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**NGO REPORT AND OPINION ON THE
IMPLEMENTATION OF THE AARHUS
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I. General statements related to the implementation of the Convention

1. The process of compiling the present civil report

The organisations of the Hungarian green movement were first informed about the start of the reporting process through the mailing list of the European ECO-forum. Based upon this, NGO delegates to the Aarhus Working Committee established by the Ministry of Environment and Water – hereinafter Ministry – asked for information about the governmental measures related to the Report in a letter at the beginning of August 2007. However, the working committee did not provide opportunity to become involved in this phase of the process, only in the period of expressing opinions which started on 14 September and was open to anybody.

The reporting rules of the Convention make it possible for the environmental non-governmental organisations (NGOs) to adopt an alternative report. According to the opinion of the Hungarian environmental movement the National Report compiled for MOP-3, finalized on 28 December 2007 can not be regarded as an analysis completely synthesising and covering the opinion of those affected in the subject, so although they gave comments to it and, during the harmonisation process, the Consultative Forum of the environmental organisations made a decision on 2 October 2007 to prepare a separate analysis as well. Besides forming this separate opinion NGOs also state that the National Report compiled by the government contains much useful information, and in its final text space was given to certain civil comments, too.

The comments to the civil report (that was made public in the green movement in the widest possible circle) were summarized on 4 December 2007, finalized in the first week of 2008, and then accepted by the Forum on 30 January. The editors of this opinion furthermore consider it necessary to show specific examples and cases supporting the evaluation as well, thus making the analysis more tangible. We hope to contribute with our work to the change that in the next reporting period the Hungarian government and its responsible ministry make serious efforts in order to implement the Convention in Hungary.

2. Particular circumstances relevant for understanding the report

2.1. The activity determining the general aims and framework

In general it can be said that the government has no implementation strategy that would determine the priorities, discover the existing shortcomings, establish the division of tasks among the sectors concerned, the necessary legislation schedule and the institutional-organisational framework. In our opinion, the necessary legislative procedure does not reflect recognised legal shortcomings neither in its scheduling, nor in the content of the legislation passed. The direct application of the Convention in daily legal practice is many times dubious, difficult, and its adaptation in the domestic law by other acts took place only partially, without coherence. Even regarding the applicability of the Convention itself, an extremely contradictory legal practice has evolved: while it was promulgated in the Act 81 of 2001, in specific cases, in the various forums of jurisdiction, radically different interpretations have arisen about the question, whether the Convention has at all become part of the domestic law or not.

On this subject the Capital Court took the following position in its judgement nr. 24.K.32347/2005/13: „The Aarhus Convention is a classic international convention without having direct effect, so it does not originate neither in vertical (state-person), nor in horizontal (person-person) legal relationships such rights for the persons that can be enforced at the court.”

At the same time there were also several examples of applying the Convention in the judicial practice. Regarding client rights e.g. in one of the cases followed by big media attention the proceeding court provided the association concerned with the client rights related to a construction permit, referring precisely to the Convention. A decision of the Supreme Court destined to form the unified legal practice on this subject has not been passed as yet.

Beyond the shortcomings of the legal background, the central budget, respectively the Ministry does not provide appropriate capacity and financial source for the domestic implementation of the Convention. The governmental working group set up to monitor the implementation of the Convention got active only to prepare the National Report after 30 August 2007.

Besides the inappropriate planning of the legislation, its lack of solid basis is also a problem. Detailed preliminary studies, analyses for laws, institutional reforms, organisational transformations are made in the rarest instance, thus many times the actual aim, the desirable target conditions can not be identified either, and indeed, they are often contradictory. Therefore later on the fulfilment of these aims can not be called to account, all the less since the subsequent evaluation of the measures fails to come about in almost every case, or if it still happens, it is not accessible for the public. So there is no way either for the public and the non-governmental organisations to participate in the determination of the aims and the subsequent evaluation. We will cover this in more detail in the opinion attached to the given article.

2.2. The actual shortcomings, problems concerning the basic pillars of the Convention

Although the material and procedural legal foundations guarantee the rights stated in the Convention, their enforcement is sometimes difficult due to the divergent detail-regulation of the different areas of jurisdiction, or even impossible due to the insufficient knowledge of those applying the law. A unified view – that would make the civil rights guaranteed in statutory law applicable in the practice – could not be established. We will cover these questions in more detail under the respective points of the report.

Among the general problems hindering the implementation of the Convention we must mention the drastic reductions in the state administration and in the system of authorities as well. The leaner system of authorities did not result in the rationalisation of law application, but it rendered it impossible in certain fields, even as regards the provision of the basic tasks. The administrative machinery that has to fulfil the same amount or more work with smaller staff, can pay the least attention to the supply of data or to conditions to exercise the rights to the expression of opinion. The missing human and financial sources do not help, but hinder the implementation of the Convention, often even the basic conditions are missing. We will mention the positive examples differing from the general tendencies in our detailed opinion concerning the actual article.

In many of the obligations outlined in the Almaty Declaration adopted in 2005, no steps forward have been made. The already existing institutional frames, thus the provision for

the right to information, the capacity building to participate and the access to justice, was not expanded, not formed into a system. The Aarhus Environmental Democracy Information Exchange System, its organisation and institutional framework was not established, so it could not become a tool to help the implementation of the Convention. The activity of the non-governmental sector that undertakes many duties which are state obligations, is supported neither with financial nor with immaterial means. The environmental education and knowledge-dissemination is suppressed, lacks resources.

3. Summary of the report

In our experience, out of the three pillars of the Convention, for the time being the access to environmental information of public interest is the only field, the legal background of which could really guarantee the effective enforcement of rights. It could guarantee this, if the fourth pillar: capacity building would work properly. Nevertheless, since serious shortcomings can be experienced in this field, we can speak only about partial successes. Moreover, they are owing not to the use of rights provided by the Convention, but to the really high quality Hungarian Act on data protection and the activity of the data protection ombudsman.

According to our opinion in the two years reporting period unfortunately Hungary showed significant implementation deficiencies. The conditions of access to and dissemination of information were hardly improved. The inclusion of public participation in environmental decision-making with the necessary organisational and procedural guarantees failed to come about.

We failed to fulfil expectations related to capacity building, in the attitude of authorities hardly any steps were taken towards a servicing-type public administration. All in all, the conditions of participation in decision-making are continuously worsening and the opportunities of legal remedy are stagnant.

The outstanding significance of the Aarhus Convention was soon realized by the non-governmental organisations struggling for an open society, and they undertook a determinant role in its preparation. Admitting that in the reporting period we ourselves did not work with the efficiency needed – mainly in the field of self-education and knowledge-dissemination –, after all it was not our fault that in the field of obligations and expectations related to the implementation of the Convention, Hungary shows a weak performance.

II. Comments to the individual articles of the Convention

1. Application of Article 3 – general provisions

1.1. Article 3.1 (A clear, transparent and consistent framework to implement the Convention, have there been any legislative changes in non-environmental legislation significant for the environment that may limit public participation in certain cases, e.g. construction of highways?)

The Act 128 of 2003 on the public interest character of the high-speed freeway network has generated thorough objections because of the significant restriction of the obligations of information, participation and access to justice stated in the Convention. A non-governmental organisation had initiated two procedures against the Republic of Hungary at the Compliance Committee. These are mentioned in the National Report too, but the

Committee's opinion is evaluated in a different way. According to our opinion this evaluation is extremely disquieting, as it violates the spirit of the Convention, when it does not treat the various procedural phases uniformly. Namely, it doesn't recognise that in the course of construction permit procedures environmental information may be generated, just like in the environmental permit procedures conducted before.

The subjects of the compliance procedure were the Act 128 of 2003 of the Republic of Hungary on the public interest character and development of the high-speed freeway network, and the rules of the 15/2000 (XI.16.) decree of the Ministry of Environment and Water on the permit procedure of the construction, opening and suspension of roads, as well as the subsequent amendment of the act. The disputed provisions have introduced a simplified procedure that provides public participation to a lesser extent in the permit procedure of high-speed freeways (cases nr. ACCC/C/2004/04 and ACCC/C/2005/13). In the case nr. ACCC/C/2004/04 the Compliance Committee has explained in its findings that the Hungarian government has to review the simplified permit procedure of the high-speed freeway network, as in spite of the fact that at first sight its rules do not violate the minimum requirements of the Convention, the compliance of the procedure depends on the practical application of the new act. Furthermore the Committee had expressed its concerns in the respect that one Party to the Convention takes measures reducing the already existing level of rights provided by the Convention. Therefore the Committee had recommended to draw attention of the states at the next Meeting of the Parties, to abstain from the reduction of already existing rights. The Almaty Declaration adopted at the Second Conference of the Parties had confirmed the recommendation of the Committee.

On top of this, the Act 12 of 2005 (amending the above Act on the public interest character and development of the high-speed freeway network of the Republic of Hungary) comprises further steps back in the provision of rights expected by the Convention regarding the decisionmaking about the routes of highway-tracks, as well as the simplified permit procedure of the so-called target extractive spots needed for the construction works.

In the case nr. ACCC/C/2005/13 the Compliance Committee examined these amendments. The Compliance Committee has found that since the environmental impact assessment part, in relation to the complex permit procedures mentioned – as the primary framework of providing public participation – and the connected legal remedy possibilities have not been changed, existing public participation opportunities were not violated. Nevertheless, the Committee has recommended the Hungarian government to review the provisions in question, because their practical application may be disquieting in terms of the Convention.

At the same time, environmental permit procedures related to highway construction are carried out absolutely formally. There is no possibility to review the substance of the environmental impact studies prepared on behalf of the constructing state organs.

The chances of efficient public participation are significantly harmed by the Act 53 of 2006 on the "acceleration and simplification of the implementation of investments of distinguished importance in terms of the national economy." The aim of the act is to create an accelerated permit procedure for projects over 5 billion HUF (about 20 million euros) financed by the European Union, and thus, the more efficient utilization of the sources available. In case of projects covered by this law, all procedural deadlines are much shorter than usual, thus the law makes it more difficult for the public to participate in time and substance in decision-making according to the expectations of the Convention. A separate

problem is that the government should specify these projects in a decree, but this has not been issued yet.

The environmental public administration system of the authorities was transformed continuously between 2003 and 2007 in the spirit of rationalisation and the transparency of procedures. However, this transformation has eventually resulted in impairing civil rights originally exercised in a permit procedure involving several authorities concerned – that is, the exercise of right of access to information and access to justice. For example, the resolution of the nature conservation authority that was earlier issued as an independent decision and as such could be appealed, is now present only as a supporting decision-preparation material in the permit procedure, thus it is not public, and no independent legal remedy can be requested against it.

1.2. Article 3.2 (assistance and guidance to the public in public participation matters)

Which legal tools does general administrative law provide to facilitate exercise by the members of the public of their procedural rights?

We consider the repeal of Act 1 of 1977 on the announcements, complaints and proposals of public interest a step back, as the articles 141-143 of Act 29 of 2004 replacing it do not provide such elaborated framework for the administration and remedy of complaints, announcements of public interest, like the former provisions. The passage on the cooperation obligation in the Act 140 of 2004 on the general rules of public administration procedures, mentioned in the National Report is valid in the Hungarian law and order since 1957, so it cannot be regarded as an achievement in the implementation of the Convention. However the legal obligation has not formed its practice and attitude up to now. The Act 80 of 2003 on legal assistance mentioned also in the National Report excludes the legal assistance among others in cases emerging in connection with the foundation and operation of non-governmental organisations, so this is obviously not a provision facilitating the implementation of the Convention.

The practice of public participation in specific procedures demands the acquisition and recognition of the so-called client legal status - without this participation is excluded. Although the effective environmental law guarantees the client legal status of NGOs – according to the Convention’s text the client legal status of organisations formed with the aim of environmental protection is provided ex lege –, its enforcement has many times failed in practice since the transfer of nature conservation authority jurisdiction (mainly in water management and forestry procedures).

The North-Hungarian Environmental, Nature Conservation and Water Management Inspectorate has refused the request of the Ecological Institute for Sustainable Development for the recognition of client legal status (1156-7/2007) in the public administration procedure in process on nr. 1156/2007, concerning the water laws establishment permit procedure of the “impermeability plan of the riverbed section on the Tatár-graben periodical watercourse between the entrance of Mexikói stone-pit and the Mexikó-valley, phase 1”. The Inspectorate has argued that the water laws permit procedure in process is not an environmental public administration procedure, but a water management permit procedure, carried out on the basis of the paragraph 2 of article 28 of the Act 57 of 1995 on water management. As neither the Act on water management, nor other binding regulations authorise a civic/advocacy organisation with client legal status, furthermore the requesting association does not correspond to any of the client concepts determined in the article 15 of the Act 140 of 2004, the Inspectorate has decided to refuse the request.

In order to enforce paragraph (2) of article 3, due to the contradictory legal practice, the resolution 1/2004 KJE made by the Supreme Court has also prescribed public participation for the proceeding authorities. However, the application of this decision is still not universal in the practice – in spite of the fact that it should have been applied for three years –, due to the insufficient knowledge and bias of the administration. To our opinion this can be experienced because of the inappropriate legal knowledge of those working in public administration.

1.3. What are the institutional arrangements for capacity building (public relations departments, information officers)?

The Green Point (GP) Service of the authorities was established at the environmental authorities and the institutions of national parks, water management directorates. It's most important role is to support the authority administration and the management of documents. Beyond this the proportion of public counselling and information, according to our knowledge, is very low: a GP office communicated the registration of 5 such cases in a year. The situation is different at the Central Public Relations Office, where the proportion of personal, email and phone request circulation is really high. On national level the service is uneven, the clear definition of its tasks (authority or/and general information) is missing. In terms of the Convention, law enforcement, participation in decision-preparation processes and capacity building – due to reasons of conflict of interests – are missing, too.

No cooperation agreement has been signed between the Hungarian Network of Eco-counselling Offices (Kötháló) run by NGOs with some 22 offices and the Green Point Office Network, but the Kötháló counsellors have visited and contacted the local GP offices personally, and publications are also often exchanged. The activity of Kötháló is endangered to a large extent by the fact that the magnitude of support awarded to Kötháló and its offices by the Ministry has diminished to less than third, and after a decade 2007 was the first year, when eco-counselling was not among the priorities supported. As a result, the offices of Kötháló do receive and manage the requests continuously but with reduced time and capacity. Their activity is supported by a monitoring system as well, for the sake of quality insurance.

A move forward could be experienced at the Ministry of Economy and Transport, where in the period of the compiling present report several forms of information (www.gkm.gov.hu, www.kozadat.hu, www.lendulet.hu), and involvement in decision-making were established. The environmental assessment analyses of certain plans and projects are public. The National Environmental Council is invited to express its opinion to the draft documents of the Ministry of Economy and Transport.

The Ministry of Agriculture and Rural Development has released its report on agriculture, and since 2006 the draft genetic engineering licences too, opinions can be expressed to these. In the course of forming the so-called New Hungary Rural Development Plan, professional organisations were involved, but the environmental ones could not enforce their intentions easily in this respect. Public consultation, webpage (www.program.fvm.hu) was at the disposal of those interested. Besides, the public participation procedure of the Strategic Assessment was coordinated by an environmental organisation (National Society of Conservationists – Friends of the Earth Hungary, Magyar

Természetvédők Szövetsége).

The Ministry of Health provides information in the framework of a public relations office, publications and via the Internet.

1.4. Article 3.3 (environmental education and awareness raising)

How do curricula of lower-, medium- and higher-level education institutions address environmental issues?

Compared to the former decade, a lack of government concept can be experienced on the field of environmental education in school. According to the 2003 amendment of the Act 79 of 1993 on public education, all the schools have to prepare a health and environmental education programme till the middle of 2004. The documents are mostly finished, but as a result of the drastic withdrawal of resources, implementation has also declined compared to the earlier level.

For three years, the Environmental Education Communication Programme Office (KÖNKoMP) has operated as a common institution of the Ministry of Environment and the Ministry of Education. This office has elaborated all the details of institutional environmental education. After ever decreasing support, the office ceased to operate finally in 2005.

In 2003, a complex Forest School Programme started and within its framework, among others a qualification system of forest schools was elaborated, and a major fund established for education institutions, as well as for programme-providers. Despite its recognition, the programme office was unexpectedly closed in 2005; since then only the solvent, most wealthy educational institutions can get to forest schools. It can be stated that the Forest School Programme – as it is admitted also by the National Report – does not exist any more, was liquidated by the two responsible ministries, and this can be regarded as a major step back. In the meantime as a positive feature on the basis of a cooperation agreement, a non-governmental professional organisation, the National Alliance of Environmental and Nature Conservation Education Centres performs the qualification of forest schools.

According to the present government concept a few – one or two per county – education centres should be “enabled for everything”, and they should provide for awareness-raising for the schools on their territory. This is totally different from the development of possibilities based on the knowledge and demands of local communities, so the principle of subsidiarity can not be enforced.

In the New Hungary Development Plan, although there are sources supporting environmental education, these cover relatively narrow fields, e.g. sustainable consumption, forest school infrastructure development. They do not at all complement each other organically, and due to the planning logic of the New Hungary Development Plan, precisely the possibility of complex programmes is lost, and this renders the fulfilment of programmes with long-term aims and professional organisations impossible.

1.5. Are there awareness-raising campaigns implemented by the environmental administration?

Compared to the former reporting period, the number of campaigns of the Ministry of Environment, and the diversity of tools applied has really increased, mainly in the field of waste management. However, it is not acceptable that these campaigns almost entirely

lacked messages promoting the prevention and the reduction of consumption. At the Ministry no traces of the integrated approach can be found, and they do not deal with such important topics, like ecological consumer protection or environmental health. The tasks related to these topics, requiring a complex approach, are undertaken by non-governmental organisations, but none of the ministries provide support to this. The presence of some firms (e.g. the Coca-Cola Company) in the circle of those supporting the ministerial campaign is also rather disquieting from environmental point of view.

1.6. Do environmental non-governmental organisations participate in environmental awareness raising?

The environmental non-governmental organisations do not deal directly with school-level environmental instruction, but they rather assist these processes with environmental education and awareness-raising mostly through their members. The national report deals in detail with this sort of activity of the NGOs, so we don't repeat that.

1.7. Article 3.4 (recognition of and support to environmental non-governmental organisations)

What is the level of complexity of the existing procedures for NGO registration?

Although the legal regulation of registering non-governmental organisations, including environmental ones, meets the democratic expectations and requirements, practical experience have already indicated for a long time that the registration procedure has become more and more difficult, circumstantial, even if the request for registration is well prepared legally. The procedure described in the National Report works only on principle level, while the practice of proceeding courts is widely different throughout the country. To test this issue, the Environmental Management and Law Association together with the Environmental Partnership Foundation and other civic experts, made a survey, in which they initiated a registration procedure at the 20 county courts of the country with the same identical statute. The results show that registration did not take place anywhere in the quick and simple way mentioned, there were major differences in the courts' objections both in numbers and the content. From the summary it seems that the courts explicitly render the registration difficult, raising unjustified, in places even unlawful conditions on those requesting to be registered. The general conclusion of the survey was that the principles of the associations' autonomy and democracy seem to collide with the over-administrated controlling functions of the courts. The dominance of this latter one makes the establishment of an association almost non-transparent for a lay person.

1.8. Is there an established practice of including NGOs in environmental decision-making structures (committees, etc.)?

There are several means of participation of non-governmental organisations in the decision-making processes: statutory law provides participation on levels ranging from programming activities to specific procedural issues. However, practice is fluctuating and depends on the attitude of the partner institutions and bodies – we cannot speak of an established practice.

In line with the principles of open society, NGOs recognised the importance of regulated social consultation in environmental decision-making. In order to promote this in the practice, three NGOs - the Non-profit Information and Training Centre, the National Society of Conservationists and the Reflex Environmental Association - carried out a complex project in the years 2006 and 2007, supported by the European Committee, with

they aim to form a partnership-based cooperation in the decision-making processes between the spheres of public administration and NGOs.

The “package of recommendations” called Procedural Standard-system of Social Agreement (TEEN), drafted and published as a result of the project and the active collaboration of the two spheres, can provide assistance to the future institutional setup of partnership between the public administration and the NGOs, as well as to the formulation of co-operation and agreements between the two spheres.

1.9. Does the government provide financial support to environmental NGOs?

The support provided by the Ministry gradually declined from the almost 1 billion HUF (cca. 4 million euros) at the end of the 1990s to 500 million HUF (cca. 2 million euros) in 2003, 300 million HUF (cca. 1,2 million euros) in 2005, and altogether 100 million HUF (cca. 0,4 million euros) in 2007. By the end of the reporting period hardly any such source has remained available to a broad circle of the civic environmentalists, which would really serve their development and sustainability, not merely the implementation of individual projects. Usually, the funds available are too big to be accessible to smaller organisations. Moreover, all this is made difficult by such administrative obstacles, e.g. post-financing or the typical delays in transferring the sums obtained. These features cause the organisations liquidity problems that can not be overcome by most of them. Smaller grants awarded in a more flexible system that could be used efficiently and successfully by the local, starting organisations, are absolutely missing. The existence and availability of such grant opportunities is of fundamental importance if only because through them can the organisations gain the knowledge and skills needed for fundraising, project management, and this is a prerequisite of organizing overall, professional programmes. Nevertheless it is a welcome development that for the year 2008, the Ministry, with the help of foreign funds, provides a support in the magnitude of 300 million HUF (cca. 1,2 million euros).

1.10. Article 3.7 (public participation in international environmental decision-making processes)

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

Although the Ministry of Environment regularly declares its commitment and participation in the international processes, its representation in the different forums of the Convention does not reflect this fully. While the employees of the Ministry continuously participated in the Working Group of the Parties, and in the PRTR Task Force, they were represented already much more sporadically in the work of other bodies, considered obviously to have smaller significance. For example in the Task Force on Electronic Information Tools, out of the five meetings only three were attended by Hungarian representatives (always a different person) while the two sessions of the Task Force on Public Participation in International Forums had to do without Hungarian representatives.

Before the second conference of the Parties in Almaty (MOP) the Ministry, under the pressure of the National Environmental Council, has agreed to provide for the participation of an “external” (i.e. not council member) NGO representative, as a member of the official delegation. At the meeting of the council in March 2005, a suggestion for the person was also made, and this person was accordingly invited and registered by the Ministry for participation at the conference. However, one and half weeks before the event, when even the acquisition of the Kazakh visa has already been in process, the Ministry cancelled the participation via a telephone call without a justification on the

merits, so only the president of the National Environmental Council could participate in the Hungarian delegation from the NGOs' side.

1.11. Article 3.8 (prohibition of penalization for public participation)

According to the statutory law, nobody can suffer inconvenience, if using his/her rights provided in a law or regulation, articulates an opinion or even a judgement. The action against persons formulating such negative opinions is not typical from the authorities' side, but one seriously striking case is worth mentioning:

Related to the seriously toxic galvanic sludge abandoned on the territory of the former Csepel Works of Budapest, a Member of Parliament has stated on 8 and 11 February 2007, that the hazardous waste causes "a threat of disaster in Csepel". According to the environmental authority competent on this territory and responsible for the transportation of the waste, the statement above has constituted the crime of threatening with a public danger determined in article 270/A of the Act 4 of 1978 on the Criminal Code, so the authority has initiated the institution of a criminal procedure. A crime can be ascertained in case of untruthful statement of facts, however, the content of the statement was not untruthful. Furthermore, the superior organ of the authority, the Ministry has appealed to the national general public, writing that "campaigns with self-serving purposes have to be stopped in environmental matters. The Ministry encourages others too, to use the possibilities provided by the law against the scare-mongers, if people experience such or similar cases."

With this move the Ministry has limited the freedom of speech protected as the basis of environmental democracy by promising criminal consequences. However it has to be noted, that following the personal change at the head of the Ministry, the action was withdrawn.

In the case of a procedure by an environmental NGO initiated against the nature destructing practises of a forestry company, the firm counter-attacked by filing a personality protection legal proceeding against the manager and programme leader of the Nimfea Nature Conservation Association, together with a demand of non-property liability for damages. The firm offered the association to withdraw the action, inasmuch as the organisation renounces a part of its client rights. It was clearly visible, that the action was partly aimed at engaging the capacities of the environmental organisation, as the plaintiff did not appear in none of the hearings its legal representative did not appear on one occasion either, and on the second occasion the lawyer has sent a practitioner, who asked for the suspension of the legal proceeding. The court has conceded to this request.

The legal representative of the Dalerd Zrt. had many times indicated to the legal representative of the Nimfea, what the association may expect in case the organisation does not withdraw their proceedings initiated. The lawyer's office has even turned to the Ministry of Environment in order to be allowed to examine all the project reports of the association and to search for any inconvenient information against Nimfea in them. The actions suited for the intimidation of the organisation are not over – the conciliation process is still under way for the time being. In the meantime a criminal proceeding was also initiated against the leader of the organisation through a private charge motion for slander. The proceeding is still going on for the moment.

1.12. Have there been any libel, slander or other similar provisions of civil or criminal law used in the context of environmental decision-making processes? Have there been any cases of NGOs being ordered to pay damages in connection with their environmental protection activities or litigation (e.g. due to delay in a procedure)?

In case of exercising the participation rights provided by the Convention, it happens more and more frequently, that an investor institutes – typically for the injury of good reputation – a civil legal proceeding, and demands liability for damages suffered due to the proceeding's delay or failure. The right of initiating a court action by virtue of personality grievance can not be curtailed from the investors, but the judgements passed in such cases do not show an uniform approach. The right to free speech is a basic constitutional right, and in environmental cases it is also a task for the NGOs. The judgement of injury caused or presumed with the opinion is the subject of court discretion.

The courts' judgement practice is different: in a case instituted because of a private person's statement, the court has concluded the violation of the law on first instance, the request was refused on second instance, and then on the level of extraordinary legal remedy, the violation of the law was concluded again, but the person was not obliged to pay damages.

1.13. Obstacles in the implementation of Article 3

We consider it an obstacle that the environmental ministers themselves, charged by law with the implementation of the Convention, did not fully realise the significance of the topic. The task had no responsible senior civil servant in the Ministry, the framing of laws needed for the enforcement and the harmonisation of the job with the other ministries concerned, was not initiated.

The Prime Minister's Office usually responsible for the "NGO issues" does not feel itself affected in respect of the Convention, while in the other ministries concerned even the knowledge of the Convention is insufficient. The Inter-departmental Committee, destined for the coordination of the enforcement, has not even been formed, and no material, facilitating wide-range public information, has been published.

Another related problem is the reform of the system of public administration already mentioned, as the communication among the authorities thus merged has worsened despite their "closeness", so the contact with external stakeholders, NGOs has become even more difficult. Primarily the process of access to information has suffered the consequences of this, the fulfilment of requests for the publicity of documents has characteristically decreased. For example, previously the positions of the National Park Directorates, issuing expert authority statements as independent nature conservation authorities, could be fully known by the NGOs involved in the procedures as clients. In the new system, the opinion of the nature conservation/wildlife protection departments, working within the unified green authority, is not public, being an internal, decision-preparation document, and the final authority resolutions do not include them in any way.

1.14. Further information on the implementation of Article 3

The drafting of laws necessary for the enforcement and the harmonisation of the task with other ministries concerned, was not initiated.

In the procedure of access to data of public interest, the valid Hungarian Act on data protection, i.e. the Act 63 of 1992 on the protection of personal data and the public character of data of public interest comprises a few more advantageous provisions for the

citizen, than those of the Convention. It is a positive feature that the instructions regulated by the law, and relevant to the Convention, were not modified.

2. Application of Article 4 (Access to information)

The system of access to information rests on the principle that the community, public concerned has the right to know this information. This is furthered since 1992 by the Act on data protection, moreover since 1995 by the Act on environmental protection, too. The government decree nr. 311/2005 on the forms of public access to environmental information was also aimed at transposing the Convention. Unfortunately, this decree meant in fact a step back in the present reporting period, because the circle of environmental information specified in it is actually smaller, than that formulated in the two acts mentioned above. Article 2 of the Convention defines the circle of environmental information in three paragraphs, while the article 2 of the government decree aimed at the harmonisation of Directive 2003/4/EC of the European Parliament and of Council, lists the environmental information in six points. This definition is more detailed in certain respects, than the text of the Convention, but at the same time it does not include e.g. landscape and the energy. The narrower understanding of the concepts renders the possibility of public participation usually more difficult in the cases not directly affecting the environmental elements.

The other circle of laws that regulate the enforcement of this right in practice is describing the way of requesting and providing information, the conditions of denying a request and the legal remedy against this. Beyond this, data provision is made obligatory by the general rules of the public administrative procedures in specific authority cases, by the Act on municipalities with a general character, and by the Act on the freedom of electronic information also with general content. It is regrettable that precisely the conditions of practical implementation do not constitute an appropriate background, because the sometimes contradictory system of conditions provide an opportunity to deny the information or make it necessary for those affected enforce their rights in a court procedure.

The practice of access to information indicates that this is much more problematic on ministerial levels than at the local environmental authorities. The most common administrative shortcomings: neglecting deadlines, reference to unprocessed materials, silence or providing data not requested. The data denial or false provision can be traced back to the narrow understanding of the notion of "environmental information", and these faults are related mainly to the expert authority positions, opinions and measurement records used for decision-making. In the individual administrative procedures, the right of studying the files is usually provided by the authorities according to the provisions of the law, and this opens opportunities for the recognised clients to study environmental data, information. The essential problem is that although the requested information is not denied, its provision is linked to fees of a level that is unacceptable for the clients. This is in contradiction with the provisions of the Convention concerned.

On 27 September 2005 the Green Circle of Pécs requested the study of the Strabag Construction Co.'s preliminary environmental impact assessment aimed at the establishment of a cement plant (seat of activity/establishment: Kővágószőlős, topographical lot number 0165/17, registry number: 4866/2005). The association requested a copy of the documentation too, and in relation to this preliminary information about the extent of the justified costs incurred in connection with the fulfilment. The department head of the South-Transdanubian Environmental, Nature Conservation

and Water Management Inspectorate informed the association in its answer dated on 5 October 2005 that based on the instruction nr. 9/2005 (on the form of fulfilling the demands aimed at getting to know the data of public interest) of the director of the Inspectorate a refund of costs of 200 HUF + VAT (cca. 1 euro) should be paid for each A4 page. However in order to reduce the costs, the text part of the documentation requested could be delivered electronically on a data carrier device (registry number:4866-36/2005.).

There are also positive examples, but from this the conclusion can be drawn that the basic system is not stable in this respect, and the success of requesting information depends on the approach of those applying the laws, the employees at the authorities.

The Nimfea Nature Conservation Association has turned to the municipality of Körösladány because of the downgrading of a local protected area, requesting the study of files on the basis of the Aarhus Convention and the Hungarian Act on data protection. In the course of both visits all the data were supplied and any kind of background, necessary for the study of the files, was provided (notary of Körösladány 3039/2007).

2.1. 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 environmental information?

Can materials that directly or indirectly serve as a basis for an administrative decision be considered confidential?

The Act on data protection qualifies the data substantiating the decision non-public as a rule, but information can be requested about these, and the authorities may deny the request only with a justification. An important and active participant of the system is the data protection ombudsman, whose practice is progressive, but his statements and opinions have no binding character.

As it was already mentioned, the fusion of the environmental authority system has also reduced the publicity of information in the new circle of decision-preparation documents which arose as a result of this. Earlier, the decision of the originally independent (e.g. nature conservation) authorities was public as an independent resolution, however, following the fusion this is qualified by the practice – wrongly – as a decision-preparation material, and as such it is not public. The expert materials are also qualified as decision-preparation materials, and while their access is not excluded by statutory law, sometimes it is excluded by the interpretation of practice.

The Green Circle of Pécs wrote a letter in December 2006 to the minister of environment and water, Mr. Persányi Miklós, requesting the expert materials, on the basis of which the Hungarian government decided in April 2006 to pay, out of court, multiple times the original sum for the firm primarily charged with liquidating the hazardous waste in Garé. The text of the agreement was enclosed to the reply of 9 February 2007 of the state secretary of the Ministry, while the copy of this agreement could previously be obtained by one of the daily papers only with a half-year delay, under the pressure of the statement of the data protection ombudsman. However, the issue of the expert materials constituting the basis of the agreement was denied by the state secretary referring to the Act 63 of 1992 on the protection of personal data and the public character of data of public interest. Subsequently the association turned to the data protection ombudsman, who – based on the study of the documents – stated on 25 June 2007 that after the decision the expert analyses were closed from the public without reason, because – after the decision, and after rendering the experts' names

unrecognisable – the danger of unjustified external influence did not exist any more (case nr. 556/P/2007-4).

The Reflex Environmental Association participating as a client in a construction procedure, requested the sending of the environmental expert authority position issued in the case, referring to the Act on data protection and the Aarhus Convention. The fulfilment of the request was denied by the construction authority and the environmental inspectorate of Budapest as well. The association asked for the help of the data protection ombudsman, who laid down in its statement nr. 820/A/2006-3, that the expert authority positions – contrary to the reference of the institutions mentioned – are not decision-preparation documents, but data of public interest that should be accessible. After this the authority sent the statement to the association.

2.2. Are various categories of confidentiality of commercial or industrial information defined by several laws in harmony with the Convention?

The data described as “confidential commercial and industrial information” in the text of the Convention are protected in the national law as business secret, thus such data are protected in to a somewhat wider extent.

In a relevant case in process the Hungarian Civil Liberties Union filed an access to information court case, because the relevant agency qualified an expert material related to a base-load power station, as a business secret, and denied the request. According to the final decision of the court, passed after several turns, the holder of the information has to prove in such cases the justifiable interest tied up with business secret, it does not exist automatically.

In this range of cases, again the position of the ombudsman was necessary, according to which requests for data concerning emissions loading the environment, as well as the fines imposed, cannot be denied with reference to business secret, because the interest of those concerned in knowing these data is more serious, than the interest tied up with business secret.

2.3. Obstacles in the implementation of Article 4

Some factors hindering the access to information and their causes:

- the slow computer processing of data received by the authorities, mainly in the case of annual reports and comparative data sets,
- lack of information suitable for demonstrating the trends, mainly in respect of data about health and safety,
- distrust and the insufficient knowledge of provisions,
- no explicit regulations protecting business secret, opening the door to abuse by authorities classifying data as confidential. The harmony between the Hungarian provisions regulating the denial of access to data and the content of Directive 2003/4/EC is missing,
- fees of access to data determined at an unjustified high level (due to the income expectations of the data- processing authorities, e.g. in the forest and water management administration),
- the legally unclear notions of “document prepared for internal use” and “decision-preparation document”.

2.4. Further information on the implementation of Article 4.

The Public Relations Office's client circulation record mentioned in the National Report can not be relevant here, as a major part of the real information requests is received not by this office, but by the departments and the environmental, health care, water management etc. authorities. Such agencies of the public offices can not help solve the population's problems counter to their own ministry. The data processing authorities can keep statistics at best about the requests denied, as according to the Act on data protection they are obliged to submit a report each year to the data protection ombudsman.

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

The most serious shortcoming in this field is that we can not speak of systemic collection, processing and publication of environmental information. Although the Act on environmental protection has called for the establishment of the National Environmental Information System (OKIR) as early as 1995, processing the data collected by the monitoring measurement network or even its implementation decree have not been issued up to now. For the time being up-to-date current data, demonstrating the state of the environment or data containing the result of the most recent measurements, are not available – apart from a few exceptions. On the Ministry's webpage no OKIR database data demonstrating Hungary's state of environment was presented in December 2007. Professional webpages concerning specific environmental elements do operate with more or less, but these are not complete, data are missing, and the webpages are updated irregularly. Thus, the presentation and the authentic nature of these data is accidental

The shortcomings of active information dissemination concerning the operation and management of environmental authorities should also be mentioned. The Act on freedom of electronic information specifies the circle of data that should be published on the webpages, but the domestic environmental authority system complies with these prescriptions only fragmentally. The ratio of publishing management data is especially weak; up-to-date, timely data about the management of environmental authorities performing public tasks, financed by public funds, is practically not available.

The May 2007 survey of Kötháló focused on the releases related to the publication of samples above permissible limit values in the level of pesticide residues in and on raw vegetable products. According to the nationwide analysis, carried out in the cooperation of the 20 member organisations, in 50% of the Mayor's Offices of county seats even the persons in charge have not seen the analyses' results destined for publication. According to Kötháló, hanging the published announcements for 15 days on the Mayor's Offices' billboard is not a suitable and satisfactory procedure to inform the consumers thoroughly. The results should be continuously published on webpages.

3.1 Article 5.1-3 and 7 (existence and quality of environmental data, dissemination of environmental information)

A major part of the information portals and databases listed in the National Report is in its introductory phase, their timeliness is accidental. Both on governmental and ministerial level as well as at the regional authorities this uneven level can be seen, although this obligation is provided for by the Act on the freedom of electronic information.

The authority system obtains one part of the database from its own sources, another

part from the similarly obligatory, but insufficiently performed data provision of the users of environment. There is no actually operating sanctioning system to enforce the data provision.

Article 5.4 (publication of reports on the state of the environment)

A broader report targeting the general public, not just experts was not published in a printed form during the reporting period.

3.2. Obstacles in the implementation of Article 5

The failure to establish the national monitoring network and the National Environmental Information System (OKIR) can be traced back to financial reasons on the one hand and to the lack of the legislators' will on the other.

Access to local, regional environmental data is fundamentally hindered by the fact that only a few environmental authorities and municipalities have their own webpages. Where they exist, the lack of expertise, money or capacity hinders data processing and clear representation. Within the meaning of the paragraph (3) of article 51 of the Act on environmental protection, local municipalities should inform the population at least once a year about the state of the environment. Only a few municipalities satisfy this – a feature that can be traced back first to the lack of appropriate data, second to the lack of methodology to be employed. Local municipalities acting as environmental authorities and thus data managers do not deal with public information at all.

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

4.1. Article 6.1-10 (public participation in decisions on the permitting of activities with a likely significant effect on the environment)

Paragraph a) of point 1. of Article 6 of the Convention is fulfilled in the case of environmental activities, investments listed in the Annex, falling under the Integrated Pollution Prevention and Control (IPPC) regulations. However, the provision of paragraph b) of point 1. of Article 6, i.e. public participation in the course of other activities not listed, but having occasionally significant environmental effect, is not provided in Hungary.

We note that the national regulation fundamentally guaranteeing efficient public participation sometimes fails in practice, because one cornerstone of capacity building, the earliest and widest access to information depends to a great deal on the subjective attitude of the authority or municipality supervising the actual procedure. Based on a separate agreement concluded with the environmental inspectorates, some major non-governmental organisations are informed in time about the start of an environmental permit procedure, and these groups inform the population as well about this. However, nowadays this is still an exception.

The rules of publication seem to be legally sufficient, but its faulty practice indicates that tighter and more seriously accountable provisions are needed. In spite of the objections indicated, legislation does not change this. In the earliest phase of the procedure, i.e. when alternatives are elaborated, the notification of the public is not obligatory at all. At the same time, environmental authorities do not insist on the detailed surveying of the establishment, the technology alternatives prescribed in the law, and they

try to define the investment's field of influence as narrow as possible, thus limiting the circle of the public affected determined by this field. Public hearings fixed in the procedural rules are often formal, the opinions received or articulated are rarely taken really into consideration by the authority.

The competent inspectorate has set the date for a public hearing on the topic of a regional waste disposal site planned near Győr. Despite the impossible time, a considerable number of inhabitants came, and of the forty speakers no one was supportive the project. The questions raised were answered by the investor in general terms, or were not answered at all. As the local environmental organisation, the Reflex Environmental Association knew the public hearing practice of the inspectorate, and making use of the legal opportunity, collected the questions and concerns related to the project in advance, and submitted them in written form – these issues were not, or hardly answered by the environmental impact assessment. The 98 technical questions raised this way were “answered” in five rows by the inspectorate in its permit issued.

A contrary example has also appeared, whereby the environmental authority proceeding on the second instance evaluates the technical objections articulated by the civic side against a given project in detail, and agrees to them. Thus, the examples contradict each other and the authority concerned applies the provisions of the Convention and the prescriptions of the procedural rules concerned depending on its geographical location and professional skills.

In the further phases of the procedure those affected can access the information listed in Article 6 from time to time too late, after the environmental permit or the resolution ordering the detailed impact assessment is issued. The date of public hearings set to discuss the plans renders the participation ab ovo impossible many times, if it is set in the general working hours.

It is a usual shortcoming that the authorities do not help the legal enforcement in their procedures. So the lay persons affected do not know exactly what kind of rights can be used when, what should be referred to and how detailed, what do they have to do in order to enforce their comments successfully in the decision-making process. So due to the lack of information, participation does not have the quality needed. A logical consequence of this is the disregard of opinions during the decision-making.

No matter how prepared they are, the technical materials of non-governmental organisations involved in the procedure are pondered with less weight or not at all. The arrangement of public participation at this level bears serious social-environmental conflicts effective for decades, for which the responsibility of the authorities, arranging the procedures, comes up as well. However this responsibility can not be called to account by right.

The permit procedure of a cement plant with significant environmental impacts is a case in the matter: the North-Transdanubian Environmental Inspectorate, referring to the fact that the NGOs have raised new arguments against the cement plant planned compared to the former phase, did not deal at all with the comments of some 100 pages supported by civic experts. Furthermore, the authority disregarded the opinion of the municipalities submitting a technical material against the cement plant as expert authorities, claiming that they exceeded their scope of competence. The authority had not changed the time of public hearings held in this issue, even in spite of a written request by municipalities, non-governmental organisations and the general population, and the hearing was held in the morning of a weekday.

4.2. Article 6.11 (participation in the permitting of genetically modified organisms)

The main national instrument of participation in decision-making related to the use of genetically modified (GM) organisms is the civic participation in the Committee on Gene-technology Procedures. Based on the Act on the application of genetic technologies, environmental NGOs may delegate four representatives to the committee, while the consumer protection and health care organisations each send one representative. In accordance with the 2006 amendment of the Act, the representative of biotechnological organisations, essentially of the industry, got out of the committee – this was a welcome development. A similarly positive change is that the six persons delegated by the Hungarian Academy of Sciences now have to represent by rule different professions, with regard to the complexity of the topic, contrary to the previous situation, when basically the Agrarian and the Biological Departments have delegated overwhelmingly genetic and biochemist members, so e.g. the representation of the ecological points and aspects had remained mostly to the “civic” members.

Beyond the operation of the Committee, the Act provides for the publication of draft permits, with an option to comment on them, on the webpage of the Ministry of Agriculture, but regarding the practice of this, experience is not really available. However we perceive the low level of local information and participation as a shortcoming, e.g. the lack of public hearings in the location of the experimental releases. As for the time being there are no GM plants in public cultivation in Hungary, thus, it is hard to articulate an opinion about the future practical implementation of the coexistence rules and their otherwise appropriate publicity provisions.

The other way of participation, that is spreading information related to GM organisms is generally weak. The webpage www.biosafety.hu keeps a public database of the experimental releases of GM plants, but it has serious shortcomings that had not been repaired up to now in spite of the environmental organisations’ warnings. Beyond the basic data there is no summary on the webpage of neither the release itself, nor of environmental impact assessment, and the changes in the permits from year to year cannot be followed, or it is very hard to understand them. In many case the name of the genetic construct, the location of release and the name of the contact person are also missing. Other information on the webpage is outdated and/or incomplete.

The most important source of information related to the products made of GM plants is labelling, the domestic regulation of which corresponds to the relevant EU regulation. However in the practice we can almost never meet such labels, although non-governmental organisations (Universal Existence Nature Conservation Association – ETK, Greenpeace) have found already in the course of their own examinations products that would have fallen under the labelling obligation based on their GM-content. However, in Hungary only one institute, the National Food and Nutrition Science Institute has a laboratory equipped to detect GM ingredients, but despite their regular and planned controls, they are not able to check all the preparations in question.

As decision-making related to the GM organisms, especially the permissions for cultivation and placing on the market is in a sphere of authority of the European Union, for the time being not so much the national level, but rather the order of procedures of Brussels, and the participation in them represent a problem.

4.3. Obstacles in the implementation of Article 6

In general it can be stated that due to the legal-attitudinal shortcomings we can not speak of a servicing type of public administration in Hungary as yet. The legal regulation of public participation is stronger in the environmental procedures, but in other

neighbouring sectors, e.g. in the field of building affairs it is explicitly hindering. Beyond this, regarding the professional skills of the official machinery, there is also a significant difference between the individual sectors.

Environmental NGOs have the widest publicity and legal participation opportunities. Based on the Supreme Court resolution 1/2004 KJE, which interprets the article 98 of the Act on environmental protection in a broad manner, today these organisations can participate as clients in all cases in which the environmental authorities act as basic or expert authorities. However the application of the resolution, as we have already written, is not uniform, it is up to the law interpretation of the proceeding authority. This is especially true of the so-called 'large' projects of public interest, characteristically in the permit procedure of highways and the projects of telecommunication services. It is a general view that even if a project is obliged to an environmental permit, civic participation rights can be exercised only in this procedure, not in the other, establishment permit procedure, although the subject of the case is the same.

The inconsistent practice and interpretation by the courts, their view-dependent decisions are likewise disquieting. In all forms of civic participation it can occur that the exercise of any right stated in the Convention have to be sought finally in the court. Even following the law unity decision mentioned that is by the way binding for the proceeding courts, court judgement questioning the whole system was also passed.

"... neither the Convention (i.e. the Aarhus Convention), nor the community directive prescribes that the rights tied to the access to information, to the public participation in decision-making and to the provision of access to justice in the environmental matters create client legal status..." (case nr.: Kfv.IV.37.436/2006.)

4.4. Further information on the practical implementation of the provisions on public participation in decisions on specific activities

The enforcement of this article of the Convention is not examined by any authority statistics, so there are no official data about its development, and no will is manifested to solve this problem. However the general trend is indicated by the feature that on the national legislation level concepts aimed at limiting certain participation rights of the NGOs are born again and again. Such a debate is under way on the initiation of the economy-transport ministry about a general Act on "the protection of investment".

There is mostly no internal regulation at the actual decision-making authorities for the information of the public affected, for the necessary information activity and for the procedures of public involvement.

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

The right of participation in the environmental assessment of plans, programmes; and the enforcement law was added to the Act of 1995 on environmental protection, and its implementation decree 2/2005 come into force at the end of January 2005. Although the Act on environmental protection itself had already included provisions concerning e.g. the planning on municipal level, the practice has not been uniform even after the government order come into force, it is rather in deficit.

Based on the Act 21 of 1996 on regional planning, the National Regional Planning Civil Consultative Forum was established at the beginning of 2005 composed of national non-governmental organisations registered at the competent office - the forum has 53 members for the time being. Based on the government decree 258/2004 (IX. 16.), civic representatives can also be delegated to the councils involved in county and regional level planning.

The national level programming mentioned already was carried out between 2004 and 2007. In the period 2005-2007 the development policy planning was characterised by a changing level of openness. There was a one-month public debate about the National Development Policy Concept determining the years 2007-2020, and during this a high proportion of the opinions received was integrated in the documents, including the re-inclusion of the sustainable development principle. The actual use of resources is determined by the New Hungary Development Plan, its operative programmes and action plans, as the tender announcements are built on these. In general it can be stated that the ratio of opinions taken into account was highest in the case of the widest framework documents, and this ratio grew worse rapidly till the action plans; now another opening, the integration of opinions at a higher proportion than before can be experienced again on the level of tender announcements. The publicity, transparency of development policy planning is watched and commented since January 2005 by the working group NGOs for the Openness of the National Development Plan, the reports of which can be found on the webpage www.cnnny.hu. The monitoring committees of the New Hungary Development Plan have civic delegates too, as required by relevant EU regulation.

In the water catchment area management planning aimed at the domestic implementation of the Water Framework Directive, mentioned in the national report as a high priority, one affected NGO was been involved, exactly to discuss the subject of public consultation. As a result of this, the formation of stakeholder councils with civic participation was articulated as a goal.

5.1. Public participation in the preparation of policies relating to the environment

The National Environmental Council established by the Act on environmental protection, as the advisory body of the government, could theoretically play an important role in the social foundation of environmental policy. The weight of its opinion is increased by the fact that the representatives of science and economy are present also in equal proportion to the NGO delegates. However its efficiency is spoiled to a great deal, because the National Environmental Council receives the propositions late, they are incomplete, there is no alternative choice, and their positions formed remain insignificant in the decision process of the government.

The NGO representatives delegated to certain professional committees of the Environmental Fund (KAC, Kövöce) - as they were involved in the determination of annual development and funding goals - had before an opportunity provided by law in the shaping of national environmental policy. However, the significance of these professional committees has been continuously diminishing. As a result of successful advocacy, some major organisations undertook a determining role in elaborating the environmental policy of the Regional Development Councils.

5.2. Obstacles in the implementation of Article 7

In our opinion the obstacles related to the implementation of Article 7 can be traced back in the first place not so much to legal gaps, but rather to attitudinal limitations.

Relevant ministries do not enforce the decrees of the Act on environmental protection, according to which they should send their legislative plans to the Ministry Environment each year in advance. Besides, neither the ministries, their background institutions elaborating plans, programmes, nor political decision-making bodies really feel the importance of public participation. This is indicated by the fact that the parliamentary and municipal environmental committees participating in the preparation of decisions involve civic environmentalists formally at best, and this contributes to the situation in which on specific investments with environmental impacts are based on political interests, instead of professional arguments.

On the local level this is characteristic also to the procedures related to the amendment and modification of municipal environmental programmes or zoning plans. It is a regrettable experience that the neglect of participation rights and guarantees, i.e. the procedures of authorities, organs not or only formally applying the provisions concerning the content of information, the time and manner of publication, the due consideration of opinions, is not found illegal by the public administration offices performing the legal supervision either.

5.3. Further information on public participation concerning plans, programmes and policies relating to the environment

The public administration offices' peculiar law-interpretation related to "professional concepts" can be led back to a curious interpretation of definitions. According to this, in the procedure related to the concept – as it is grammatically neither a plan nor a programme – the Convention's prescriptions should not be applied even if the "conceptual decision" clearly affects seriously elements of the environmental.

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

It is a general experience that the draft laws presented to the public are published irregularly, with short deadlines to express opinion, and opinions are taken into consideration sporadically. This problem is rendered more serious because due to the ad hoc, unprepared, unplanned legislation, in the preparation phase often the public administration itself works also with extremely tight deadlines, so only unrealistically short periods remain available for the public consultation. For example the planned 70-pages modification of the Act on forests was put to public debate at the end of December 2005 with a deadline of 8 days including 31 December and 1 January, too. In several other cases, non-governmental organisations had opportunity to express opinions to major laws with broad effects only with a few days' deadline. The practice of individual ministries is divergent, the ones explicitly affected by environmental protection are inclined to a more positive practice, while the "rivalling" sectors, e.g. energy, finance etc. rather refuse this.

The basis of public participation is information. Although the Act on freedom of electronic information mentioned in the National Report obliges legislators to publish the draft laws, according to the detailed, semi-annual/annual summary monitoring reports prepared by NGOs and published monthly, at the time when the act came into force, the webpage of none of the ministries conformed fully to its prescriptions. Although the situation has improved a lot in the past two years, even now not all the draft laws are displayed on the Internet for commenting.

The national legislation is not surpassed in any respect by the local (i.e. municipal) ones. Based on an analysis of the municipal webpages' structure and content meant for the information of the public remain way below the expected level. The neglect of the provisions of the act is not followed by any sanction.

6.1. Obstacles in the implementation of Article 8

The mode of cooperation in solving environmental problems emerging on local level should be regulated by municipal decrees, in which the rights and obligations of individual actors should be specified completely in all phases of the procedure. However, such local decrees were developed only in some major cities, but the spirit and expected practice of the Convention generally do not appear in them either.

6.2. Further information on public participation during the preparation of executive regulations and/or generally applicable legally binding normative instruments

In 2004, the Ministry has re-regulated the mode of maintaining relations with NGOs, including participation in legislation. Unfortunately, this regulation is only an internal one and as such not binding, moreover the expectations guaranteed in the Convention are not shown in its provisions. Therefore NGOs have announced to redouble their efforts in order to implement the prescriptions of the Convention in practice. We note that the publication of the Ministry's draft laws on its webpage is in fact a positive development now also prescribed by the valid Act on freedom of electronic information, and it will be prescribed by the new Act on legislation more generally and with binding character, too. However the efficiency of this institution is influenced to a large extent still today by the fact that only a small proportion of those entitled to express opinion have Internet access.

7. Application of Article 9 (access to justice)

7.1. Article 9.1 (access to justice in relation to access to information)

The access to environmental data qualified as of public interest, and the review procedure against the denial of the data is regulated by the Act of 1992 on data protection – this law was subsequently polished by the statements of the competent ombudsman, as well as by the court practice. The remedy of injuries related to access to environmental information of public interest by a court of law is free of charge and also quick, theoretically, as the Act prescribes the “out of turn” hearing of the court case, but it is not required from the court of appeal to take it into consideration in its further proceeding.

7.2. Article 9.2 (access to justice in relation to access to decision-making)

The review by the courts of law is provided for the citizens and organisations recognised as clients in the authority procedures related to individual activities. The legal unity resolution 1/2004 of the Supreme Court is important also in terms of the application of article 9, as the broadening of the clients' collaboration opportunities – after the unsuccessful review procedure – has opened the channel to the court as well. However, for this the recognised client has to prove the infringement of law. But the application of article 9 of the Convention is significantly worsened by the fact that the Hungarian courts generally do not consider the infringement of procedural laws of such a weight that would justify the change in the decision or the ordering of a new procedure.

The feature that the opportunities of review procedures related to the other pillars of the Convention show a rather mixed picture, can be led back exactly to this. The default of

state, municipal organs in the dissemination of environmental information, the omission of public participation in decision-making procedures, or its formal fulfilment – as a procedural infringement of the law – generally do not establish successful suing of those affected, if their due interest is recognised at all – which is a precondition of law enforcement.

There are many examples when the client's position itself is decided in review procedure. Namely the other (not environmental) authorities mentioned, already in cases with environmental impacts, rarely recognise the rights entrenched by the act, the Convention and the legal unity resolution. It is a general problem that the opportunity provided for by the material law fails in the labyrinth of procedural law, becomes useless even in case of a positive decision.

The Nimfea Nature Conservation Association requested client legal status in a procedure started to obtain the water law permit of an activity obliged to receive environmental permit. The request was denied by the authority, which at the same time continued the procedure. The association initiated a review procedure at the superior organ of the authority, and as a result of this the second instance ordered the first instance to carry out new procedure in this circle, saying that "the client legal status can be decided only after the examination of the environmental impact of water law permit". The authority was obviously aware of the fact that this impact exists, as the environmental permit procedure was also under way under another registration number. However by the time the first instance procedure would have been closed in the subject of "impact", the water law procedure was finished.

The authority denied the Reflex Environmental Association seated in Győr to participate as client in the construction permit procedure of a food store. The environmental authority was involved in the given case as an expert authority. The association brought an action at the court requesting the establishment of its client title. The competent court held six (!) hearings within one year in the case, but even then could not come to a decision (and ordered the authority to start a new procedure). Naturally in the meantime the store has been built, and received the permit of occupancy.

The divergent court practice mentioned several times urges the NGOs also to exercise the enforcement of their rights consequently, in proportion to their force. Several examples indicate that the courts' approach can be formed, so e.g. the client legal status not recognized in the authority procedure was established by the given court precisely referring to the Convention.

In a Natura 2000 territory the authority illegally permitted the construction of a damming plant without the establishment of a fish-ladder. Nimfea Nature Conservation Association which registered itself as a client, appealed to a higher court and requested the facilitation of free migration of supplementary species in accordance with the Natura 2000 regulations by means of a fish-ladder, respectively saying that the authority should promote the "good ecological state" prescribed in the WFD. The authority proceeding on the second instance refused the appeal without an examination on the merits, stating that the association is "not a client", based on the Act on water rights. The association contested this resolution with an action referring among others to the Aarhus Convention. The court accepted the action in a non-litigation procedure, and obliged the authority to a new procedure.

7.3. Article 9.3 (the public's right to challenge the acts and omissions by private persons and authorities)

No case started by an NGO is known that would have applied the rules of the Act on public administration procedure, for infringement of the law committed in an authority procedure. Also, according to the participation rights of the Act on environmental protection, action can only be brought against the user of environment, i.e. not against authority actor, the same way, as in the Act on nature conservation. Although such a procedure was started, its lesson refers not so much to the essential part of this point, but to the unrealistically high level of legal costs instalments that can be determined by the courts.

The construction of the northern section of the ring around Budapest (high-speed freeway number M0) was considered problematic by the population, and respectively by non-governmental organisations affected in terms of environmental impacts. Therefore after the permit procedure of the road section (that comprised a bridge on the Danube too) started, 5 NGOs brought an action (case number: 4.P.24.614/2005) against the investor, asking the court to forbid the constructor to finish the investment first, and then as the bridge construction progressed, to make the constructor to take appropriate measures to minimise the environmental damages. The court refused the action on first instance and obliged the plaintiff NGOs to pay 1 million HUF (cca. 4000 EUR) by right of legal costs, excluding the lawyer fee of the defendant investor, determined by the court at the highest possible cost level allowed by the laws, in spite of the fact that the work performed, with respect to the relative simplicity of the case, and to the small number of hearings, did not justify this at all. According to our position this practice is suited to discourage the public and the NGOs from directing their environmental concerns to legal channels, and from exercising their rights provided by the Convention.

7.4. Article 9.4 (timely, adequate, effective, fair, equitable and not prohibitively expensive remedies)

The following change concerning the procedural costs is a dubious legislative virtuosity: the cost of starting administrative and court procedures is generally denoted with the word procedural duty, and the concerning Act on duties releases the NGOs from the payment under certain circumstances. The cost fixed in the public administration procedures, thus in the course of environmental procedure, is called service fee by a ministerial decree that has entered into force in 2006, so the releasing provision of the Act on duties cannot be applied, though the decree prescribes a reasonably lower payment for the exercise of a civic right, than for the user of environment.

It is also a problem that the high appeal fees applied in other permit procedures concerning among others the environment discourage those affected from the review procedure of public administration resolution, and from the court procedure as well.

Environmental NGOs concerned have submitted an appeal against the construction permit of one section of the highway M0. The proceeding National Transport Authority subjected the judgement of the appeal to the condition, that the associations pay to the authority's account a procedural fee of appeal of 18.185 EUR. As the associations could not pay this sum corresponding to their several years' total budget, the authority refused their appeal. The associations turned to court that has made the following decision: "The court did not find the prescriptions of Aarhus Convention applicable directly in this procedure" (Capital Court 1.Kpk.45621/2007/4.)

7.5. Obstacles in the implementation of Article 9

The neglect of the Convention's expectations related to capacity building represents a hindering factor. The organised training of the permanent staff of the deconcentrated environmental authorities and municipalities did not take place, the appointment of experts responsible in the case did not come about. The efficiency of law enforcement in courts – together with the fear of legal costs – is significantly limited also by the traditional indifference and unpreparedness of the courts in environmental topics.

We are not aware of statistics related to environmental issues taken to the courts. The legal assistance services run by environmental NGOs register their cases and discuss them regularly on the webpages.

7.6. Further information related to access to justice

The enforcement of access to justice needs professional skills, legal knowledge and bearing financial burdens. It is a regrettable fact that Hungarian environmental, nature conservation NGOs and the public counselling offices have altogether five legal experts at their disposal. There are about eight such major organisations in the country which can establish a legal risk fund to finance individual legal actions with precedent character, but the system of pro bono representation from the side of prepared lawyers' offices with secure existence, tried and tested already in the welfare democracies, has not formed in Hungary as yet.

Acts referred to above:

Act 80 of 2001 on the enactment of Aarhus Convention

Act 53 of 1995 on the general rules of environmental protection

Act 128 of 2003 on the public interest character of the high-speed freeway network

Act 53 of 2006 on the accelerated procedure of the implementation of investments of distinguished importance in terms of the national economy

Act 140 of 2004 on the general rules of public administration procedure

Act 90 of 2005 on the freedom of electronic information

Act 29 of 2004 on the law-modifications connected with the accession to the European Union

Act 63 of 1992 on the protection of personal data and the public character of data of public interest

Government order 3/11 (XII.25.) on the public access to environmental information

Government order 2/2005 on the environmental assessment of individual plans, programmes