

# Environmentalism in Today's Eastern Europe

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**Abstract:** Civic control in environmental matters is an existential need of a well-functioning democracy. Green parties often emerge from civil society movements, though they lose their civic nature on entering parliament. Axiologically, objective environmental values should be protected by political parties, whilst both objective and subjective environmental values are represented by civil society organizations. The evolution of green movements in Western Europe and Northern America differs considerably from that of environmentalism in European communist and post-communist countries.

**Keywords:** Environmental law, environmental sociology, environmental civil activity, partaking democracy, social changes, green parties.

## 1. RULE OF LAW AND CIVIC CONTROL

The Preamble of the Universal Declaration of Human Rights (UNO, 1948) states that it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law. Article 20 of the Declaration specifies that everyone has the right to freedom of peaceful assembly and association.

From the aspect of maintenance of the rule of law, state should be under civic control. Civic control implies the social activity of both groups of people and also individuals. In Eastern European countries, civic control is controlled by the state, the state recognizing and subsidizing only those civic organizations which are registered and controlled by state organs. In Central and Western European countries, the situation is somewhat similar, though in practice individuals may have their voices heard.

In many Eastern European countries, the right to freedom of peaceful association is mostly well-functioning. Nevertheless, individuals do not have the rights to exert civic control over the state with efficacy comparable to that of associations. The ever-present problem is whether an individual who has no direct interest in a particular case should or should not be allowed to defend other people's interests.

In most European countries, only associations have such rights. There are exceptions of course. According to Paragraph (3) of Article 52 of the Constitution of Portugal, for example, everyone, either personally or through associations that purport to defend the interests at stake, enjoys the right to *actio popularis* in the cases and under the conditions provided by law, i.e. the right to promote the prevention, the suppression and the prosecution of offences against public health, the environment, the quality of life and the cultural heritage, and also the right to claim corresponding damages for the aggrieved party.

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## 2. DIVISION OF POLITICAL POWER, *ACTIO POPULARIS*

Civic control might possibly be doomed to vanish in Eastern European countries, which are appreciably poorer than their Western European counterparts and hence less sensitive in rule of law matters. Such phenomena as NIMBY (Not In My Back Yard), etc. do not play important roles in the field of civic control in this region. NIMBY is rooted in the fabric of the political life in Western European countries. In Poland, the Czech Republic, the Slovak Republic and Hungary, NIMBY is considered solely by theoreticians. In these Visegrad countries (V-4), civic control is slowly but saliently losing its weight in politics. The division of political power appeared in the philosophy of Aristotle, Cicero, John Locke, Montesquieu, etc. The Montesquieu mode of division of political power ([1] legislative, [2] executive and [3] judiciary powers) is currently becoming weaker, and these three political powers are united by the winner of parliamentary elections.

A legislature independent of executive power was a dream that never materialized in the V-4 countries. Around the end of the 1980s, attempts were made to bring about a Montesquieu division of political power, though the last two decades have demonstrated that legislature and executive power can function only in the hands of the governing majority. The electoral winners appointed new public administrators in order to ease the execution of the acts of parliament.

During the communist era, judiciary power was likewise in the hands of politics, under full governmental control. Around 1990, however, the situation changed. In those Eastern European countries where the parliamentary elections led to a large majority, the judiciary system was re-organized so as to serve the interests of the new government. One example is the case of Hungary. Under such circumstances, the division of political power has undergone a change of face. Since the legislative, executive and judiciary powers are in the same hands, the role of civic control over the state is to be stressed. Associations and civic individuals should coun-

terbalance the leading political power. Civic control and a state controlled in a civic manner are the new political powers.

Associations have special rights within the state. Civic activities are destined to be expanded and new means of civic control to be developed. *Actio popularis* is only one means, though, for example in Hungary, the right to *actio popularis* before the Constitutional Court (whereby anyone without a special interest could request the Constitutional Court to examine legal norms) is to be terminated from January 1, 2012. In environmental law and the law on consumer protection, the right to *actio popularis* still survives. Registered associations, as legal entities, may defend other people's interests.

### 3. CIVIC CONTROL AS A POST-COMMUNIST PHENOMENON

According to the Act on Environmental Protection, local municipalities in Hungary are still considered part of civil society. *De jure et de facto*, local municipalities have comparatively little to do with civic control. Following the political changes in Eastern Europe around 1990, local municipalities were designed partly to counterbalance the state and partly to complement the state activity of public administration at a local level. Local municipalities may currently be regarded as part of the state power. Top-down effects implemented by the state, including local municipalities, can be counteracted by bottom-up effects. The bottom-up effects are therefore left to not over-strongly positioned associations and relatively powerless individuals.

Two relatively new branches of law in the European legal systems relate to environmental protection and consumer protection. It would be a mistake to believe that countries in Eastern Europe adopted legal norms in these areas only after the era of communism. Environmental protection and nature conservation were already regulated under the communist régime, though civic control could not be imagined at that time. The notion of a civil society organization was to be found in the text of the Hungarian Act on Environmental Protection of 1976, but the state did not tolerate true civic control.

Civic control appeared as a really effective system of social functioning in the post-Soviet era. Hungary, Poland, and the new Czech and Slovak Republics saw civic control emerge from the social, economic and political changes that took place around and after the political collapse within the Soviet Union. The V-4 countries cooperated to achieve tangible social and political changes. The ultimate aim of the changes in society and state was the creation of a market economy: in Hungary, a social market economy; in Romania, a free market economy; etc.

The new constellation of social and political factors resulted in the opposition of state and civil society. Environmentalism today is directed by the state in a top-down way, though some form of bottom-up civic control is undergoing development. The civic control of state activity in the field of environmental protection can be seen as the strongest field of civic activity in Eastern Europe. In the V-4 countries, Western European civil society and civic control over the state were taken as examples to be followed. No matter how

determined civic activists may be, however, they can attain very little if the rule of law does not function properly.

### 4. ENVIRONMENTAL AXIOLOGY AND CIVIC CONTROL

The rule of law functions properly when it is applied in the service of individual environment-users and collective environmentalism. Objective environmental values should be defended both by the state and civil society, while subjective values should be protected in some cases by collective measures. Those subjective environmental values which are not existential for a community or a nation should be protected at an individual level.

Water, the soil, the air, the built environment and biodiversity are naturally objective environmental values that must be protected by state and civil society alike, but the cooperation of state and civil society cannot be restricted to objective environmental values. An association may fight for permaculture, for environmental justice in connection with ethnic minorities, or for other important values, despite these values not being completely objective.

Under the auspices of the United Nations Economic Commission for Europe, the Aarhus Convention signified a great step towards furnishing all citizens with the right to have access to environmental information. It is the task of the public authorities to make such information available to the citizens, and also to make it possible for the people to participate in decision-making concerning projects and the legislative process. In 1998, all 15 Member States of the European Community signed the Aarhus Convention. The Convention is not a *lex imperfecta*. On the contrary, access to justice ensures its character as a *lex perfecta*. The Aarhus Convention presents a positive image, though a constantly changing image. Assuring citizens that they have access to justice is in line with the rule of law only in the event of the separation of the legislative, executive and judiciary powers. A judicial review of the decisions of public authorities, these latter being part of the executive power, can be expected to be fully independent from the public authorities.

Environmental information relates partly to objective and partly to subjective values. Subparagraph (a) of Paragraph (3) of Article 2 of the Aarhus Convention covers the right of access to environmental information concerning the state of elements of the environment, such as the air and the atmosphere, water, the soil, the land, the landscape and natural sites, biological diversity and its components, including genetically modified organisms, and the interactions among these elements. The environmental elements are objective values of the society as a whole.

Due examination of Subparagraph (b) of the same Paragraph reveals that this Subparagraph also relates to subjective environmental information, covering factors such as substances, energy, noise and radiation, and activities or measures, including administrative measures, environmental agreements, policies, legislation, plans and programmes, affecting or likely to affect the elements of the environment, and cost-benefit and other economic analyses and assumptions used in environmental decision-making. Subparagraph (c) of the same Paragraph again relates to subjective environmental information: the state of human health and safety,

conditions of human life, cultural sites and built structures, inasmuch as they are or may be affected by the state of the elements of the environment or, through these elements, by the factors, activities or measures referred to in Subparagraph (b).

The environmental information featuring in Subparagraphs (b) and (c) may be essential for groups of people or for individuals, whereas that in Subparagraph (a) is essential for all mankind. Civic control over the state should not take subjective values for objective ones, because civic control over the state is not the same as standing up for the rights of one group of people. Nevertheless, subjective values may sometimes appear of more importance than their objective counterparts. This can arise when a subjective value concerns the environmental rights of economically and/or politically powerful citizens, such as business leaders, makers of public decisions, etc., so that the subjective value acquires national or global significance. This does not mean that it is essential for the whole of mankind. It is demonstrated only that, in an extreme case, objective interests may be passed over by subjects.

## 5. GREEN PARTIES AND CIVIC CONTROL

The activity of green parties, of course, is not civic control. When a civil society organization becomes an actor on the legislative stage, it gives up its civic nature. Green parties tend to ally with social democratic parties, and sometimes with right-wing democrats, as has been seen in Germany and Austria, whereas the green party in the Hungarian parliament is currently not inclined to ally with either social democrats or right-wing democrats.

In most European countries, an opposition role is usually the first step adopted by a green party freshly elected to parliament. The German and Austrian examples illustrate that later, with a view to strengthening both politically and socially, green parties may choose a partner with which to ally, from either the left-wing, or the right-wing.

In any analysis of the functioning of green parties, it must be borne in mind that a political party loses its civic character when it becomes part of the legislative political body, even if it expresses oppositional criticism of the parliamentary majority. Civic control in environmental matters is not a duty of oppositional political parties. Civic environmentalism could enter parliament without losing its civic attribute only if civil society, as it is, were represented in the parliament. The representation of civil society, if it ever comes true, is generally ill-proportioned.

A number of draft proposals have dealt with the representation of civil society in European parliaments. In Hungary, a reform of the composition of parliament is under way: civil society seems to be kept at some distance from professional politics. In fact, the exclusion of civic environmentalism from parliament and the admission of a green party instead might in the long run be socially more beneficial.

Civic environmentalism can be both amorphous and organized. The representation of subjective values is not a primary goal of parliamentary green parties. Axiologically, a green subjective value may constitute an environmental value, but epistemologically, a green claim of a subject may acquire a normative form only if it is adopted by legislation.

However, legislation does not tend to adopt subjective values unless these are properly communicated. Civic environmentalism generally places the main stress on the protection of objective environmental values; this is the only way for smaller groups or ethnic minorities to express their environmental opinions.

## 6. ENVIRONMENTAL INJUSTICE AND CIVIC CONTROL

Environmental injustice usually appears as a minority question. The opposing of ethnic minorities to a national majority has the effect of sharpening a conflict than resolving it. Environmental justice comprises part of social justice. Society should preferably not be divided into minority groups, though a certain measure of such division is unavoidable.

When environmental justice concerns poor people living in the neighbourhood of industrial plants, the state often proves less sensitive than in the case of ethnic minorities living under similar conditions. Environmentalism is therefore more strongly represented when ethnic minorities are involved. This is a result of the historical oppression of minorities, and has virtually nothing to do with environmental justice.

Environmentalism and minority problems are frequently topics of discussion in scientific studies, whereas the protection of the environment of physical workers and of retired lower-class people usually does not receive scientific attention. The largest minority in Central and Eastern Europe, the Romany groups, suffer from serious diseases in a strikingly greater proportion than the national majority. Public health researches have demonstrated that increasing numbers of Romany people are exposed to the vicissitudes of unfavourable environmental health conditions. A similar phenomenon was revealed as regards the black population in the United States of America during the 1960s and 1970s. This led Eastern European politicians to make a detailed examination of the manner in which the Americans set out to solve this problem. After large sums of public money had been spent on this examination, the governments in Eastern Europe concluded that the situation of black people in America had nothing in common with that of Romany people in Eastern Europe. Environmental justice for the Romany minorities could be a major issue within the radius of action of civic control.

The provision of improved environmental and work health conditions for the Romany minorities should be one of the main goals of Eastern European civil societies. From a different aspect, environmental injustice may concern ethnic minorities living outside the borders of their motherlands. This is not purely a European problem, but such minorities in Central and Eastern European countries often suffer from environmental injustice, which may be either latent or apparent. Historical fears tend to dissuade states from interfering in the home affairs of neighbouring countries, in which situation the civic activism of local people, backed by the civil society of the motherland, may come to the fore. This is a preferable way to struggle for environmental conditions equal to those enjoyed by the majority. Naturally, activism by civil society is in no way to be confused with radical nationalism.

Environmental injustice may cause offence to Rumanians living in the Ukraine, Hungarians living in Serbia, Slovaks living in Hungary, Turks living in Bulgaria, etc. At a state level, attempts to impede such negative environmental discrimination remain faint. Civil society must be impartial, i.e. independent of party politics. Cross-border civic activism is undesirable if the civic character is eclipsed by political radicalism, chauvinism or other negative factors.

## 7. SOCIAL DANGER AND ENVIRONMENTAL DANGER

Civic control in environmental matters may possibly have a negative outcome, one of the most relevant sources of social danger being a civic control group with various motivations. As the civil society is an inclusive society, no citizen should be excluded unless posing a danger to society. Environmentally counterproductive activity, although a potential threat to society, is not necessarily to be classified as socially dangerous activity. Civil society often plays the role of counteracting both the state and the economy.

Industrial activities carried out without due respect to the state of the environment may result in local ecological catastrophes, as occurred in 2010, when the disaster caused by red sludge in Western Hungary made headlines in the world press. In this case, an environmentally dangerous activity posed a threat to the local system of ecology, though the question remains open as to whether a social danger was also generated. Civil society immediately became active on the spot. The company involved, as an economic actor, was pilloried, but until social danger is proven, criminal liability can not be established. Civil liability was, of course, established. This example illustrates that social danger is normally inherent in criminal liability. Without proof of a social danger, civil society may make use of civil law and administrative law institutions, though the latter are far too weak to truly serve civic motivations. Civic activity therefore remains restricted to the collection and dissemination of information, and normally to charity. Charity is not a legal tool at the disposal of civic activists, but is rather a moral action of ethically mobilized individuals ('moral' and 'ethical' as construed by Hegel).

## 8. COQUETRY WITH RADICALISM

Radicalism is a real and existing danger to civic activism, not solely in the developing countries, but additionally in their better-off counterparts. Europe and North America are also affected by radicalism overruling a 'rule of law' type of environmental axiology.

Radical activism may assume the shape of political activism and also the shape of civic activism. Radical politics are bound up with radical civic activism, and radical political parties can never exist without a solid social basis. Radicalism is usually strengthened by economic and social crises. When radicalism turns its attention to environmentalism, then ecoanarchists, ecofascists and other ecoradicalists strive to erode the concepts and practices of democratic environmental protection.

Some two decades following the conclusion of the Cold War and the disappearance of the Soviet-style communism, radicalism is relatively strong in Europe. In 2010, both a

green party and a radical nationalist party succeeded in gaining seats in the Hungarian parliament. This was not a fortuitous coincidence. When people want radical changes, they vote in larger numbers for radicalism. In Eastern Europe today, voters who favour the radical right wing or the environmentalist party are socially and axiologically close to each other. This is so even if it is denied by green politicians and even if the green parliamentary party rather communicates liberalism and environmentalism to the mass media. It is counterproductive to the relationship of environmentalism and civil society. In this area of Europe, the true greens do not participate in parliament and continue civic environmentalism under not too favourable circumstances.

## 9. THE PROMOTION OF ENVIRONMENTAL SOLIDARITY

Solidarity is a basic notion of civic environmentalism: solidarity in the language of law and also in that of sociology. As concerns environmental matters, the social, economic and political actors are situated in a pool of social responsibility, and from a teleological aspect the pool is the same for each of these actors. If a participant in the market economy causes harm to certain elements of the environment, it is the state and society that must pay for the damage. The situation can be conceived as a society game that always ends up with a zero balance. When *A* harms the environment, *B* and *C* have to restore equilibrium. In the end, the losses of *B* and *C* will be equal to the gain of *A*. Environmental sustainability can be imagined only in this way. Should the final sum be less than zero, then environmental sustainability would not be maintained.

The question arises as to whether social actors should pay for environmental inadequacies of the market economy or improperly conducted environmental politics. The market economy and state policy are in different relationships with civil society. Is it possible that the market economy may avoid civic control, whereas state policy cannot avoid it? Do economic interests automatically stand above objective environmental values?

In new born democracies, such as those in Central and Eastern Europe, economic interests are primary ones, so that state policy tends to promote the economy, sometimes regardless of the effects on the environment. The question of why can readily be answered. A new democracy can exist without environmentalism, though it cannot survive without a prosperous economy, and this is currently posing major socio-economic problems in this region. In itself, civic control over the state is never sufficient. Unless the economy also comes under civic control, the efforts of civic environmentalism may remain useless.

## 10. SUB JUDICE?

Is it essential that society and state be separate? Could civil society exist in an absolute state where society is bound up with state? The separation of state and society is in fact a precondition of civic control. An absolute state usually lacks a properly functioning society: from the aspect of environmental protection, it is an outdated *modus*. A total state does not even pretend to separate state from society. Total states are no longer present in the better-off part of the world. State absolutism seems to be a failed historical phenomenon. In

most European and Northern American countries, state and society now function in a separate, though closely interrelated way.

It may be stated that, in the course of absolutism in the history of Europe, the economy boomed, whereas the people had not the slightest opportunity to oppose state policy. In Eastern Europe, antirepublican civic activists who now desire to turn back to absolutism consider only the economic outcome. The excellent economic outcome of absolutism is a historical fact, but such activists do not see the overriding of human rights as *jus naturale*. In Western Europe, the kingdoms of today have nothing in common with Eastern European monarchies in the 17th-18th centuries.

Civic control is rarely codified as positive law. Civic activism stems from *jus naturale*, and in many cases it is natural law to canalize civic activism. Civil society is to function mostly *sine lege*, or according to legal orientation without specific legislated rules. Legal orientation, if there is any, furnishes room for civic environmental activism in strategically weightless phases of environmental rule-making. In an atavistic manner, the legislative and executive political powers in democratic countries still act to set aside civic environmentalism. From the aspect of social ecology, this justifies much of the current environmental deficiency on the part of democratic states. Judiciary power cannot alone provide a solution to this problem. In younger democracies, civil society organizations rarely present their cases before a court.

## CONFLICT OF INTEREST

The author(s) confirm that this article content has no conflicts of interest.

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