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Citizen involvement in Slovenian spatial planning system: What can we learn from the New Labour planning reform in England?

Miha Vrabec¹, Alenka Temeljotov Salaj²

1. Preface

As far as research carried out so far is concerned, we may conclude that public participation in various fields of governance has in the last two or three decades increasingly become the subject of intense scientific investigation.³ This is partly due to the recognition that the historical gap between scientific/expert argumentation and democratic discourse where the broader (lay) public may participate more or less on equal terms must be closed.⁴ By adhering to scientific/expert argumentation, the modernist approach has become obsolete as it creates a gap between theory and practical implementation and is therefore incapable of offering acceptable solutions in the long term. Moreover, it often produces conflicts in social relationships.⁵ The emergence of the post-modernist paradigm of participation partly results from a crisis in the legitimacy of democratic institutions and partly from tapping into the essence of prevailing political paradigms of the 20th century (the participative model of democracy for example as proposed in 1989 by Held in his *Models of Democracy*, as overcoming the division and deficiencies of existing models of the then new left and new right political wings). According to Lavtar, the globalisation process has caused a drop in the authority and competence of national government while at the same time supra-national en-

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³ Cliff Hague and Paul Jenkins, *Place Identity, Participation and Planning* (Routledge 2005); Susan Brownill and Gavin Parker, 'Why Bother with Good Works? The Relevance of Public Participation(s) in Planning in a Post-collaborative Era' (2010) 25(3) *Planning Practice & Research* 275; Drago Kos, 'Postmoderno prostorsko planiranje?' (2003) 40(4) *Teorija in praksa* 647.

⁴ Mojca Golobič, 'So vetrne elektrarne problematičen projekt?' 2005 16(1) *Urbani izziv* 42.

⁵ Ibid.

tities e.g. the European Union are gaining power. By virtue of the high level of bureaucratisation, people are becoming alienated from decision-making centres. On the other hand, the rise of educational backgrounds and the growing influence of consumerism in society have increased individualisation which in turn contributes largely to non-politicisation and reduces interest in the common good (*bonum comune*).⁶ This trend was also established by the Council of Europe in its Green Book of 2004 (The Future of Democracy in Europe: Trends, Analyses and Reforms) forecasting a decrease in voter turnout by 2020 to 55% in Eastern and Central Europe and 35% in Western Europe. This could very well compromise the legitimacy of decisions taken by elected bodies.⁷

Just like governing the country, the democratic participation of citizens in decision making on public matters is important at the local level. One of the most significant books on political science Making Democracy Work by Robert Putnam, which defines citizen participation as the foundation of the development of social trust, reciprocity and cooperation (social capital) and thereby of the strengthening of democracy, was the result of research into Italian regional institutions, i.e. at the local level.⁸ According to Brezovšek, with an important role in creating social capital because it deals with issues of common interest and is capable of mobilising a considerable number of participants, local administration is at the same time at least in principle more accessible to citizens.⁹ The significance of participative decision making at the local level is discussed in more detail under item 5 herein.

Spatial planning is a key issue relevant to local communities. The legal framework for spatial planning in Slovenia has quite frequently been modified in the last few years¹⁰, yet conflicts ari-

⁶ Roman Lavtar, Sodelovanje prebivalcev v slovenskih občinah: participacija prebivalcev pri odločanju o javnih zadevah na lokalni ravni v Sloveniji (Inštitut za lokalno samoupravo in javna naročila 2007).

⁷ Council of Europe, 'The Future of Democracy in Europe: Trends, Analyses and Reforms - a Green Paper for the Council of Europe' (Green Paper, Council of Europe 2004).

⁸ Robert D Putnam, Making Democracy Work: Civic Traditions in Modern Italy (Princeton University Press 1993).

⁹ Marjan Brezovšek, 'Pojmovno-teoretični okvir razvoja lokalne demokracije' in: Marjan Brezovšek and others (eds.), Lokalna demokracija II (University of Ljubljana, Faculty of Social Sciences 2005).

¹⁰ Spatial Management Act (Official Gazette of RS, Nos. 110/2002 (8/2003 corr.), 58/2003, 33/2007, 108/2009, 79/2010 and 80/2010 (106/2010 corr.)); hereinafter referred to as ZUreP-1; Spatial Planning Act (Official Gazette of RS, Nos. 33/2007, 70/2008, 108/2009, 80/2010 (106/2010 corr.), 43/2011, 57/2012 and 57/2012); hereinafter referred to as ZPNačrt; The Act Regarding the Sitting of Spatial Arrangements of National Significance in Physical Space (Official Gazette of RS, Nos. 80/2010 (106/2010 corr.) and 57/2012); hereinafter referred to as ZUPUDPP.

sing in the related procedures are growing and as a result civil initiatives opposing development planning interventions have been increasing. This has often been emphasised by the professional and scientific communities as well as by non-governmental organisations and other representatives of civil society. The seriousness of the situation is further proven by an initiative of the Chamber for Architecture and Spatial Planning launched in February 2010 and entitled "It is time for changes in spatial planning" and by a conference in the National Council of the Republic of Slovenia with the same name organised in the same month.

The insufficient participation of citizens is frequently mentioned among the many challenges facing Slovenian spatial planning. The difficulties have a structural nature and range from the legislation covering spatial planning to administrative procedures and local governance. This paper analyses some of the deficiencies and substantiates the assumption about why citizen participation is a *sine qua non* for the quality of spatial planning at the national and local levels and for more sustainable public governance that is less burdened by conflict.

Further, some of the most important reform measures by the new Labour party in Great Britain are presented which in the first decade of the 21st century have radically changed the English system of spatial planning and introduced significant novelties in the field of citizen participation. In spite of numerous historical, cultural and economic differences between Slovenian and British society, coupled with the differences in the spatial planning systems (for more details, see item 7 below), we believe that an overview of some changes in the English system of spatial planning, being one of the most developed and democratic in the world, offers a good basis for considering the directions and priorities of possible amendments in legislation in Slovenia. Becoming acquainted with the difficulties that impeded the success of the reforms and even led to the withdrawal of some of them may be as useful as an examination of the actual contents of the reforms. A few suggestions for improving Slovenian legislation are given in the conclusion, but only after we have discussed a few theoretical foundations of the participative paradigm of decision making.

2. The professional/scientific or democratic approach to argumentation and the legitimacy of public decision making

Ever since Antique (Greek) times, society has known two main forms of argumentation and seeking solutions: democratic debate and science. Spatial planning and making decisions on spatial intervention function in the area where the two overlap, whereby in the course of time the influence of each has been changing according to the circumstances in society.

Thus, in modern times science has effectively been put forward by means of the concept of integral and rational planning,¹¹ yet by doubting the legitimacy of all traditional institutions pluralistic post-modern society has put the role of science into question.¹² In the concept of the so-called risk society,¹³ scientific recognitions are increasingly necessary but, on the other hand, they are less and less a sufficient condition for adopting decisions. As rightly pointed out by Golobič, referring to a profession and professional criteria is convincing and effective only as long as we believe that we may make decisions about our actions on the basis of our knowledge of reality as enabled by science. Veneris labels such an approach »cohesive« planning where solutions to technical problems are being sought within a societal consensus on values.¹⁴ Quite a few spatial planning problems are at least apparently easy to resolve professionally. In such cases, decisions based more or less exclusively on professional knowledge may prove to be entirely as legitimate even though they in fact mean a shift of decision making towards professionals.¹⁵ A professional approach should ensure an expert solution, i.e. a quality solution and at the same time the non-involvement of (private) interests which, in turn, means an objective solution. However, on the other hand each spatial planning issue can be seen from different viewpoints and therefore referring to professionalism as a single aspect of decision making is in principle wrong since it often leads to conflicts and thereby impedes the

¹¹ John T Lyle, *Design for Human Ecosystems* (Van Nostrand Reinhold Co. 1985).

¹² Golobič (n 4) 2.

¹³ Beck, 1992 as cited in *ibid*.

¹⁴ Yannis Veneris, 'Reliable Design under Conflicting Social Values' (1993) 20(2) *Environment and Planning B: Planning and Design* 145.

¹⁵ Golobič (n 4) 3.

adoption of solutions.¹⁶ Moreover, the rhetoric and argumentation required by open procedures (that include citizens) place experts in a different, less influential position. At the same time, it requires more open decision making and different styles of communication which most experts are not used to. That is why in practice incorporating expert knowledge often proves to be inefficient and triggers conflicts. Since such conflict will often present itself as a disagreement over facts, decision makers will be induced to demand newer, more 'professional' and more 'objective' knowledge.¹⁷

Individuals often do not possess expert knowledge about a certain spatial planning issue, but know the situation in the local environment very well.¹⁸ As Marot states, they may be able to convey a lot of practical knowledge about the characteristics of the areas, of particular difficulties, their possible solutions and of the practical influence of applicable regulations and policies.¹⁹ Besides being a source of information, involving the public in decision making also means establishing confidence and increasing the legitimacy of solutions which are more custom-made for the local community.²⁰

Rationality and knowledge are important but, according to our modern understanding, we know three categories of knowledge: personal, social and positive. Personal knowledge embodies our subjective internalised experiences and provides the root of individual competence. It is also the source of innovation. Through knowledge we are aware of the self and our relationship with the existential world.²¹ Social knowledge emerges as a social construction of reality.²² Positive knowledge will be acquired on the basis of deductive reasoning, empirical observation and experimentation.²³ It represents universal knowledge whose function is object appraisal, prediction and control and is a popularly accepted "sci-

¹⁶ Ivan Marušič, 'Planiranje' in Marko Polič and others (ed.), *Spoznavni zemljevid Slovenije* (University of Ljubljana, Scientific & Research Institute of Faculty of Arts 2002).

¹⁷ Golobič (n 15).

¹⁸ Patsy Healey, 'Building Institutional Capacity through Collaborative Approaches to Urban Planning' (1998) 30(9) *Environment and Planning A* 1531.

¹⁹ Naja Marot 'Presoja vloge prostorske zakonodaje v slovenskem sistemu prostorskega planiranja' (DPhil thesis, University of Ljubljana, Faculty of Civil and Geodetic Engineering 2010).

²⁰ Healey (n 18).

²¹ Dewey, 1929, 1938; Heidegger, 1949; Jaspers, 1949 as cited in Clyde Weaver and others, 'Rationality in the Public Interest: Notes Toward a New Synthesis' in Michael Breheny and Alan Hooper (eds.), *Critical Essays on the Role of Rationality in Urban & Regional Planning* (Pion 1985) 146.

²² Berger, Luckman, 1966 as cited in *ibid.*

²³ Ayer, 1956; Werkmeister, 1937; Poincare, 1905 as cited in Clyde Weaver and others (n 21).

entific method”.²⁴ In planning, the rationality connected with positive knowledge and abstract reasoning applies objectively to the external world, i.e. functional rationality of the Ends-Means calculus. Human reasoning is also influenced by social conditions and then resultant assumptions and beliefs, requiring the exercise of substantive rationality.²⁵ However, it seems that comprehension of the human world lies beyond behaviourism and structuralism and requires a multidimensional rationality that balances different epistemologies and various realms of experience. Marot thinks that a one-dimensional description of social events does not suffice for a satisfactory presentation of all relationships and connections as the course of events in society is not linear and does not have one single cause to enable the creation of a sufficient explanation of such events.²⁶ That is why, according to her, it is absolutely necessary to disclose all aspects of a phenomenon and the knowledge of planners alone does not suffice in spatial planning.²⁷ Therefore, the public, investors and politicians should be familiar with the basic principles of spatial planning and management as well.

The formal restrictions in spatial planning are often considered as a final, unchangeable fact and we tend to forget that they result from an agreement in the context of specific values which in turn are defined by historical, economic, social and professional circumstances. They may as such, according to Golobič, in the changed conditions be legitimately faced with different starting points and their validity checked.²⁸ Apart from the criteria defined in formal documents, a number of other value categories validated in professional circles only or not even there will enter the decision-making procedure. The majority of criteria depend on what individuals perceive as value and how in their opinion the space should be utilised. The views of individuals and groups differ, there are also significant differences in views depending on whether people are market- or professionally-oriented. Therefore, in spite of applying the top-level expertise it often happens that solutions designed exclusively on the basis of professional knowledge are

²⁴ Clyde Weaver and others, *Rationality in the Public Interest: Notes Toward a New Synthesis* in Michael Breheny and Alan Hooper (eds.), *Critical Essays on the Role of Rationality in Urban & Regional Planning* (Pion 1985) 146.

²⁵ *Ibid.*

²⁶ Marot (n 19) 21.

²⁷ *Ibid.*

²⁸ Golobič (n 4) 5.

unacceptable to the public and we cannot come much closer to solutions by means of improving the quality of information.²⁹

Already in the 1960s, the theory started to point to several deficiencies in decision making based solely on expert argumentation. According to Golobič, the criticising of technocratic planning and the growing awareness of the individual's rights, especially the right to a healthy environment, have slowly led to the idea of planning as a procedure of cooperation between the public (users), the profession (planners) and politicians (decision makers) all the way through to the introduction of various forms of participative approaches and the so-called communicative theory of planning.³⁰ The paradigm of participative planning as a communication process³¹ has contributed one of the most powerful criticisms of the technocratic planning procedure.³² Thus, in his theory on the crisis of legitimacy Habermas maintains that people may in the profane as well as the cosmic environment be located with a dynamic mechanism of identification, called a self-reflective symbolism of identity.³³ This represents the system of beliefs in self-identity, collective identity and social function in a legitimate social system. According to Habermas, the link between the interpretative system and realities of social existence legitimise the structure of any social system. Habermas designed this theory on the basis of an analysis of several riots in the second half of the 1960s, which continued in numerous countries of Western Europe and in the USA and were strongly connected with the social economic circumstances of the time. Nevertheless, the key findings of this theory may be applied to the field of spatial planning today. The concept of place identity that most frequently underpins planning and design, the *genus loci* view of place, is derived from the same assumption about human identity, which is relational by nature.³⁴

The participative model of democracy is a theoretical concept which emerged as a response to challenges³⁵ several democratic

²⁹ Ibid.

³⁰ Golobič (n 4) 4.

³¹ A propos, according to Weber, a planner is above all a civil servant who has to act rationally, impartially and equitably (Max Weber, *The Sociology of Religion* (translation Ephraim Fischhoff, introduction Talcott Parsons, Beacon Books 1964).

³² Jürgen Habermas, *The Theory of Communicative Action*, Volumes 1 and 2 (Beacon Press 1984, 1987).

³³ Jürgen Habermas, *Legitimation Crisis* (Beacon Press 1975) 49.

³⁴ Christian Norberg-Schulz, *Genius Loci: Towards a Phenomenology of Architecture* (Academy editions 1980).

³⁵ It is above all a crisis of the legitimacy of power. Seeking a new paradigm or a new democratic model is very much a consequence of the crisis of the political left in European democracies in the second half of the 1980s when a neo-liberal model in Europe often called "Thatcherism" was on the march.

countries (primarily Western) of Europe faced towards the end of the 1980s, when the social democratic model of governing appeared to be exhausted and attempts were made to re-define the welfare state. According to Lavtar, the participative model in relation to representative democracy was particularly intensely and zealously developed by Benjamin Barber. In his model of strong democracy, he maintains that politics in a participative form can develop the ways of turning private interests to the public good by moulding political tolerance.³⁶ However, the participative form of governance is not a concept that is only useful in the field of national politics. It also finds a place precisely in the system of local self-government, where local communities take over control of their destinies by means of effective and open institutions and a high level of political participation. This will be further discussed in item 5 of this paper.

3. What is participation after all?

Participation, or the involvement of the public in the broader sense of the word, can be defined as an activity where an individual is together with others involved in some social processes. Political participation can be described as active engagement in the process of governing and is an opportunity for individuals to become involved in policy designing in the same way as civil servants and elected representatives. The authorities in modern countries have to respond to the requests and wishes of their citizens. Thus, participation is first of all a communication process where citizens convey their views, suggestions and objections to power holders. It is an attempt, a tendency, an effort of ordinary people in any political system to influence the activities of the government and its institutions. Here the authors point out that it is normatively neutral and can range from debates and usual polling to riots. The criteria with which we define an activity as participation are the following:

- that the participants are individuals;
- that it is a voluntary activity;
- that it refers to a specific activity; and
- that this activity is directed to influencing the authorities.

³⁶ Barber, 1984 as cited in Lavtar (n 6) 10.

It is an eminently politically directed activity and not only a political activity which is intended for political positioning, i.e. an activity which refers to the struggle for power and exercising it.³⁷

In the literature, a more precise definition of participation is often given regarding the share of power delegated to the public in a particular case.³⁸ The lowest level of transfer is informing³⁹ and consulting (the public is invited to present opinions or remarks through questionnaires, focus groups, public hearings and similar). A two-way communication between the public and those in power is the next level. Here, besides the term participation, the literature often uses the terms “active involvement”, “active participation” and others.⁴⁰

Many definitions and classifications of different forms of participation can be found in the literature. However, this paper is limited to the participation of individuals and groups according to the definition given in the previous paragraph. Opinions vary as to the level where ‘real participation’ begins, yet the present paper is based on a definition of participation which in the vast majority of cases also includes the procedures of informing but goes upwards from the level of consultation.

4. Spatial planning as a public affair and a subject of public interest, participation and sustainable development

Spatial planning including utilisation, maintenance and renewal are a public issue and therefore a subject of common interest and public policies in several areas. Spatial solutions are, on the other hand, a reflection of individual as well as common needs. Ac-

³⁷ Marjan Brezovšek, ‘Politična participacija, Prispevek k analizi »participativne demokracije« Teorija in praksa, (1995) 32(3-4) 202.

³⁸ See Sherry R. Arnstein, ‘A Ladder of Citizen Participation’ (1969) 35(4) Journal of the American Planning Association 216; Dorothy Nelkin and Michael Pollak, ‘Public Participation in Technological Decisions: Reality or Grand Illusion?’ (1979) 81(8) Technology Review 55.; Peter M Wiedemann and Susanne Femers, ‘Public Participation in Waste Management Decision Making: Analysis and Management of Conflicts’ (1993) 33(3) Journal of Hazardous Materials 355; Gene Rowe and Lynn J Frewer, ‘A Typology of Public Engagement Mechanisms’ (2005) 30(2) Science, Technology & Human Values 251; James L Creighton, The Public Participation Handbook: Making Better Decisions Through Citizen Involvement (Jossey Bass 2005) and others.

³⁹ Public officials inform the public with press releases and briefings etc.

⁴⁰ Yorck von Korf, ‘Re-focusing Research and Researchers in Public Participation’ (2007) research paper, <<https://www.newater.uni-osnabrueck.de/caiwa/data/papers%2520session/J2/RefocusingResearchYvK3.pdf>> accessed 2 September 2011.

cording to the modern understanding of rationality as a multidimensional phenomenon, it is necessary to associate personal experience, social and historical conditions and objective reality and that is why public participation in spatial planning is inevitable.

Decisions concerning spatial planning influence relationships since planners, the users, the administration, investors, politicians and in certain cases the public are confronted with problems they perceive differently. In spatial planning we can still speak of a clear delimitation between the so-called professional/scientific approach and the democratic approach (see above). In addition, conflicts between private and public interests tend to arise frequently. The participative approach enables us to avoid such conflicts or to resolve them more quickly if they occur and sustainable spatial planning is thereby ensured. The aim is active public participation at various stages of decision making which in certain conditions can contribute considerably to the democratic legitimacy of spatial planning decisions. With this paradigm we can move beyond the classic division into professional and democratic approaches and at the same time put limits on the prevalence of private over public interests.

More intensive research of the possibilities of citizen participation in decision making on environmental and spatial matters was, among others, stimulated by recognition of the fragility of our biosphere, the growing intensity of climate change and of the reasons that spawn them which are connected to human activities. Recognition of the inevitability of sustainable development emerged and has turned into a regular mantra of the 21st century. It has led to the realisation that natural resources are not infinite and that a global change in their management is needed, above all in limiting their exploitation. Physical space is a limited and non-renewable resource and spatial planning is a system of rules and conditions for spatial development and land use that humankind has known forever. In the last two decades, the bodies of the United Nations, the European Union and several national governments and non-governmental organisations have elaborated numerous reports, plans and strategies for long-term sustainable environmental and spatial management. Dredge also notes that it is possible to approach the ideal of sustainable development through involvement, participation and cooperati-

on.⁴¹ By adopting the global action programme Agenda 21 and, within it, Local agenda 21, the conference of the United Nations on Environment and Development in 1992 (also known as the Rio conference) acknowledged the strong significance of citizen participation in decision making at a local level.⁴² It stipulates sustainable development as a central objective that the signatories implement at a local level with horizontal and decentralised networks of local actors above all of civil society, economic groups, citizens, politicians and holders of power. These groups should be included by local authorities in the programme of ensuring sustainable development by means of counselling them and stimulating them to supply incentives. Agenda 21 stipulates the active participation of civil society in designing and implementing policies or programmes as a precondition for the shift to sustainable development.⁴³

5. Citizen participation in spatial planning and local governance

The participation of citizens in decision making on public affairs is important for the quality and acceptability of decisions at all levels of administration but particularly in decision making at the local level. Some theorists, e.g. Dahl and Tufte, consider the local level to be the natural democratic venue for citizen participation.⁴⁴ The local level offers citizens the unique possibility to realise their freedom and express their local identity.⁴⁵ Barber also sees such powerful democracy in local communities which ever more frequently take control over their destinies with efficient and open institutions and a high level of political participation.⁴⁶ Baker, Van de Walle and Skelcher similarly emphasise the provisions of the Council of Europe's European Charter of Local Self-Government that citizen participation is an essential democratic

⁴¹ Dianne Dredge, 'Networks, Conflict and Collaborative Communities' 14(6) 2006 *Journal of Sustainable Tourism* 562.

⁴² United Nations Conference on Environment and Development, June 3-14, 1992, 'Agenda 21 Programme of Action for Sustainable Development' U.N. Doc. A/CONF.151/26.

⁴³ Ibid., chapter 28.

⁴⁴ Robert A Dahl and Edward R Tufte, *Size and Democracy, The Politics of the Smaller European Democracies* (Stanford University 1973).

⁴⁵ Bogomil Ferfila, 'Upravljaljska sposobnost in koalicijsko povezovanje v slovenskih občinah' (research report, University of Ljubljana, Faculty of Social Sciences – Institute for Social Sciences, Centre for Political Science Research 2008).

⁴⁶ Barber, 1984 as cited in Lavtar (n 6) 10.

principle which can be most directly exercised at the local level.⁴⁷ Similarly, in the White Paper on European Governance the European Commission strives to stimulate participation at the local level as one of the ways of solving the crisis of legitimacy of European institutions.⁴⁸ According to Smith, smaller territorial units are more suitable for the development of democratic values and innovative forms of democratic decision making.⁴⁹ Even though the latter statement may be considered as too generalised,⁵⁰ the local level is at least theoretically more accessible to citizens, it is capable of mobilising a larger number of participants and at the same time it is the level where decisions are often made with a direct impact on the life of the population.⁵¹

Above all, decisions from the field of sustainable development and from the closely connected field of spatial planning (see the previous item) also belong to them. These decisions are the subject of the present paper. At the local level, some of the most important processes of spatial planning take place which, according to the Local Self-Government Act,⁵² is one of the biggest competencies of Slovenian municipalities.⁵³ Paragraphs 1 and 3 of Article

⁴⁷ Keith Baker and others, 'Citizen Support for Increasing the Responsibilities of Local Government in European Countries: A Comparative Analysis' (2011) 9(1) *Lex Localis - Journal of Local Self-Government* 1.

⁴⁸ Commission 'White Paper on European Governance' COM (2001) 428 final. 15-20.

⁴⁹ Bryan C Smith, *The Territorial Dimension of the State* (George Allen 1985).

⁵⁰ As emphasised by Bherer, such an explanation might lead to a (wrong) conclusion that local authorities in decision making automatically introduce participative mechanisms (Laurence Bherer, 'Successful and Unsuccessful Participatory Arrangements: Why is There a Participatory Movement at the Local Level?' (2010) 32(3) *Journal of Urban Affairs* 287). In practice however, their introduction is often subject to other factors which are independent from the level of public administration. Some research studies even established a negative correlation: the development of participative mechanisms of decision making is stronger in larger local communities as they have more resources (human, financial and others). Similarly, Oliver (Eric J Oliver, *Democracy in Suburbia*, (Princeton Univ. Press 2001)) determines that in smaller local communities we may find numerous civil initiatives but very few activities of the local authorities which would enable institutionalised citizen participation.

⁵¹ Brezovšek (n 9) 11.

⁵² The tasks of municipalities are stipulated in paragraph 2 of Article 21 of the Local-Self Government Act. Regarding the discussed subject, the most important are indents 2, 3, 4, 12, 13 and 20 of the said paragraph and Article, and of these the most important are:

- providing the conditions for the economic development of the municipality;
- planning spatial development, carrying out tasks in the areas of activities affecting the physical space and the construction of facilities in accordance with the law and ensuring the public service of building land management;
- creating conditions for the construction of housing and providing for an increase in rent (social welfare housing fund);
- being responsible for preserving cultural heritage in its territory in accordance with the law;
- constructing, maintaining and regulating local public roads, public ways, recreational and other public areas, regulating traffic in the municipality and performing tasks of municipal public order;
- adopting the statute of the municipality and other general acts.

⁵³ Local Self-government Act (ZLS-UPB2, Official Gazette of RS, Nos. 72/1993, 6/1994, 45/1994, 57/1994, 14/1995, 20/1995, 63/1995, 73/1995, 9/1996, 39/1996, 44/1996, 26/1997, 70/1997, 10/1998, 68/1998,

1 of ZUreP-1 define spatial planning as the performance of spatial planning and enforcement of implementation measures for planned spatial arrangements and ensures the development of building land and the maintenance of a spatial data system.

ZPNačrt largely repealed ZUreP-1, above all the part related to spatial planning, and defines the latter as an interdisciplinary activity whereby interventions in space and spatial arrangements are planned on the basis of development policies which take into account the public benefits of environmental protection, nature conservation, the protection of animals and natural goods, the protection of property and cultural heritage (indent 19 paragraph 1 of Article 2). In the present paper, we focus on citizen participation in spatial planning as the adopting of plans for interventions in space and spatial arrangements (development planning) and where explicitly stated also in making decisions on interventions in physical space (development control).

As mentioned, spatial planning is one of the most important competencies of local communities and, as a rule, their implementation will have a decisive influence on their economic and social development.

According to paragraph 2 of Article 11 of ZPNačrt, the local self-governing communities (hereinafter communities) are responsible for:

1. determining references and guidelines for the spatial development of the municipality;
2. determining the use of space and conditions for placing interventions in space; and
3. planning spatial arrangements of local importance.

Paragraph 2 of Article 12 (indents 6 and 8) of ZUreP-1 stipulates the following as competencies of the municipality:

1. keeping databases on spatial issues within their competence;
2. following the situation in the field of spatial planning and taking care to maintain legitimacy and order in physical space; and
3. preparing and adopting reports on the situation in the field of spatial planning.

We should not overlook the fact that municipalities play an exceptional role by determining and protecting the public interest

74/1998, 12/1999 (16/1999 corr.), 36/1999, 59/1999, 70/2000, 94/2000, 100/2000, 28/2001, 87/2001, 16/2002, 51/2002, 108/2003, 77/2004, 72/2005, 100/2005, 21/2006, 14/2007, 60/2007, 94/2007, 27/2008, 76/2008, 100/2008, 79/2009, 14/2010, 51/2010, 84/2010 and 40/2012); hereinafter referred to as ZLS.

in spatial development. This is achieved by means of implementing the relevant laws, spatial acts (spatial plans and other spatial acts at the municipal level) and of active land use, or spatial policy (backed up by tax, financial, market and urban planning instruments). According to Rebernik, the precise, efficient and consistent execution of spatial laws and planning documents as well as of active land use policy measures is crucially significant when it comes to implementing the public interest and thereby sustainable land development.⁵⁴

6. Citizen participation in the Slovenian system of spatial planning – significant room for improvement

Municipalities face a series of challenges while carrying out the tasks within their competence in the field of spatial management. One of the vital challenges for quality spatial development is the timely and well planned involvement of the public (see above). In the Slovenian professional and scientific literature the prevailing position is that the existing way of including the public in spatial planning procedures in Slovenia has a host of deficiencies.⁵⁵ As a result, the level of citizens' participation in planning as well as in public life generally is low.^{56, 57} Similarly, the position of representatives of different stakeholders in spatial planning and spatial management (citizens, local and national governmental level, investors and professionals) has often been

⁵⁴ Dejan Rebernik, 'Teorija in praksa prostorskega načrtovanja prostorski razvoj mest in širših mestnih območij v Sloveniji', (2010) 9(33) Dela 111.

⁵⁵ Naja Marot, 'Upravljalvska sposobnost slovenskih občin na področju prostorskega načrtovanja' (2010) 50(1) Acta geographica Slovenica 155.; Golobič (n 4); Maja Simoneti, 'Izobraževanje za sodelovanje v urejanju prostora' (2007) 51(2) Geodetski vestnik 366; Andrej Klemenc, 'Krepitev participativne kulture v Sloveniji' (Civil society consultation in the National Council of the Republic of Slovenia, Ljubljana, February 2011); Drago Kos, 'Krepitev participativne kulture v Sloveniji' (Civil society consultation in the National Council of the Republic of Slovenia, Ljubljana, February 2011).

⁵⁶ Haček and others, Upravljalvska sposobnost in koalicijsko povezovanje v slovenskih občinah (University of Ljubljana, Faculty of Social Sciences 2008); Stane Vlaj, 'Lokalna samouprava - demokracija od spodaj navzgor' (Mednarodni inštitut za bližnjevzhodne in balkanske študije IFIMES, 18 October 2011) <http://www.ifimes.org/default.cfm?Jezik=si&Kat=10&ID=632> accessed 28 October 2011; Marot (n 55); Centre for Political Science Research, 'Stališča o lokalni demokraciji' (research report, University of Ljubljana, Faculty of Social Sciences - Institute for Social Sciences Centre for Political Science Research 2003).

⁵⁷ The widely held position is that Slovenia lags behind similar foreign practice in this field and, in the opinion of Simoneti (Maja Simoneti, Participativna kultura in prostorsko načrtovanje (Institute for Spatial Policies 2011)), Slovenia is even lagging behind its own practice from the earlier times of its "self-management" social system.

expressed publicly.⁵⁸ This is also confirmed in the conclusions of a recent conference on strengthening the participative culture⁵⁹ attended by 70 participants – representatives of civil society, governmental and local level administration and of professionals from the area of spatial planning. The conference was held in the National Council of the Republic of Slovenia. Like with the participants of a seminar called “Promotion of participation in spatial decision making at the local level” (organised by the Institute for Spatial Policies on 29 January 2009 in the framework of the PoLok project⁶⁰) and the round table on the role of civil society in urban planning, which took place at the Faculty of Architecture at the start of April 2009, the conference held on the premises of the National Council largely confirmed and partly also expanded the findings of Slovenian urbanism science and spatial sociological science, as summarised here:

a) inadequate regulation of public participation in spatial management in the relevant laws (ZPNačrt, ZUPUDPP, Law on Environment Protection, Construction Act⁶¹) – above all, the large deviations of norms in various laws referring to public participation, inconsistent use of terms in different laws, inconsistent legal implementation of the Aarhus Convention and the non-existence of the responsibility of authors of spatial planning documents and of decision makers in spatial planning procedures to prepare a so-called process plan that clearly defines how the public is to be included in the planning procedure. The legislation should provide for the public’s involvement in early stages of the procedures and stipulate longer terms for conveying any com-

⁵⁸ The stakeholders are enumerated as examples only as they may differ according to the nature of a specific spatial planning procedure. This is true for the term “citizens” who may concern all the people in the area subject to a certain planning document (area of planning), owners of the adjacent real estate in cases of siting interventions in certain areas. The general public and organised civil society (often by acting through non-governmental organisations) may often be important factors.

⁵⁹ The conference took place on 3 February 2011. It was organised by the Regional Centre for Environment in the framework of the project Civil Society under auspices of the French Cultural Institute Charles Nodier in Ljubljana.

⁶⁰ From October 2008 to November 2009, the project was managed by the Institute for Spatial Policies (IPoP) in partnership with the Trajekt institute (www.Trajekt.org) and a Norwegian partner CBNRM Net (www.cbnrm.net). It was supported by a subsidy from Iceland, Liechtenstein and Norway through the Financial Mechanism of EGP and by the Norwegian Financial mechanism.

⁶¹ Environment Protection Act (Official Gazette of RS, Nos. 41/2004, 17/2006, 20/2006, 28/2006, 39/2006, 49/2006, 66/2006, 112/2006, 33/2007, 57/2008, 70/2008, 108/2009, 48/2012 and 57/2012); hereinafter referred to as ZVO-1; Construction Act (Official Gazette of RS, Nos. 110/2002, 97/2003, 41/2004, 45/2004, 47/2004, 62/2004, 102/2004 (14/2005 corr.), 92/2005, 93/2005, 111/2005, 120/2006, 126/2007, 57/2009, 108/2009, 61/2010 (62/2010 corr.), 20/2011 and 57/2012); hereinafter referred to as ZGO-1.

ments or proposals. It is necessary to stipulate in detail that such comments and proposals be considered and that the obligation of the relevant authority is to define in detail any rejection of such comments or proposals. It is precisely the (too) late involvement of the public, which in most cases is merely a formality as the decisions have already been made without any real influence of the public, that triggers the emergence of numerous civil initiatives. This is a clear indicator of growing conflictive situations in physical space and that significant changes are called for in this field. The spatial and environmental legislation in Slovenia provides for the involvement of the public no earlier than in the stage when draft acts have already been prepared and only then does the public have a certain time (usually 30 days are provided for in ZPNačrt, but the period is evidently too short when a more complicated issue is in question) to submit any comments and proposed modifications or amendments. Spatial planning document producers in most cases have to examine those comments and proposals and take a position which has to be made public, but the absence of stringent legal provisions allows the comments or proposals to be frequently ignored or rejected without any real substantiation. The early involvement of the public, which enables more active participation at an early stage of preparing draft spatial planning documents, has been a mantra of numerous authors for more than a decade but the legislature has not decided to apply it when preparing the relevant laws. ZUPUDPP is partly an exception since in preparing the national spatial plan it foresees the participation of the public (public announcement, possibility of submitting comments, directions and opinions; organising a consultation is unfortunately simply a possibility and not obligatory) already at the stage of the initiative to adopt a plan (Article 21). Likewise, the relevant legislation needs to be modified or amended to enable the more active engagement of non-governmental organisations. A recommendation to the competent ministry as well as to the Slovenian government to ensure more openness to the “broader interested public” when relevant spatial planning documents are being prepared, was adopted on the basis of Articles 272 and 111 of the Standing Orders of the National Assembly⁶² by the same

⁶² Standing Orders of the National Assembly (Official Gazette RS, 92/07 - Officially Consolidated Text, 2007).

National Assembly in a session on 29 January 2009 while discussing the annual report of the Ombudsman of the Republic of Slovenia.

b) The next set of deficiencies refers to the functioning of the government and municipal administration. They often observe citizens' participation as a nuisance.⁶³ Although the relevant legislative framework, as already mentioned, contains numerous imperfections, it does not prevent the application of various informal methods of involving the public. In the last decade, several extensive studies have been conducted in the areas of executing the spatial legislation and of the analysis of the functioning of the administration connected with it. In 2001, a research study was carried out by the Environmental Law Institute by means of a questionnaire.⁶⁴ The research aimed to collect information on problems or difficulties the municipalities and administrative units⁶⁵ encounter when carrying out procedures to find solutions related to spatial planning and management. Here we must also mention the 2003 study by Ravbar and Bole who focused on systemic aspects of spatial planning. By means of analysis and a critical cross-section of the legislative starting points, the study aimed to investigate the possibility of introducing a system of spatial planning. A comparative analysis was also used to design various possibilities for the institutional organisation of the system.⁶⁶ As far as the analysis of the municipal administration's functioning is concerned, we should mention the research carried out in 2007 by the Faculty of Social Sciences called "Administrative capacity and coalition building in Slovenian municipalities" (project manager Bogomil Ferfila, PhD) within the framework of the targeted research programme "Competitiveness of Slovenia 2006–2013". The research was conducted by using a questionnaire for the target population of

⁶³ Jože Kos Grabar 'Urejanja prostora v Sloveniji na zacetku XXI. stoletja' (press conference of Slovenian Evaluation Society, Ljubljana February 2009).

⁶⁴ Dušan Blagajne and Borut Šantej, 'Študija izvajanja prostorske zakonodaje o urejanju naselij, stavbnih zemljišč in graditve objektov' (study, Environmental Law Institute 2001).

⁶⁵ Administrative units are territorial offices of the state administration subordinated to a given ministry, with their own area of operation and tasks. Their basic responsibility is to decide on administrative matters at first instance, while the competent ministry or body or organisation within the framework of the ministry is competent for deciding on appeals against the decision of the administrative unit. In addition, they supervise the legality of local authorities' performance of their competencies and the expediency of local authorities' performance of delegated state functions. Supervision of spatial development activities is mainly performed through building permits issued by administration units.

⁶⁶ Marjan Ravbar, 'Sistem urejanja prostora' (final report, University of Ljubljana, Scientific Research Centre of the Slovenian Academy of Sciences and Arts – Anton Melik Geographical Institute 2003).

municipal administration directors.⁶⁷ The questionnaire consisted of five sections with the following topics: personnel-organisational and financial aspects, the aspect of cooperation among municipalities, introducing entrepreneurial principles to municipal administration, and aspects of administrative-political relationships in the framework of the municipal system.⁶⁸ The latest research from this field was carried out by Marot in 2010. Using a questionnaire and an analysis of secondary sources she investigated the planning governance capacity of Slovenian municipalities. She defined 13 indicators⁶⁹ and used them to produce the typology of management capacity in the field of planning, i.e. the capacity of municipalities to implement spatial planning legislation.⁷⁰ The questionnaires were distributed to all 210 municipalities and 55 responses were received. The questionnaires were filled in by representatives of municipalities responsible for spatial planning: heads of departments of the environment and spatial planning, advisors, directors of municipal administration and others.⁷¹

The findings of the abovementioned studies are very similar. The main common points refer to the personnel, financial and organisational 'shortages' of institutions performing spatial planning. Ravbar points out the need for specialised (interdisciplinarily conceived) public research – an applied institution capable of preparing the expertise to implement modern, ever changing methodologies in spatial planning which would perform advising, various auditing tasks and give opinions on the contents and technical questions of spatial planning (see our proposal in the Conclusion). He further suggests the introduction of regional planning and strengthening of the quality and number of personnel, while improving the financing of municipal administrations and conferring more autonomy on larger municipalities (according to the alleged cases from Europe of "supralocal" spatial manage-

⁶⁷ The questionnaire was addressed to the directors of 193 municipal administrations (the questionnaire was not sent to the administrations of 17 newly founded municipalities since, in the opinion of the researchers, they lacked the necessary experience and development in administration to be able to participate relevantly in the survey. 118 administrations (61.1%) returned completed questionnaires.

⁶⁸ Haček and others (n 56) 113-132.

⁶⁹ The indicators used measure the adequacy of the criteria for founding a municipality and the founding of a municipality by separation from an existing one, the adequacy of the personnel, and the demand for new staff available funding, difficulties in understanding the legal framework, which all influence the execution of the 'project' and, most importantly for the subject of this paper, the level of public participation, its influence, frequency and quality.

⁷⁰ Marot (n 55).

⁷¹ Ibid.

ment to which the spatial management system is subordinated, with municipalities having the common instrumentation of decision making on land use management according to its purpose).⁷² In spite of the said limitations, the central government continues to burden local communities with an increasing amount of obligations, thereby significantly reducing their governance capacity.

Beside the deficient legal framework, Haček, Brezovšek and Bačlija emphasise poor human resources (management) and limited funding as the key management hurdles to be cleared by Slovenian municipalities.⁷³ They argue that the majority of municipal administrations are relatively small in size and lack legal professionals and technically educated personnel (mostly engineers).⁷⁴ Heads of municipal administrations are also disinclined to introduce entrepreneurial principles and good business practices to the municipality's operations. On top of that, they use an ineffective reward system. Interestingly, however, according to the said research the directors consider the municipal administration accepting the proposals of the citizens as (the only) acceptable entrepreneurial principle. This is promising as it points to at least a partial awareness of the deficiencies in public participation in the administration of local communities and to the perception of the public's involvement as a positive value.

Marot also notes the problem of personnel and funding and the inadequate legal framework for the operation of local administration in the spatial management field (ZPNačrt for instance, as opposed to ZUreP-1, does not require a municipality to employ an urban expert although, on the other hand, it demands that a municipality acts rapidly and efficiently with regard to spatial interventions (see below)).⁷⁵ She argues that staff deficiencies are associated with the problem of a unified (without internal divisions) municipal administration (most of the surveyed municipalities) and stresses the changed role of planners in the modern system of spatial planning, which exceeds the mere elaboration of plans. She also identified the poor interdisciplinary cooperation

⁷² Marjan Ravbar (n 66).

⁷³ Haček and others (n 56) 113-119.

⁷⁴ Similarly, Vlačj (n 56) points to inconsistencies of some solutions in force in Slovenian local self-government (as an example he mentions the problem of sources of financing the local communities) with the European Charter of Local Self-government (MELLS), ratified by Slovenia in 1996, which is considered one of the basic documents in the field of democracy in Europe.

⁷⁵ Marot (n 55) 157.

of departments and cooperation of stakeholders in general and, in particular, the public.

The ability of Slovenian municipal administrations to execute spatial legislation is according to her findings therefore relatively low, which is also evident in the field of public participation which is, as shown by the research, at a very low level. Municipal administrations on average use consultation (second lowest level as measured by the five-point scale of the International Association for Public Participation – IAP2).⁷⁶ It consists of giving information to the public about plans and of inviting the written/oral transmission of their views and wishes during the period of public hearings (see item 3). In second place by frequency is the lowest level – information – where the public will only be given information on spatial development plans and projects and provided with explanations of the problem and possible alternatives.⁷⁷ Only six municipalities have opted for more active public participation through workshops at the very beginning of the planning process or through the establishment of partnerships with the community.⁷⁸

The abovementioned deficiencies in the functioning of the Slovenian local government system, which has important competencies in the field of spatial management, are closely related to the level of the so-called administration culture and the concept of local governance. During the last 20 years, traditional local government systems in countries of Western Europe and in the USA have been transformed into systems of local governance. Concepts like technocracy, hierarchical structure and political monopolism have, at least on the declarative level, been replaced by participation, consensus building and legitimacy, efficiency, responsiveness and impartiality.^{79, 80}

⁷⁶ Ibid.

⁷⁷ Umanotera, 'Umanotera poroča – Ogleđalo vladi 2006, praksa in značilnosti sodelovanja s civilno družbo' (Umanotera and Legal-informational centre for NGOs Slovenia 2007).

⁷⁸ Marot (n 55) 155.

⁷⁹ John Graham and others, 'Principles of Good Governance in the 21st Century' (Policy Brief No. 15, Institute on Governance 2003).

⁸⁰ In modern democracies it is quite difficult to set a dividing line between administration and politics: the political and administrative processes are intertwined. To find new solutions which would assist in improving the efficiency and rationality of administration, developed countries have ever since the 1980s been introducing extensive reforms under a common denomination "new public management (NPM)", putting a stress on the organisational (not only in terms of personnel) division of designing and executing of politics, disaggregation and introducing of principles of private sector management. In the literature, we also come upon the term new public governance. These two terms will mostly be used as synonyms. Yet some authors (Stephen Osborne, *The New Public Governance?* (Routledge 2010)) think that the term new public management represents a transitional stage from the traditional, bureaucratic model of administration to the term new public governance.

These concepts are closely connected with public participation in spatial and public decision making in general since it is almost impossible to imagine good governance without active citizen participation. The trends with regard to planning legislation and public administration and their impact on the position of the public in the English spatial planning system – which the previous British government had sought to change by emphasising the motto “Let us change the planning culture!” – will be discussed in the following sections.

7. Slovenia and England: Comparable spatial planning systems?

When England is mentioned in connection with the system of spatial planning and management most of us think of common law – a legal tradition and discretionary system of development control which due to cultural, social, legal and economic circumstances has developed differently than in countries of continental Europe, including Slovenia. The latter belongs to the continental legal tradition and its system of spatial planning is classified among regulatory planning systems.⁸¹ According to Carmona and Sieh, regulatory systems are based on fixed legal frameworks and administrative decision making, while discretionary systems distinguish between law and policy, and are based on ‘guiding’ plans and political decision making.⁸² For Dimitrovska, Andrews and Ploštajner, regulatory or plan-oriented systems (such as the Slovenian spatial planning system) are target-oriented, with ‘like to achieve’ ideal development schemes, pre-planned and determined in advance, with prescribed land uses, design standards and regulations.⁸³ Such systems are inflexible as there is no place for discretion. There is a plan and accompanying regulations and there is a clear divide between what is and what is not allowed.⁸⁴

⁸¹ A division into predominantly either regulatory or discretionary systems of development control is made by Booth (Philip Booth, ‘Zoning or Discretionary Action: Certainty and Responsiveness in Implementing Planning Policy’ (1995) 14 (2) *Journal of Planning Education and Research* 103). The terms plan-led systems versus discretionary systems are also well recognised. Some authors (Kaliopa Dimitrovska-Andrews and Zlata Ploštajner, ‘Local Effects of Transformation Processes in Slovenia’ 2000 7(8) *Inf.Raumentwicklung* 435) distinguish between “plan-oriented” and “project-oriented” systems. Today, the elements of both systems in numerous countries are intertwined and the division into the two mentioned above is, due to convergence, less and less distinctive.

⁸² Matthew Carmona and Louie Sieh, *Measuring Quality in Planning* (Taylor & Francis 2007) 28.

⁸³ Dimitrovska-Andrews and Ploštajner (n 81) 445.

⁸⁴ Eric Reade, *British Town and Country Planning* (Open University Press 1987).

On the positive side, regulatory systems offer greater certainty and less delay in decision making because provisions in the plan are binding upon the decision maker and confer a right upon the landowner. On the negative side, plan making is slower, there is little potential for negotiation and the system is unresponsive to development and community needs.

In contrast, discretionary systems allow responses to development proposals to reflect the circumstances that exist at any time, without having to revise entire policy framework if circumstances change. Flexibility is therefore achieved and decisions on development can continue to be made in the absence of an up-to-date policy framework without necessarily incurring any loss in rigour. On the negative side, discretion can create uncertainty for developers, an overemphasis on the efficiency rather than the quality of the process, and inconsistency in decision making based on values that are not always fully articulated.⁸⁵

From 1947⁸⁶ until the 1990s, the English spatial planning system was perhaps the most typical representative of the group of discretionary systems. Before 1991, when the Planning and Compensation Act was adopted, the role of a plan in development control had been less defined and in most local communities no local plans had been adopted. The 1991 Act amended the 1990 Town and Country Planning Act (Section 54A) to introduce a plan-led system in England. This signified an important shift from the past practice and an attempt to increase predictability in spatial decision making. Sieh states that the move to a plan-led system in Britain effectively gave primacy to plan policy in the making of planning decisions; however, the system continued to be discretionary as the plan remains just one of a range of material considerations (including central government planning policy) that authorities need to consider.⁸⁷ That is why in planning theory today the majority opinion prevails that the English system can be designated as a plan-led discretionary system with elements of both regulatory and discretionary systems.⁸⁸

⁸⁵ Carmona and Sieh (n 82) 30.

⁸⁶ The year when the Town and Country Planning Act 1947 was adopted in England, a law which marked the beginning of modern spatial planning in England (see above).

⁸⁷ Carmona and Sieh (n 85).

⁸⁸ Allmendinger emphasises that contradictory tendencies were intertwining in English planning policy of the mid-1990s but the planning-oriented model which is alluded to by the meaningful title of the article has a better chance of prevailing: Zoning by Stealth? The Diminution of Discretionary Planning (Philip Allmendinger, 'Zoning by Stealth? The Diminution of Discretionary Planning' (2006) 11(2) *International Planning Studies* 137).

However, the special features of different planning systems are not without an impact on the position and role of public participation and the characteristics of these connections should clearly be researched in depth. Yet an analysis of the characteristics of such connections exceeds the aim and subject of this paper. We instead focus on those examples of the English planning system reforms (emphasising the participation of the public) that are not connected to the particularity of the English, i.e. discretionary, system and can therefore, in our opinion, also be instructive for the continental point of view.

8. Spatial planning in England in the light of social and political changes

This section discusses the reformed system of spatial planning in England. Before the extensive governmental reforms (2001–2009) in England, town and country planning was based on a land use planning system. The term ever more frequently used in Europe and England to define the activity is spatial planning, and it is also used in this paper. The UK government defines spatial planning as “beyond traditional land use planning to bring together and integrate policies for the development and use of land with other policies and programmes which influence the nature of places and how they function”.⁸⁹ The main English professional association for spatial planning, the Royal Town Planning Institute (RTPI), advocates an even broader definition: “critical thinking about space and place as the basis for action or intervention”.⁹⁰ How the change in definition is reflected in English legislation and politics will be explained in the following chapters.

The modern-day planning system in England is a post-war invention, with roots that may be traced to the enactment of the Town and Country Planning Act in 1947. It introduced a comprehensive and universal approach to land use control, which meant ‘nationalisation’ of the right of private individuals to develop land by stipulating that planning permission would be required for certain types of development. In return, these ‘applications’ were

⁸⁹ Office of the Deputy Prime Minister, Planning Policy Statement 1: Delivering Sustainable Development (2005) 12.

⁹⁰ Royal Town Planning Institute, ‘Education Commission Final Report’ (report, Royal Town Planning Institute 2003).

afforded the automatic right of appeal (to a planning inspector or to the Secretary of State) should consent be refused. The newly created system of town and country planning sought to secure the interests of the community in cases where amenity would be harmed. "Amenity" itself was never defined and from 1947 to date it has been interpreted in many ways (usually by virtue of legal interpretations in the courts).^{91, 92} The public interest would, therefore, take precedence over the private right to develop land and use property.⁹³ Rights of (private) land ownership would, therefore, not offer a *carte blanche* for ignoring matters of public law or policy.⁹⁴ Nevertheless, the private interest should not be unduly restricted or fettered, and in a variety of circumstances various freedoms, such as the right to extend a dwelling within a certain level of tolerance, would be deemed to fall outside planning control. Today, such freedoms from the need for planning permission are granted by subordinate (i.e. laid before Parliament) legislation (such as contained in the General Permitted Development Order or Use Classes Order which permit certain building works and changes of use without planning permission).⁹⁵

In spite of that, political aims to be implemented by the planning system changed. In 1947, it was post-war reconstruction and in the first decade of the 21st century it was the sustainable development,⁹⁶ for the assurance of which the spatial planning system has developed strategies for adapting to climate changes and reducing the consequences thereof. Growing awareness

⁹¹ John Ratcliffe and others, *Urban Planning and Real Estate Development* (Routledge 2009) 3.

⁹² It is an expression characteristic of the English common law legal system in which some concepts are not legally stipulated but can be of decisive importance for a court's judgement in a particular case. It is a term taken from the planning practice whose contents will in an individual case considering the relevant circumstances be stipulated by the court. Or, as Booth puts it: "... the practice of deriving general concepts from practice, which in turn may be applied to cases in the future, has run the risk of obscuring rather than exposing the value systems that underpin an approach to spatial planning. In this respect a catch-all concept like amenity is classic: it has covered, variously, aesthetic values, environmental protection and the rights of people to be shielded from the activities of their neighbours" (Philip Booth, 'The Control of Discretion: Planning and the Common-Law Tradition' (2007) 6(2) *Planning Theory* 143). And further: "...application is the same: we recognize amenity or material considerations when we see them and successive examples allow decision-makers, be they administrative or judicial, to refine and indeed modify the initial concept" (Ibid., 142).

⁹³ Malcolm Grant, 'Planning Law and the British Planning System' (1992) 63 *Town Planning Review* 3.

⁹⁴ Barrie Needham, *Planning Law and Economics: An Investigation of the Rules We Make for Using Land* (Routledge/RTPI 2006).

⁹⁵ Ratcliffe and others (n 91).

⁹⁶ Such a case is, for instance, a yearly objective of the government that at least 60% of new buildings are built in developed areas (Department for Communities and Local Government, *Planning Policy Statement: Planning Policy and Climate Change* (Supplement to Planning Policy Statements 1, COM 05006, 2006)).

of the significance of sustainable development in England has emerged *inter alia* from the recognition by governments at four summit conferences organised under the auspices of the United Nations: in 1992 in Rio de Janeiro (the so-called Rio conference), in 1998 in Kyoto, in 2002 in Johannesburg (the World Summit on Sustainable Development) and in 2007 in Bali (Climate Change Conference). Recognition of the threat posed by climate change to life on Earth and of its anthropogenic causes triggered the adoption of a series of legally binding objectives⁹⁷ concerning the reduction of emissions of greenhouse gases by the Government of the United Kingdom (hereinafter called the government). Likewise, the government identified a number of even more ambitious but legally non-binding tasks in order to reduce harmful influences on the environment to, as Flannery states, achieve stabilisation of the climate sufficient to prevent extreme weather and associated population movements across the planet.⁹⁸ This governmental policy is clearly reflected in the planning field.⁹⁹ In 2005, in Planning Policy Statement 1 the government presented a set of guidelines and principles on national spatial policy which clearly indicate the priority given by the government to the struggle against climate change as compared to other objectives of land development policy.^{100, 101} This commitment is clearly reflected in the wording of one of the most important laws in the field of spatial planning in England: the Planning and Compulsory Purchase Act, which in Chapter 39

⁹⁷ For instance, a commitment based on Kyoto Protocol 1998 (Framework Protocol on Climate Change) to reduce the national production of greenhouse gases by a figure of 12.5 percent so that by the period 2008–2012 the volume of such emissions would be reduced to 1990 levels.

⁹⁸ Tim Flannery, *The Weather Makers: The History and Future Impact of Climate Change* (Allen Lane 2006).

⁹⁹ Local government is responsible for the day-to-day implementation of the public interest in spatial planning by means of the production of local policy and determination of planning applications. The national government dictates the overall structure and direction of the system by enacting legislation that dictates exactly what needs consent and how local policy shall be produced as well as producing national policy guidance to set out more detail on acceptable forms of development. Thus, the national government enjoys a detailed level of intervention to set up the system (by legislation) and influence its outcomes (by planning policy statements; (PPS)). National government departments, in particular the Secretary of State for Communities and Local Government, hold responsibility for the policy outcomes of the planning system. The Secretary of State issues Planning Policy Statements and Circulars containing the views of the Secretary of State on a wide variety of political areas. These documents constitute important material considerations and must be taken into account in decisions on planning applications and appeals.

¹⁰⁰ Office of the Deputy Prime Minister, *Planning Policy Statement 1: Delivering Sustainable Development* (2005).

¹⁰¹ The objective of a long line of measures is, according to Ratcliffe and others (n 91) 25, among others the stabilising of carbon emissions from development (mitigation) and take the unavoidable consequences of climate change (adaptation) into account.

provides that spatial planning must at the regional and local level contribute to sustainable development.¹⁰²

Ensuring sustainable development and a reduction of the detrimental impact of climate change are not the only reasons for the government's decision to initiate fundamental reforms of the English planning system. In December 2001 Stephen Byers, the then Secretary of State for Transport, Local Government and the Regions¹⁰³ assessed in the Green Paper "Planning: Delivering and Fundamental Change"¹⁰⁴ the previous English system of spatial planning as unsatisfactory and exposed its following deficiencies:

- planning is complex, remote, hard to understand and difficult to access;

- the planning process is too often perceived to be a set of rules aimed at preventing development rather than making sure good development goes ahead. Communities frequently feel detached from the process and suffer from planning blight. Business finds planning delays frustrating and potentially damaging to their competitiveness;

- planning is not customer-focused and local planning departments are overstretched; and

- there are too many inconsistencies. Too often local plans are inconsistent with policies set out at the regional or national level, they are too long, inflexible and slow and expensive to prepare.¹⁰⁵

Based on the said findings, the Green Paper announced an extensive reform¹⁰⁶ of the spatial planning system with the following objectives:

¹⁰² The Planning and Compulsory Purchase Act 2004.

¹⁰³ As far as the name of the government department competent for spatial management is concerned, there were three major modifications in 2001 and 2002: from the Department of the Environment, Transport and the Regions the competence for spatial management was transferred to the Department of Transport, Local Government and the Regions and then from this to the Office of the Deputy Prime Minister. Today, the competence lies with the Department for Communities and Local Government.

¹⁰⁴ The Oxford English Dictionary gives the following definition for a green paper: "(in the UK) a preliminary report of government proposals, published to stimulate discussion". A broader definition may be found: a Green Paper is a government publication that details specific issues and then points out possible courses of action in terms of policy and legislation. It is commissioned from the relevant department, if the government feels that there is an area where new legislation is required or existing legislation needs to be renewed. Crucially, a Green Paper contains no commitment to action, it is more a tool of stimulating discussion, but it is often the first step towards changing the law.

¹⁰⁵ Department of Transport, Local Government and the Regions, Planning: Delivering a Fundamental Change (Planning Green Paper, 01PD 0785, 2001).

¹⁰⁶ Also the expressions used e.g. "fundamental change" and "radical overhaul" reflect the great ambitions of the UK government in planning the spatial management system's renewal.

- to simplify the plan hierarchy, reducing the number of tiers and clarifying the relationships between them;
- to deliver shorter, better focused plans at the local level, which can be adopted and revised more quickly;
- to engage the community more closely in the process of plan preparation; and
- to improve integration with other local strategies and plans.¹⁰⁷

A similar orientation is set out in a planning policy statement from July 2002 entitled "Sustainable communities: Delivering through planning". The document was prepared by the office of the Deputy Prime Minister, then responsible for spatial planning and management, and includes the five criteria from the Green Paper the renewed system should fulfil to meet the objectives of spatial planning renewal in England:

- to deliver in a sustainable way the key to the government's objectives such as housing, economic development, transport infrastructure and rural regeneration whilst protecting the environment;
- to create and sustain mixed and inclusive communities;
- to be transparent so that the right decisions are taken more quickly, with a set of rules that everyone can understand;
- to enable local communities to be involved much more positively than before; and
- to deliver a higher quality and better respected public service.¹⁰⁸

Two years later, in 2004 the UK parliament adopted the Planning and Compulsory Purchase Act which, according to Allmendinger and Tewdwr-Jones, is the most significant element of planning reform in the first ten years of Labour, which completely reformed the planning policy and strategy-making function at national, regional, sub-regional, and local levels.¹⁰⁹ This law introduced a two-stage system of "Regional Spatial Strategies"¹¹⁰ (RSSs) which replaced the former Regional Planning Guidance and

¹⁰⁷ Department of Transport, Local Government and the Regions (n 105) 15.

¹⁰⁸ Office of the Deputy Prime Minister, Sustainable Communities: Delivering Through Planning (Policy Statement, 02PD 00393, 2002) 2.

¹⁰⁹ Phil Allmendinger and Mark Tewdwr Jones, 'Embracing Change and Difference in Planning Reform: New Labour's Role for Planning in Complex Times' (2009) 24 (1) Planning Practice & Research 75.

¹¹⁰ Hereinafter referred to as RSSs.

the “Local Development Frameworks”,¹¹¹ (LDFs) which in turn replaced the former “Structure Plans”, “Local Plans” and “Unitary Development Plans”. The so-called Regional Planning Bodies¹¹² are competent for the preparation of RSSs, whereas local authorities are responsible for the preparation of LDFs making sure that the guidelines from RSS are properly observed. LDF represents an umbrella term, covering a raft of local development documents.¹¹³ It must contain Development Plan Documents,¹¹⁴ a Statement of Community Involvement, an Annual Monitoring Report and a Sustainability Appraisal. Supplementary Planning Documents (SPDs) are not part of the statutory plan, but will provide more detail on policies contained in LDDs. They are not subject to examination, but are subject to public consultation and a sustainability appraisal. SPDs replace the Supplementary Planning Guidance (SPG) of the old system.¹¹⁵ The government recommendations in the field of spatial planning – Planning Policy Guidance Notes – were replaced by Planning Policy Statements.¹¹⁶

Further changes in the spatial planning system in England with a special emphasis on public participation will be discussed next.

¹¹¹ Hereinafter referred to as LDFs

¹¹² Until 31 March 2010 there were eight regional assemblies indirectly elected from among members of the county and district councils and unitary authorities in each region, while the remaining one-third were appointees from other regional interest groups. The regional assemblies were abolished on the said date. The competence for preparation of RSSs are, except for the City of London (their sui generis regional and local authorities act on the basis of the applicable provisions of the Greater London Authority Act 1999 and the competence for preparing RSSs is with the Greater London Authority), shifted to Regional Development Agencies under the guidance of a new Local Authority Leaders' Board.

¹¹³ Ratcliffe and others (n 91) 7.

¹¹⁴ These include Core Strategy, Site Specific Allocations of land, a Proposals Map and it may also contain other Development Plan Documents such as Area Action Plans.

¹¹⁵ Hull City Council – HDF Planning Services, ‘Briefing Note 1: The New Development Plan System’ (briefing note, Hull Development Framework 2007) 5.

¹¹⁶ Planning Policy Guidance notes, and their replacements Planning Policy Statements, are prepared by the Government after public consultation to explain statutory provisions and provide guidance to local authorities and others on planning policy and the operation of the planning system. They also explain the relationship between planning policies and other policies which have an important bearing on issues of development and land use. Local authorities must take their contents into account when preparing plans. The guidance may also be relevant to decisions on individual planning applications and appeals.

9. New Labour, a planning system overhaul and citizen participation

In 1997, the UK government was for the first time in 18 years in the hands of the Labour Party. The New Right narrative that had underpinned policy thinking during previous governments had stressed the importance of the market, the role of the individual, and had consequently underplayed the role of participation in public policy delivery and decision making.¹¹⁷ In contrast, much of New Labour's discourse in all policy arenas emphasised the renewal of democracy by empowering communities to be involved in decision making about services that affect their lives.¹¹⁸ From 1997 to 2010, the New Labour government emphasised its commitment to involving citizens in a wide range of policy decisions relating to health, education, employment and urban regeneration. Further, some authors such as Albrechts even suggest that participation has become integral to the delivery of public services, as governments attempt to involve citizens in decision making through processes of consultation and engagement.^{119, 120}

The Green Paper of 2001 *inter alia* emphasises the need for the stronger involvement of citizens in decision making procedures on spatial development. It already asserts in the introduction: "People feel they are not sufficiently involved in decisions that affect their lives. So it is time for change".¹²¹ Later it is admitted that

¹¹⁷ Andrew Thornley, *Urban Planning under Thatcherism: The Challenge of the Market* (Routledge 1993).

¹¹⁸ Robert Imrie and Mike Raco (eds.), *Urban Renaissance? New Labour, Community and Urban Policy* (Policy Press 2003); Juliet Carpenter and Susan Brownill, 'Approaches to Democratic Involvement: Widening Community Engagement in the English Planning System' (2008) 9(2) *Planning Theory & Practice* 227.

¹¹⁹ Louis Albrechts, 'The Planning Community Reflects on Enhancing Public Involvement' (2002) 3(3) *Planning Theory & Practice* 332.

¹²⁰ In respect of the green paper of the conservative party (The Conservative Party, *Open Source Planning Green Paper*, Policy Green Paper No. 14 (Conservative Party 2010)) of February 2010 – a few months before the parliamentary elections in which the party won the majority and formed a coalition government with the Liberal Democrats – Haseltine's position (see Michael Haseltine, 'Cities Renaissance: Creating Local Leadership' (submission to the Shadow Cabinet, Cities Taskforce of the Conservative Party 2007) that commitment to public participation has become a permanent feature of English politics, might be confirmed. The said document entitled *Open Source Planning* contains an outline of the system of spatial planning as conceived by the Conservative Party, namely it specifies community involvement and collaborative design as one of the essential elements of spatial planning. It is stated in the introductory chapter that "to establish successful democracy, we need participation and social engagement" and "our conception of local planning is rooted in civic engagement and collaborative democracy..." (Ibid.).

¹²¹ Department of Transport, Local Government and The Regions (n 105) 1.

the previous spatial planning system had been “very consultative, but had despite that, too often failed to engage the communities”. It further concludes: “The result of all this is that the community feels disempowered”.¹²² The governmental appraisal of the situation, according to Kitchen and Whitney, makes an important distinction between the existence of the quantity of public participation exercises and the ability of those exercises to engage people effectively in planning decision making.¹²³ In respect of this, the said government document defines three deficiencies of the then system:

- procedures that lead to the adoption of a plan can be so protracted that few community organisations or businesses with an interest can afford to sustain their involvement. There is a perception that the system favours those with the deepest pockets and the greatest stamina;
- planning committees can make decisions on planning applications without the applicants or significant objectors having an opportunity to present their case;
- some planning procedures are legalistic and effective participation tends to demand at least some specialist knowledge. People who are inexperienced in the workings of the system find this difficult and sometimes community organisations can find it hard to present their case without access to professional advice.¹²⁴

Based on these findings, the government promises in the Green Paper to deliver a “system, which better engages communities. We propose real community participation...”.¹²⁵ The Planning Policy Statement of 2002, which sets stakeholder participation in planning as one of the priority objectives of the planning reform,¹²⁶ also announces some concrete changes in planning legislation such as the introduction of a Statement of Community Involvement.¹²⁷

¹²² Ibid.

¹²³ Ted Kitchen and David Whitney, ‘Achieving More Effective Public Engagement with the English Planning System’(2004) 19(4) Planning Practice & Research 396.

¹²⁴ Ibid.

¹²⁵ Department of Transport, Local Government and the Regions (n 105) 6.

¹²⁶ “...better community involvement which takes into account the needs of all those with a stake in the system” (Office of the Deputy Prime Minister (n 108) 2). This designation is more definite than in the majority of other governmental documents on reform of the spatial planning system as it does not speak of communities but of the stakeholders. What is important here is the interest that an individual or a group of individuals or any other subject (e.g. enterprises or non-governmental organisations) have in a certain plan or construction.

¹²⁷ “...Statement of Community Involvement... will set out benchmarks for community participation in the preparation of LDF documents and significant planning applications” (ibid).

Before the Planning and Compulsory Purchase Act entered into force, the government published another programming document in February 2004 entitled "Community Involvement in Planning: The Government's Objectives". As the introduction to the document, setting out the government's objectives for community involvement in planning, states: "Planning shapes the places where people live and work. So it is right that people should be enabled and empowered to take an active part in the process. Strengthening community involvement is a key part of the Government's planning reforms".¹²⁸

Further on in the text, the government presents the reasons for its endeavours for more participative spatial planning:

- involvement leads to outcomes that better reflect the views and aspirations and meet the needs of the wider community in all its diversity;
- public involvement is valuable as a key element of a vibrant, open and participatory democracy;
- involvement improves the quality and efficiency of decisions by drawing on local knowledge and minimising unnecessary and costly conflict;
- involvement educates all participants about the needs of communities, the business sector and how local government works; and
- involvement helps promote social cohesion by making real connections with communities and offering them a tangible stake in decision making.¹²⁹

The reforms set out a number of ways through which greater involvement is to be achieved:

- Through the preparation and implementation of Statements of Community Involvement¹³⁰ by all local planning authorities.¹³¹ These set out each LPA's policy on involvement in plan making and development control which meet the statutory requirements as well as setting out proposals to meet the needs of particular areas.
- Through other regulations and guidance on consultation on planning documents, e.g. regional plans and LDFs.

¹²⁸ Office of the Deputy Prime Minister, *Community Involvement in Planning: The Government's Objectives* (04PD 01989, 2004) 1.

¹²⁹ *Ibid* 4.

¹³⁰ hereinafter referred to as SCIs.

¹³¹ hereinafter referred to as LPAs.

- Through “joining up”¹³² with other relevant strategies, in particular the Sustainable Community Strategy.
- Through capacity building, including investment in the Planning Aid service to ensure the engagement of previously excluded groups.
- Through culture change amongst all parties (planners, developers and community leaders) to promote greater involvement.¹³³

In 2004 another government document was published. It amended and defined in detail the planned government measures referring to the overhaul of the normative framework and policies in the field of participation in spatial planning. It was called “Planning Policy Statement 12” which, among others, introduced the principle of so-called front loading.¹³⁴ The argumentation underlying this term is that if a strong emphasis is placed upon work in the early stages of the plan making process, the later stages will run more smoothly. This involves a local authority ensuring that a robust evidence base is collected. It also requires the early and effective involvement of key delivery stakeholders and the community. This should ensure there are fewer objections to the plan or issues arising at a late stage. Front loading should also offer people and organisations an opportunity to influence plan content by sharing their knowledge and views with planners. Where consensus is difficult to achieve, front loading should allow the maximum opportunity for participants to understand each

¹³² “Joining up” is a term that Tom Ling (‘Delivering joined-up Government in the UK: Dimensions, Problems and Issues’ (2002) 80(4) *Public Administration* 617) defines as a group of responses to the perception that services had become fragmented and that this fragmentation was preventing the achievement of important goals of public policy. This perception grew in prominence in the mid-1990s and has remained an important part of the thinking behind public sector reform. It is based on the view that important goals of public policy cannot be delivered through the separate activities of existing organisations but neither can they be delivered by creating a new “super agency”. It therefore seeks to align the activities of formally separate organisations towards particular goals of public policy. Therefore, joined-up working aims to coordinate activities across organisational boundaries without removing the boundaries themselves. These boundaries are inter-departmental, central-local, and sectoral (corporate, public, voluntary/community). To join up, initiatives must align organisations with different cultures, incentives, management systems and aims. Therefore, “joined-up government” is an umbrella term describing various ways of aligning formally distinct organisations in pursuit of the objectives of the government of the day.

¹³³ Office of the Deputy Prime Minister, *Community Involvement in Planning: The Government’s Objectives* (04PD 01989, 2004).

¹³⁴ The said document substantiates the principle with the words: “Local planning authorities should take key decisions early in the preparation of local development documents. The aim will be to seek consensus on essential issues early in the preparation of local development documents and so avoid late changes being made” (Office of the Deputy Prime Minister, *Planning Policy Statement 12: Local Development Frameworks* (2004) 1).

other's positions and to negotiate. This means that any issues are clearly understood by the time documents are subject to examination. While this increases the workload in the early stages of plan making, it should, however, increase the overall efficiency of the process and the quality of plans a local authority produces.¹³⁵

Besides front loading, the document also classifies the principle of continuing involvement, the principle of transparency and accessibility and the principle of planning the participation already at the beginning of preparation of a spatial plan or of the development approval process as the most important principles regarding the participation of the public in spatial planning. Here the need is emphasised to adapt the level of intensity and public involvement methods to the nature of the particular decision making process and the circumstances in which it is carried out.

The document contends that it is impossible to speak of 'one size fits all' solutions. Whilst seeking an adequate method and technique for an individual case, the document advises that decision makers should contact an agency such as Planning Aid (see below for more details).

9a. Planning Aid

Writers have long recognised that participation in planning is influenced by structural inequalities in power, along the lines of class, income, ethnicity, gender and other dimensions of diversity. Therefore, any efforts to increase participation need to address existing inequalities. The ways in which participation processes can themselves influence the construction of groups within the "public" such as "the hard to reach"¹³⁶ or "usual suspects" have been a further area of attention.¹³⁷ The government was obviously

¹³⁵ Planning Advisory Service, (2009) 'CLG Plan Making Manual' (Planning Advisory Service, 2009) <<http://www.pas.gov.uk/pas/core/page.do?pageId=109798>> accessed 17 August 2011.

¹³⁶ Many terms are used in government documents and the relevant literature to designate such groups and individuals. The most frequent of these are: "hard to reach", "excluded", "disadvantaged", "underrepresented" and "marginalised". As one can see in the present paper, the definition of these groups by the former English government is comparatively wide as the criterion *inter alia* takes gender, race, physical mobility, age and social background into account. Accordingly the Royal Town Planning Institute (hereinafter referred to as RTPI) defines "disadvantaged groups" as "people on low incomes, unemployed people, minority ethnic communities, women and women's groups, disabled people and disability groups, older people, children and young people, tenants groups, community groups and voluntary organisations" (Royal Town Planning Institute (n 90) 6).

¹³⁷ Yasminah Beebeejaun, 'What's in a Nation? Constructing Ethnicity in the British Planning System' (2004) 5(4) Planning Theory and Practice 437; Robert Imrie, *Disability and the City* (Paul Chapman 1998).

aware of the said debates as Community Involvement in Planning: The Government's Objectives of 2004 Concerning Marginalised Groups states: "Our aim is that planning should provide opportunities for people irrespective of age, sex, ability, ethnicity or background... to make their views known and have their say in how their community is planned and developed".¹³⁸ Already a year before, by ensuring public financing of the Project Aid Service, the government had indicated it was adamant to stimulate, with concrete measures by providing necessary funding for their fulfilment, the stronger involvement of marginal groups and individuals in the spatial planning system.

In 1973, the Town and Country Planning Association commenced carrying out the Planning Aid Project with the aim to "empower local communities by helping them to effectively engage with the planning process and influence decisions that affect their neighbourhood".¹³⁹ The users of this service should above all be "people who would otherwise be excluded from participating in local decision making".¹⁴⁰ In the 1990s, the management of this independent organisation was assumed by the RTPI.¹⁴¹ The English government announced it would join the funding of Planning Aid services in the abovementioned Green Paper. In 2003 the government allocated £3.8 million for a period of a further three years, for the years from 2006 to 2008 funding amounted to £3.3 million, for 2007 and 2008 to £1.7 million, although for 2008 and 2009 £3.2 million. In 2009 and 2010 the sum contributed by the Department for Communities and Local Government already amounted to £4.1 million, while in 2010 and 2011 the sum rose to £4.5 million. This funding continued until March 2011 when the new coalition government abolished the financing of such services.¹⁴²

The operations of Planning Aid England may be divided into two main fields. The first one covers free of charge counselling

¹³⁸ Office of the Deputy Prime Minister (n 128).

¹³⁹ Royal Town Planning Institute, 'What planning does', (Royal Town Planning Institute Official Website)) <http://www.rtpi.org.uk/what_planning_does/> accessed: 1 March 2011.

¹⁴⁰ Ibid.

¹⁴¹ For the area of London a separate independent charity is in charge of the project. In the present paper we focus on Planning Aid England only, even though the service is performed separately by organisations in Scotland, Ireland and Wales. Planning Aid England has professional staff and volunteers in all nine regions of England and in London.

¹⁴² From now on, the RTPI must put up a candidature at yearly invitations to apply for funding from budget to proceed with the Planning Aid England project. Thus, on 14 April 2011 the RTPI released information that it had been granted funding in the amount of one million pounds by the Department for Communities and Local Government in partnership with Planning Aid for London to carry out the project for a period of one year (Royal Town Planning Institute (n 139)).

to disadvantaged individuals and groups on their possibilities of participating in spatial planning processes. For this purpose, RTPi has a special phone line served by expert volunteers. For those individuals or groups that cannot afford to pay, the counselling is cost-free. Planning Aid England follows individual cases over longer periods of time and assists users with expert advice and by representing their interests in specific decision-making procedures. Another field is so-called community planning. This is defined by the RTPi as "...the strategies, techniques and capacity building required to encourage and enable communities to take a full and active role in both the statutory and non statutory planning processes".¹⁴³ In this area, Planning Aid has a proactive, chiefly emancipatory role since by strengthening bonds and building partnerships with communities its environmental and spatial education and training stimulates often excluded groups and individuals to more actively participate in planning processes. According to Reeves and Burley, the objective of such activities is that "...communities and individuals become empowered to act in their own best interests, acknowledging their own perceptions and values rather than those of the professional planners".¹⁴⁴

9b. Statement of community involvement

The Statement of Community Involvement (SCI) is probably one of the most important new institutes for ensuring the public's better involvement in spatial planning. It requires local planning authorities to set out their intentions and procedures regarding participation in the local plan-making process and development control.

This is one of the ways of pursuing the principle of frontloading, as a form of consensus-seeking; overcoming differences early on the planning process. The Planning and Compulsory Purchase Act of 2004 had until the legislative changes in 2008 provided that the Statement of Community Involvement is the subject of independent review by a person appointed by the Secretary of State. According to Moore, as a rule this would have been an Inspector drawn from the Planning Inspectorate (see below).¹⁴⁵

¹⁴³ Ibid.

¹⁴⁴ Dory Reeves and Ken Burley, 'Public Inquiries and Development Plans in England: The Role of Planning Aid' (2002) 17(4) Planning Practice & Research 413.

¹⁴⁵ Victor Moore, *A Practical Approach to Planning Law* (11th edition, Oxford University Press 2010).

The government recommendation in Planning Policy Statement 12 of 2008, among others, defines more in detail the purpose and foreseen contents of the Statement of Community Involvement:

- To clearly explain the process and methods for community involvement for different types of local development documents and for the different stages of plan preparation. This needs to include details of how the diverse sections of the community are engaged, in particular those groups which have been underrepresented in previous consultation exercises.
- To identify which umbrella organisations and community groups need be involved at different stages of the planning process, with special consideration given to those groups not normally involved.
- To explain the process and appropriate methods for effective community involvement in the determination of planning applications and, where appropriate, refer to Planning Performance Agreements.
- To include information on how the SCI will be monitored, evaluated and scrutinised at the local level.
- To include details of where community groups can obtain more information on the planning process, for example, from Planning Aid and other voluntary organisations.
- To identify how landowner and developer interests will be engaged.¹⁴⁶

The introduction of the Statement of Community Involvement and the extensive recommendations shows the efforts on the part of the government for early and planned involvement, with the active participation of civil society organisations such as non-governmental organisations and Planning Aid. Similar goals were undoubtedly pursued by the other changes of policies and of the normative framework. How successful these endeavours prove to be, which obstacles still have to be overcome and what changes in the field of participation lay ahead will be discussed in the next chapter.

¹⁴⁶ Department for Communities and Local Government, Planning Policy Statement 12: Local Spatial Planning (2008) 15.

10. Public participation, competitiveness and speed – a meta-narrative against the pragmatic approach

Some analysts of the English spatial planning system reform believe that it actually represents the transition from a representative model of democracy to a deliberative representative participative model.¹⁴⁷ This is also maintained by the British government which in its programming document of 2004 called *Community Involvement in Planning: The Government's Objectives* talks about "... vibrant, open and participatory democracy...".¹⁴⁸ The participative model of democracy has emerged in the field of spatial planning in the framework of communicative and collaborative theories of spatial planning.¹⁴⁹ Both concepts, based on the principles of Habermas' "ideal speech situation" attribute considerable significance to dialogue, the search for consensus and involvement of stakeholders.

However, the position of some theorists¹⁵⁰ who point to hybridity as one of the key characteristics of New Labour politics seems to be more convincing. In the area of planning, this is manifested in a combination of governmental strategies, incentives and legislative changes based on different, sometimes contradictory principles. Thus, for instance, the majority of performance indicators determined by the English government as criteria for granting funding to local planning authorities within the framework of the Planning Delivery Grant fund and the Best Value programme relate to the speed of decision making and quality of design.¹⁵¹ With regard to participation, there are no incentives or rewards for the activities of local authorities exceeding the preparation of the Statement of Community Involvement.¹⁵² However, this changed

¹⁴⁷ For example, Marian Barnes and others, 'The Micro Politics of Deliberation: Case Studies in Public Participation' (2004) 10(2) *Contemporary Politics* 93.

¹⁴⁸ Office of the Deputy Prime Minister (n 128).

¹⁴⁹ Patsy Healey, *Collaborative Planning: Shaping Places in Fragmented Societies* (MacMillan 1997).

¹⁵⁰ Kitchen and Whitney (n 123); Brownill and Carpenter (n 118); Mike Raco, 'Sustainable Development, rolled out Neoliberalism and Sustainable Communities' (2005) 37(2) *Antipode* 324; Janet Newman, *Modernising Governance: New Labour, Policy and Society* (Sage 2001).

¹⁵¹ Emphasising the speed of decision making is, according to the appraisal of numerous representatives of local planning authorities, a huge barrier to successful participation procedures. Kitchen and Whitney (n 121) carried out a survey among representatives of five English planning authorities and the opinion of 71 percent of the respondents was that it is "not very easy" or "not easy at all" to implement the government requirements to accelerate the procedures of decision making and increase the participation of the public in them.

¹⁵² Hereinafter referred to as SCI.

with the adoption of Local Government and Public Involvement in Health Act 2007, Section 138 of which requires that councils “embed a culture of engagement and empowerment” and ensure consultation with – and the involvement of – representatives of local persons across all authority functions. This so-called duty to involve is a legal foundation for granting funding in the framework of the Best Value programme also according to the quality of assuring public participation. Yet in April 2011 the coalition government announced it was repealing the duty to involve. Moreover, the Labour governmental documents on one hand promote more active public participation while on the other they let the rate of participation conform to “particular local circumstances” (the “what works” approach) which, as Leach and Wingfield warn, provides an opportunity for authorities which do not accept the importance of public participation to marginalise it or pay it lip-service.¹⁵³ Instead of more specific instructions to the local planning authorities, the documents promote the exchange of good practices. The lack of more detailed requirements referring to SCI in the 2004 Planning and Compulsory Purchase Act, according to Brewer and Alexander who performed extensive research on implementation of the SCI, resulted in varying performances between the local communities.¹⁵⁴ Some local planning authorities are committed to more intensive, high quality consulting procedures, although many of them will be satisfied with the SCI prepared in accordance with minimal legal requirements. Such oscillations are, according to Brownill and Carpenter, enhanced by the 2006 legislative changes which did away with the requirement for an independent review by the competent Planning Inspector.¹⁵⁵

Another main focus of the English planning reform is so-called frontloading, which should mean the earliest possible involvement of the public in the procedures to prepare planning documents. This is how the (virtual?) contradiction between speed and participativeness in spatial planning, the two most often emphasised aims of the said reform, should be bridged. With early participation, dif-

¹⁵³ Steve Leach and Melvin Wingfield, ‘Public Participation and the Democratic Renewal Agenda: Prioritisation or Marginalisation?’ *Local Government Studies* (1999) 25(4) 47.

¹⁵⁴ Kate Brewer and David Alexander, ‘Accessing the Emerging SCIs’ (2007) 75(2) *Town and Country Planning* 47.

¹⁵⁵ Susan Brownill and Juliet Carpenter, ‘Increasing Participation in Planning: Emergent Experiences of the Reformed Planning System in England’ (2007) 22(4) *Planning Practice & Research* 619.

ferences in opinions should be ironed out and a consensus should be sought at the very beginning of the procedure to make sure that it can then run more quickly. A case study carried out by the Oxford Brookes University in 2004 on the basis of a Cowley Road Matters project that took place for six months and where, with a substantial subsidy from the Department of Transport¹⁵⁶ some innovative mechanisms of public involvement were tested (e.g. participatory video, planning for real, workshops with marginalised groups), shows that frontloading may in practice have unwanted effects. Individuals and groups with more social power, above all local entrepreneurs, waited for the official stage of preparation of spatial documents and only then presented their views and succeeded to assert their solutions that they had never mentioned at the introductory consultation with the public. Representatives of the community later admitted they had paid less attention to the statutory elements, thinking their views had already been taken into account through the extensive early consultation.¹⁵⁷

Here we encounter a frequent difficulty where participative decision making collides with restrictions represented by power and hierarchy. Similar barriers are faced by Planning Aid, whose data show that the share of representatives of ethnic minorities and of coloured people who turn to this supportive office is comparatively small (approximately 1 percent).¹⁵⁸ The reasons for this cannot be found on the part of Planning Aid, but with the excluded groups themselves. Beebeejaun points out that: "...encouraging greater participation of marginalised groups without consideration of power relations between and within groups does not safeguard values of equality, nor should it be presumed to do so. Participation does not offer a panacea for embedded racial and ethnic inequalities. These inequalities are interwoven into the fabric of our societies".¹⁵⁹

¹⁵⁶ The aim of the project was to harmonise the opposing interests concerning the use of a road in Oxford by means of the modern innovative mechanism of participation. The accent was, similarly as with the new spatial legislation in England, on frontloading, seeking the consent of all stakeholders and in involving marginalised groups and individuals (for more on the project, see Oxford Brookes University, 'Interim Evaluation of Cowley Road Matters' (Report to East Oxford Action, Oxford Brookes University 2005) and Oxford Brookes University, 'Final Evaluation of Cowley Road Matters' (Report to East Oxford Action, Oxford Brookes University 2006)).

¹⁵⁷ Ibid.

¹⁵⁸ National Planning Aid Unit 'Year 4 National Quarterly Monitoring Report April 2006–March 2007' (report, NPAU 2007).

¹⁵⁹ Yasminah Beebeejaun, 'The Participation Trap: The Limitations of Participation for Ethnic and Racial Groups' (2006) 11(1) International Planning Studies 15.

As in the case of many Slovenian municipalities (see above), one of the difficulties faced by many English LPAs is “culture change”. The change in fixed views on the part of spatial planners is not an easy task which is *inter alia* shown by the research of Durning and Glasson.¹⁶⁰ In their research, 24 percent of the surveyed representatives of local authorities attribute difficulties in cooperation with the community to a lack of knowledge and skills on the part of authorities’ planning staff. Carley and Bayley also maintain that one of the biggest challenges is that the organisational culture of local authority bureaucracies is seldom receptive to genuine participation and that elected councillors may view systematic participation as a threat to their role.¹⁶¹

The above clearly shows the contradictions inside the objectives and policies in the field of spatial planning in the time of New Labour governments. These contradictions are also visible in other fields of governance and reflect the dynamics of the times we live in. The developmental challenges and ever more burning question of climate change are causing increased political requirements for speed and efficiency in planning procedures.¹⁶² This trend is also reflected in some recent changes to planning legislation for major infrastructure of national importance. Thus, the British Parliament passed the Planning Act of 2008 which contains a number of changes in the field of public participation in spatial planning of nationally significant infrastructure projects such as ports, energy systems, airports and roads. Cotton argues that the Act was developed within the political context of government concerns over the lengthy and costly arrangements for approving Terminal 5 at Heathrow airport, which was opened in 2008, following the longest planning inquiry in UK history.¹⁶³ The law established a special independent Infrastructure Planning Commission (IPC),¹⁶⁴ ¹⁶⁵ which would

¹⁶⁰Bridget Durning and John Glasson, ‘Skills Base in the Planning System’ (literature review, Local Government Association 2004).

¹⁶¹Michael Carley and Rosalind Bayley, ‘Urban Extensions, Planning and Participation: Lessons from Derwenthorpe and other New communities’ (research project report, Joseph Rowntree Foundation 2009) 29.

¹⁶²Phil Allmendinger and Mark Tewdwr Jones, ‘Embracing Change and Difference in Planning Reform: New Labour’s Role for Planning in Complex Times’ (2009) 24(1) Planning Practice & Research 71.

¹⁶³Matthew Cotton, ‘Public Participation in UK Infrastructure Planning: Democracy, Technology and Environmental Justice’ (Flexnet, 12 May 2010) <www.supergen-networks.org.uk/filebyid/587/file.pdf> accessed 28 September 2011.

¹⁶⁴Hereinafter referred to as the IPC.

¹⁶⁵The coalition government announced they were to abolish the IPC in April 2012 as the commission is composed of non-elected members and is therefore considered not democratic by the coalition

be competent for examining applications for development consent for nationally significant infrastructure projects and for deciding on such applications when a relevant national policy statement would be in force. This procedure was previously a competence of local governments. There would also have been a public examination, with the cross-examination of witnesses and the Secretary of State would take the final decision after having assembled all the information and did not have to accept the recommendations made by the planning inquiry as the inspector, provided they gave good reason. In the new system, evidence is considered by the IPC primarily in writing, unless it chooses to hold an oral evidence session. The introduction of the IPC clearly shows the government's renewed emphasis on delivery. The new system should save time and costs and enable a clear distinction between policy making and decision making. These changes mean, according to numerous authors¹⁶⁶, the prevalence of the technocratic views on spatial planning and giving priorities to economic competitiveness before the demands of social involvement and environmental protection and placing the will of the central government before the will of local communities.

Further changes in the English spatial planning system were commenced by the coalition government upon taking over office in spring 2010. Already soon after elections the new British government announced radical changes to planning legislation.

The most significant change is the Localism Bill, which (at the time of writing) is in the final stage of parliamentary procedure, and will abrogate regional spatial planning and transfer some spatial planning competencies from the government to local communities. It extends the possibilities of local referendum, which previously could only be issued under very strict conditions. Further, it offers some new possibilities for public participation in spatial planning at the local level such as, for instance, neighbourhood planning, intended for the population of narrower parts of municipalities.¹⁶⁷ In view of the fact that the legal changes of the coalition government have only recently been

government. It is proposed that the acceptance and examination of applications for development consent will be dealt with by a new unit within the Planning Inspectorate.

¹⁶⁶ Cotton (n 163); Allmendinger and Tewdwr Jones (n 162); Phil Allmendinger and Graham Haughton, 'Critical Reflection on Spatial Planning' (2009) 41(11) *Environment and Planning A* 2544.

¹⁶⁷ Royal Town Planning Institute (n 139).

made and no detailed scientific debates and studies regarding its impacts have been completed, it will only become clear over time if they signify a step forward in the direction of better quality public participation.

11. Conclusion

Maja Simoneti, a planning expert from the Institute for Spatial Policies and one of the outstanding authors on citizen participation in spatial planning in Slovenia, concluded the abovementioned conference in the National Council of the Republic of Slovenia in February 2010 with the following words: "It is time for changes to spatial planning" (see above) "... we appeal to those responsible to act at a different level to include citizens in spatial planning affairs in Slovenia both formally and informally and to thereby open a public discourse to such a critical degree that it prevents the situation in spatial planning that we have now".¹⁶⁸

At least in the professional public this discourse is continuing and demands for changes to both the regulatory framework and the functioning of the public administration are growing ever louder. They stem from scientists and other spatial planning experts as well as from the local government level. Thus, Vlaj sees the failure to ensure the participation of citizens in decision making concerning local public affairs as one of the major reasons for the crisis of Slovenian self-government.¹⁶⁹ One of the basic challenges posed to us by the ever more unpredictable and rapidly changing economic circumstances in the country as well as abroad is the implementation of two apparently incompatible goals: a higher degree of democracy in decision making and sustainable development on one hand and economic efficiency and competitiveness on the other. The above review of the reform processes in the field of citizen participation in spatial planning in England, which according to the rate of democracy in spatial planning is considered one of the most developed in the world, clearly demonstrates that responses to these challenges are not at all simple and are even less unambiguous. The uncritical trans-positioning of institutes from different bodies of legislation or social and eco-

¹⁶⁸ National Council of the Republic of Slovenia, 'Čas je za spremembe v urejanju prostora' (Bulletin of the National Council of Slovenia, 2010-04, NCSB 2010) 6.

¹⁶⁹ Vlaj (n 56).

conomic systems will often fail to produce good solutions. However, knowledge of how these other systems work will direct us to the right path in seeking improvements that suit our demands. And, obviously, there is a lot of space for improvement.

If we commence at the top, one of the first conditions *sine qua non* for successful development of the spatial planning system is recognition of its significance at the level of national policy. Instead of listening more carefully to their suggestions, of attracting the public and thereby forming a modern legal framework which would last longer than each single government or parliament, the numerous and insufficiently deliberated amendments to the legal framework create unnecessary confusion among planning stakeholders. As emphasised by Marot, if it wishes to ensure successful implementation of the law, the legislator must consider the situation of the system – the way it currently functions and the values of the stakeholders, the broader institutional environment, the different logics governing how the various regulatory tools and strategies work – and changes to any individual part of the system.¹⁷⁰

For instance, the recent legislative interventions were adopted without a thorough analysis of the existing spatial planning system. The examination herein of some English legal solutions shows that the former Labour and current coalition government's opinion is that spatial planning and citizen participation in it are relatively important for economic development and the development of a democratic culture and its institutions. The legislation itself as well as the guidelines and programmes issued by the competent ministries point to this. In spite of the assumed increased significance of governmental guidelines and instructions in the discretionary decision-making system, the fact remains that the Slovenian government is comparatively passive.¹⁷¹ Also more funding should be assigned to non-governmental organisations, primarily for projects of education and stimulating the development of a spatial planning culture. A programme such as Planning Aid which in the spatial planning field offers free of charge assistance

¹⁷⁰ Marot (n 19) 37.

¹⁷¹ On the website of the Ministry for Environment and Spatial Planning of the Republic of Slovenia we find only one publication with the subject of public participation in spatial planning and even this one is highly superficial without concrete recommendations to the parties concerned (stakeholders). The British government, on the other hand, regularly publishes recommendations and their contents are much more concrete, providing clear guidelines to the civil servants who implement legislation concerning spatial procedures.

to users who are underprivileged is a good example of how independent professional institutions may on the government's initiative be involved in improving the situation of spatial planning culture. A similar programme as carried out by the Royal Town Planning Institute may, with adequate funding, be carried out by the Urban Planning Institute of the Republic of Slovenia, the Institute for Spatial Policies and others. Perhaps we should go even further and transfer some of the mandates in spatial planning from government to professional bodies, e.g. to the Urban Planning Institute of the Republic of Slovenia or, as proposed by Simoneti, to form a similar body at the government level.¹⁷²

At the level of specific legal arrangements, it would certainly be sensible to oblige the producers of spatial planning documents to take a more active approach in involving citizens in the planning procedure. While some of the provisions of the Act Regarding the Siting of Spatial Arrangements of National Significance in Physical Space (above all in terms of the early involvement of citizens and of its planning in advance) are a step in the right direction,¹⁷³ it is probably necessary to introduce a similar institute as the Statement of Community Involvement, however on the condition that at the same time a system of stimulations be introduced for those (especially at the local level) who demonstrate more innovativeness in choosing mechanisms for including the public and who also otherwise practice approaches which go beyond meeting the minimal legal requirements and who see in public participation possibilities for improving the quality of decisions and not only a troublesome formality that needs to be fulfilled and left behind as soon as possible (the 'tick box' approach). Such stimulative mechanisms are subject to another set of difficulties facing the Slovenian spatial planning system. This concerns the government's attitude to local community governance and the attitude of the latter towards spatial management issues.

Even though the present paper does not deal specifically with the English local government reform (which took place in 1999 while a new one whose normative essence is the said Localism

¹⁷²National Council of the Republic of Slovenia (n 168).

¹⁷³English law, which regulates this subject, the Planning Act 2008 (see above), adopted only two years before our counterpart law ZUPUDPP, is – contrary to Slovenian law – according to the prevailing opinion of the British professional public a step backwards in terms of public participation, which reminds us of the famous Italian philosopher Gienbattista Vico and his thought on *corsi e ricorsi storici*.

Bill is on the way), based on the above we may draw the conclusion that in order to improve the quality of spatial planning in Slovenia we must first improve the quality of local governance. Instead of centralisation, more funding should be allocated to the local communities to ensure they are capable of properly fulfilling their tasks. A much greater emphasis should be placed upon devolution and decentralisation. The spatial planning legislation namely often requires local communities to carry out activities which exceed their personnel, financial and organisational capabilities. One of the difficulties faced by the current planning staff is the lack of professional knowledge and the fact they are not required to employ at least one municipal town planner. Here we must again mention the possibility that support with knowledge and experience might be offered to the local communities by an independent agency, (co)funded by the central government. We also propose the comprehensive training of planning personnel in contemporary approaches to spatial planning with special attention to public participation and stakeholder cooperation. The British government is aware of this and stimulating a so-called culture change. According to some researchers, this is happening (too) slowly even among urban experts themselves.¹⁷⁴ For the more rapid implementation of principles of good governance, the government might do more by following the example of new localism in England. Like in Slovenia where there is more and more criticism of the country's exaggerated centralisation,¹⁷⁵ similar reproaches were often addressed to Tony Blair's government. That is why, when reforming local government, they gave priority to the principle of subsidiarity. With the said programmes, the central government started to more generously reward the activities of local institutions (Best Value or Planning Delivery Grant in the field of spatial planning).

Based on these facts, we may conclude that improving the situation in the field of citizen participation in spatial planning calls for an integral approach. As the example of England shows, the legislative activity does not suffice to ensure a substantial move in the desired direction and to change culture. A lot of attention and funding will have to be allocated to public institutions as well as

¹⁷⁴ Kitchen and Whitney (n 123) 411.

¹⁷⁵ Vljaj (n 56); Zdravko Mlinar, "Glokalizacija" ali getoizacija lokalne demokracije: Koper, Slovenska Istra in država' (2000) 37(3) Teorija in praksa 413.

to civil society as the change is necessary at all levels. The approach based on greater citizen participation in decision making is usually referred to as the bottom-up approach, but the support for such efforts and the examples of it are rightly to be expected in the top-down direction.

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