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**NGO REPORT AND OPINION ON THE
IMPLEMENTATION OF THE AARHUS
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2014-2017

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Introduction

The next session of the Meeting of the Parties to the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (promulgated in Hungary by the Act LXXXI of 2001) will take place in June 2017. For this occasion, all the countries contracted to the Convention have to draw up a national report on the implementation status and progress regarding the period of 2014-2016.

According to the opinion of the Hungarian civil environmental movement, the National Report that was finalized in December 2016 cannot be considered a comprehensive analysis fully synthesizing and exhausting the stakeholders' views. The green non-governmental organizations (NGOs) were involved in negotiating and criticising the report, but since the reporting rules of the Convention allow environmental organisations to send an alternative report to the conference, the Hungarian NGOs decided to make use of this opportunity in 2017 as well. Besides formulating a separate opinion, they also state that there is a lot of useful information in the national report compiled by the government, and its final text does contain certain NGO comments too.

By now it has become a tradition that the environmental and nature conservation NGOs – in addition to commenting on the official national report of the Hungarian government (hereinafter: the National Report) – prepare their separate summary about the developments relating to the implementation of the Convention. The main reason for drafting this alternative report is that the green NGOs have a lot of practical experience in the areas covered by the Aarhus Convention, they are involved in many processes that exemplify well the enforcement of its provisions, or the lack thereof.

This NGO report was circulated among the Hungarian green movement in the widest possible way, and the comments received were taken into account before finalising this report in March 2017. Then the NGOs' Aarhus Working Group recommended the final version for support by all the environmental non-governmental organizations and will submit it for approval to the National Meeting of Environmental and Nature Conservation NGOs in May.

We hope that the findings and specific case scenarios in this alternative report can contribute to make the Hungarian government and its responsible ministry take serious steps in the next reporting period in order to correct the shortcomings encountered in the domestic implementation of the Convention.

Many thanks to all involved persons and organizations who contributed through this document to the presentation of the development of possibilities in the field of enforcing environmental democracy in Hungary between 2014-2016.

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I. General Statements Relating to the Implementation of the Convention

In general, we make the following observations regarding the practical enforcement of the Aarhus Convention:

- Overall, it is characteristic that the National Report seeks to demonstrate that the statutory domestic law complies with the text of the Convention, but the shortcomings of the enforcement of rights, and the jurisdiction inadequate to the spirit of the Convention are little mentioned. Furthermore, not much is written about the bigger or smaller steps back concerning the rights guaranteed by the Convention. These include further simplifications regarding the priority investment projects for the sake of national economic interest, the extension of the scope of simplified rules, moreover the lack of transparency in the classification process of priority investments.
- Similar problems arise by tightening the rules and raising the costs of accessing data of public interest, or the elimination of the separate post of Parliamentary Commissioner for Future Generations.
- The Ombudsman for Future Generations (Deputy-Commissioner for Fundamental Rights) has proposed in many cases the solution of environmental legislative or enforcement problems, but most times these suggestions, recommendations were not the adopted. The National Report also mentions these recommendations, however their destiny is not described in the document.
- The National Report does not mention with due emphasis the downsizing of the network of environmental and nature conservation authorities and institutions. The 2013 annual report of the Commissioner for Fundamental Rights also states that restructuring and withdrawal in the field of environmental protection violate the constitutional right to a healthy environment. The elimination of a separate Ministry of Environment and Water Management, the reduction of the budget of environmental and nature conservation authority body system, the melting of revenues from environmental fines into the central state budget caused a severe setback: the environmental authority system and institutional background went through a virtually continuous transformation in the reporting period, which is still not over. These changes raise concerns in themselves, and it is to be feared that they will result in the dismantling of public authorities, and the further marginalisation of the enforcement of environmental considerations. However, to asses this, to gather the practical experiences, the elapsed time is not sufficient yet, it is expected to be revealed by the next reporting period. But the really big problem was caused exactly by the fact that the restructuring processes are continuous, no uniform and consistent system can be established, which reduces the effectiveness of official operation and influences profoundly the capacities of the public affected to participate. Many times it is not known, which authority has powers and jurisdiction in a certain environmental issue, which one acts on first and second instance. Due to the changes, there have been occasions at the turn of the years 2016-17, when the same authority made decision in an environmental case in the first and second instance as well.
- The transformation of the environmental regulatory system has also the consequence that in the construction permit procedures, in which the environmental authority was involved earlier as special authority, by now it gives only an advisory opinion. This may also entail that environmental NGOs lose ground in these processes, because according to the current judicial practice, the client status can only be established in a construction

permit procedure, if the process includes issuing a special environmental authority resolution too.

- We consider it important and promising that the linking of National Environmental Information System and National Regional Development and Spatial Planning Information System is realized. This can promote access to environmental information, inasmuch as the disclosure of the data is up-to-date.
- Due to the drying up and poor allocation of resources, the operation of NGOs is in constant crisis, they fall in number, so they can perform less and less their tasks related to social participation and control. This is accompanied by the lack of government measures, programs and initiatives to raise the level of public participation. The rules of establishing non-governmental organizations, registering data-changes, furthermore the organizations' administrative burdens are tightened generally too. This means that legal or other special expertise is required to found such organizations, to change their entries and to fulfil the administrative obligations, which are major obstacles especially for smaller NGOs.
- Probably due to the lack of current data, in several places the National Report refers to data stemming from before 2013, even though some of the measures and institutions mentioned were fully dismantled in the meantime. Although we pointed this out in the review process, these were still not modified in many instances.
- The fact has a symbolic and practical significance that the Aarhus Working Committee set up by the government to monitor the implementation of the Convention was not convened at all between 24 September 2013 and 17 November 2016, so the emerging problems could not be discussed to the merits by those affected.

In addition, we draw attention to the fact that a serious translation error was committed in the Hungarian text of the Aarhus Convention (Act LXXXI of 2001) 15 years ago. The translation omitted that not the causes of information provision, but precisely the reasons of refusing to disclose information are to be interpreted restrictively. This way, however, the Hungarian text has been published with a diametrically opposed meaning than the original wording of the Convention.

We suggested that prior to a possible wider publication the government should initiate an amendment to the promulgated text of the law.

In the rest of our summary we follow the structure and content of the official National Report with our detailed comments. The statements of the National Report can be read among quotation marks, while the civil review and supplement is written in italics below in frame.

II. Comments on the Articles of the Convention

1. Application of Article 3 (general provisions)

Article 3, paragraph 2 (providing assistance and guidance to the public in facilitating participation)

What are the legal possibilities granted to the public by public administration laws to enforce their procedural rights?

“2. Act LXXXI. of 2001. on the acceptance of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters signed in Aarhus in 25 June 1998 promulgated the Convention, but Hungary has been applying the related principles since the early 1990s. Act CXII. of 2011. on the Right of Informational Autonomy and the Freedom of Information (Information Act) has widely provided for the disclosure of environmental data, Act LIII. of 1995. on the General Rules of the Protection of the Environment (Environment Act) recognised the right of environmental non-governmental organisations to participate in various administrative procedures, and the Supreme Court adopted – with the aim of eliminating different interpretations related to participation rights – decision 4/2010 for the uniformity of the law concerning the legal status of NGOs in environmental administrative legal procedures. The legal decision – while upholding the principle tenets of the 1/2004 legal decision – stated that client status can be given to NGOs in cases where the environmental authority agency acts as an arbitral authority, or if the legal rule stipulates the contribution of the environmental authority as an administrative authority.”

While the role of environmental authorities is mentioned several times in the National Report, their liquidation in 2015 – a step back in many respect – and its consequences are not presented. Once the environmental public administrative system is changed, the environmental authority is no longer involved in the proceedings as a special authority. As a result, public participation is at risk in many cases, because the environmental NGOs are entitled to participate as clients only in the proceedings, in which the environmental authority acts as a special authority. A new uniformity decision of the Curia would be necessary on the issue.

Based on the 2010 Act on Public Participation in Drafting Legislation, when performing its task, the government is cooperating with the non-governmental organizations affected. The aim of this provision is to make it possible for a wide circle of society to get involved in the preparation of legislation, thus paving the way for the versatile foundation of legal regulation, and the improvement of the quality and enforceability of legislation. Strategic partners include, above all, NGOs, churches, professional and scientific bodies, advocacy organizations, public bodies, national minority governments, and academic institutions.

From 2012 on, the minister of agriculture (the head of the ministry made responsible also for environmental affairs) concluded several dozen strategic partnership agreements with representatives of non-governmental and inter-professional organizations working in the field of – among others – horticulture, seed production, bee-keeping, pest control, veterinary medicine, meat and food industry, confectionery, fish farming, hunting, forestry, grain processing, forage production, as well as advocacy of young farmers. In contrast, no strategic agreement has been concluded with the environmental NGOs or their advocacy until the end of 2016, though it was constantly requested by the stakeholders – because of ever changing excuses.

“3. One of the fundamental principles of the Administrative Procedures Code is that administrative authorities must conduct their proceedings in the spirit of cooperation with the client and fairness. The authority must ensure that any person involved in the procedure be informed of their rights and obligations, as well as promote the exercises of the clients’ rights. Any person engaged in a procedure without legal representation must be informed of the legislative provisions relative to the case, the legal consequences of any failure to obligation, and the availability of legal assistance for non-legal entities. Section (5) of Paragraph 4 of the Administrative Procedures Act states that clients and other concerned parties be granted right of access to the documents, and in cases of provisions given by relevant legal rules it will organize a public hearing and will inform the involved parties about its decisions.”

Anomalies of service charges:

The rules of administrative authority proceedings and services provide the right of access to documents for the clients, and – in certain cases – even for the citizens affected by the consequences of the plan or project, which is the subject of administrative proceedings (Act CXL of 2004). Nevertheless, the civilians can make only limited use of this permission of access to documents. The barrier is the large sum fee to be paid for copying the document. This fee is specified by the implementing regulation (government decree 188/2009) as the cost of items in the tax law:

“Act XCIII of 1990 – Appendix, point 4.1

the fee to be paid for certified or uncertified copies or extracts made in the administrative proceeding – unless otherwise specified in this Annex – is HUF 100 per page of Hungarian-language copies, and HUF 300 per page of foreign-language copies. The fee of non-certified photocopy is HUF 100 for each page.”

The market price of copying nowadays in Hungary is round HUF 10 per page, the tenth of the fee for copying in the administrative proceedings. In environmental matters a responsible NGO position on a plan or project can only be formed on the basis of studying documents of hundreds of pages. Unfortunately, it is often impossible due to the unfairly high fee to be paid to the authority.

“In case of events laid down in item a-j of Section 80/A. of the Administrative Procedures Act administrations have an obligation of publication in respect of legally binding decisions or regarding those decisions that are declared to be enforceable without appeal.”

The public administrative institutions established by law comply with their disclosure obligations on the website of the government:

<http://hirdetmenyek.magyarorszag.hu/?CIMKE=k%C3%B6rnyezet%C3%A9delmi>

An average citizen cannot get information on this page.

What institutional framework is in place to advance the enforcement of participation rights (public relations offices, information service officials, etc.)?

“6. Information to the public concerning access to rights in the field of environmental protection is provided by the Public Relations Bureau of the Ministry responsible for the environment, and the PR Bureaus of the Government offices and the National Parks. The Public Relations Bureau of the Ministry responsible for environment, has worked since 1997, it was completed in 2005 by a network of so-called Green Point Offices maintained by the regional offices of environmental and water directorates and national park directorates. The Green Point Offices were established with a view to provide up-to-date environmental information and assistance to handling cases or complaints by citizens (up

until 1 January 2014.). These mostly have functioned until now –not as a network, but independently from each other-- in the new governmental structure since 2010.

... Besides the before mentioned, many offices of green civil organizations that were part of the former Hungarian Network of Eco-counselling Offices (Kötháló) function currently, in many cases with the financial support of the Ministry's Green Source tender. In addition, Kötháló provides assistance to the public in legal matters relating to the environment."

The Green Point Offices can be reached via e-mail and in person, the customer service by phone is almost impossible in many places.

The environmental orientation of the population is complicated largely by the fact that outdated, but alive-looking links can be found on the Internet (e.g. the website of the independent ministry of environment that has ceased to operate already in 2014, and the contact list of its regional authorities).

Due to the financial support (called Green Resource) that is contracted to its third compared to the previous period, the similar NGO services (the Hungarian Network of Eco-counselling Offices) can provide their environmental counselling activities only with a considerably reduced capacity.

„Az állampolgári jogok országgyűlési biztosáról szóló 1993. évi LIX. törvény 27/A-H. §-ával hozta létre a magyar országgyűlés a Jövő Nemzedékek Országgyűlési Biztosának intézményét 2007-ben, ami 2011 végéig működött. A Biztoshoz bárki, így társadalmi szervezetek is benyújthattak panaszt az egészséges környezethez való joggal kapcsolatos probléma miatt. 2012. január elsejével kezdődően az alapvető jogok, így a jövő nemzedékek érdekeinek védelmét is egyetlen biztos látja el.”

The Ombudsman for Future Generations (Deputy-Commissioner for Fundamental Rights) has proposed to solve environmental legislative or enforcement problems in many cases, but most times the transplantation of these suggestions, recommendations did not happen. The National Report also mentions these recommendations, however their fate is not described in the document.

Are there training programmes for officials performing environmental duties and judges?

These days in Hungary there is virtually no training of any kind organised for judges on environmental law and participation rights within. As a result, the judges' environmental law expertise and knowledge of participation law regulation, case law and international legal cases depends only on the personal preparedness and ambition of the specific acting judge.

Article 3, paragraph 3 (environmental education, awareness raising and development of environmentally conscious thinking)

How are environmental issues managed by the primary, secondary and higher level education systems? Are there any agreements between institutions dealing with this issue?

“15. In the framework of the Swiss-Hungarian Cooperation Programme, the Institute of Research and Development for Education has won a subsidy of 1.187.500 CHF for the development of environmental education. Its partners in professional execution were the Ministry of Human Resources, the Ministry of Agriculture, domestic NGOs with a portfolio of environmental education and regional funding centres.”

This budget frame (approx. 1.109.562 euro) could not cover the support of schools or environmental educators working there.

“16. Based on Paragraph (5) of Section 78. of the 2011. CXC. Act on National Public Education, the Minister responsible for the education and the Minister responsible for the environment assist in fulfilling of the assignments of environmental education and the execution of the Forest School Program, the Forest Kindergarten Program, the Green Kindergarten Program, and the Eco-School Program via issuing applications and joint programmes and tenders.”

It is part of the overall picture that in recent years the state did not support the programs listed. The implementation of forest kindergartens and schools was supported by the National Alliance of Environmental and Nature Protection Training Centres through the Swiss contribution budget.

„18. Az Alapvető Jogok Biztosa 2013 tavaszán gyermekjogi projekt keretében indított vizsgálatot „Környezettudatosság a nemzedékek közötti igazságosság alapja” címmel, melynek keretében azt vizsgálta, hogy a közoktatásra, a nemzeti alaptantervre vonatkozó szabályozásban hogyan jelenik meg a környezeti nevelés, illetve a szabályozás eleget tesz-e a Nemzeti Környezetvédelmi Programban foglalt céloknak.

(A jelentés a <http://www.ajbh.hu/documents/10180/111959/201300676.pdf> oldalon olvasható.)”

The investigation report did not imply any consequences, the findings were not followed by changes.

“18. Environmental education is part of the educational duties conducted in the institutions of public education in Hungary. The National Kindergarten Educational Framework Programme, the National Educational Framework Programme and the National Environmental Programme provide its primary framework. Pursuant to the Act CXC of 2011 paragraph (1) of section (62), item e). on National Public Education, it is the teacher’s obligation to teach the children, students to awareness towards the environment and healthy life. The National Educational Framework also contains materials concerning environmental protection and sustainability.”

Most of the teachers are not prepared for this and the conditions are incomplete too. There are no reliable textbooks and the financial support for the necessary field learning (e.g. class excursion, forest school) is insufficient.

“The Ecological School programme has been in place since March 2000 through the coordination of the Programme and Curriculum Development Centre of the Hungarian Institute for Educational Research and Development (OFI) (formerly the National Institute of Public Education) and the Ministries responsible for the environment and education. The two Ministries have published a tender every year since 2004 for the OFI title of *Ecological School*. All Hungarian public educational institutions are eligible for the title. Since 2012 the title of Perpetual Eco-School may be awarded. So altogether there were 785 institutions with the title.”

In the widening of both “networks” the National Alliance of Environmental and Nature Protection Training Centres acted as the National Resource Centre. Within the Swiss contribution, mentioned above, primarily the number of members increased, no real network development took place. The kindergartens, schools were given a lot of extra tasks. By now, due to forcing the growth in quantity, the alliance is rather “diluted”. Both systems lack “genuine” control!

Environmental protection in higher education

The government report cites information of 2009(!), which is irrelevant for the present account covering the period of 2014-2016.

In course of the changes in higher education the environmental management agricultural engineer BSc program and the eco-toxicologist MSc training have been abolished nationwide, therefore failures are to be expected in the specialist supply and in the education of environment-focused agricultural professionals.

However, the transfer of environmental protection and environmental awareness skills is present only in these programs bearing environmental protection and nature conservation in their name. In the case of other specializations these subjects mostly do not appear separately, and it is impossible to follow, if a lecturer responsible for a field, pays attention to this or not, when designing to teach the subjects of other disciplines. Among the competencies to be acquired, listed in the new training and outcome requirements of higher education courses the development of environmental awareness appears only rarely, while it is not present among the academic disciplines leading to qualification.

Do environmental non-governmental organizations (NGOs) participate in environmental education, awareness raising?

Article 3, paragraph 4 (recognition of and support to environmental NGOs)

„Környezet és Energia Operatív Program (KEOP) projektek kedvezményezettjei, illetve szakmai teljesítői számos esetben civil szervezetek voltak.”

The Environmental and Energy Efficiency Operational Programme of the period 2014-2020 aimed to support the NGO projects related to sustainable consumption for each priority of the operational programme. In contrast to the plans only in case of one priority (energy) will a public tender for civic awareness-raising programs be launched with a budget of one billion HUF (cca. 3,2 million euro), which is an order of magnitude lower than the source available in the previous planning cycle. The beneficiaries of most awareness-raising programs are the state institutions, the involvement of NGOs in such projects is accidental and rare. The awareness raising effectiveness of special state projects is measurably lower than that of the projects implemented by NGOs.

In addition, the administrative proceeding has changed, affecting the applicants adversely: the mentioned energy awareness raising programs were announced at the beginning of April 2016. Originally the deadline for submission was 2 May, however in the meantime the dates and conditions have been modified five(!) times, so the deadline was delayed for 3 October. According to the news published the funding decision is to be expected by May 2017 at the earliest.

What is the level of complexity of the existing procedures for civil institution registration?

“29. The regulation for the establishment of a civil organization is fairly simple in Hungary.”

We find the statement, that the regulation is simple, false. Even the registration of organizations established with a statute form is lengthy, overly formal, the requirements imposed by the courts are unrealistically rigid and they are often different by county (and even by judge). The complexity of the issue is already indicated by the fact that the report itself lists three laws that regulate this process. If the situation was simple, one act would be sufficient to regulate it. The 15-days evaluation on the basis of a sample document is not realistic, life is much different. It is no

coincidence that the relevant legislation was modified at the end of 2016 (Act CLXXIX of 2016 on the Amendment and Acceleration of the Procedures connected to the Registration of Non-governmental Organizations and Companies), and the minister's reasoning for the modification states that the registration and data-change of civil society organizations is complicated due to several unreasonable burdens.

"The court registration of civil organizations must be carried out according to Section 6-14 of the Civil Registration Act. The dismissal of an application can be carried out according to Section 29 of Paragraph (1)-(2) of the Civilian Registration Act."

The procedure of the organizations' change registration is too complicated, lengthy and it is burdened with many unnecessary administrative obligations. Without legal expertise it is very difficult to fulfil, and many NGOs do not have the opportunity to make use of such knowledge.

Is there an established practice of including civil organizations in environmental decision-making structures?

"30. In Hungary environmental civil organizations have participated in a range of decision-making and consultative bodies.

Each year the National Meeting of Environmental and Nature Conservation Organisations delegated members to the working groups of government organisations which integrate NGOs in the decision-making work of the committees. Since the mandates of the delegates have a term of 1-3 years, 40-60 committee representatives are delegated each year."

Civilians can actually be involved in the decision-making through the annual National Meeting of Environmental and Nature Conservation NGOs, and the delegates of this gathering participate in the work of the consultative and advisory bodies. Nevertheless, the extent and quality of participation has deteriorated severely over the last three years. The work of NGO delegates has become complicated by a number of inhibiting factors: for example short reviewing periods and declining the comments without substantial justification.

Between two annual meetings, the so-called Coordination Council operates with regular sessions. If necessary, the NGOs can also be involved quite shortly in the decision support and decision-making processes through this Council.

The primary task of this body is to coordinate and improve the advocacy and lobbying activities of domestic environmental and nature conservation NGOs. It can have an integrating role in the decision support and decision-making processes, but such specific invitation was not received from the government during the operation of the Coordination Council so far.

"According to the laws, the preparation of regulations is worked out through public discussion. In general a few days are available for the discussion. The discussion itself is in written form, organized by the proposer on the www.kormany.hu website."

"Bodies operating with NGO participation (including, but not limited to):"

Steps back have been taken in several bodies and the committee is either empty or there is no longer an NGO representative in it. The National Economic and Social Council (formerly Economic and Social Council) did not accept the elected representative of environmental NGOs. The person "appointed" to the Council by the government often expresses an opinion contrary to the position of environmental NGOs.

"The Aarhus Working Group, which was established in 2005 by the ministry responsible for the environment for the monitoring of the implementation of the Convention in

Hungary. The representatives of environmental civil organizations delegated by the National Meeting of green organisations are also members of the group.”

The ministry responsible for the environment created the Aarhus Working Committee in 2005 to monitor the domestic implementation of Aarhus Convention. In addition to professionals from government agencies and institutions, this body involves green NGO representatives delegated by the National Meeting of environmental NGOs as well. The Working Committee did not meet at all between 24 September 2013 and 17 November 2016, so it could not discuss the emerging implementation problems and the opportunities for improvement in the period between the two National Reports.

“National Forest Council, which was established pursuant to Act XXXVII. of 2009. on Forests, Protection of Forests and Forestry. ... The Council forms an opinion on draft legislation relating to forest protection and sustainable forestry, the economic, regulatory and development directives of forestry and issues relating to the asset management of forests.”

The National Forest Council was restructured by the Ministry of Agriculture. Before the transformation, the National Meeting of Environmental and Nature Conservation NGOs could delegate four professionals in this body, while after the change the meeting can delegate only one person.

“In relation to the use of EU funds, Operational Programmes defining the target areas for the use of EU funds have been elaborated; their implementation is monitored by monitoring committees. At least one environmental NGO delegates a member of the monitoring committees. At least one independent external expert delegated by a non-governmental professional organisation is a voting member of the Assessment Committees, the bodies proposing decisions on the received tenders. In accordance with Section 9. Paragraph (3) item f) of the Governmental Decree 4/2011 (I. 28.) on the use of subsidies from the European Regional Development Fund, the European Social Fund and the Cohesion Fund during the 2007-2013 programming period, members of community, civilian, economical and professional organizations delegate members to the monitoring committees of operational programs.”

Following the transformation and re-regulation of the development policy system, in the reporting period, the external independent members had no possibility to take part in the Selection Committees, therefore NGOs are no longer members in these panels. A civil environmentalist delegate may take part in each of the monitoring committees of the operational programmes. The quality of participation is different for each programme, in many cases it is formal, the NGO representative has no substantive influence on the processes. The government does not implement fully the requirements of the European Code of Conduct on Partnership – the code of conduct containing regional political partnership rules and recommendations adopted by the EU Commission. It is particularly important that the government implements capacity-building programs on a low level for the NGOs participating in the monitoring activities, restricting only to trainings and not complying with the specifications, which aim at for instance the support of networking, coordination.

“In the area of water management, Regional Water Management Councils (TVT), Sub-catchment Water Management Councils (RVT) and the National Water Management Council (OVT) operate for the purpose of ensuring the professional and scientific substantiation of water catchment management planning affecting the national and

partial areas of water management and public participation. The Council was established on 19 May 2009 as the supreme forum of public coordination relating to the planning of water catchment management.”

The EU Water Framework Directive (2000/60/EC) provides an itemized record on the civil rights related to river basin management plan. The rules in force that incorporate the directive into the Hungarian national law declare literally transplanting the act – partly in order to ensure the six months’ period necessary to involve the public – the deadlines for the implementation schedule. In the drafting process of the second river basin management plan, finalized on 22 December 2015, the government did not respect the deadlines. As a result, only a few weeks were provided to study thousands of pages of text and its voluminous annexes, to gather the views and comments of the locals concerned, and to develop a written opinion on this basis– instead of half a year as ordered by the legislation.

The documents’ disclosure date specified in the laws and the actual date, as well as the – arbitrarily imposed – deadline and period for reviewing are shown in the table below.

<i>The draft document title</i>	<i>Disclosure date by law</i>	<i>Actual disclosure date</i>	<i>Deadline for reviewing</i>	<i>Period for reviewing</i>
<i>Revision timetable and work program of the river basin management plan</i>	22 December 2012	23 July 2013	23 January 2014	6 months
<i>Significant water management issues</i>	22 December 2013	21 June 2015 ^[1]	31 July 2015	1,5 months
<i>River basin management plan</i>	22 December 2014	16 November 2015 ^[2]	16 December 2015	1 month

The limited periods of “socialization” of the river basin management planning raise the question, whether the Framework Directive’s requirement, namely that society’s expectations should be integrated into the decision-making for the improvement of waters “before making final decisions on the necessary measures” was or could be fulfilled. These decisions determine the fate of the waters of Hungary until 2021.

[1] Some materials have been published already on 24 November 2014, see: <http://www.vizeink.hu>

[2] Some materials have been published already on 8 June 2015, see: <http://www.vizeink.hu>

„Az Aarhusi Egyezmény nukleáris ügyekben történő alkalmazásával kapcsolatban Kerekasztal működik civil szervezetek bevonásával.”

The Nuclear Roundtable is not working since many years, and it had not been established earlier by the initiative of the government, but it was a project of the Regional Environmental Center and the Aarhus Working Committee. The Nuclear Roundtable was terminated by the NGO participants due to the continuous non-cooperative attitude experienced on the side of the government and the users of the environment.

In the working committee itself the government representatives complicated the meaningful activity in many cases referring to the lack of authorization, and during the several years’ operation of the committee, it were almost without exception the NGO representatives, who prepared substantive proposals for discussion.

The lack of co-operative atmosphere, the rigid refusal of discussing certain issues that attracted and still attract public attention, as well as the general distrust felt against the NGO participants

of the Roundtable made the substantive work impossible. On top of all that, the sides of the government and the nuclear operators did not consider the civilians as partners, and this emerged emphatically in the cases, when at the working group meetings held prior to certain major events (e.g. a public hearing) none of the sides mentioned above informed the civilians and they did not put the topic on the agenda. The seriousness of the side of environmental users was doubted by their behaviour demonstrated outside of the Roundtable, for example when deciding on the public information requests submitted by the NGO side, specifically rejecting them.

Does the government provide financial support to environmental civilian organizations?

“32. The ministry responsible for the environment annually publishes a call for tenders under the name “Green Resource” to support environmental and nature conservation programmes of environmental and nature conservation civilian organizations. The allocated amount:

- HUF 70 million between 2013 and 2016 (approx. 300,000 EUR)”

The level of grant amounts reserved for NGOs is ridiculously low and it is stagnant for many years, therefore these grants are not suitable to support any meaningful civil activity.

The central Hungarian institution supporting the operation of non-governmental organizations, the National Cooperation Fund provides an order of magnitude less support for the environmental and nature conservation NGOs, than the previous similar budget frame, the National Civil Fund operating till 2011. The structure of the fund has changed, the possible number of selection committee members delegated by civil society organizations has decreased significantly. The environmental and nature conservation NGOs are no longer entitled to automatically delegate members to the committees, only the Minister of Agriculture – who is responsible for environmental affairs – can send one person to one of the juries. Before delegation the minister should, in principle negotiate with the ministry’s strategic partners working on environmental issues, but in fact there is no such partner, so the minister does not consult any environmental or nature conservation NGO prior to selecting the delegate.

„33. Magyarország 2007 és 2013 között 22,4 milliárd eurós európai uniós támogatásban részesül, melynek felhasználási kereteit az Új Magyarország Fejlesztési Terv (ÚMFT), illetve az annak a helyébe lépett, 6 kitörési pontot tartalmazó Új Széchenyi Terv (ÚSZT) határozza meg. Külön pont foglalkozik a zöldgazdaság-fejlesztés ügyeivel, ugyanakkor több más kitörési pont is érinti a környezetvédelmi kérdéseket.”

In the 2014-2020 tendering cycle there was a significant increase in the number of the so-called priority projects, where the government does not make the project implementers compete, but determines the (usually state-owned) beneficiaries through a government decision. As a side-effect of this practice the non-governmental organizations are involved to much less extent in the implementation of EU programs, than in the period of 2007-2013. This is also true in the case of environmental and nature conservation NGOs, the resources available to them are drastically reduced. The government does not invest sufficient resources to prepare the potential applicant NGOs either, therefore it is difficult for them to reach these sources.

„A Társadalmi Megújulás Operatív Program (TÁMOP) keretében a nonprofit szervezetek, így a környezetvédelmi civil szervezetek is az alábbi témában kaphattak támogatást, melyek a környezetvédelmi szemléletformálási tevékenységhez közvetve vagy közvetlenül kapcsolható.”

The reference to the competition TÁMOP 5.5.2. is irrelevant, because it was available prior to the reporting period.

Article 3, paragraph 7 (public participation in international environmental decision-making processes)

Is there a practice of including civil organization members in delegations representing the State or in any national-level discussion groups forming the official position for such negotiations?

„35. Az Aarhusi Munkabizottság, szükség szerint megtárgyalja az Egyezményvel kapcsolatos nemzetközi eseményeken való részvételt is.”

During the reporting period the Aarhus Working Committee practically did not operate (see above), earlier the representatives of the responsible ministry have repeatedly questioned it's legitimacy, so it is not recommended to refer to it without dithering. At the single session in November 2016 the participation in the international events related to the Convention was not even mentioned.

“36. In the course of preparation for the key international events, the ministry responsible for the environment negotiated its position with civil organizations in numerous cases. There are no uniform regulations or practice in place in relation to the participation of civil organisations in international delegations and the coordination of positions represented at certain international events with civil organizations.”

The lack of uniform regulation or practice demonstrates specifically that this mechanism is not working, or it is working only in an ad hoc manner. As far as we know, in the reporting period it did not occur that the government involved environmental NGO representatives in state delegations, though it used to be a practice of the administration for certain processes (such as climate negotiations, forums on sustainable development). The civilians cover the participation in these events from their own resources, if they can attend at all.

Article 3, paragraph 8 (prohibition of penalization of persons exercising rights granted under the Convention)

“37. Adequate protection of citizens participating in administrative procedures is guaranteed by the Administrative Procedures Code, it declares the equality of all persons appearing before authorities, the prohibition of discrimination between or the exclusion of any persons, the right to a fair and timely procedure as well as the right to access to justice.

38. In addition to the general client rights granted under the Administrative Procedures Code, the act also makes it possible for anyone to file a complaint or an application in the public interest outside of the administrative procedure at the authority with competence in the given matter.”

These statements – in light of the government measures against the NGO Fund of the EEA/Norway Grants, and the police procedures against civilians acting to defend the City Park, as well as knowing the data published ever since – do not provide a complete picture of the actual situation. Environmental NGOs are since many years subject to ongoing, lasting and multi-directional pressure, so their operation has become more difficult, in many cases even impossible. The government began harassing and threatening from Spring 2014 on the non-governmental organizations managing the NGO Fund of the EEA/Norway Grants, and those supported from this fund in the media and then with the help of various state bodies. First, the Government Control Office (GCO) performed (on the direct instruction of the Prime Minister) a prolonged

audit and investigation for several months (which was unlawful under the international treaties of EEA and Norwegian Financial Mechanism signed by Hungary too) at the foundations managing the Fund, and at 58 organizations supported. Given that the organizations concerned had no remedy, they were forced to meet the demands of GCO. Then the Prime Minister's Office accused the project implementing organizations with a number of unfounded criminal charges from embezzlement to misappropriation. In August, they were referring to starting a police investigation, and this was fulfilled finally in September with perquisitions conducted at the Hungarian Environmental Partnership Foundation and its partners, in course of which documents, laptops were confiscated. In addition, the tax numbers of the four foundations managing the Fund has also been suspended on the grounds that they did not cooperate with the Government Control Office. GCO published its report poorly supported by facts and figures in late October, which in turn manufactured a number of criminal offenses, including the charges of embezzlement and fiscal fraud.

At the end of January 2015, in the absence of reasonable suspicion the court judged the perquisition held in September 2014 at the Environmental Partnership Foundation unlawful, but the harassment was not over. During January and February, the government imposed a tax audit on seven organizations supported by the NGO Fund of the EEA/Norway Grants. No irregularity was found, and after the agreement between the Norwegian and the Hungarian government – which also included a stop on harassing the organizations involved in the management of the Fund – the procedures against NGOs were closed.

Infringement procedures against the Park Defenders: the Park Defender group is protesting against the construction of new buildings planned in the reconstruction project of the City Park in Budapest, and against the reduction of green spaces by peaceful means. On 6 July 2016, during a demonstration against starting the work a police action took place too, in course of which the police produced several protesters using physical force, and then, after questioning them for hours, imposed high amounts of misdemeanour fines against them. Following the protesters' complaints, the court terminated the infringement proceedings launched for disobedience to the official measure. According to the court judgement, the nonviolent protest of Park Defenders was not directed against the public order, and the public interest attached to sustaining order, so it would be an arbitrary decision to qualify their disobedience as a violation, furthermore it is also important that the authorities acted unlawfully, when the possession defence resolution underlying the police measure was not communicated to the lawfully demonstrating Park Defenders and the officials did not wait for its potential volunteer fulfilment.

Have any libel, slander or similar provisions of civil or criminal law been used in the context of environmental decision-making processes? Have there been any cases of civilian organizations being ordered to pay damages in connection with their public interest environmental protection activities or litigation?

The Miskolc District Court acquitted the civilians of libel charges in the criminal case brought against F. N. Zs. and others (STOP Miskolc Cement Plant Civil Action Group). The accuser representative of HCM 1890 Ltd. filed a private motion because of offense of libel, as to his opinion an article published in the county newspaper contained statements suitable for compromising the plaintiff's honour. The first instance court found that the statements made by the defendants in a roundtable discussion about the restart of the Miskolc cement plant are to be regarded as falling within the scope of free expression. To explain concerns related to an activity to be launched in the future does not constitute a crime either. Examining specifically the statements of the accused the appellate court ascertained that although the defendants' manifestations concerning incineration

are factual allegations based on data of the environment utilisation license application submitted by the plaintiff company, they are still not offensive for the accuser. In the reasoning, the appellate court explained: the freedom of expression is a fundamental right guaranteed by the Fundamental Law of Hungary, it has a prominent role among the fundamental rights, so the laws limiting the freedom of expression should be interpreted in a restrictive way.

2. Application of Article 4 (access to environmental information)

“48. Government Decision 1330/2011. (X.12.) encourages the effective information systems for passengers, the use of communicational IT systems and the provision of up-to-date information for the public on the adverse effects and costs of traffic in order to minimize PM₁₀ and improve the air quality.”

Up to date information provision on adverse effects and external costs is not carried out in practice, we are not aware of any communication activity to this end.

Article 4, paragraph 1 (ensuring access to information)

Are public authorities required to keep records of information requests received and responses provided, including refusals? Is there a separate body that oversees matters of access to information?

“49. The Information Protection Act provides that all public authorities must draw up their internal rules of procedure for fulfilling requests for public information. The so-called National Data Protection and Information Freedom Authority has to be informed on an annual basis of all requests refused as well as the reasons for refusal”

The agencies affected are not obliged to, and do not keep either records of requests received and refused, at least it is a rare exception, if they do so.

In the reporting period, the 2011 act on freedom of information (that was replacing the earlier law of 1993) has undergone two significant modifications. The human rights and anti-corruption NGOs received both amendments with sharp criticism as the changes represent a major step backwards in many areas, and make access to public information difficult. Although the most restrictive provisions of the original proposal were removed from the amendments adopted and announced by the Parliament (partly as a result of the veto of the President of the Republic¹), in several respects the law has moved away from the letter and spirit of the Convention.

The 2013 amendment – famous as “Lex Transparent” through the work of investigative journalists – limits the knowability of data mainly regarding the use of public money, inasmuch as it says that the financial management of bodies performing public service can only be checked by the state control organs meant for this. And the bodies managing public information decide what is qualified as a “comprehensive, account-level” or even “substantive” audit. This is a clearly limiting rule in terms of the freedom of information.

Despite the change, journalists and civil society organizations have successfully sued several times to have access to public information² (although the practice of provincial courts interprets the

¹ <https://transparency.hu/hirek/az-informacioszabadsag-megis-megy-a-levesbe/>

² for example: http://ataszjelenti.blog.hu/2016/02/04/harom_ev_kellett_a_szazadveg_tobbilliardos_tanulmanyainak_a_megszerzesere

category of public information also in an unduly restrictive way). Presumably, this has led to the amendment of the Act in 2015, when the Parliament adopted a legislation to change the quasi precedents established through the data claim lawsuits lost by the state before the courts. The proposal adopted allows the data controllers to reject information requests merely claiming that the data requested serves for the foundation of a future decision, which will perhaps not be taken either, because even the decision-making process itself is not started yet; and for example the right to get to know expensive studies was limited referring to copyright. The most important change however, is undoubtedly the provision that allows the information controllers to demand payment – in addition to the costs of copy and postage – just for fulfilling the request itself, if they consider that this entails too much effort.³

The Act itself does not specify what constitutes extra workload laying the foundations for a fee reimbursement, how to determine the amount and what is its maximum. These issues were regulated only in a norm detailing the implementation (government decree 301/2016), and nearly one and a half years had to pass before the government created it. (Some data owners, however, have already linked the fulfilment of information requests they did not like to fees also during this period. According to the decree, in case of information requests that can be fulfilled with more than 4 hours working time an hourly maximum salary of 4400 Hungarian forints multiplied by the actual number of hours used can be demanded from the clients. The decree gives no guarantee on who and how should define in a verifiable way, how long the fulfilment of requests actually takes, as the state organs are not obliged to keep similar internal records (this is why public administration cannot determine the cost-based prices of public information either in case of another data type), so what remain are the secretive body's own estimates.⁴

In addition to all this, it is significant that with the government decision 1719/2016, after four years Hungary quitted the Open Government Partnership (OGP) one day before its upcoming Paris summit. Although participation in the OGP did not impose enforceable legal obligations on the government, an essential component of the initiative is the proactive action and co-operation (“co-creation”) with NGOs formulated in action plans to broaden open governance. This ambition is apparently discarded by the government also in a symbolic sense.

Article 4, paragraph 4 (general)

“52. With the entry into force of Act CLV. of 2009. on the Protection of Classified Information on 1 April 2010, the earlier institution of the so-called register of classified information was abolished which enabled the classifier to apply classification based on the data categories contained therein.

The new law abolished this automated procedure, and currently the damage-level based classification principle is applied to classification based on the individual assessment of the classifier.”

A number of new laws and amendments contain steps back, regressions from the earlier level of freedom of information, these prevent access to important public data also in the context of environmental protection (e.g. Act XCII of 2014, Act XCIX of 2014, Act LXXII of 2015, Act LXXIV of 2015, Act CXXIX of 2015). Although at first sight access to environmental information is not directly affected, an example for this can be the 2014 amendment of the law on sports allowing the sport federations – benefiting from grants received from firms that are in turn

³ <https://transparency.hu/hirek/a-ti-arra-kerte-a-koztarsasagi-elnokot-hogy-ne-irja-ala-az-informacioszabadsagrol-szolo-torveny-modositasat/>

⁴ Summary: <http://tasz.hu/informacioszabadsag/azert-meg-ne-doljunk-hatra>

rewarded by tax relief – to get away from the fulfilment of public information requests through publishing indicators summarizing the grants. Moreover, the modification of the law on post offices and the one regulating the operation of other publicly owned companies try to help the state firms one by one to avoid the data disclosure obligation.

The scope of confidential information is too broad in the practice, the classification is unjustified in many cases, and there are also instances, when the clear objective is to block information from the public.

The National Assembly adopted on 3 March 2015 the Act VII of 2015 on the Investment Related to the Maintenance of the Capacity of Paks Nuclear Power Plant and on the Amendment of Certain Laws in this Regard. This law declared among others that “the business and technical data in the contracts concluded by Russian and Hungarian organisations and their sub-contractors in charge of the project implementation, as well as the data related to the preparation of the implementation agreements and of the convention, and serving for the foundation of decisions may not be known as public data for 30 years from their formation, inasmuch as this would violate national security interest or intellectual property right (Section 5).”

For the sake of accuracy it should be added that since then this has been amended by the Act XIX of 2016, and based on its Section 2 the new rule has to be applied already to proceedings ongoing at the time of this latter act coming into force, concerning the fulfilment of a demand directed at getting to know the public data ...

In the last years the Legal Aid Service of Green Connection Association, seated in the city of Miskolc, received a series of public comments and complaints in the period of the Miskolc Beer Festival regarding the noise pollution affecting a large number of residents and the interventions in green areas. So far the local residents could not make use of their enforcement capabilities, as the contract on the Festival was classified for a term of 10-years. In the preparation period of licensing they could not receive the relevant documents, and after this time they could not get the license either.

At the request of residents the association, in order to use the environmental enforcement capabilities, claimed the client legal status and also right of access to the license issued in the meantime. However as environmental administrative proceeding has not been carried out, the client legal status of the organization was not recognized, and the documents were not disclosed.

3. Application of Article 5 (collection and dissemination of environmental information)

Article 5, paragraphs (1)-(3) and (7) (obligation relating to information and processing of environmental conditions, system of active environmental data provision, electronic storage and access to data)

Institutions have been established to measure and record environmental data since the late 1800s in Hungary. The pledge of their activities conducted independently of political changes was the existence and public operation of the stable measurement network and a database essential to evaluate the changes. After the second World War until 2010, as a guarantee of the independent operation of these institutions, every year the Parliament provided the financial conditions for the functioning of research centres by a separate budget line in Hungary’s budget.

In the year 2011 the circumstances have changed, the institutions were reorganized and later reorganized again, the financial conditions were modified; this is reflected by the fact that the state budget is running out of separate budget lines representing the pledge of independent operation.

Examples:

- 1. The oldest one of the institutions is the Geological Institute of Hungary, which was founded in 1869 by Emperor Franz Joseph as an indispensable organization of independent statehood. The 2013 budget lists it only combined with another body, the Eötvös Loránd Geophysical Institute.*
- 2. The Research Institute for Water Resources was established in 1952. In the early 2000s it was reorganized several times. It lost independence in 2012, when it was merged with the National Institute for Environment. This organ also mouldered, its budget support was 1245 million Hungarian forints (some 4 million euro) in 2013, but in 2015 it was only 419 million forints (some 1.36 million euro). The institute ceased operation in 2016, and as its legal successor not an institution, but a so-called non-profit ltd. was appointed.*

“A module operated under the TIR (Nature Conservation Information System) provides access to a user-friendly map view service <http://web.okir.hu/hu/tir> that can be easily reached from the main nature conservation website, www.termeszetvedelem.hu.”

The municipality of the parish of Múcsony intends to offer an area of nearly 16 hectares for open-pit coal mining activities through the amendment of the National Ecological Network's (the official records of which are part of the Nature Conservation Information System) zoning. The minister approved the proposed modification on 10 February 2014. However, according to the Act XXVI of 2003 on the National Spatial Plan the modification, withdrawal of areas belonging to the ecological network can be performed exclusively through the amendment of the Act, and not via ministerial approval. The Green Connection Association requested a statement in this case from the Commissioner for Fundamental Rights on whether the withdrawal of the area mentioned from the national ecological network violates the right to a healthy environment set out in the Fundamental Law, and the provisions of the Act on Nature Conservation, as well as the legal principles concerning the achieved level of environmental protection and the prohibition of regression.

“69. The publicity of strategic noise maps and action plans based on the EU guideline on the evaluation and handling of environment noise is insured by the related domestic legislative regulation.”

The obligation imposed by law that on the basis of the noise map the public must be informed about the environmental noise load each year (!), was not fulfilled in one single year since 2007. The strategic noise map is worth nothing, if the environmental authority and the local municipality do not take it into account when making decisions. For example, in the procedure related to the re-launch of the Miskolc cement plant, the strategic noise map completed in 2013 stated that the plant causes a noise load over the strategic threshold, yet the environmental license was issued in 2016, which will result in daily 507 trucks more riding the already congested area (mainly Pesti street).⁵

Article 5, paragraph 1 (c) (the dissemination of environmental emergency information)

⁵ http://miskolc.hu/sites/default/files/dokumentumok/csatolmanyok/vi-119_mmjv_zajcsokkentesi_intezkedesi_terv_elfogadasa_melleklet_intezkedesi_terv.pdf

“70. Government Decree 311/2005. (XII. 25.) on the public access to environmental information provides that in case of an imminent threat to the environment or to public health, the authority holding the relevant information must immediately inform the public concerned. ...

73. ... In 2008, information and alarm limits were introduced also in relation to flying dust (PM₁₀). On the basis of these, in recent years the information or alarm levels of smog alarms were applied in several cities (e.g. Budapest, Miskolc). The aim of the review which has been imposed in 2012 is to establish a more modern, more effective and legally ordered smog alarm regulations.”

The National Report provides no information about the results of the by now almost four-years long review.

What kinds of environmental facts, analyses and explanatory materials are being published?

“Geographical location of nature conservation objects (<http://geo.kvvm.hu/tir/>, <http://webgis.okir.hu/tir/>):”

The data sources listed are mostly of nature conservation character, the environmental information sources are missing from the list.

Article 5, paragraph 4 (disclosure of reports on the state of the environment)

“Green environmental authorities regularly publish data under their responsibility.”
88. A Központi Statisztikai Hivatal által közzétett kiadványok 2011-2013 között.”

These refer only to years prior to the reporting period.

“Websites, <https://kereses.magyarorszag.hu/jogszabalykereso> and www.njt.hu are both user friendly legislation databases.

In 2012 the map applications for the viewing of the E-PRTR reports have been completed and are useable by the Google Earth program.”

The National Report covers only the term before the reporting period, it would be necessary to give account about the results of the process lasting from 2014.

The links cited lead to the okir.hu site, rather than to the indicated E-PRTR webpage. The mentioned website is not available on the internet.

“The nature conservation branch provides access – free of charge – to the description of natural values and areas through the customer service module of the Nature Conservation Information System (<http://geo.kvvm.hu/tir/>; <http://web.okir.hu/hu/tir/>). The nature conservation branch, however, needs to pay hundreds of millions of forints to enable access to core government data, (orthophotographs and state geological survey i.e. property register maps) necessary for the creation of the maps.”

The majority of information systems require significant previous qualification and expertise, most of the users have problems with the practical application. It would be important to create clear surfaces that are accessible and usable for everyone. It is problematic that the data concerning various environmental elements are scattered in separate information systems.

4. Application of Article 6 (public participation in decisions on specific activities)

“105. The amendment to the Administrative Procedures Code affected public participation in administrative procedures relating to the environment in more than one way.”

The special procedures represent a serious and ongoing setback in ensuring the participation rights, and they violate the spirit of the Convention. The main problem is that there is almost no limit and no control mechanism on what investment does the government label as priority project. The practice shows that these exceptional procedures are increasingly used.

The decisions made in procedures of priority investments are enforceable regardless of appeal:

- *The first activity of the City Park project is the demolition of the Transport Museum and the construction of a new museum, as well as a three-storey underground garage. In the first instance decision of 26 October 2016, the environmental authority concluded that the investment does not have a significant environmental impact, so no environmental impact assessment is needed. Since the activities of the City Park project were determined by the government in a decree as high priority in respect of national economy, therefore the decision have become enforceable immediately regardless of appeal, despite the fact that both the Clean Air Action Group and an individual filed an appeal. The implementation has begun right away, and during the second instance procedure the demolition of the former museum building was started and the process has become irreversible. This may violate the right to an effective remedy.*

- *The “Balaton 2 Ferry Consortium” prepared a detailed feasibility study in 2012 in the preparatory stage of the EU-supported investment proposal on the subject “introduction of a new scheduled ferry between the northern and southern shores of Lake Balaton on the route Badacsony-Fonyód”. Despite the efforts of local communities and the media, this study has not been published ever since⁶. A passenger ferry operates between Badacsony and Fonyód for decades, the proposed development is designed to make it useable also for cars. The development involves the major reconstruction of the two ports and the related road network. If the car ferry is realized, the two lakeside municipalities will be flooded by an order of magnitude more traffic than the existing one. The natural values of the affected shore areas, mainly the reeds would inevitably be damaged. To have access to the plans and the study, the local community until now used only the technique of “requesting”. There were two restraining factors impeding the application of the legal way of enforcing disclosure. On the one hand the needlessness of coercion, because this development has been prepared many times in past decades before the present occasion, but in the end – lacking resources – all these preparatory studies ended up in the desk drawer.⁷ The other disincentive was the significant expected cost of the legal process for the local community.*

In the 2014-2020 EU development cycle the plan of the car ferry has become taken seriously again: the government issued a decision on its implementation (government decision 1861/2016). The local communities will be forced to resort to a more binding legal procedure than “requesting” for the disclosure of the detailed feasibility study...

“The provisions of Article 6 are implemented in Hungary in the following manner.

⁶ http://www.balantontipp.hu/balaton_i_hirek/balaton_i-hajozas-jogeros-dontes-nem-titkolhatjak-az-adatokat/

⁷ <http://magyararancs.hu/kismagyarorszag/hianykompp-lozungokkal-81774>

The relevant annexes to the Government Decree determine the activities that are subject unconditionally or subject under certain conditions to EIA. These annexes cover a range of activities broader than laid down in the Convention, or apply thresholds lower than those in the Convention.”

In practice an impact assessment obligation is only rarely imposed based on the authority resolution, the authorities interpret significant environmental impact in a very narrow sense, the precautionary principle was not applied at all.

So for example in Miskolc and its region several hundred thousand people are affected by the restart of the cement plant, the energy for which is intended to be supplied by waste co-incineration. Despite the fact that in an area with otherwise one of the worst public health data a demonstrable setback would take place in comparison to the previous period due to air and noise pollution, moreover to touristic and social impacts as well, the environmental authority issued the IPPC permit.

The radical transformation of environmental (and other related, such as land protection, forestry etc.) regulatory system and the virtually total elimination of special authority system lead also to rendering doubtful the applicability of – on the one hand – the 4/2010 administrative legal uniformity decision on the client legal status of NGOs, and that of its legal basis, the paragraph 98 of the act on environment. The drastic decrease in the number of procedures involving the environmental protection authority causes an ever decreasing number of processes, where client rights may be exercised based on NGO participation. This affects the decisions’ quality (negatively) and legitimacy.

5. Application of Article 7 (public participation concerning plans, programmes and policies relating to the environment)

“The Environment Act grants a general right to environmental civilian organizations to review any plans or programmes affecting them and bound to environmental assessment.”

Although reviewing plans and programmes is actually provided in theory, it should be noted that according to the government decree 2/2005 it is the developer of the plan and programme who specifies the public affected. This in turn may provide opportunity for abuse, especially in case of plans and programmes that are not directly connected to environmental issues, but nevertheless have a close relationship with or an effect on the field of environmental protection. If the developer does not consider in these cases the environmental NGOs affected, but only for example the sectoral (energy, forestry, hunting, road development etc.) organizations, then public participation in decision-making might be undermined. In this respect a regulatory guarantee should be created, but it is still lacking today.

Opportunities for public participation in the preparation of environmental policies

“120. The main bodies of institutionalized public participation are described under item 30. Among these bodies, outstanding role is played by the Hungarian National Council on the Environment (OKT) which, in accordance with the Environment Act, is an advisory, reviewing and consulting body to the Government.”

In practice, the National Council on the Environment (OKT) does not receive all the draft proposals it should review from the ministries (usually except for the Ministry of Agriculture and the Ministry of Interior), and particularly not in the right time (that is before the government’s

decision according to the laws and other legal provisions) to be able to perform this reviewing, advisory and consulting task. The commenting periods are generally so short (instead of 30 days as specified by law) that OKT cannot fulfil its role corresponding to the legislative intention: the Council does not have enough time to develop a consensual position among the three member groups (economy, science, civil) constituting it. The proposals of OKT are seldom incorporated in the reviewed documents. Despite its explicit request in this regard, the Council does not receive an explanation, feedback from those submitting the draft laws, and there is no possibility to discuss the amending proposals of OKT. (Despite all these difficulties, and precisely to solve them, the National Council on the Environment – taking advantage of the authorization provided by law to determine its own rules of operation – sought from the beginning to be able to adapt to the government rhythm that is different from the way of operation of the advisory body. The Council has formed and operates standing thematic committees in key areas of environmental and nature protection in order to flexibly accelerate the reviewing procedure and OKT authorized a permanent officer to articulate and represent its opinion, together with introducing electronic consultation.) Unfortunately, in practice the Council's role is insignificant by now, its power has weakened considerably compared to the original ideas, the opinion of OKT is rarely taken into account by the decision-makers.

“121. Widespread, open public participation is enabled through public consulting. In addition to the formal consulting procedures relating to draft legislation, the ministry responsible for the environment prepares and submits for approval major draft environmental policy documents through extensive consultation.

The comment process is further assisted by strategic agreements between the Ministry and the organizations representing smaller organizations or larger professional sectors.”

The strategic partnership agreement to be concluded between the Coordination Council of the Cooperation of Environmental and Nature Conservation NGOs (the panel for the representation of environmental organisations in between two National Meetings) and the Ministry of Agriculture was first raised in the course of 2012. Although the actual draft was also agreed on, that time the ministry finally rejected the initiative. During the year 2016 the Council re-initiated the strategic partnership negotiations with the Ministry of Agriculture. This time the ministry was open to the initiative, and by the end of 2016 the draft agreement approved by both parties was completed. Due to procedural issues, the conclusion of the agreement is still uncertain. In 2016 the Council initiated a more active dialogue between the environmental and nature conservation NGOs and the relevant ministries in the framework of organized forums. First the Coordination Council approached the Ministry of Agriculture and the Ministry of National Development that were receptive to the initiative. The Council organized two forums with the participation of Mr. SZABÓ Zsolt, State Secretary for development and climate policy and priority public services, and Mr. V. NÉMETH Zsolt, State Secretary for environmental affairs, agricultural development and hungaricums. These forums were open to representatives of non-governmental organizations.

6. Application of Article 8 (public participation during the preparation of executive regulations and/or generally applicable legally binding normative instruments)

“126. In addition, the Environment Act explicitly sets out that environmental civil organizations have a right to comment on any draft legislation on environmental matters. Upon a general request, the Ministry responsible for the environment sends individual

invitations to civil organizations to comment on particular legislative texts. The National Council on the Environment has to be consulted on each draft bill and decree before adoption.”

In respect of reviewing draft legislation, the insurmountable workload due to short deadlines strikes the National Council on the Environment (OKT) the same way as it afflicts non-governmental organizations. It is an ongoing practice that legislators – violating the provisions of the relevant Act – do not provide the minimum time required for the Council to form opinion. This is an important issue also because OKT works as a body, so it can fulfil its true function only if it is provided sufficient time to establish its position. The law allows the Council to invite on its own initiative governmental actors to present certain draft legislation at the plenary session of OKT, but in some cases the ministry contacted did not even answer, or after the umpteenth request the only reaction was rejection.

7. Application of Article 9 (access to justice)

Article 9, paragraph 1 (legal remedy related to access to environmental information)

“129. The Information Act provides that where a request for information has not been fulfilled, the applicant may have direct recourse to judicial review. The grounds for and the legality of the refusal have to be demonstrated by the holder of the information. The court procedure can be initiated within 30 days after the receipt of the refusal or the elapse of deadline for data submission response. The court handles these cases in a fast-track procedure.”

In the cases of public information provision, the court's fast-track procedure is merely a legislator's felicitation, the reality is however that the first and second instance trials may last for years.

Article 9, paragraph 2 (legal remedy pertaining to public participation in decision making related to certain activities)

“130. Administrative and judicial remedies available in environmental administrative procedures (including the permitting procedure attached to EIA) are defined by the Administrative Procedures Code (Act CXL. of 2004.) referenced above. ... Enforcement of the decision is not automatically suspended, even though the client may initiate such a suspension in its petition.”

The suspension is very rare in practice, the economic damages arising from the lack of enforcement are typically overestimated by courts, while the environmental damages due to the implementation are usually underestimated. This often leads to the consequence that the legal dispute is about the licensing of an activity that has been partially or even wholly realized.

“132. In its administrative uniformity decision 4/2010., superseding decision 1/2004., the Supreme Court also dealt with the client status of environmental civilian organizations, the right to bring action and to a court hearing, and the possibility of intervention in administrative proceedings.”

The court intervention activity of NGOs is greatly limited by the fact that as a result of dismantling the supporting system almost no organizations are left to act in such lawsuits, while the financial contribution of the population cannot be expected either, especially in the eastern part of the country, which, moreover, belongs to the most polluted regions.

A good example of this is the licensing process of re-launching the Miskolc cement plant, where the Green Connection Association prepared an expert opinion to protect the air quality of the city and the region. Less than a third of the high expert fee (600,000 HUF – some 2000 euro – 5% of the annual income of the association) could be collected from donations at the expense of the organization's operation.

“The decision, upholding the theoretical arguments of the 2004 decision, determined that the NGOs set out under Section 98, Paragraph (1) of the Environment Act are entitled to the client status in environmental administrative cases, where the environmental authority acts in the capacity of peremptory authority and in other such administrative cases where law stipulates the participation of the environmental authority as an administrative environmental authority.”

One of the most general uses of environment is construction activity, in the licensing procedure of which the environmental authority acted previously as a special authority. Now the green authority issues only an expert opinion that causes problems of efficiency and participation. The legal uniformity decision needs revising because the Supreme Court did not consider the nature conservation and water management issues official environmental regulatory cases. However, in nature conservation matters there are still opportunities to participate, because of the provisions of the nature conservation act. (According to section (2) of paragraph 3 of the Act LIII of 1996 on Nature Conservation, for the issues related to nature conservation, but not regulated by this act the provisions of the act on environmental protection should be applied. Taking this into account in the nature conservation regulatory matters the non-governmental organizations – more precisely only the associations – are entitled to client legal status in accordance with section (1) of paragraph 98 of the act on environmental protection. For the time being we have no information about the practical utilization of the legal uniformity decision.)

The noise pollution of Miskolc Beer Festival: organizing this event in one of the most important green areas of the city (Népkert – People's Garden) entails noise pollution, cutting down trees and vandalism in the garden for many years. According to the municipality, the preparation details of the beer festival licensing procedure and the license itself are not public for ten years. As environmental administrative authority procedure was not carried out, nor client legal status, neither access to the documents was given the local Green Connection Association, moreover journalists and private persons either. There is a special noise limit for service and leisure facilities in the area: 55 decibel instead of the general 40 by night and 65 decibel instead of the general 50 by daytime according to the measurements, still no measure is taken. The municipality is not in the position to differ from a national law towards mitigation.

Article 9, paragraph 3 (general right to bring action upon infringement of environmental legislation by authorities or private persons)

“133. Section 98 of the Environment Act makes it possible for environmental civil organizations to seek the intervention of the competent authorities as well as to directly sue the operators of activities that pose a threat to, pollute or damage the environment. Civil organizations may request the court to order the termination of the unlawful polluting activity or the introduction of preventive measures.”

The use of “actio popularis” is impeded in practice by a number of factors, such as high procedural costs. In addition, there are several legal and extralegal barriers, which are actually degrading this legal institution to a mere theoretical opportunity, or are able at most to confirm the prosecutors’ authorization to litigate. Namely the detailed rules on what actual petition claim should be drawn up by the acting NGO, what should be the content of the claim, what is the value of the cause of action, what does the plaintiff have to prove etc. are missing (and due to the sparse case law, this could not be developed conceptually by the courts either). Parallel to this, the solutions facilitating litigation (tax relief, legal aid or sharing the expert costs, perhaps reversing the burden of proof) are sorely needed. Reviewing the legal institution and strengthening its applicability would be recommended.

Article 9, paragraph 4 (measures taken in the course of legal remedy procedures, “effectiveness” of the procedure, costs)

What overall costs do members of the public incur in bringing cases to court?

“139. The authority of second instance or the court may, depending on the type of appeal, procedure, modify or annul the resolution of first instance passed by the administrative authority and may simultaneously order a new procedure. In case of a repeated procedure, the authority of first instance is bound by the findings of the appeal body or the court.”

The formulation is misleading, it is necessary to clarify that the second instance authority may approve, modify or annul the first instance decision, while the court may maintain in force or repeal the second instance decision. Of course, under certain conditions the administrative body may impose a retrial obligation.

In addition, based on the recently amended act on administrative proceedings the authorities acting on second instance would have significantly less possibility to order the first instance organs to conduct a new procedure. However, this regulation seems to be ignored by the second instance environmental authority, as in several cases (e.g. Szombathely fibreboard factory, Almásfüzitő composting plant), contrary to the act on administrative proceedings it ordered again the first instance authority for further prosecution rather than making a substantive decision.

“140. The costs associated with administrative procedures, including administrative appeal fees, in environmental cases are specified by Decree 33/2005. (XII. 27.) KvVM of the Minister of Environment and Water and are specified by Decree 14/2015. (III. 31.) FM of the Ministry of Agriculture on administrative service fees of environmental- and nature protection authority procedures since April 1, 2015. The filing fee of appeal is fixed, as a general rule, 50 per cent of the administrative service fee of different procedures.

Exceptions from the 50 per cent rule are also determined by the Decree. Thus, the filing fee for a private person contesting an administrative decision concerning an activity subject to EIA and preliminary EIA significantly less equals 1 per cent of the otherwise applicable fee.

Similarly, civil organizations may make an appeal in permitting procedures for 1 per cent of the otherwise applicable fee (unless the procedure itself has been initiated by the same civil organization). These fees can be considered equitable and not prohibitively expensive.”

Several special authority procedures have separate administrative service fees both on first and second instance, these must be paid in full in case of appeal, since they are not subject to the 1 percent rule. The decrees on administrative fees apply almost no cost allowances towards individuals and/or NGOs wishing to appeal, taking them virtually under the same judgment as the economically interested applicants. This creates a serious disadvantage in some cases, and as a matter of fact deprives the customers of their rights to remedy.

“Act XCIII. of 1990. on Duties specifies preferential duty tariffs for the judicial review of administrative decisions at a rate of HUF 30,000 (approx. € 100) and HUF 10,000 (approx. € 35) in non-litigated procedures, which is very equitable in comparison to duties imposed on general civil court proceedings.

Beyond the payment of the procedural duty, additional costs may arise for the client who is determined according to the specific case (e.g. lawyer’s fee or expert fees).”

Recently the judicial practice has shifted in the direction that in an administrative lawsuit the professional opinion of the authority written in the decision can be traversed successfully only by a forensic expert opinion. This causes very serious costs that are practically unacceptable for a non-governmental organization.

Article 9, paragraph 5 (informing the public on legal remedy options)

“141. Under the Administrative Procedures Code, all administrative decisions have to contain a precise reference to the availability of appeal. The decision has to be officially communicated (delivered) to the client and any other person to whom it conveys rights and obligations.”

The protracted litigation is a well-known general problem, which reduces the effectiveness of the right of appeal, as environmental degradation is often experienced before the end of the trial. If one wins a case, the refund of advanced legal expenses is considerably delayed in many places.

Cited Legislation

Acts

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Act LXIII of 1992 on the Protection of Personal Data and the Access to Data of Public Interest

Act LIII of 1995 on the General Rules of Environmental Protection

Act LIII of 1996 on Nature Conservation

Act LXXXI of 2001 on the Promulgation of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters Adopted in Aarhus on 25 June 1998

Act XXVI of 2003 on the National Spatial Plan

Act XCII of 2003 on Taxation

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Act XXIX of 2004 on Certain Legislative Amendments, Repealing Legal Provisions and Establishing Certain Statutory Provisions Related to the EU Accession

Act CXL of 2004 on the General Rules of Administrative Proceedings and Services

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Other laws

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Establishing a Framework for Community Action in the Field of Water Policy
- Government Decree 2/2005 on the Environmental Assessment of Individual Plans and Programmes
- Decree 33/2005 (XII. 27.) of the Ministry for the Environment on the Administrative Service Fees of Environmental, Nature Conservation and Water Management Authority Procedures
- Government Decree 311/2005 on the Order of Public Access to Environmental Information
- Government Decree 188/2009 (IX. 10) on the Compensation to be Paid for Making Personal and Classified Data Unrecognizable in the Official Documents of Administrative Procedure and for Copying the Documents Extracted This Way
- Administrative Uniformity Decision 4/2010 of the Supreme Court
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- Government Decree 301/2016 (IX. 30.) on the Level of Allowance to be Established for Meeting the Demand for Data of Public Interest
- Government Decision 1719/2016 (XII. 6.) on Hungary's withdrawal from the international initiative called Open Government Partnership
- Government Decision 1861/2016 (XII. 27) on Determining the Priority Tourism Development Region of Lake Balaton and on Securing the Resources Needed to Implement Certain Developments in this Area