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## Increasing the Role of Local Governments in Infrastructure Projects in Russia and Bulgaria as a Tool for Environmental Protection

Stanimir N. Kostov

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# **INCREASING THE ROLE OF LOCAL GOVERNMENTS IN INFRASTRUCTURE PROJECTS IN RUSSIA AND BULGARIA AS A TOOL FOR ENVIRONMENTAL PROTECTION**

STANIMIR N. KOSTOV\*

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## **INTRODUCTION**

The collapse of the Soviet Union and the transition to a market economy brought significant changes to the legal frameworks of most

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\* Stanimir N. Kostov is a 2009 J.D. candidate at the William & Mary School of Law. Mr. Kostov received a Bachelor of Science Degree in Commerce from the University of Virginia in 2004.

countries in Eastern and Central Europe. One notable aspect of these changes is the process of long-term restructuring of local government units to reflect the new democratic values.<sup>1</sup> While the restructuring is occurring at a different pace in each of the countries in the region, the general trend is to transfer more power away from the national governments to the municipalities. Yet, this reform stopped short of allowing local governments to play a more decisive role in issues that directly affect the interests of their constituents but which also presents a question of national importance.<sup>2</sup>

This Note considers the construction of oil pipelines and other large infrastructure projects and the level of municipal involvement in their planning process. Due to the significant environmental impact of such projects, this is one of the most frequent contexts in which conflicts between the two levels of government arise. The Note focuses on the responses of the Bulgarian and Russian governments when the local authorities demanded a greater control over the location of the Burgas-Alexandroupoli<sup>3</sup> and the Pacific pipelines,<sup>4</sup> as well as the existing legal frameworks in which these responses were made.<sup>5</sup> The Note then examines the pros<sup>6</sup> and cons<sup>7</sup> of increasing the role of local governments in deciding whether a particular project should be allowed within their territory, and also examines how Australia<sup>8</sup> and the European Union<sup>9</sup> have addressed similar issues.

## DISCUSSION

Despite the increased risk of corruption and insufficient resources on the local level, municipal governments are in a better position to determine the most appropriate location for proposed large infrastructure

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<sup>1</sup> Dan Durning, *New Trends in Local Government in Western and Eastern Europe*, PUBLIUS, Winter 1994, at 96, 96-97, available at <http://www.jstor.org/stable/3330708>.

<sup>2</sup> See Local Self-Government and Local Administration Act, No. 90 (1996) (Bulg.) available at <http://unpan1.un.org/intradoc/groups/public/documents/UNTC/UNPAN016312.pdf>; Law on Basic Guarantees of Electoral Rights and the Right of Russian Citizens to Participate in the Referendum, 1997, art. 13 (Russ.) (amended 2003), available at [http://www.democracy.ru/english/library/laws/bg\\_law\\_eng/page2.html](http://www.democracy.ru/english/library/laws/bg_law_eng/page2.html).

<sup>3</sup> See *infra* Part I.

<sup>4</sup> See *infra* Part II.

<sup>5</sup> For the Bulgarian legal framework, see *infra* Part I.B. For the Russian legal framework, see *infra* Part II.C.

<sup>6</sup> See *infra* Part III.B.

<sup>7</sup> See *infra* Part III.A.

<sup>8</sup> See *infra* Part IV.

<sup>9</sup> See *infra* Part V.

projects such as pipelines. Because their constituency consists of the local community, these governments are likely to select an option that is not only beneficial to the local economy but is also the least harmful to the environment. However, because of the undisputed importance of transnational pipelines, national governments should retain the power to block municipal decisions that threaten the realization of the project.

## I. BULGARIA AND THE BURGAS-ALEXANDROUPOLI PIPELINE

### A. *Project Description*

Recognizing Bulgaria's strategic geographic location on the border of Europe and Asia, the country's first democratic governments set the ambitious goal of making Bulgaria one of Europe's key energy players.<sup>10</sup> Because Bulgaria lacks oil and gas resources of its own,<sup>11</sup> the government concentrated its efforts on two alternative strategies. The first strategy was to export low-cost electricity to the other Balkan Peninsula states from its Kozludui Nuclear Power Plant.<sup>12</sup> The second strategy aimed to take direct advantage of Bulgaria's location by exploring the opportunity to transport oil and gas from Russia and other former Soviet republics to Western Europe. Two oil pipeline projects have been of particular interest to Bulgaria. Both provide for Bulgaria to receive oil tankers at its Black Sea port of Burgas and then transport it overland via pipes. The first pipeline will take the oil to the Greek port of Alexandroupoli, thus circumventing the busy Bosphorus straits.<sup>13</sup> The second pipeline, commonly referred to as the AMBO, will carry the oil through Bulgaria and Macedonia and will end on the Albanian Adriatic coast at the port of Vlore.<sup>14</sup>

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<sup>10</sup> MINISTRY OF ENERGY AND ENERGY RES., ENERGY STRATEGY OF BULGARIA 23-32 (1999), [hereinafter MINISTRY OF ENERGY] available at <http://www.seea.government.bg/documents/EnergyStrategyEN.pdf>.

<sup>11</sup> See Energy in South East Europe—Oil and Gas Networks, <http://www.seerecon.org/infrastructure/sectors/energy/oilgas.htm> (last visited Sept. 22, 2008).

<sup>12</sup> MINISTRY OF ENERGY, *supra* note 10, at 30-32. In the following decade, Bulgaria also provided for the construction of a second nuclear facility in the town of Belene. *Bulgarian Government Issues Belene Construction Permit*, WORLD NUCLEAR NEWS, July 15, 2008, [http://www.world-nuclear-news.org/NN-Bulgarian\\_government\\_issues\\_Belene\\_construction\\_permit-1507085.html](http://www.world-nuclear-news.org/NN-Bulgarian_government_issues_Belene_construction_permit-1507085.html).

<sup>13</sup> The Greens: European Free Alliance in the European Parliament, *Dirty Energy: New Pipeline to Bring Russian Oil to Mediterranean* (Mar. 21, 2007), [http://www.greens-efa.org/cms/default/dok/174/174057.dirty\\_energy@en.htm](http://www.greens-efa.org/cms/default/dok/174/174057.dirty_energy@en.htm) [hereinafter The Greens].

<sup>14</sup> ENERGY INFO ADMIN, COUNTRY ANALYSIS BRIEFS: SOUTHEASTERN EUROPE, 1, 2 (2006), available at [http://www.eia.doe.gov/emeu/cabs/SE\\_Europe/pdf](http://www.eia.doe.gov/emeu/cabs/SE_Europe/pdf).

While AMBO's viability is still being explored,<sup>15</sup> the Burgas-Alexandroupoli project has already gained the approval of all participating countries.<sup>16</sup> On March 15, 2007, Russia, Bulgaria, and Greece signed a pipeline construction agreement.<sup>17</sup> The agreement provides that 51% of the shares will be held by Russia and the following companies: Gazpromneft, Rosneft and Transneft.<sup>18</sup> Bulgarian companies Bulgargas and Universal Terminal Burgas will receive 24.5%. While the remaining shares will be held by Greek stakeholders.<sup>19</sup> The pipeline will have a total length of 288 km, with 161 km passing through the territory of Bulgaria, and is estimated to be completed by 2011.<sup>20</sup>

The project received opposition from the start.<sup>21</sup> Right wing political parties and ecologists on the national level initially led this opposition.<sup>22</sup> They argued that the project will have harmful effects on the environment and will also be economically detrimental to the country.<sup>23</sup> As the media publicized more details about the project, the citizens and government of the Burgas municipality began to voice concerns about the environmental impact of the pipeline.<sup>24</sup>

Burgas is Bulgaria's fourth largest city and plays an important role in its economy.<sup>25</sup> Along with its significance as a transportation hub,<sup>26</sup> the

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<sup>15</sup> Kosovo's declaration of independence has recently raised concerns about the stability of Macedonia, which is a country with a significant Albanian minority. See Risto Karajkov, *Macedonia Quiet for Now on Kosovo's Independence*, WORLDPRESS.ORG, Feb. 22, 2008, <http://www.worldpress.org/Europe/3076.cfm>. These concerns may pose an additional setback to this project, at least for the short term.

<sup>16</sup> Michaletos Ioannis, *Burgas-Alexandroupoli Pipeline: Current Role of Bulgaria in Southeast Europe*, RESEARCH INSTITUTE FOR EUROPEAN AND AMERICAN STUDIES, [http://rieas.gr/index.php?option=com\\_content&task=view&id=228&Itemid=42](http://rieas.gr/index.php?option=com_content&task=view&id=228&Itemid=42) (last visited Sept. 23, 2008).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> Petar Kostadinov, *Pipeline Referendum in Bulgaria's Bourgas*, SOFIA ECHO, July 16, 2007, [http://sofiaecho.com/article/pipeline-referendum-in-bulgarias-bourgas/id\\_23756/catid\\_5](http://sofiaecho.com/article/pipeline-referendum-in-bulgarias-bourgas/id_23756/catid_5).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> See 300 Protest Against Burgas-Alexandroupolis Oil Pipeline, NOVINITE, Feb. 10, 2008, [http://www.novinite.com/view\\_news.php?id=90240](http://www.novinite.com/view_news.php?id=90240).

<sup>25</sup> The Cities Alliance, *Liveable Cities: The Benefits of Urban Environmental Planning 73* (2007), available at <http://www.citiesalliance.org/activities-output/topics/cds/liveable-cities.html>.

<sup>26</sup> See Bourgas, Bulgaria, <http://www.bulgariansearesorts.com/resorts/bourgas/> (last visited

city is also a center for the tourist and fishing industries.<sup>27</sup> For these reasons, the citizens of Burgas are especially sensitive to environmental issues. In this case, the citizens' concerns stem primarily from the threat of oil spills in the bay of Burgas from the tankers that delivering the product to the pipeline terminal as well as from location of the terminal itself.<sup>28</sup>

In response to public pressure regarding the project, the Burgas Municipal Council announced on July 5, 2007, that the city was to hold a local referendum, in accordance with Article 17 of the Local Government Act, on whether the pipeline should be allowed through its territory.<sup>29</sup> The Council also demanded that the Ministry of Regional Development and Public Works, the administrative entity in charge of the project, release the results of the mandatory Environmental Impact Assessment that the Ministry of Environment and Water prepared for the pipeline.<sup>30</sup>

The Minister of Environment and Water Affairs, Djevdet Chakurov, responded that the referendum would not influence the construction of the pipeline because the project is one of strategic national importance.<sup>31</sup> In addition, government officials contended that the result of the referendum would be moot because it would be superceded by the Pipeline Construction Agreement signed by Russia, Greece, and Bulgaria.<sup>32</sup>

An analysis of the current Bulgarian legislation<sup>33</sup> suggests that the national government had the stronger argument in this case. In fact, after a prolonged discussion on the issue, on July 27, 2007, the Municipal Council announced that it was abandoning its decision to hold a referendum.<sup>34</sup>

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Sept. 23, 2008). In addition to being a major seaport, Burgas is home to one of the country's busiest airports and is an important railroad hub. *Id.*

<sup>27</sup> See *Bulgaria's Minister Djevdet Chakurov Will Not Approve an Environmental Impact Assessment*, PROFIT BG, Aug. 30, 2007, <http://www.profit.bg/index.php?aid=1533>.

<sup>28</sup> See *id.*; The Greens, *supra* note 13.

<sup>29</sup> Kostadinov, *supra* note 21.

<sup>30</sup> *Id.*

<sup>31</sup> Elitsa Grancharova, *Just Say "No,"* SOFIA ECHO, Feb. 22, 2008, [http://www.sofiaecho.com/article/just-say-no/id\\_27696/catid\\_5](http://www.sofiaecho.com/article/just-say-no/id_27696/catid_5).

<sup>32</sup> *Id.*

<sup>33</sup> See *infra* Part I.B.

<sup>34</sup> *Bourgas-Alexandroupolis Project Referendum in Bulgaria Abolished*, SOFIA ECHO, July 27, 2007, [http://www.sofiaecho.com/article/bourgas-alexandroupolis-project-referendum-in-bulgaria-abolished/id\\_24091/catid\\_67](http://www.sofiaecho.com/article/bourgas-alexandroupolis-project-referendum-in-bulgaria-abolished/id_24091/catid_67). Note that in 2008, Burgas's new mayor reversed the decision of the previous administration and a local referendum was in fact held. However, the results were considered void because fewer than 50% of the eligible voters participated in the vote, as required by law. And while the overwhelming majority of those who did vote voted against the construction, the national government clearly indicated that the referendum would have no impact on its decision on the pipeline. It also reiterated that

## B. *Current Bulgarian Legislation on the Issue*

In 1991, the Seventh Grand National Assembly adopted Bulgaria's new constitution.<sup>35</sup> This constitution replaced the 1971 communist version and accorded the Bulgarian citizens rights similar to those of citizens of a modern European democracy.<sup>36</sup> With regard to the issues at hand, Article 55 guarantees the right to a "healthy and favorable" environment.<sup>37</sup> Article 120 allows citizens to "challenge any administrative act which affects them, except those listed expressly by the laws."<sup>38</sup> It is clear that these constitutional guarantees, while supporting Burgas's position, are too broad to support their argument without additional, more specific legislative acts.

Bulgaria's Local Self-Government and Local Administration Act clarifies the authority of Bulgarian municipalities.<sup>39</sup> Article 22 allows local governments to "adopt rules, regulations, resolutions, and instructions on issues of local importance."<sup>40</sup> The prerequisite is that the local regulation must provide rules for activities of legal and physical persons that are linked with the historical or ecological characteristics of the area.<sup>41</sup> Essentially, "the local regulation can set stronger environmental standards than national guidelines only when it is necessary because of the local

"international matters could not be resolved with municipal referendum." *Void Referendum in Bulgaria's Burgas Rejects Overwhelmingly Oil Pipeline*, NOVINITE, Feb. 18, 2008, [http://www.novinite.com/view\\_news.php?id=90495](http://www.novinite.com/view_news.php?id=90495) [hereinafter *Void Referendum*].

<sup>35</sup> See KONSTITUTSIA NA REPUBLIKA BULGARIA [Constitution], available at <http://www.parliament.bg/?page=const&lng=en>.

<sup>36</sup> The 1971 constitution was widely considered by the Bulgarian citizens to be undemocratic and authoritarian because it solidified the Bulgarian Communist Party as the "leading force in society and the state." BULGARIA: A COUNTRY STUDY 181 (Glenn E. Curtis ed., Federal Research Division Library of Congress 2nd ed. 1992), available at <http://countrystudies.us/bulgaria/45.htm>.

<sup>37</sup> KONSTITUTSIA NA REPUBLIKA BULGARIA art. 55, available at <http://www.parliament.bg/?page=const&lng=en>.

<sup>38</sup> *Id.* art. 120.

<sup>39</sup> Local Self-Government and Local Administration Act, No. 90 (1996) (Bulg.), available at <http://unpan1.un.org/intradoc/groups/public/documents/UNTC/UNPAN016312.pdf>. The act can also be translated as the Self-Government Act.

<sup>40</sup> Alexander Kodjabashev, *Bulgaria*, in DOORS TO DEMOCRACY: CURRENT TRENDS AND PRACTICES IN PUBLIC PARTICIPATION IN ENVIRONMENTAL DECISIONMAKING IN CENTRAL AND EASTERN EUROPE 109, 110 (1998), available at <http://www.rec.org/REC/Publications/PPDoors/CEE/PPDoorsCEE.pdf>. See KONSTITUTSIA NA REPUBLIKA BULGARIA art. 22.

<sup>41</sup> See Local Self-Government and Local Administration Act art. 21(1)(13) (1996), available at <http://unpan1.un.org/intradoc/groups/public/documents/UNTC/UNPAN016312.pdf>.

conditions.<sup>42</sup> The pipeline project seems to fall within the purview of the Act because the Bay of Burgas has unique historical, ecological, and social characteristics. Specifically, it is essential for the tourism and fishing industries and thus provides a substantial portion of local residents' income.<sup>43</sup>

However, Articles 21 and 22 alone are not sufficient to justify a referendum on the pipeline project. Article 17 addresses the issue of local referendums.<sup>44</sup> Specifically, it states that local referendums are allowed in pursuance of Article 11, which empowers municipalities to protect the environment and natural resources.<sup>45</sup> However, this authority is extended only to issues of *local importance*.<sup>46</sup>

Article 200 of the 2003 Law on Energy dispels any doubt that pipelines are an issue of national, not local, importance.<sup>47</sup> It provides that

the layout and safe operation of oil pipelines and oil product pipelines in the territory of the Republic of Bulgaria shall be regulated in an ordinance adopted by the Council of Ministers upon proposal by the Minister of Energy and Energy Resources and the Chairperson of the State Agency of Meteorology and Technical Supervision.<sup>48</sup>

It is clear that while Bulgaria's legislation grants constitutional guarantees for environmental protection and a certain degree of municipal authority to act on environmental issues, pipeline construction project decisions remain entirely within the purview of the national government.

It is also important to note that along with the legislation just discussed, there are broader government structural issues that present obstacles to municipal exercise of authority in this case. A municipality that gets in a conflict with the national government often faces the threat of budgetary constraints.<sup>49</sup> As there are no direct local taxes, local governments depend on the national government for most of their rev-

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<sup>42</sup> Kodjabashev, *supra* note 40.

<sup>43</sup> *Bulgaria's Minister Djevdet Chakurov Will not Approve an Environmental Impact Assessment*, *supra* note 27.

<sup>44</sup> See Local Self-Government and Local Administration Act art. 17, available at <http://unpan1.un.org/intradoc/groups/public/documents/UNTC/UNPAN016312.pdf>.

<sup>45</sup> See *id.* art. 11, 17.

<sup>46</sup> *Id.* art. 17.

<sup>47</sup> Law on Energy, No. 107 (2003) (Bulg.), art. 200, available at <http://www.erranet.org/index.php?name=OE-eLibrary&file=download&id=2946&keret=N&showheader=N>.

<sup>48</sup> *Id.*

<sup>49</sup> See Kodjabashev, *supra* note 40.



enues and are therefore vulnerable to pressure.<sup>50</sup> And while the threat of retributive action from the national government would essentially amount to political blackmail and would not be legal, this possibility is far from being a mere theory.<sup>51</sup> It is not difficult to imagine similar treatment in the case of a municipality that stands in the way of an important national infrastructure project.

## II. RUSSIA AND THE PACIFIC PIPELINE

### A. *Project Description*

The Russian Federation is undoubtedly one of the key players on the energy scene.<sup>52</sup> As of 2006, it has the eighth largest oil reserves<sup>53</sup> and the largest natural gas reserves in the world.<sup>54</sup> Because gas is the fastest growing fuel source in Europe, Russia now holds the key to the European Union's future economic prosperity.<sup>55</sup> Energy is also the single most important reason why Russia's economy has experienced such a substantial growth under President Putin.<sup>56</sup>

Recognizing the possibility that Europe will seek a way to limit its dependence on Russian energy resources,<sup>57</sup> and for the potential profits

<sup>50</sup> See *id.*

<sup>51</sup> The Bulgarian media frequently voice concerns about mayors who represent political parties that are in opposition on the national level and who allege that because of their affiliation, the national government limits funding for their cities with the intention of turning the public against them. *Muravei Privatizira Mestnite Bjudjeti* [Muravei Privatized the Local Budgets], STANDART NEWS, July 24, 2001, [https://www.standartnews.com/archive/2001/07/24/interview/s3077\\_2.htm](https://www.standartnews.com/archive/2001/07/24/interview/s3077_2.htm).

<sup>52</sup> See generally *The Russian Federation*, THE BROOKINGS FOREIGN POLICY STUDIES ENERGY SECURITY SERIES, Oct. 2006, at 1, 1-2, 5.

<sup>53</sup> See *Worldwide Look at Reserves and Production*, 103 OIL & GAS J. 20, 24-25 (2005) (providing data for world oil and gas reserves); Infoplease.com, Greatest Oil Reserves by Country 2006, <http://www.infoplease.com/ipa/A0872964.html> (last visited Sept. 25, 2008).

<sup>54</sup> See *Worldwide Look at Reserves and Production*, *supra* note 53; Infoplease, *supra* note 53.

<sup>55</sup> ENERGY INFORMATION ADMIN, INTERNATIONAL ENERGY OUTLOOK 2007 39, 45 (2007), available at [http://www.eia.doe.gov/oiaf/ieo/nat\\_gas.html](http://www.eia.doe.gov/oiaf/ieo/nat_gas.html).

<sup>56</sup> See ROBERT PIROG, CRS REPORT FOR CONGRESS: RUSSIAN OIL AND GAS CHALLENGES 1-4 (2007), available at <http://www.fas.org/sgp/crs/row/RL33212.pdf>.

<sup>57</sup> See Stefan Nicola, *Analysis: Europe's Pipeline War*, *United Press International*, Feb. 5, 2008, [http://www.upi.com/International\\_Security/Energy/Analysis/2008/02/05/analysis\\_europes\\_pipeline\\_war/2456/](http://www.upi.com/International_Security/Energy/Analysis/2008/02/05/analysis_europes_pipeline_war/2456/). Europe's most significant effort to decrease its dependence on Russian energy is the Nabucco natural gas pipeline. The idea behind the project is to transport gas supplied by Iran, Azerbaijan, Kazakhstan, Turkmenistan, and Syria from Turkey to Austria. And while the project presents some clear economic benefits to the

in other markets, the Russian government has looked to the East. On December 31, 2004, Russia announced its decision to build the longest pipeline in the world, which will transport oil from Siberia to the Sea of Japan.<sup>58</sup> The oil will then be shipped via tankers to potential customers in the Pacific such as Japan, Korea, and the United States.<sup>59</sup> The pipeline will be constructed by the state-owned Transneft, and was originally planned to end in Southwest Primorye region on the Amur Bay near the city of Vladivostok.<sup>60</sup>

This is the largest infrastructure project in Russia's history and is estimated to cost \$11.5-\$15 billion.<sup>61</sup> Once completed, the pipeline will cross fifty rivers and include thirty-two pumping stations.<sup>62</sup> The pipeline "will have the potential to transport as much as 56 millions tons of oil a year from the town of Taysket—400 kilometers north-west of Lake Baikal—to the Sea of Japan."<sup>63</sup>

### B. Conflict

Local authorities and conservationists argue that selecting Perevoznaya Bay as a terminal site makes it seventeen times more likely that an oil spill will occur than if one of the alternative sites is selected.<sup>64</sup> They also contend that "[i]t would be much more efficient to utilize already existing infrastructure in the industrialised Nakhodka region, where oil terminals already operate."<sup>65</sup> In addition to the danger of oil spills at the terminal site, residents and local environmental organizations argue that the proposed location of the pipeline encroaches on the habitat of the endangered Amur leopard, the most endangered cat on Earth.<sup>66</sup>

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European Union, its future is far from certain. *Id.* (describing the project, as well as Russia's alternative proposal, which aims at preventing the construction of Nabucco).

<sup>58</sup> See Tigris Foundation, *Pacific Pipeline Campaign Overview*, <http://www.tigrisfoundation.nl/cms/publish/content/showpage.asp?pageID=24> (last visited Aug. 28, 2008).

<sup>59</sup> WWF News Centre, *World's Longest Oil Pipeline Re-routed in Russia's Far East, Endangered Leopard Habitat Spared*, Mar. 13, 2007, [http://www.panda.org/news\\_facts/newsroom/index.cfm?uNewsID=96540](http://www.panda.org/news_facts/newsroom/index.cfm?uNewsID=96540).

<sup>60</sup> Tigris Foundation, *supra* note 58.

<sup>61</sup> WWF News Centre, *supra* note 59.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> Tigris Foundation, *supra* note 58.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*; see also WWF News Centre, *supra* note 59.

To address its citizens' concerns, the government of the Primorye region, like the government in Burgas, attempted to hold a local referendum on the location of the pipeline. This referendum, too, was rejected by the national government on the grounds that it was attempting to address an issue of national importance.<sup>67</sup>

It is important to note that the national government ultimately revised its decision. On March 13, 2007 Russia's federal service for ecological, technical, and atomic supervision announced that the pipeline terminal will now end at Kozmino Bay and thus will spare the last remaining habitat of the endangered Amur leopard.<sup>68</sup> There is little doubt, however, that this change of position was prompted by the pressure exerted from international environmental organizations, such as the World Wide Fund for Nature, and not by the efforts of the citizens of Primorye to protect their local environment.<sup>69</sup> Therefore, problems of a similar nature might occur in the future and an examination of Russia's current legislation concerning this issue is warranted.

### C. *Current Russian Legislation on the Issue*

The citizens of the Russian Federation adopted the current version of their constitution through a direct vote in 1993.<sup>70</sup> Article 71 of this constitution "assigns to the federal government those powers that concern the country as a whole,"<sup>71</sup> while Article 130 allows for local self-government for issues of local importance.<sup>72</sup> The constitution further provides that self-government should be "exercised by citizens through a referendum, election, other forms of direct expression of the will of the people, through elected and other bodies of local self-government."<sup>73</sup>

Article 13 of the Law On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a

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<sup>67</sup> Tigris Foundation, *supra* note 58.

<sup>68</sup> WWF News Centre, *supra* note 59.

<sup>69</sup> *Id.* The World Wide Fund for Nature was formerly the World Wildlife Fund; it is still commonly referred to as the WWF. WWF Statues, [http://www.panda.org/about\\_wwf/who\\_we\\_are/organization/statutes/index.cfm](http://www.panda.org/about_wwf/who_we_are/organization/statutes/index.cfm) (last visited Sept. 25, 2008).

<sup>70</sup> Constitution of the Russian Federation Homepage, <http://www.constitution.ru/en/10003000-01.htm> (last visited Sept. 8, 2008).

<sup>71</sup> MARAT SALIKOV, THE RUSSIAN FEDERAL SYSTEM: SUB-NATIONAL AND LOCAL LEVELS 6, <http://camlaw.rutgers.edu/statecon/subpapers/salikov.pdf>; see Konstitutsiia Rossiiskoi Federatsii [Konst. RF] [Const.] art. 71.

<sup>72</sup> Konstitutsiia Rossiiskoi Federatsii [Konst. RF] [Const.] art. 130.

<sup>73</sup> *Id.*

Referendum further clarifies the question of local referendums by stating that “[i]ssues may be submitted to a referendum of a Subject of the Russian Federation if they are within the jurisdiction of the Subject of the Russian Federation. Issues may be submitted to a local referendum if they are *within the jurisdiction of the local self-government*.”<sup>74</sup> Once again, there is no doubt that the pipeline construction layout is considered an issue of national importance and is therefore beyond the authority of the Primorye provincial government. As mentioned above, the pipeline is the most expensive infrastructure project in Russia’s history and with its length of 4200 km,<sup>75</sup> it spans across the borders of a number of the country’s regions and provinces. The pipeline will also be an essential tool in Russia’s strategy of expanding its importance in the world energy markets.<sup>76</sup>

Finally, it is important to note that Article 132 of Russia’s Constitution specifically empowers local governments to “implement the local budgets, introduce local taxes and dues.”<sup>77</sup> This, of course, makes Russian sub-national governmental units less dependent on the national government than their Bulgarian counterparts.<sup>78</sup> Therefore, at least theoretically, they should be somewhat less vulnerable to pressure to comply with national expectations. However, this effect is counterbalanced by the great role that the national government plays in selecting candidates for local authority positions.<sup>79</sup>

### III. ANALYZING THE PROS AND CONS OF AMENDING THE LEGISLATION OF BULGARIA AND RUSSIA TO ALLOW FOR GREATER MUNICIPAL CONTROL

The recent experiences of Bulgaria and Russia with pipeline construction projects indicate that the current relevant legislation of the two countries allows sub-national governmental units to play only a marginal

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<sup>74</sup> Law on Basic Guarantees of Electoral Rights and the Right of Russian Citizens to Participate in the Referendum, 1997, art. 13, *available at* [http://www.democracy.ru/english/library/laws/bg\\_law\\_eng/page2.html#P91\\_28624](http://www.democracy.ru/english/library/laws/bg_law_eng/page2.html#P91_28624) (emphasis added).

<sup>75</sup> WWF News Centre, *supra* note 59.

<sup>76</sup> See generally ISABEL GORST, *THE ENERGY DIMENSION IN RUSSIAN GLOBAL STRATEGY—RUSSIAN PIPELINE STRATEGIES: BUSINESS VERSUS POLITICS* (2004), *available at* [http://www.rice.edu/energy/publications/docs/PEC\\_Gorst\\_10\\_2004.pdf](http://www.rice.edu/energy/publications/docs/PEC_Gorst_10_2004.pdf).

<sup>77</sup> *Konstitutsiia Rossiiskoi Federatsii* [Konst. RF] [Const.] art. 132. (Russ.).

<sup>78</sup> See *supra* Part I.B.

<sup>79</sup> See Laura Belin, *Russia: Pro-Kremlin Party May Gain Voice in Appointing Governors*, RADIO FREE EUROPE, Oct. 10, 2005, <http://www.rferl.org/featuresarticle/2005/10/a7448207-95ce-4920-9aaa-e035d6635123.html>.

role in the layout decision making process. This section analyzes the possible advantages and disadvantages of increasing municipal and provincial control in accordance with the general political liberalization since the collapse of communism.

#### A. *Cons*

One of the most obvious problems with allowing greater local control stems from corruption. While corruption is generally a serious issue for any governmental unit in Eastern Europe, it is undisputed that municipal governments are more prone to it than their national counterparts.<sup>80</sup> In addition, these authorities are more susceptible to lobbying pressure for lower environmental standards by economically powerful industries.<sup>81</sup> Interestingly, it also appears that, unlike in Western Europe and the United States, the supervision by the citizens over their municipal council representatives is smaller as compared to the national level.<sup>82</sup> Furthermore, in addition to the lower level of scrutiny, local governments and their constituents also lack the enforcement capabilities enjoyed by their national counterparts.<sup>83</sup> While anticorruption laws obviously apply with equal force regardless of the governmental unit, it is easy to imagine that economies in transition, such as the ones in Eastern Europe, would not have sufficient resources to fight corruption at every level.<sup>84</sup>

Of course, limited financial resources affect the local government's decision making capabilities in other respects as well. One obvious question is whether a municipality or a province will be able to afford an adequate evaluation of the true environmental or economic impact of a proposed project. This issue extends beyond purely financial resources and includes problems with human capital. While unemployment in Eastern Europe remains high, most countries in the region have experienced difficulties in finding workers who are qualified and motivated to meet challenges

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<sup>80</sup> Alex Dehgan, *A Criticism of the New Mechanisms for Environmental Protection in the Russian Federation*, 19 REV. CENT. & E. EUR. L. 661, 700 (1993).

<sup>81</sup> *Id.* at 701.

<sup>82</sup> This can probably be explained by the fact that Eastern Europeans are accustomed to the centralized government model, in which local governments play only nominal roles.

<sup>83</sup> See OPEN SOCIETY INSTITUTE, CORRUPTION AND ANTI-CORRUPTION POLICY IN BULGARIA 85-87, 130-31 (2002), available at [http://www.eumap.org/reports/2002/corruption/international/sections/bulgaria/2002\\_c\\_bulgaria.pdf](http://www.eumap.org/reports/2002/corruption/international/sections/bulgaria/2002_c_bulgaria.pdf).

<sup>84</sup> Because international scrutiny is much stronger on the national level, it is logical to expect that most of the resources for combating corruption would be channeled there.

associated with working in a free market economy.<sup>85</sup> Needless to say, the impact of this problem is even more severe on the municipal level where few positions provide advancement opportunities that are lucrative enough to compete with the private sector.<sup>86</sup> However, the problem with limited resources can be partially mitigated with changes to the existing self-government legislation.

One possible solution to the problem of limited financial and human resources on the municipal level would be to amend existing legislation to require the national government to provide the necessary assistance. However, for the evaluation process to be effective, the legislation should include safeguards to avoid improper interference by national authorities in the local decision making process. In other words, the national government should not be allowed to attach unreasonable restrictions on the use of the financial assistance or to attempt to influence the evaluation by selecting the environmental experts to conduct the evaluation.

Finally, increasing municipal control over infrastructure projects that go beyond the municipal borders will inevitably create some danger of conflicts with other municipalities and sub-national governmental units. For example, deciding on a certain location for a pipeline limits the location choices available to the municipality that is further down the line. In more extreme cases, some location choices will necessitate the participation of municipalities that otherwise would not have been involved. And in the most extreme case, a location that presents the greatest benefit to one municipality may render the overall project impermissibly expensive or unprofitable. This point demonstrates that increasing municipal control should not mean allowing full control. At the very least, the national government should retain a veto power that would allow it to act as a final, impartial arbiter when conflicts of this nature arise.

## B. Pros

The most obvious benefit of increasing sub-national government control over pipeline construction stems from greater environmental

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<sup>85</sup> See Jochen Luybaert, *Eastern Europe Might Never Catch Up*, BUSINESS WEEK, Oct. 16, 2007, available at <http://www.businessweek.com> (search for "Eastern Europe Might Never Catch Up"; follow title hyperlink); see also UNEMPLOYMENT, RESTRUCTURING, AND THE LABOR MARKET IN EASTERN EUROPE AND RUSSIA (Simon Commander & Fabrizio Coricelli eds., 1995) (examining the levels and causes of unemployment in the region).

<sup>86</sup> See *Rural Regions Development: From General Problems to Specific Opportunities*, LOCAL GOVERNMENT AND PUBLIC SERVICE REFORM INITIATIVE, May 22, 2007, <http://lgi.osi.hu/documents.php?id=1681>.

concern at that level. It makes economic and social sense that the environment will be protected the most by those who have the highest stakes in it. Therefore, it is easy to predict that local communities and their representatives would be more concerned about the environment where they live. They also are likely to possess a more in-depth knowledge of local environmental and meteorological peculiarities that could impact the project.

Secondly, allowing a greater degree of self-government is more in line with the principles of democracy. Because a pipeline location decision is likely to have a significant impact on the local community, it makes more political sense if the decision is made as close to the people as possible. This also allows for a more extensive constituent consultation process and decreases administrative and overhead costs that are inherent to decision-making.

While an increased degree of self-government would generally be beneficial to most countries in the world, it would be especially valuable in Eastern Europe where political apathy has emerged as a new and unexpected threat to these young democracies.<sup>87</sup> This is true because greater municipal control over important infrastructure projects is likely to convince people that they can have a more substantive impact on their economy, thus motivating them to participate actively in the political process.

Decision making at the municipal level will also result in less interference with other important industries. As with environmental concerns, municipalities are likely to have greater knowledge of local industries and may be better equipped to protect them from the negative effects of pipeline construction. For example, Burgas municipality is likely to be in the best position to determine the pipeline location that would have the least detrimental effects to its interests in the tourist and fishing industries.

#### IV. THE AUSTRALIAN MODEL

As a federation, Australia has a three-tier government structure.<sup>88</sup> However, while the federal and state governments have clearly delineated powers guaranteed by the country's constitution, the local government lacks such constitutional legitimacy.<sup>89</sup> This fact has prompted many to

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<sup>87</sup> See Liz Barrett, *Corruption in Eastern Europe*, CENTER FOR EUROPEAN REFORM BULLETIN, February 2000, [http://www.cer.org.uk/articles/n\\_10\\_2.html](http://www.cer.org.uk/articles/n_10_2.html).

<sup>88</sup> See ESSORTMENT, *The Australian Government Structure*, [http://www.essortment.com/australiangover\\_rbpt.htm](http://www.essortment.com/australiangover_rbpt.htm) (last visited on Sept. 8, 2008).

<sup>89</sup> Michael Longo, *Subsidiary and Local Environmental Governance: A Comparative and Reform Perspective*, 18 U. TAS. L. REV. 225, 238-39 (1999).

call for a constitutional amendment that would recognize a certain degree of autonomy for the local government units.<sup>90</sup> It is unlikely, however, that such a change will occur in the near future, because the federal government is reluctant to support it.<sup>91</sup>

Despite the local governments' dependence on the constitutional power of the states, they have been recognized as important players in environmental management.<sup>92</sup> Traditionally, they have been accorded significant discretion in the areas of waste disposal, recycling, building and land development, and road construction.<sup>93</sup>

In 1997, Australia also adopted environmental legislation that limited the federal government's involvement in environmental policy to issues of national importance.<sup>94</sup> And while similar formulations appear in the legislation of both Bulgaria and Russia,<sup>95</sup> there is one important difference. To avoid any possible uncertainty regarding the scope of federal power, Australia chose a rather strict and narrow definition of "national significance" in its environmental law. The definition includes:

- World Heritage properties;
- Ramsar wetlands of international importance;
- Nationally threatened species and ecological communities;
- Migratory species protected under international agreements;
- Nuclear actions; and
- Commonwealth marine environment.<sup>96</sup>

It is clear that this short list leaves the vast majority of important decisions relating to pipeline layout and construction to the sub-national government units. More specifically, due to the lack of constitutionally provided autonomy for the local governments, the primary decision-making power rests with the intermediate government level, the Australian states.<sup>97</sup>

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<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.* at 238.

<sup>93</sup> *Id.*

<sup>94</sup> *Id.* at 239.

<sup>95</sup> See Kodjabashev, *supra* note 40 (allowing local governments to address environmental issues of local importance); see also Konstitutsiia Rossiiskoi Federatsii [Konst. RF] [Const.] art. 71.

<sup>96</sup> Environment Protection and Biodiversity Conservation Act, 1999, c. 2, p. 3, div. 1 (Austl.).

<sup>97</sup> Longo, *supra* note 89, at 240-41.



This model admittedly does not guarantee that the state governments will share the responsibility for pipeline location decisions with their municipal counterparts.<sup>98</sup> And even when they do, that responsibility could be taken away at any time in the absence of constitutional protections.<sup>99</sup> Despite the fact that this is probably not the optimal solution to the power allocation problem between the different levels of government, this model has some obvious advantages over the ones currently in place in Bulgaria and Russia.

Most importantly, the inclusion of a clear and narrow definition of "issues of national significance" in environmental legislation ensures that the national governments would not attempt to increase the scope of their authority at the expense of the sub-national levels.<sup>100</sup> Currently, in both Bulgaria and Russia there is no limitation on what can be considered a nationally important question.<sup>101</sup> Therefore, their national governments could stake a claim on any infrastructure project by simply exaggerating its importance.

Secondly, the Australian model provides for greater efficiency and effectiveness in solving environmental problems. This is because, in most cases, the state governments would be in a better position to understand local environmental concerns than their national counterparts.<sup>102</sup> Because lower levels of government are normally burdened with less bureaucratic red tape, they would also be able to react more quickly to issues that require immediate attention.<sup>103</sup> Additionally, this model is more democratic because it brings the decision-making process closer to the people who are most affected by the infrastructure projects.<sup>104</sup>

Of course, an even more efficient and democratic solution would be to transfer most of the power to the municipal units, and not to the states. However, considering Bulgaria and Russia's national governments' strong opposition to sharing control over key infrastructure projects—as

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<sup>98</sup> *Id.* at 243.

<sup>99</sup> *Id.*

<sup>100</sup> See Environment Protection and Biodiversity Conservation Act, 1999, c. 2, p. 3, div. 1 (Austl.).

<sup>101</sup> See generally Kodjabashev, *supra* note 40. See also, Konstitutsiia Rossiiskoi Federatsii [Konst. RF] [Const.] art. 71.

<sup>102</sup> This makes sense because the level of communication between local and state governments and their constituents is generally much higher than on the national level.

<sup>103</sup> Of course, this is difficult to measure, but it is logical to assume that local governments that have smaller administrative organs would also have less sophisticated and burdensome bureaucratic procedures.

<sup>104</sup> Longo, *supra* note 89, at 242.

evidenced by their reactions to the opposition of the pipeline projects—a compromise that transfers some of the decision making authority to an intermediate government level may be more realistic in the short-term.

## V. LESSONS FROM THE EUROPEAN UNION

### A. *The Principle of Subsidiarity*

Although not exactly a “state,” the European Union (“EU”) provides useful lessons with regard to the allocation of decision making authority between the different levels of government. One such lesson stems from the principle of subsidiarity. Subsidiarity is defined in Article 5 of the Treaty Establishing the European Community<sup>105</sup> and is intended to ensure that political actions are taken as closely to the citizens of the Union as possible.<sup>106</sup> In other words, an EU institution is only allowed to make a decision on an issue if it can prove that it can do so in a more effective way than any national, regional or local governmental unit.<sup>107</sup> Because this approach is inherently democratic, it has been accepted as one of the fundamental principals of the European Union as an institution.<sup>108</sup>

From a strictly legal standpoint, the principle of subsidiarity must only be applied in the relationships between the European Union institutions and the member states.<sup>109</sup> In other words, there is no requirement for the national governments of the member states to delegate authority to their local counterparts unless a task can be accomplished more effectively and efficiently on the national level.<sup>110</sup> From a political perspective, however, the principle undoubtedly has a positive impact on municipalities because constituents now expect political actions to be taken as close to them as possible.<sup>111</sup>

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<sup>105</sup> Treaty Establishing the European Community art. 5, Nov. 10, 1997, 1997 O.J. (C 340) 5 [hereinafter EC Treaty].

<sup>106</sup> Europa.eu, Glossary—Subsidiarity, [http://europa.eu/scadplus/glossary/subsidiarity\\_en.htm](http://europa.eu/scadplus/glossary/subsidiarity_en.htm) (last visited Sept. 30, 2008).

<sup>107</sup> *Id.*

<sup>108</sup> Luxemburg Presidency of the Council of the European Union 2005, Glossary: Subsidiarity, [http://www.eu2005.lu/en/savoir\\_ue/glossaire/glossaire\\_s/index.html#Susidiarity](http://www.eu2005.lu/en/savoir_ue/glossaire/glossaire_s/index.html#Susidiarity) (last visited Sept. 30, 2008).

<sup>109</sup> LOCAL GOVERNMENT IN IRELAND: INSIDE OUT 407 (Mark Callanan & Justin K. Keogan eds., Institute of Public Administration 2003).

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

In fact, this expectation has prompted some EU member states to make subsidiarity a part of their national legislation. One prominent example is Italy, whose Parliament approved a sweeping constitutional reform in 2001.<sup>112</sup> As part of this reform, the Constitution now requires that "administrative functions belong to the municipalities except when they are conferred to provinces, metropolitan cities, regions, or the state in order to guarantee uniform practice."<sup>113</sup> And while these changes have created some uncertainty with regard to the exact roles of the different levels of government,<sup>114</sup> one cannot dispute that they bring the country in the direction of greater democracy and decentralization.

The principle of subsidiarity can also serve as a helpful tool in outlining the parameters of local and national authority in Bulgaria and Russia. Such an approach can be especially useful in large infrastructure projects that involve multiple stages of development. Allocating responsibility for each of these stages to the level of government that is closest to the citizens that can accomplish them most effectively and efficiently would not only decrease the project's cost, but also likely result in greater environmental protection.<sup>115</sup>

It is hard to predict whether subsidiarity can gain acceptance by the leadership of Bulgaria and Russia. However, at least in the case of Bulgaria, the pressure on the national government for more decentralization is likely to increase in the near future as the public becomes more familiar with the values and principles of the European Union.<sup>116</sup>

### B. *The Committee of the Regions*

In 1994, the European Union created the Committee of the Regions ("the Committee") to reaffirm its commitment to transferring more author-

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<sup>112</sup> See Tania Groppi & Nicoletta Scattone, *Italy: The Subsidiarity Principle*, 4 INT'L. J. CONST. L. 131, 131-137 (2006).

<sup>113</sup> Costituzione [COST.] art. 118 (Italy), available at [http://www.servat.unibe.ch/icl/it00000\\_.html](http://www.servat.unibe.ch/icl/it00000_.html).

<sup>114</sup> See Groppi & Scattone, *supra* note 112 at 134.

<sup>115</sup> See *supra* Part III.B (discussing why greater participation by local governments in infrastructure projects leads to better environmental protection).

<sup>116</sup> Bulgaria became a full member of the European Union as part of its Fifth Enlargement on January 1, 2007. See EUROPA: Rapid—Press Release, Commission Confirms Bulgaria's and Romania's EU Accession on 1 January 2007, Sept. 26, 2006, <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/06/1257&format=HTML&aged=0&language=EN&guiLanguage=en>.

ity to the local and regional government levels.<sup>117</sup> As an advisory body consisting of local officials from different Member States, the Committee consults with other EU institutions on matters concerning regional and local policy, including environmental questions.<sup>118</sup> Both the Commission and the Council of the European Union are required to consult the Committee on topics of direct relevance to local authorities.<sup>119</sup> In addition, they can also request consultation on any other issue.<sup>120</sup> Alternatively, the Committee is authorized to adopt opinions on its own initiative and present them to the Commission, the Council, and the European Parliament.<sup>121</sup>

It is important to note that even though each state's representatives to the Committee are nominated by their national governments, they are expected to work independently from them.<sup>122</sup> They are appointed by the Council of the European Union for a term of four years and may be reappointed.<sup>123</sup> In addition, the representatives must have a mandate from the local authority they represent and must be accountable to them.<sup>124</sup>

Admittedly, the role of the Committee is quite limited due to its advisory nature. In other words, even though the Commission and the Council are required to consult in certain instances, they are not required to follow its recommendations.<sup>125</sup> In addition, the requirement that the members of the Committee be nominated by their respective national governments may be problematic because of the potential for interference in the Committee's work.<sup>126</sup> However, the existence of the Committee is an important indicator that the European Union has recognized the necessity of including sub-national governmental units in creating environmental policy and legislation. Moreover, the role of the Committee is likely to increase in the future in light of the growing criticism of the European Union for becoming too centralized and removed from its citizens.<sup>127</sup>

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<sup>117</sup> Europa.eu, European Union Institutions & Other Bodies—The Committee of the Regions, [http://europa.eu/institutions/consultative/cor/index\\_en.htm](http://europa.eu/institutions/consultative/cor/index_en.htm) (last visited Sept. 30, 2008).

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> Europa.eu, *supra* note 117.

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> Despite the Committee's theoretical independence, it is easy to imagine that members who seek reappointment would be reluctant to openly challenge their national governments.

<sup>127</sup> This criticism was one of the primary reasons for the rejection of the proposed EU Constitution by the citizens of the Netherlands in 2005. See, e.g., *Dutch PM: EU*

Needless to say, the Committee has the potential to provide direct benefits to Bulgaria's municipalities. As the European Union's newest member,<sup>128</sup> Bulgaria is entitled to a twelve-member representation on the Committee.<sup>129</sup> Such a forum presents an excellent opportunity for leaders of local government units to voice their concerns against actions taken by the national government. And while the Committee is unable to adopt binding opinions to EU institutions or member states,<sup>130</sup> an adverse advisory opinion can potentially damage a member state's reputation in the Union and is likely to deter blatantly abusive practices on the part of national authorities.

## VI. LEGISLATIVE AND POLICY CHANGES

The analysis above indicates that there are a number of strong arguments both in favor of and against increasing municipal control over pipeline location decisions.<sup>131</sup> However, the possible advantages appear to outweigh the disadvantages in terms of social and environmental significance. In addition, the negative impact of increased control can be partially mitigated. This section will introduce legislative proposals that would capitalize on the advantages while attempting to minimize the possible negative effects.

### A. *Amending Referendum Laws*

The first and most important change should concern those provisions of self-government legislation that deal with referenda. More specifically, the current referendum articles should be expanded to all municipal governments to control the location of infrastructure projects of national importance *within* the borders of the municipality if the municipality can establish that the project presents a serious threat to the environment and livelihood of the local community. For the amendment to be effective, the local governments should be given wide discretion in making this determination. Needless to say, in accordance with the prin-

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*Constitution Rejected*, USA TODAY, June 2, 2005, [http://www.usatoday.com/news/world/2005-06-01-netherlands-eu\\_x.htm](http://www.usatoday.com/news/world/2005-06-01-netherlands-eu_x.htm).

<sup>128</sup> See EUROPA: Rapid—Press Release, *supra* note 116.

<sup>129</sup> Europa.eu, *supra* note 117.

<sup>130</sup> *Id.*

<sup>131</sup> See discussion *supra* Part III.

ciples of democracy, the national government would be free to challenge this determination through the judiciary.

On the other hand, national government should retain the ability to block a municipal decision if it makes the determination that the local harm of going with the original national proposal is clearly outweighed by the harm to the national economy or other interested governmental units from the municipal proposal. This determination must also be subject to judicial review.

Secondly, municipalities should be allowed to block the construction of infrastructure projects on their territories altogether through a referendum if they can show that there is a less environmentally harmful, yet economically viable, alternative. Because the potential consequences to the project and to the national economy would generally be greater in this case, the decision regarding whether the municipality has met its burden of proof should rest with national government, but should also be subject to a judicial challenge.

Lastly, Bulgaria should amend its current referendum law to allow for the results to be considered valid even when less than 50% of the eligible voters have participated.<sup>132</sup> A threshold requirement of the sort that is currently in place seems likely to discourage voters because they may suspect that any efforts to be a part of the political process would be in vain.

### B. *Other Legislative and Policy Changes*

In addition to the amendments of self-government legislation, there are a number of other potential legislative changes that would increase the benefit of greater municipal control. One such change could be introduced to existing energy regulations. As previously mentioned, Bulgaria's energy law currently provides that the layout of a pipeline be proposed by the Ministry of Energy and Energy Resources.<sup>133</sup> It is clear that an amendment to the act that would allow for greater local government involvement at this early planning stage of a project would prevent many of the potential conflicts and the costs associated with them that usually emerge once the layout has been approved by the Council of Ministers.<sup>134</sup>

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<sup>132</sup> For an explanation on how the current referendum law works, see *Void Referendum in Bulgaria's Burgas Rejects Overwhelmingly Oil Pipeline*, *supra* note 34.

<sup>133</sup> Law on Energy art. 200, available at [www.erranet.org/index.php?name=OE-eLibrary&file=download&id=2946&keret=N&showheader=N](http://www.erranet.org/index.php?name=OE-eLibrary&file=download&id=2946&keret=N&showheader=N).

<sup>134</sup> These costs can come as a result of court challenges, intentional bureaucratic delays,

Another useful legislative change could be adopted in the context of the countries' environmental laws. To mitigate the financial and human resource constraints currently experienced by local governments,<sup>135</sup> these laws should require national governments to provide full disclosure of any environmental impact assessments performed with respect to the project. Furthermore, if a municipality can show that a potential harm to its environment exists, the laws should require that national governments provide the resources necessary to evaluate the actual economic and environmental impact to that municipality.<sup>136</sup>

The existing legislation does little to encourage corroboration between the different levels of government. An important reason for this is that the legislation fails to recognize that municipalities lack the proper incentive to support projects of national importance. While Burgas and Primorye may benefit from increased port fees at their terminal cities, the economic benefit that will be received by the majority of the governmental units involved in pipeline projects is not clear.<sup>137</sup> Therefore, the legislation should be amended to provide for profit sharing from infrastructure projects. For example, a municipality that hosts a portion of an oil pipeline should be allowed to receive a portion of the fees received by the national government. Such an amendment would give the municipalities a stake in the project and would likely decrease conflicts over the proposed layout of the project. Furthermore, it would allow local governments to use this new source of revenue to cure some of the environmental harms incurred as a result of the construction.

National governments should take action to facilitate knowledge and information exchange between the municipal units. This would allow local

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strikes and other forms of protest directed against the infrastructure projects and led by municipal government leaders.

<sup>135</sup> See *Rural Regions Development: From General Problems to Specific Opportunities*, *supra* note 86.

<sup>136</sup> The evaluation could be conducted by a panel of independent experts that is selected and approved by both the local and national levels of government to ensure fairness and lack of bias.

<sup>137</sup> In January of 2008, the Minister of Regional Development and Public Works met with mayors of municipalities along the route of the pipeline. During the meeting, the representatives of the local governments were assured that they will be allowed to retain part of the funds that Bulgaria will receive from the project. However, this promise has not yet been backed by a specific contractual agreement. See Spasena Baramova, *Minister Gagaouзов Met with Mayors of Municipalities Along Bourgas-Alexandroupolis Route*, SOFIA ECHO, Jan. 24, 2008, [http://www.sofiaecho.com/article/minister-gagaouзов-met-with-mayors-of-municipalities-along-bourgas-alexandroupolis-route/id\\_27218/catid\\_5](http://www.sofiaecho.com/article/minister-gagaouзов-met-with-mayors-of-municipalities-along-bourgas-alexandroupolis-route/id_27218/catid_5).

governments to use each other's best practices, share ideas, and minimize costs on evaluating the economic and environmental benefits and harms of infrastructure projects. Such an information exchange could be achieved by replicating the World Bank's Local Government Information Network ("LOGIN") project.<sup>138</sup> LOGIN is an internet-based tool which allows municipalities to exchange information on budgets, legislation and best practices.<sup>139</sup> This tool would grant access to outside organizations that serve local governments through various consulting and training programs.<sup>140</sup> The World Bank has already entered into agreements with such organizations in Bulgaria<sup>141</sup> but a more active participation in the project on the part of the national government would undoubtedly facilitate and accelerate the process.

Russia could also benefit from creating a strong and independent national association of municipalities. Bulgaria has already established such an association with the support of USAID.<sup>142</sup> This association has been a powerful force in building the "image and stature of local government."<sup>143</sup> More specifically, it has actively participated in the national legislative process and was able to secure a greater share of tax revenues for the use of municipalities from the national government.<sup>144</sup> It has also frequently organized information dissemination and advocacy efforts.<sup>145</sup>

Finally, the countries of Eastern Europe must work on legislative changes that would immunize their local governments from improper pressures by their national governments.<sup>146</sup> Only then will their citizens have confidence in the political system and be more willing to engage in the self-government process. At least in the case of Bulgaria, this change should begin with granting municipalities greater power to tax their citizens directly and to be able to have full control over their budgets.<sup>147</sup>

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<sup>138</sup> See Worldbank.org, Project Summary: Local Government Information Network, <http://www.worldbank.org/html/prddr/trans/nd00jan01/pg34.htm> (last visited Sept. 30, 2008).

<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

<sup>141</sup> See *id.*

<sup>142</sup> CENTER FOR DEMOCRACY AND GOVERNANCE, U.S. AGENCY FOR INT'L DEV., USAID'S EXPERIENCE IN DECENTRALIZATION AND DEMOCRATIC LOCAL GOVERNANCE 7 (2000), available at [http://www.usaid.gov/our\\_work/democracy\\_and\\_governance/publications/pdfs/pnach302.pdf](http://www.usaid.gov/our_work/democracy_and_governance/publications/pdfs/pnach302.pdf).

<sup>143</sup> *Id.*

<sup>144</sup> *Id.* at 8.

<sup>145</sup> See *id.*

<sup>146</sup> See Muravei *Privatizira Mestnite Bjudgeti*, *supra* note 51.

<sup>147</sup> See *supra* text accompanying notes 49-51.



## CONCLUSION

The main issue this Note considered whether local governments in Bulgaria and Russia should be given a greater role in determining the location of pipelines and other important infrastructure projects on their territories. It focused on the construction of the Burgas-Alexandroupoli and the Pacific pipelines to illustrate the most common context in which conflicts between national and municipal authorities arise and discussed the existing legislation concerning the issue in the two countries.<sup>148</sup> Based on that analysis, the Note concluded that the existing legal frameworks do not permit meaningful involvement by sub-national governments in projects of national importance.

The Note then turned to examining the potential advantages and disadvantages of amending the laws in Bulgaria and Russia to allow for sharing the responsibility for important projects.<sup>149</sup> And while municipalities are faced with a number of important problems, such as corruption and financial and human resource limitations, the potential benefits, along with the possibility for mitigating some of these problems, clearly suggest that greater municipal participation would be helpful for environmental protection. Furthermore, the increased involvement would probably be economically beneficial to all parties that participate in the project.<sup>150</sup>

In the following parts, the Note considered ideas for establishing a more successful relationship between the different levels of government by examining practices and legislation from Australia and the European Union.<sup>151</sup> Australia, like Bulgaria and Russia, places issues of "national importance" under the authority of the national government. However, the law in that country provides a clear and narrow definition of this term and leaves everything that falls outside of that definition to the Australian states.<sup>152</sup>

The European Union provides some innovative solutions to increasing the role of local governments in projects that affect their constituents. Subsidiarity, which is now accepted as one of the fundamental principles of the Union, prohibits EU institutions from taking action on any policy issue, unless they can establish that their solution is more

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<sup>148</sup> See *supra* Parts I, II.

<sup>149</sup> See *supra* Part III.

<sup>150</sup> *Id.*

<sup>151</sup> See *supra* Parts IV, V.

<sup>152</sup> See *supra* Part IV.