expert opinion

Civil critical remarks to the Hungarian Government's 2017 National Implementation Report to the Aarhus Convention

2024

Civil critical remarks to the Hungarian Government's National Implementation Report to the Aarhus Convention

expert opinion

By joining the Aarhus Convention, Hungary undertook to ensure a high level of environmental democracy (access to information, participation in decision-making, right to legal remedy) in our country. The Convention was incorporated by law into the legal system by the Parliament, and the Government prepares for the Meetings of the Parties to be held every four years a so-called National Implementation Report. The expert opinion below is prepared to the

2017

National Implementation Report of the Government.

The critical remarks reflect an expert opinion, because lawyers dealing with environmental protection law reviewed the National Implementation Report and formulated critical comments regarding the findings contained therein. The opinions were not released for broad NGO consultation, given that 8 years passed between the preparation of the National Report (2016) and the formulation of the criticism (2024).

Content

Introduction

On the basis of Article 10 of the Aarhus Convention, the Parties have undertaken that during the deliberations at the Meetings of the Parties, the Parties will continuously review the implementation of the Convention on the basis of regular reports prepared by the Parties. To this end, a mandatory reporting form for all states has been developed, which covers the implementation of the essential points of the Convention, including details of the preparation process of the National Implementation Report, the relevant circumstances related to the application of the Convention, the implementation of Article 3 containing the general provisions, the access to information the regulation and practice of access, participation in decision-making and the right to redress, and finally the implementation of articles related to genetically modified organisms.

1. The process of preparation

a) The authorities involved in the preparation

During the preparation of the report, in order to compile the first official draft, the national focal point only asked for opinions from the environmental protection authorities in the narrower sense (the relevant departments of the Ministry of Agriculture, the National Inspectorate for Environmental Protection and Nature Conservation, the Environmental Protection and Nature Conservation Departments of Government Offices, the National Meteorological Service and the Herman Ottó Institute), but not from the authorities and other state institutions of related areas (for example, some frequented construction authorities and institutions, public health or agricultural administration areas). Furthermore, it did not process the important data sets available at non-governmental state bodies (in particular the Ombudsman, the State Audit Office, the prosecutor's office), if they did not make a special comment.

b) The process of commenting and the consideration of opinions

The working material of the report, although they did not take part in its preparation, was reviewed by a number of related, non-governmental state bodies (Ministry of Interior, Ministry of Justice, Ministry of Human Resources, Ministry of National Economy, Ministry of National Development, Prime Minister's Office, and the Office of the Deputy Ombudsman for the Protection of the Interests of Future Generations), in line with civil society organizations.

It is a great merit of the report that it highlighted the received and accepted opinions separately in the final text, indicating the source of the given contributions.

Regrettably, the report lacks a dialogue with the organizations giving opinions, so the report does not reveal the position of the Hungarian Party in relation to the suggestions of the partner bodies, the Deputy Ombudsman and the non-governmental organizations.

2. Other relevant circumstances

a) The domestic legal background of the report

The relatively most detailed domestic legal background of the report is 1/2017. (IV. 28.) FM instruction on the Organizational and Operational Regulations of the Ministry of Agriculture. The OOR basically assigns this task to the Legislation Department (points 2.2.2.g. and 3.f.), with the relevant departments providing it with partial materials, and it has a particularly emphasized obligation to cooperate with the Environmental Protection Department (which is assigned to the

latter organizational unit as also confirmed by the relevant point 4.2.2). At the same time, the rule for the Department of Environmental Protection places coordination here, which complicates the organizational background and can be suitable for blurring the lines of responsibility.

b) The transformation of the environmental and nature conservation organizational system

Under the heading of other relevant circumstances, the Hungarian report mainly discusses the liquidation of the environmental protection authority system and its integration into the unified territorial administration system. Rightfully so, since the institutional system has a decisive effect on the application of the rules of public participation.

The so-called "Salad Laws" introducing organizational changes (i.e. laws of mixed subject matters, which regulate diverse subject areas in a given field of law and whose specific content is usually not revealed from the title), Act No. VI of 2015 on the amendment of certain laws on public administration, as well as Act No. VIII of 2015 on the amendment of certain laws related to the transformation of the regional state administration organizational system also make it clear that the basic purpose of the new organizational solution is to reduce the bureaucratic burden on legal entities, i.e. primarily on large companies engaged in environmentally significant activities in environmental protection law. The objectives of the amendment do not include objectives related to sustainability, making the protection of nature and the environment more effective.

In relation to the general assessment of the organizational and legal background, the report correctly notes that public participation rules can be found in the general administrative procedure law and in the special rules of each related area, however, in this regard, it should be noted that the public participation rules of the Aarhus Convention have a systematic approach and are very detailed because they are definitely special. Therefore, it is impossible to properly apply all the detailed provisions of this special area of law, the jurisprudence of more than two decades, based on the institutions of general public administrative law.

c) What was left out of the reports: the presentation of trends

A serious issue that is missing from the report is the presentation of the development of the legislative and institutional background of public participation. At the end of the nineties, the regulation of the right to public participation in environmental protection in Hungary was still at the forefront of the world. However, it has not developed further since then, in fact, as can be clearly seen from the above examples, a marked erosion can be observed in the last three decades.

The comments of civil society organizations repeatedly return to this issue, mentioning the deteriorating conditions of the legislation directly applicable to them, the opportunities for participation, and the sources of support, but the reports do not respond to these comments either, and there is no dialogue on these fundamental issues between the commenters and among the editors of the report.

3. Support and guidance provided to the public in order to promote public participation

a) Description of the relevant Hungarian law, general legal background

The report teaches the obligatory lesson: the Aarhus Convention is part of our legal system after its ratification, and our constitutional law and administrative law ensure the appropriate information and participation rights anyway. Indeed, the most important legal sources here are the Freedom of Information Act, the Environmental Protection Act and 4/2010. KJE legal unity decision.

The report also mentions the law regulating social discussion related to legislation (perhaps it is not by chance that it is mentioned in the last line, since the relatively new rule has had very little jurisprudence yet). The report also refers to the general participation rights provided by the administrative procedure law. In this respect, the right to legal remedies would have been particularly interesting, which if the report had highlighted separately, then the third pillar would have been at least represented at some level.

b) Detailed environmental protection legal rules relevant to legal practice

In relation to the approach of the report, a fundamental question of application of the law must be clarified. Due to the *lex specialis* principle, the authorities and courts acting in specific cases will not apply international treaties or certain provisions of the Constitution, but the provisions defining detailed rights. From this point of view, the implementation of the Aarhus Convention and the relevant EU standards in Hungary is still insufficient. Articles 2-9 of the Aarhus Convention are missing from executive rules that adapt the detailed provisions of its articles to domestic conditions, and at the same time coordinate with all relevant environmental protection and related rules of our legal system. In this respect, the environmental impact assessment legal institution cited by the report from the field of environmental protection law is indeed detailed and contains rules regarding the second pillar of the right to participate, but it is not the same as Article 6 of the Convention. If the Parties wish to achieve full coverage, then on the one hand, the impact assessment law should be supplemented in many respects (among other things, in order to create the currently incomplete compatibility regarding publication and consideration of opinions), on the other hand, regulations bringing the second pillar of participation into full harmony with the Convention would also be necessary in view of all related cases where community participation is possible due to the environmental relevance of the case.

c) Qualification for participation - transparency of procedures, difficulties in applying procedural rules

It refers to the general, principled provisions of the administrative procedure law, which requires certain information to be provided under specific circumstances (primarily if the party does not have a legal representative). Of course, this is an appropriate content in the report, however, it should be noted again that general procedural rules are not always suitable for handling the specialties of environmental legal decision-making procedures. Moreover, the trends in this regard are also very negative. Individuals or local environmental protection groups who are unable to navigate the increasingly complex administrative procedure cannot receive sufficient help in the legal situation, because the very generally formulated basic principles no longer have a specific legal equivalent in the text of the administrative procedure law.

The report did not include the issues of public administrative litigation in its scope of investigation, nor did it address the environmental aspects of civil lawsuits (personality rights, neighborhood disputes, tort law etc.). Regarding the latter, the right to legal remedy is significantly impaired in Hungary. If, in an environmental case, the concerned private individuals or civil society organizations want to remedy their personal or property rights violations, they are

essentially completely left to their own devices, based on our current procedural law, which is extremely based on the rights of disposal of the parties, they have no chance of successfully conducting such lawsuits, or even initiating them.

d) Qualification for participation - institutional support

The report refers to the legislation on official mediators, which has existed in principle since 2009, for which a more detailed executive decree at the level of government decree was also created (Government Decree 185/2009 (XI. 10.), however, the practice of the legal institution has not been developed. This legal institution has since ceased to exist.

The same can be said about the legal aid that was introduced even earlier, in 2003, with the fact that there are detailed guidelines for this on the websites of both the Government and the bar associations, and in principle a list of lawyers dealing with this is available in every county. However, practical experience shows that clients cannot get meaningful help through this channel either. In environmental protection cases, this would be extremely difficult anyway, as it can be said in general that there are hardly any lawyers in the country who understand this type of cases. This is not surprising, given that only 2 of the country's 7 law schools offer environmental law education.

The Green Point offices, which were widely used at the time, fulfilled their function well at the environmental protection authorities; on the one hand, they helped the clients, and on the other hand, they filtered out cases that did not belong to the authority, and thus relieved their own authority. Unfortunately, these offices were last available before the reorganization of the authority system, and their websites are still located on the domains of the environmental, water and nature protection inspectorates that were liquidated in 2014.

The unique Hungarian civil environmental protection information network, Kötháló, is still somewhat enduring, although it is struggling with a serious lack of resources and many of its rural offices had to cease operations. At the same time, it is correct that the National Implementation Report devotes considerable space to its presentation, but it must be emphasized that this is not part of the state's role, but rather an expression of the NGO's commitment.

e) Training related to environmental protection and community participation of authorities and court officials

The data of the report on this topic are already partly out of date, we see no trace of professional training in environmental law or related environmental protection in the government office departments replacing the liquidated environmental protection authority system, and the standard of official work dealing with environmental protection matters is getting worse and worse. We also find what was described in the report regarding the environmental protection training of judges exaggerated, very little of the lively environmental professional dialogue introduced during the time of the former president of the Supreme Court (among other things with the Ombudsman's office and major environmental NGOs) remained by 2017. It is correct that the courts do participate in international professional exchanges and trainings, although their importance is not very great from the point of view of public participation. The lack of English language skills is a bottleneck for both authorities and courts in the possibility of participating in international professional training and networks. For this reason, only the few officials or judges who speak the language usually take part in the various training opportunities.

We consider the statement "A judge appointed at the Metropolitan Court performs the duties of environmental protection officer" (page 6 of the report) to be misleading, especially in the context of the environmental protection training opportunities for judges. In fact, neither the capital nor the other county courts have a judge specializing in environmental protection cases, otherwise the case allocation rules based on random allocation that are mandatory for the courts would not allow this. Any of the administrative and civil law judges can and does receive environmental protection cases and it can be established that, with one or two exceptions, they do not have any special background knowledge.

f) State supervision and administration of civil society organizations

The report does not deal with the provisions of the Civil Law adopted in 2011 (Act No. CLXXV of 2011 on the right of association, the legal status of public benefit, and the operation and support of civil society organizations), which basically defines the operation of civil society organizations, including their activities related to public participation. In relation to the Civil Code, it must be recognized that the regulation of civil society organizations dating back about two decades really needed to be renewed. This purpose is served by the rules on the management of non-governmental organizations (e.g. bankruptcy and liquidation), as well as on individual organizational transformations (mergers, separations).

At the same time, the Civil Code makes a significant distinction between individual civil society organizations, and public benefit includes the conclusion of public service contracts with certain state and administrative organizations, certain subsidies, tax concessions etc. which are an indispensable condition for its use. Public benefit organizations must definitely meet certain financial and operational conditions; however, the court is not obliged to classify all organizations that meet these conditions as public benefit.

4. Environmental education

The centralization of education adversely affected the situation of education. In 2016, the stronger than ever centralization of the education system led to nationwide protests but demands for the autonomy of schools and teachers (especially regarding the use of curriculum and textbooks) were not heard by the government.

The centralized education system also provides fewer opportunities for civil society organizations to cooperate with schools at the local level. The financing of the tools and services provided by them is insufficient anyway, as there is no viable demand for the expertise, they represent either from the schools or the government (institutions).

5. Environmental organizations

Even in the period since the previous report, the negative trends in the life of civil society organizations continued, although the general legislation regulating their registration and operation remained essentially unchanged. Act No. CLXXV of 2011 on the right of association, public benefit legal status and the operation and support of civil society organizations results in a relatively high level of transparency. By law, every NGO must prepare and publish its annual financial report and account. There are differences in the practice of individual courts, which causes some uncertainty and unpredictability.

The regulatory environment further narrowed the freedom of movement of independent organizations, reduced their financial viability, and adversely affected their capacities and the infrastructure available to them. The network cooperation between environmental protection

organizations further weakened, the organization of coalitions was typically carried out along specific issues (e.g. the development of Városliget in Budapest). Due to the reorganizations affecting the state administration, the professional cooperation between environmental protection organizations and civil servants working at lower levels has ceased.

Deteriorating financing conditions did not encourage civil society organizations to develop their capacities and human resources, or for longer-term, strategic planning. Only the most professional organizations have an effective strategy and management structure. Even for large, national organizations, however, retaining professionals is a problem, since due to the unpredictable financing environment, employment is increasingly done on a project basis, which does not allow for longer-term employment. Of course, the hostile attitude of the government also had a negative effect on employment at civil society organizations.

Meanwhile, the significant administrative burdens – especially in the case of non-profit organizations – demand ever greater expertise on the part of civil society organizations in legal and financial matters, as well as in the field of management. Due to a lack of resources, capacity and/or knowledge, NGOs do not use tools such as strategy planning, fundraising, or more effective use of social media (instead of pro-government media, which make up the majority of the Hungarian media space) in order to achieve their goals. Pro bono legal assistance available to NGOs is insufficient, especially in rural areas.

Although state funding is still important for NGOs, the system of central support mechanisms operated by the state (e.g. the National Cooperation Fund) is quite opaque, and political considerations play a demonstrably decisive role in decision-making during the distribution of support. Politically non-committed civil society organizations are not formally excluded from the application system, but they rarely succeed in successfully applying, while the financial resources of local governments have also significantly decreased.

Ministries and local governments also provide support to NGOs, but to a much lesser extent. Annually announced to environmental organizations, the Ministry of Agriculture's budget for the so-called "Green Source" tender has remained constant (HUF 70 million) over the years. The total amount of local government grants (e.g. city civic funds) rarely reaches or exceeds HUF 10 million.

Calls for EU funds still rarely give NGOs the opportunity to actually access the funds. The projects financed by the Norwegian Grant were completed in the spring of 2016, but the continuation of the program was stalled due to the dispute between the two countries involved.

In 2017, it was the first time in Hungary that a law openly putting some of the civil organizations under political pressure was adopted. The adoption of the law known as "Lex NGO" was not preceded by any professional public debate, and the legislation was based on the legislator's assumption that the foreign funding of NGOs in itself is suspicious, while the regulation had already ensured the organizations' transparency regarding the fact from where the given NGO receives its support(s).

Act No. LXXVI of 2017 on the transparency of organizations supported from abroad specifically and exclusively required civil society organizations receiving financial support from other member states or third countries (abbreviated as "foreign-supported organizations") to declare and register themselves with a designation and to appear in public in this way, otherwise various sanctions can be put in perspective against them, including the termination of the given organization. In the preamble of the legislation, there is a reference to the fact that "subsidies

provided to organizations created on the basis of the right of association from unknown foreign sources may be suitable for foreign interest groups to assert their own interests, rather than community goals, in the political and social life of Hungary through the social influence of these organizations", and "this may endanger the political and economic interests of the country, the uninfluenced operation of legal institutions".

According to Section 1 (1) of the Act, an association or foundation that receives the benefits specified in Subsection (2) is considered a foreign-supported organization. The qualification is therefore established by virtue of the law if the conditions are met. Pursuant to paragraph (2), regardless of its legal title, all monetary or other financial benefits originating directly or indirectly from abroad, which individually or in aggregate in a tax year reach the threshold of Act No. LIII of 2017 on the prevention and prevention of money laundering and terrorist financing, are considered subsidies. It is twice the amount specified in Section 6 (1) point b) of the Act (HUF 7.2 million; this amount does not include the EU subsidies received through the central State budget).

After the adoption of the Lex NGO, 23 affected NGOs jointly applied to the Constitutional Court, later 14 of them also applied to the European Court of Human Rights in Strasbourg, and the European Commission initiated infringement proceedings against Hungary, primarily for the obligations imposed on the member states based on the freedom of capital movement, as well as the due to the violation of the right to respect for private and family life, the right to the protection of personal data and the right to freedom of association (Articles 7, 8 and 12 of the Charter) contained in the Charter of Fundamental Rights of the EU.

Non-governmental organizations that participate in the enforcement of government interests as GONGOs have appeared and strengthened, and thanks to their resources, they can make their voices heard much more effectively than classic, grassroots non-governmental organizations. They are excellent tools for the government to transform the structure of civil society and push into the background "real" civil society organizations that express critical opinions against the government, making it difficult for them to function and appear in front of the public. Traditional civil society organizations are losing their ability to assert their interests, because the government, with the help of GONGOs, is able to make society believe that civil society agrees with the government's position on the specific policy or other public policy issues.

A prime example of this is the Civil Összefogás Közhasznú Alapítvány (CÖKA), which started its operation in 2011 only with donations from private individuals (it received no support from the budget at all), and 10 years later (in 2021) it has already made an income of more than 550 million. The chairman of the board of trustees of the foundation is Dr. László Csizmadia, spokesperson of the Civil Solidarity Forum (CÖF), and since 2012 he has been the chairman of the Council of the National Cooperation Fund (NEA).

Among the research institutes operating as a foundation, the Századvég Foundation should be singled out, as well as its study published in 2017, which made a sharp distinction between the role of co-called non-governmental organizations (NGOs) and other civil society organizations in public life, claiming that NGOs are inaccurately apostrophized as civil society organizations, since they operate as active, ideologically committed political actors, and in fact as lobbyists, who often represent the business and political interests of persons and organizations providing operating funds i.e. the donors.

The Zöld Követ Association was founded in 2020 specifically for the purpose of environmental protection, and its budget exceeded HUF 100 million the following year. From the end of 2021, as

a member of the 15-member "Zöld Út Konzorcium", they participated in a 2-year, almost HUF 1 billion, KEHOP tender, the purpose of which was to conduct a national attitude-shaping campaign.

Also worth mentioning is the Blue Planet Foundation (KBKA), named after the former head of state János Áder, which was formally established in December 2017. In 2020, the Government - in order to "expand the Foundation's activities and achieve Hungary's environmental and climate protection goals" - provided HUF 5 billion in non-refundable support to the Blue Planet Climate Protection Venture Capital Fund. The Blue Planet Capital Funds (Climate Protection Private Equity Fund, Water Fund) were established by the Government to "contribute to the achievement of Hungary's environmental and climate protection goals"; their combined registered capital is HUF 15.5 billion.

6. Public participation in international decision-making

The report only states that the issue does not have an established legal background or practice, but "in the course of preparing for the most important international events, the ministry responsible for environmental protection has agreed positions with civil society organizations in many cases" (page 28 of the report).

We agree with the civil society comment attached to the report to the extent that Hungary did not comply with this international legal requirement. It is a matter of fact that in Central and Eastern European countries, the international policy of the state, including the specific policies, is surrounded by extremely strict secrecy. This is also recognized to some extent by Article 4(4)(b) of the Convention.

7. Prohibition of harassment of those exercising their rights to public participation and retaliation for participation

The report also talks about the discrimination of those exercising their public participation rights (Article 3 (9) of the Convention). As for the subsequent retaliation for participation, the report also refers to the general provisions of the administrative procedure law, in relation to which the Deputy Ombudsman rightly points out that these are too general to provide substantive protection for those exercising their participation rights in specific cases, especially in environmental conflicts. The same is true for the complaint law regulations cited in the report, which were renewed in 2013, which represents a serious step back compared to the previous rules after the regime change, and according to many, it does not even stand the test of comparison with Act No. I of 1977.

On the other hand, we are less pessimistic than the authors of the report when it comes to the possibilities of civil law sanctions applied to those exercising their participation rights, primarily damages. One of the basic legal conditions for this kind of financial retaliation is missing, namely the illegality of the damage. For this reason, in legal practice, investors and operators, although their damage can be really substantial in certain cases, mainly due to the time lost due to protracted lawsuits, most of the time only go so far as to threaten the affected communities.

8. Provision of environmental information upon request

Page 29 of the National Implementation Report mentions that the environmental protection, nature protection and water inspectorates have published their final decisions on their websites. This may even be true, but finding these decisions and searching the Internet was

extremely difficult. Thanks to this, we cannot claim that the uniformity or disjointed character of the official jurisprudence was revealed from these decisions. The accessibility of water information was even more difficult, which was noted by the Ombudsman's deputy when he found that the full text of the water authority's decisions was no longer published on the website of the disaster protection authority.

It was an editorial shortcoming of the National Implementation Report that many questions covered by Article 5 of the Aarhus Convention, i.e. proactive information provision, are answered under Article 4. But we also see that irrelevant information was included in the National Implementation Report on some issues, such as a government decision that encouraged passenger information in order to reduce PM 10 and make public transport more favorable from the air quality point of view, but we also consider the Voluntary Mutual Insurance Company as an issue that belongs here also, quoting legislation on cash funds, although this is very far from environmental information. There are even unfinished sentences, such as an abandoned sentence on page 30, while the fact that the right to access information was narrowed, and that electronic access did not exist when the report was written, even though it would have been possible, were all left out of the text of the report.

At the time the National Implementation Report was prepared, the practice was that the authority charged disproportionately high costs for the encryption and anonymization of the information requested to be published, due in no small part to the wrong application of the law. Calling the requesting an excessive amount of data as an improper exercise of rights also represented a restriction of freedom of information during this period. And, unfortunately, it is a fact that in many cases, environmental protection data was provided by state bodies and organizations performing public duties only when a lawsuit was filed, and the court made a mandatory decision. One of the most negative manifestations of this was when organizations performing public duties re-disputed the position contained in a previous court ruling and obstructed access to environmental data with an unreasonably time-consuming behavior.

We consider the list of related websites to be useful, but not complete, as it does not contain the internet contact information of the National Environmental Council, the National Data Protection and Freedom of Information Authority, or the Office of the Commissioner for Fundamental Rights.

9. Proactive distribution of environmental information

In the context of proactive information provision, it is not surprising that the National Implementation Report mostly relies on the achievements of OKIR, i.e. the National Environmental Protection Information System, and presents them as the solution to the fulfillment of the information provision obligations arising from the Aarhus Convention. It is less mentioned in the report that OKIR is not at all user-friendly, it is difficult to search for information, in many cases it specifically requires professional background knowledge, and the kind of search that would actually be useful for lay users, for example all issuers around a given map point simultaneous identification was not available during this period.

Among the available state databases, the National Forest Stock Database is listed under point 62, with the small flaw that it should be noted in this paragraph that its data are not necessarily public in all respects, so, for example, forest planning documents are not accessible.

As the National Implementation Report successively lists the websites and organizations and institutions where certain environmental data are available online and proactively (i.e. how

these organizations publish this data, such as TÉRPORT, one of the Internet services of the National Territorial Development and Spatial Planning Information System and others), the reader gets the impression that the one-time user is completely lost among these sources of information. On a principal level, this raises the question of why there isn't a portal that focuses on all relevant environmental information and contains it comprehensively, and why it is not possible to make OKIR suitable for this after all. In relation to the disclosure of data on plants dealing with hazardous substances, the report forgets to mention that the safety report is also not fully public, and thus we cannot say that the public has complete information about these plants. In the same way, when the National Implementation Report was prepared, the list of permanently polluted and damaged areas was not available, for example, which would be very important basic information in matters of land use.

Point 85 of the National Implementation Report mentions the preparation of the National Environmental Protection Program without mentioning that these programs are usually completed with continuous delays, and in the case of local governments, it mentions the population of information and the local environmental protection programs without admitting that, on the one hand, the population of its information is incomplete in many cases, and on the other hand, there are hardly any municipalities in Hungary that have an up-to-date, approved municipal environmental protection program that perfectly complies with the given legal requirements.

10. Participation in individual decision-making procedures

In connection with participation in individual decision-making procedures and the presentation of relevant legislation, the 2017 National Implementation Report is obsolete in many places, and does not mention important procedural rules that were already accepted at the time but had not yet entered into force.

Points 105-108 of the National Implementation Report make no reference to the new administrative procedure law that replaces the old, nor are they mentioned what significant changes are expected in relation to participation rights and their exercise.

The National Implementation Report also does not mention that EIA law Art. 2/A entered into force on January 1, 2016, according to which the environmental user must submit a data sheet to the environmental protection authority regarding the planned activity which is included in the regulation but does not reach the limit values contained therein. The content of this data sheet is also environmental information, the public has the right to know it, and if they do not agree with its content, they have the right to report this to the authority.

According to our experience, the system established pursuant to Government Decree No. 187/2009 on the creation and maintenance of an electronic database for the purpose of notification of the initiation of the administrative official procedure, as well as notification based on the database, was not a success story in practice. In some counties, the NGO included in the database was notified of each procedure, but this was the rarest case, except in other counties, notifications may have occurred.

Although the report mentions the special regulatory system for priority investments, it does not point out that the shortened deadlines and stricter procedural rules also make public participation more difficult. According to our experience, the lack of transparency in these matters is one of the main problems. There is no legal remedy against the reasons for the priority declaration and the decision about it, it cannot be disputed. In such licensing procedures, the

availability of documents and the relevant rules are interpreted differently by the individual authorities.

Another problem is that there is no unified website or even standardized publication practice for the ongoing environmental decision-making procedures, the availability of this information depends on the given authority.

11. Participation in the preparation and acceptance of plans and programs

Together with the provisions of the Environmental Protection Act, the government decree No. 2/2005 - basically in accordance with EU rules - ensures the possibility of public participation during the environmental assessment of individual plans and programs, as well as its procedural framework.

In practice, however, several problems arise with the application of the regulation on strategic environmental assessments. One such problem is the definition of the affected public itself in relation to a plan or program. The scope of those involved is defined by the drafter of the plan/program, and there is no legal remedy in this regard. If, for example, a specific settlement, population group, or civil society organization feels involved in the procedure due to the environmental effects of the plan/program, it cannot assert its rights within the present framework.

The transparency problem related to the conduct of strategic environmental assessments is that there is no national database that contains either completed or ongoing strategic environmental assessments and makes them searchable in a simple way. The developer's decision on the significance of the environmental effects, i.e. the necessity of conducting a strategic environmental assessment, is also not displayed in a unified database. For this reason, there is no national data on how many strategic environmental assessments are conducted each year, nor on how many plans and programs were omitted and for what reasons, e.g. the developer omitted to conduct them.

There is basically no legal remedy against the definition of the affected public or against the developer's decisions. The accepted strategic environmental assessment documentation can only be challenged through a legal remedy against the normative act adopting the plan or program, the scope of which is very narrow.

Another problem related to decision-making in individual environmental matters is that the results of strategic environmental studies are not given adequate emphasis in individual licensing procedures and are not enforced. In practice, one of the goals of the SEA regulation, that is to say, is to definitely prepare plans and programs in the specific sectors that create a framework for the future official authorization of activities or facilities that are listed in the EIA law, regardless of the threshold value specified therein; except for a few cases of territorial restrictions, it is not implemented.

12. Participation in legislation

Point 2 of the National Implementation Report states that the conditions for participation in legislation have been precisely defined in Act No. CXXXI of 2010 on public participation in the preparation of legislation which entered into force on January 1, 2011. It can be said about this law that it is in line with the provisions of the Aarhus Convention both in terms of the basic

principles and the process of planning the legislation. The main rule of the law is broad social consultation (general consultation), regulates the institution of strategic partnership (direct consultation), and also defines the special aspects that may constitute an exception.

Regarding the content of the legislation, we emphasize once again that it is forward-looking and fully respects the rules of public participation, but at the same time, we encountered many problems and shortcomings regarding the practical implementation, which are not mentioned in the National Implementation Report. The prerequisite for participation in the preparation of legislation is that the citizens and the population obtain information about the legislative process. Point 93 of the National Implementation Report indicates the website of the ministry responsible for environmental protection and the website of the Parliament as the sources of drafts of environmental protection legislation being adopted.

In terms of access to information, civilians generally encountered the following obstacles. In many cases, we can say that in the majority of cases, the publication of the draft laws has not been done. If they were made public, none of these websites can be called an easily accessible source of information, the drafts were often difficult to find. Even when the draft was published, the professional background materials and foundational analyzes prior to the creation of the draft legislation were missing from the websites.

In relation to the exercise of the right to participate, in the process of the general consultation, which means a mere opportunity to express an opinion, the user-friendly interfaces presented a fundamental deficiency, as well as the shortness of the time that was open for opinions. Point 120 of the National Implementation Report calls the role of the National Environmental Council as of special importance in shaping environmental policy, but the weight of its opinion in practice was far from being of special importance, and its participation in the legislative process was in most cases only formal. Point 121 of the National Implementation Report mentions the strategic partnership agreement, which is a tool for direct consultation that helps the opinion process, but it was not concluded with civil society organizations, which is unfortunate.

In connection with the general consultation and broad opinion, we consider it a decisive shortcoming that the legislative bodies did not provide feedback regarding the civil and public comments and proposals, their overall evaluation and the publication of the evaluation almost without exception was/is still lagging behind in the process of domestic legislation.

13. Right to remedy

In connection with access to information, in the event of non-fulfillment of the request, refusal, charging of reimbursement, or an excessive amount of it, both the court route and the possibility of turning to the National Data Protection and Freedom of Information Authority were already open as legal remedies. Point 129 of the National Implementation Report describes the above forums in detail, noting that the court acts in these cases in an expedited process. In this regard, we consider it necessary to mention that, despite the provision of exclusivity, it took several years in the majority of cases after exhausting the above legal remedies, for the data requests of the citizens in the public interest to be met, and their possible rights violations to be remedied.

In connection with the exercise of the right to appeal in relation to individual decisions, point 130 of the National Implementation Report is supplemented with the fact that the provision (Act No. LXXVIII of 1997 on the shaping and protection of the built environment) was an obstacle or limitation in several cases in connection with the exercise of the right of appeal in the building authority licensing procedure (Art. 53/C paragraph (7) of the Act), which stated that a party duly

notified of the initiation of the procedure may exercise its rights if they have made a statement or submitted an application in the first instance procedure. With reference to this section, in several cases, the authorities excluded the possibility of substantial legal remedies in construction cases.

Regarding the possibility of judicial review, it was a serious obstacle that the submission of a claim does not have a suspensive effect on the execution of the decision, the court decided to suspend the execution only on the basis of a request for this purpose, and in practice this only happened in exceptional cases. In view of this, the civil society organizations decided in many cases that, although they had the right to initiate a lawsuit, they did not take advantage of it, taking into account its costliness and the fact that, in the absence of a suspension of execution, the facility could have been realized by the time the lawsuit was completed, thus the lawsuit could only bring a legal victory, no practical results.

In relation to the costs of the appeal, point 140 of the National Implementation Report lays down the rules that provided cost reductions for civil society organizations, but does not go into detail, only mentions the expert and lawyer costs that may arise in connection with the initiation of a lawsuit. The high expert costs burdened by the plaintiffs who initiated the review of the decision, in connection with which there were no, or do not exist, legal structures providing discounts in Hungarian law, put a practical obstacle in the way of the enforcement of the rights of many NGOs. In connection with litigation costs, it is also necessary to mention the provision of the law on priority investments from the point of view of the national economy, which prescribes mandatory legal representation in procedures aimed at reviewing decisions made in these procedures.

We also have critical comments regarding the availability of information on legal remedies. As we have already pointed out in point 8, although the environmental protection, nature conservation and water inspectorates published their final decisions on their websites, it was extremely difficult to find and search for these decisions on the Internet, and while information on legal remedies was included in these decisions, we see in this area as well an opportunity to develop an additional user-friendly solution.

14. GMOs

We have no critical comments on this point.

Prepared by EMLA and the Green Circle of Pécs.

The following contributed to the preparation of the expert opinion:

- dr. Zsuzsanna Berki
- Dr. Sándor Fülöp, PhD
- dr. Ágnes Gajdics
- dr. Csaba Kiss
- Dr. Attila Pánovics, PhD

Prepared by EMLA and the Green Circle of Pécs in August 2024.

The following contributed to the preparation of the expert opinion:

· dr. Zsuzsanna Berki
· Dr. Sándor Fülöp, PhD
· dr. Ágnes Gajdics
· dr. Csaba Kiss
· Dr. Attila Pánovics, PhD

Funded by the European Union via the Közös Értékeink programme.

Contact information

Környezeti Management és Jog Egyesület
1076 Budapest, Garay u. 29-31.
36-1-3228462
emla@emla.hu