANALYSIS OF PARTICIPATORY PRACTICES IN ENVIRONMENTAL PROTECTION****Essay by Anna AMBROSOVA and Yulia OREKHANOVA****Coalition of public organizations “Stop poisoning Kryvyi Rih!”**

So, what exactly is participatory urban governance? Literally, the term “participatory management” means leadership based on the participation of stakeholders in governance. It is the practice of giving citizens, members of the community, the right to participate in organizational decisions. Addressing participation of public activists in the urban governance, we consider that one of the main goals of the European Charter of Local Self-Government (adopted in 1985) is to ensure the involvement of residents in the mechanisms of democratic governance in their place of residence. This goal is achieved through compliance with the principle of subsidiarity, which is the transfer of responsibility for public affairs to those authorities that are closest to the residents, i.e. to local governments. Thus, city activists, civil groups and citizens, being among the stakeholders of participatory urban governance, can take part in decision-making on further local development.

Achieving a high level of local development means primarily providing quantitative and qualitative improvement of living standards, as well as growth of the local economy and active citizens’ participation in public decision-making processes concerning these citizens and the territory where they live. Undoubtedly, that includes environmental solutions as well. In order to achieve a high standard of living for citizens, it is necessary to regulate the balance between the economic, social and environmental aspects. Apparently, it makes no sense to start economic development by means of sudden social or environmental problems. If the environmental component is not considered in the economic development of territories and communities, then such development will affect the community and its inhabitants negatively, directly or indirectly. First of all, the important thing to remember is that humans are not an exception, they are a part of nature and the environment.

That is why, in order to keep balanced local development and caring for the environmental component, and trying to minimize the negative effects of economic development of the city, public activists, among other issues, control the use of urban space and surrounding areas by the large local industrial enterprises. In fact, there is often a natural degradation of the environment against the background of industrial and economic development.

Environmental activists and citizens of Kryvyi Rih, as well as all Ukrainians, have many tools and methods for participatory urban governance at the moment. Among such tools there are two newly-introduced laws of Ukraine, adopted in 2017-2018. These laws are intended to harmonize our legislation with the European one and to implement the environmental requirements of the European Directives. These are “Law on Environmental Impact Assessment” and “Law on Strategic Environmental Assessment”. Besides, some cities have adopted local environmental programs, which are legal acts of the local level needed according to the requirements of current environmental legislation. In Kryvyi Rih, this is the “City Program for Solving the Environmental Problems of Kryvbas and Improving the State of the Environment for 2016-2025”. Based on the experience of the coalition of public organizations “Stop poisoning Kryvyi Rih!”, representing a coalition of public organizations (hereinafter SPKR!) and the concerned citizens, we offer to take a closer look at these tools and ways of their implementation in order to influence local development and surrounding space usage.

Kryvyi Rih is known as a large industrial city with such industries and processes as iron ore mining in a closed and open way, its enrichment, coals coking, cast iron and steel smelting, and production of various rolled stock products. There are also a number of enterprises for the maintenance of the ore-mining and smelting complex, the food industry, etc. Many years of heavy industry have led to a significant deterioration of the environment.

The city development program on the environment improvement for 2016-2025 was launched in April 2016, in order to implement the Strategic Development Plan of the city of Kryvyi Rih as an environmentally friendly city with efficient use of resources. Deputies of the City Council (members of the Standing Committee on Nature Management, Ecology, Health Care and Social Protection), public organizations, specialists of dedicated scientific institutions of the city and representatives of industrial enterprises took an active part in the development of the program. The program was built on the directions of the action plan implementation on environmental protection in order to approximate Ukrainian legislation to environmental norms and standards of the European Union, considering the already adopted directives and regulations in the framework of cooperation between Ukraine and the European Union. The program also included measures and deadlines prescribed in the Emission Permits and Special Water Permits issued to industrial enterprises of the city.

Enterprises, institutions and local governments, which play executing role in the city's environmental program, have committed to implement a list of environmental measures (reconstruction and modernization of individual facilities, protection and care of nature reserves, health protection zones, development of monitoring systems, protection of waters, soils, etc.) in order to improve the ecological situation in Kryvyi Rih, and they are responsible for the timeliness and completeness of their implementation.

Monitoring the program's implementation is also carried out collectively. Open meetings of the working group are held monthly. The group includes representatives of local government bodies, public, enterprises and scientific institutions of the city. Public organizations and citizens, state control bodies, representatives of all enterprises participating in the environmental program and mass media are invited to those meetings. Representatives of enterprises and local government report on the implementation of the environmental program, and the public has the opportunity to take part in participatory management by submitting their own ideas and comments during the reporting, discussions and voting on protocol decisions. For example, they can propose amendments on the program in question.

Strategic environmental assessment is another tool of participatory urban governance for environmental activists.

On October 12, 2018, the Law of Ukraine "On Strategic Environmental Assessment" was enacted in Ukraine. The law determines the need to carry out the procedure of strategic environmental assessment for state planning documents in the manner prescribed by the legislation. Strategic environmental assessment of strategies, plans and programs allows to focus on a comprehensive analysis of the potential impact of planned activities on the environment and also to use the results of this analysis in order to prevent or mitigate environmental impacts in the strategic planning.

Strategic Environmental Assessment (SEA) is a new tool for implementing environmental policy, based on a simple principle: it is easier to prevent the negative consequences for the environment at the planning stage than to identify and eliminate them at the stage of implementing a strategic initiative. SEA's goal is to ensure a high level of environmental protection and promote the integration of environmental factors in the preparation of plans and programs in order to ensure balanced (sustainable) development.

The public has the right to submit in writing (including in electronic form) comments and suggestions to the draft state planning document and strategic environmental assessment report at the stage of public discussion and consultations. During this period, the public members can analyze the provided materials, assess the completeness and accuracy of information and evaluations, and independently assess the impact of planned activities on environmental components as well as health status and welfare of the population. The results of such analysis are sent to the dedicated body. All comments and suggestions to the draft state planning document and the report on the strategic environmental assessment received within the established period are subject to mandatory consideration. Based on its results, the customer prepares a certificate summarizing the received comments and suggestions and indicates how these comments are taken into account or rejected, and justifies the choice of this particular state planning instrument among other justified alternatives. A protocol of public hearings should be attached to the certificate. These documents are public information.

It is necessary to involve the intellectual knowledge and skills of local inhabitants in order to achieve European standards in urban governance. Therefore, by developing ideas of joint management and participation in environmental decision-making, the public has the opportunity to use such legal instrument as Environmental Impact Assessment (EIA). According to the Law of Ukraine "On Environmental Impact Assessment" (took effect on December 18, 2017), this procedure has clearly defined stages, rights and responsibilities of its subjects. Its purpose is to prevent environmental damage, ensure environmental safety, environmental protection, rational use and reproduction of natural resources. It is mandatory for all EU members to carry out EIA before issuing a permit for the implementation of planned activities that may have a negative impact on the environment, in accordance with EU Directive № 337/85.

According to the law, the public has the right to submit any comments or suggestions without the need to substantiate them, both in writing (including in electronic form) and orally during public hearings on condition that public hearings are put on the record. All proposals and comments of the public received within the established period are subject to obligatory consideration by the authorized body.

The experience of the SPKR! has proved that understanding of the law and active cooperation with local government bodies in participatory urban governance give positive results for the environment. Here are some examples where the use of participatory tools has led to success.

On 26.11.2018, PJSC ArcelorMittal Kryvyi Rih, a largest metallurgical enterprise of the city, posted a notice of planned activities for "New construction of the stock pile "Stepovyi-2" on the lands of Shyrokyivskyi district of Dnipropetrovsk region" in the Register of EIA. Representatives of the SPKR! conducted an analysis of compliance with legal procedures and assessment of the possible impact of the

planned activities on the environment. Based on these data, comments and suggestions were sent to the company and the Ministry of Energy and Environmental Protection of Ukraine. Due to the imperfections of the procedures at that time, we were not able to find out whether a strategic environmental assessment was carried out, as it was a matter of changing the purpose of the land. Therefore SEA should precede the environmental impact assessment.

The company published a report on environmental impact assessment in the EIA Register on 11.06.2019, which was subjected by the SPKR! to a detailed analysis. A month later, 17.07.2019 public hearings were held in Shyrokivskyi district, on the lands where it was planned to place a stock pile. But the zone of its influence extends to thousands neighborhoods of the city. However, there were no hearings in Kryvyi Rih, and the transportation of people from the city to the place of the hearings was not organized. Thus, the urban community was practically excluded from the decision-making process. Moreover, these respective urban residential areas were not considered during the EIA and risk assessment. Representatives of the SPKR! took part in public hearings and drew the ministry's attention to numerous violations and shortcomings in the procedure. However, this body issued a positive conclusion of the EIA. The company submitted documents for obtaining a permit for emissions from the planned stock pile. And Makulan, Karachuny, Vsebratske and Vsebratske-2 residential areas, which had been "lost" during the EIA, were suddenly "found" in those documents. Concerned local residents, unwilling to worsen their living conditions, started to collect signatures against the company's plans, trying to defend their right to clean environment, protect Red Book plants and surrounding areas that are part of the Emerald Network and are protected by the Berne Convention. Although quarantine restrictions did not allow every willing person to take part in the public hearings, the opinion of the community was expressed by its representatives and the SPKR! experts. Besides, the collected signatures and a letter from the residents were sent to the ministry.

All these violations and inconsistencies stipulated the SPKR! to file a lawsuit in the Dnipropetrovsk District Administrative Court to the Ministry of Environmental Protection and Natural Resources of Ukraine on 16.09.2020, in order to declare the EIA to be illegal and cancel the respective conclusion (registration number of the case is 201811192183). Third parties for the defendant were PJSC ArcelorMittal Kryvyi Rih and The Ministry of Defense of Ukraine. The administrative proceeding was carried out by the Dnipropetrovsk District Administrative Court on September 21, 2020 at № 160/11233/20.

Our main arguments that led to invalidation of the conclusion and its cancellation:

- the provided information on the environmental impact of the planned activity was knowingly false and incomplete;

- The report on Environmental Impact Assessment was knowingly false: residents of densely populated multi-storey neighbourhoods Vsebratske, Vsebratske-2 and Karachuny, which are also affected by the planned activities, are not considered when calculating health risks, as well as the impact of existing industrial facilities is not examined;

- irreversible interventions in the environment and landscapes in the area of the company's planned activities took place; in particular, Red Book plants and dwellings of Red Book wild animals were eliminated and destroyed respectively.

Moreover, the SPKR! considers the positive conclusions on accepting the planned activities as premature due to the fact that this area is disputed, as those who removed it from the status of defense lands are under criminal proceedings under Part 2 of Article 364 of the Criminal Code.

The second example is a bit simpler and the case is already resolved. That was one of the first EIA procedures in Kryvyi Rih, dedicated to the development of minerals (quarrying) partly on the territory of the nature reserve fund (April-September 2018). The SPKR! and other community members objected to such illegal actions, but the Regional Department of Ecology issued a positive conclusion of EIA. But we continued our attempts to save the protected areas, holding consultations with regional deputies and raising the issue at the environmental deputy commission. By joint efforts we got a result positive for the nature: the session of the regional council did not approve the allocation of land for the planned activities.

Thus, the representatives of the SPKR! keep pro-active approach and emphasize that public access to decision-making, as well as public participation in state and local governance have a positive impact on the self-development of local governments, give impetus to decentralization and harmonise our legislation with European standards. We currently have a large number of tools that allow us to take part in participatory governance. Some of them are not perfect, but fruitful work and interest in balanced economic, social and environmental development will have a positive effect.