expert opinion

Civil critical remarks to the Hungarian Government's 2021 National Implementation Report to the Aarhus Convention

2024

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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

2021

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 4 years passed between the preparation of the National Report (2020) 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

As in the 2017 report, for the compilation of the first official draft, the national focal point only asked for opinions from environmental protection authorities in the narrower sense (the relevant departments of the Ministry of Agriculture, the National Inspectorate for Environment and Nature Protection, the Departments of Environment and Nature Protection 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, from some frequented construction authorities and institutions, public health or agricultural administration). Furthermore, it did not process the important data sets available at non-governmental state bodies (in particular the Ombudsman, the State Audit Office, the non-criminal case handlers of the prosecutor's office), if no special comments were made. In his general comments to the 2021 report, the Deputy Ombudsman for the Protection of the Interests of Future Generations already emphasized that many of his resolutions would have been relevant to the report, they would have been easily accessible and usable. The 2021 report is otherwise identical to the previous one with regard to the participating authorities.

b) The process of commenting and the consideration of opinions

Although they did not participate in its preparation, the working document was sent to a number of related and non-governmental state bodies for opinions (the Ministry of Interior, the Ministry of Justice, the Ministry of Human Resources, the Ministry of National Economy, the Ministry of National Development, the Prime Minister's Office, and the Deputy Ombudsman for the Protection of the Interests of Future Generations), in line with civil society organizations.

It is also a great merit of the 2021 report that it highlighted the received and accepted opinions separately in the final text, indicating the source of the given contribution. However, it is an innovation in 2021 that the general comments of civil society organizations are summarized and placed at the beginning of the report. It would be difficult to argue with these general comments, so the continuous reduction and acceleration of the official burdens of priority investments really comes at the expense of public participation, since the latter is by its nature time-consuming. Civilians rightly complain about the neglect of qualification for participation (especially those written in Article 3 of the Convention), and especially the exhaustion of normative or targeted subsidies.

Unfortunately, however, this 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 NGOs.

2. Other relevant circumstances

a) The domestic legal background of the reports

The 2021 report still has the relatively most detailed domestic legislative background in 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. The OOR of the Ministry of Agriculture was amended every year after 2017, but the tasks related to the Aarhus National Implementation Report remained unchanged. We note that in 2022, the entire authority was transferred to the Ministry of Energy, as it appears from the new OOR of this Ministry (EM order 1/2022. (XII. 30.)). Here, the Energy Planning, Programming and Innovation Department is responsible for coordination, with the cooperation of the International Relations Department (I.11.4.3.2. and I.11.1.2.2.4., respectively). At the same time, these formulations no longer specifically mention the Aarhus Convention, and the website of the Convention still designates the former speaker of the Ministry of Agriculture, Ms. Andrea Barad, as the contact person and national focal point[1]. These circumstances may mean that the legal and institutional background of national implementation reports becomes uncertain and weakened.

b) The transformation of the environment and nature conservation authority system

Under the heading of other relevant circumstances, the report again only 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 report states that the organizational transformation was completed with the liquidation of the National Environmental and Nature Protection Inspectorate in 2017. We agree with the civil society opinions cited in the report (but not commented on), according to which these organizational changes, on the one hand, bring environmental protection and nature conservation interests into the legal background, and on the other hand, the extremely complicated jurisdictional rules make it difficult to implement all phases of public participation in practice.

Regarding the general assessment of the organizational and legal background, the report correctly states, in line with the 2017 report, 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 also be noted here that the Aarhus Convention and its public participation rules are definitely special due to their systematic approach and very detailed elaboration.

[1] https://unece.org/environment-policy/public-participation/national-focal-points-and-contact-points#accordion_7

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.

The 2021 report points to a further "organizational simplification" that makes public participation, especially the enforcement of the right to redress, more difficult. Since 2019, the administrative procedures have become one-level, the only legal remedy is the administrative court case, which of course requires greater preparation and more resources, which local communities or smaller civil society organizations can hardly provide themselves. The only extraordinary legal remedy at the administrative level is the supervisory procedure, which in turn depends on the discretionary decision of higher-level authorities, citizens and their organizations can only initiate this.

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 line of the legislative and institutional background of public participation. At the end of the nineties, the Hungarian right to public participation in environmental protection 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 refer to this issue, mentioning the deteriorating conditions of the legislation directly applicable to them, the opportunities for participation, and the sources of support, however, 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 2021 report literally takes over from previous reports that the Aarhus Convention is part of our legal system after ratification, and that 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 the 4/2010. KJE administrative legal unit decision. The Deputy Ombudsman's opinion attached to the 2021 report also contains an important addition about the tortuous life path of this key Supreme Court decision. Originally, the decade-old "what counts as an environmental administrative matter?" question was given an answer so that all cases in which the environmental protection authorities participate as decision-makers or specialized authorities are considered environmental protection cases. The decision has become weightless due to the organizational changes outlined above, since on the one hand the liquidated environmental protection authority can no longer be the decision-making authority anywhere, and in the majority of cases neither can it be a specialist authority, since as the Deputy Ombudsman pointed out, it is only listed as an internal organizational unit, so it simply can only explain environmental protection issues via internal correspondence. In 2019, a decision of the Constitutional Court already pointed out the wrongness of this, the situation has improved to the extent that the opinion of the environmental protection organizational unit must be indicated in the operative part of official decisions that also include environmental legal elements.

The report also mentions the law regulating social consultation related to legislation. This was already mentioned in the last line of the 2017 report, as the relatively new rule had very little jurisprudence - this situation has not changed in 2021 either. The reports also refer to the general participation rights provided by the administrative procedure law. In this regard, the right to legal remedies would have been particularly interesting, which, if the reports had been highlighted separately, the third pillar would have been at least represented at some level.

b) Detailed environmental protection legal rules relevant to legal practice

In accordance with the previous ones, a basic implementation issue must be clarified in relation to the report. 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 incomplete. Articles 2-9 of the Aarhus Convention are missing executive rules that adapt the detailed provisions of Article 1 to domestic conditions, and at the same time harmonize with all relevant environmental protection and related rules of our legal system. In this regard, the impact assessment cited by the reports 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 this identity, 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, the second pillar of participation would also be necessary in view of all matters related to related areas, regulations fully consistent with the Convention, where public participation is possible due to the environmental relevance of the matter.

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

Repeating the 2017 report, the 2021 report also refers to the general, principled provisions of the administrative procedure law, which in certain circumstances (mainly if the party does not have a legal representative) must provide certain information. Of course, this is appropriate content in the report, however, it should be noted again that the general procedural rules are not always suitable for dealing with 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 current legal situation, because the very generally formulated basic principles no longer have a specific legal equivalent in the text of the administrative procedure law.

Regarding the issues of public administrative law, unlike the editorial principles of the 2017 report, the 2021 report describes in detail the text of law and especially considers it forward-looking from the point of view of public participation that the administrative procedural rules also provide the possibility of litigation in cases where someone was not a party in the main proceedings. In this regard, however, it should be noted that in judicial practice, in cases where a non-governmental organization wishes to join the proceedings in the judiciary, its right to sue is often questioned. The right of action is quite difficult to interpret, and is not a concept based on substantive law, yet it is used to exclude civil society organizations that are not directly related to the subject of the case from the court proceedings.

If it had covered administrative lawsuits, the report could also have dealt with the environmental aspects of the civil lawsuits (personality rights protection, neighborhood disputes, tort law etc.). We note that if in an environmental protection 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, and based on our current procedural law, which is extremely based on the rights of disposal of the parties, they essentially 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 a government decree has also been enacted (Government Decree 185/2009 (XI. 10.), however, the practice of the legal institution has not been developed. There is no trace of the official mediator registers defined by the government decree on the Internet, even though it would in principle be mandatory for higher-level municipalities to keep them.

The same can be said about the legal aid institution 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 customers cannot get meaningful help through this channel either. In environmental protection cases, this would be extremely difficult anyway, since it can be said in general that there are hardly any lawyers in the country who understand this type of case. This is not surprising, given that only two 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, 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 not-yet-dissolved domain of the environmental protection, water and nature protection inspectorates abolished 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 Hungarian country report continues to devote significant space to its presentation.

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

The related data of the 2021 report is already outdated to a significant extent, we see no trace of environmental legal or related professional training in the government office departments that replaced the liquidated environmental protection authority system, and the standard of official work dealing with environmental protection matters is deteriorating.

Regarding the development of the courts' environmental protection knowledge, it is correct that the judges do participate in international professional exchanges and trainings, although their significance 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 for 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 clause "A judge appointed at the Metropolitan Court carries out the duties of environmental protection officer" (page 11 of the 2021 report) to be misleading, especially in the context of the environmental training opportunities for judges. In fact, neither the capital nor the other county courts have a judge specializing in environmental protection cases, otherwise the mandatory rules at courts for case allocation based on random selection 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.

The 2021 report presents a number of new forms of judicial and official training that provide environmental protection professional further training for judges and officials in a relatively narrow circle. For the National Implementation Report, these are of lesser importance, in fact it should be investigated whether there is training for courts and relevant authorities that examines more specific issues of public participation in environmental protection. However, we are no longer aware of such things in recent times - in the years covered by the two reports.

f) State supervision and administration of civil society organizations

The 2021 report describes in detail the legal status of civil society organizations and the process of their registration. None of the reports, however, deal with the operation of civil society organizations, including the Civil Act adopted in 2011, which basically determines their activities related to public participation (Act CLXXV of 2011 on the right of association, public benefit legal status, and the operation and support of civil society organizations). 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 (merger, separation).

At the same time, the Civil Code makes a significant distinction between individual civil society organizations: public benefit is defined as the conclusion of a public service contract with certain state and administrative organizations, certain subsidies, tax concessions etc. as indispensable condition for its use. The court's decision is limited in only one direction: non-profit organizations must definitely meet certain financial and operational conditions; however, it is not obliged to classify all organizations that meet these conditions as public benefit organizations (Sections 14, 34 and 35 of the Civil Code).

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

The unfavorable conditions experienced over many years affect the work of civil society organizations, which manifests itself in burnout, boredom, and loss of motivation. The continuous distortion of the distribution of public funds, the effects of the economic crisis arising as a result of the COVID-19 pandemic, which will unfold from 2021, and the energy crisis from 2022, as well as inflation further reduced the financial viability of NGOs. Over the years, the gap between the capacities of the more institutionalized organizations based in the city (Budapest) and the smaller organizations operating in the countryside (primarily in the cities with county rights) has grown larger and larger.

On June 18, 2020, the Court of Justice of the EU issued its judgment in case C-78/18 and stated that Act No. LXXVI of 2017 and the restrictions introduced by law violate EU law in several ways. The Court emphasized that the Hungarian law is suitable for "creating an atmosphere of mistrust" towards the civil society organizations concerned. In terms of EU law, the objective of increasing the transparency of funding may qualify as a "compelling reason based on the public interest" that may justify the introduction of various registration, reporting and publication obligations, as well as certain sanctions, as some civil society organizations use the means they have for the purposes they pursue and the means at their disposal. Given that they can "exercise a significant influence on public life and public debate", on the basis of which it is justified that their funding should be subject to measures aimed at ensuring transparency, especially in the case of funding from third countries outside the EU.

However, the Hungarian regulations contain discriminatory and restrictive measures that create different treatment between domestic and cross-border capital movements, which may deter natural or legal persons established in other EU member states or third countries from providing financial support to "foreign-supported organizations". Reasons of public order and public security such as money laundering, the financing of terrorism or the fight against organized crime in a broader sense can only be invoked if there is a real, direct and sufficiently serious threat to the fundamental interests of society. However, Hungary was unable to raise such arguments during the infringement procedure.

The Court also emphasized that the transfer of information about identified or identifiable natural persons to third parties (authorities or even the public in general) can only take place on the basis of fair data management in accordance with the requirements set out in Article 8 (2) of the Charter of Fundamental Rights. In all other cases, the transfer of information that is considered personal data processing is considered a limitation of the right to the protection of personal data, which cannot be justified by any of the objectives of general interest cited by Hungary.

Act No. XLIX of 2021 on the transparency of civil society organizations carrying out activities capable of influencing public life was based on the judgment of the Court of Justice of the EU. During the adoption of the law, which repealed Act No. LXXVI of 2017 as of June 30, 2021, the classification as a foreign-supported organization, the notification, data provision, publication and indication obligations, as well as the sanctions prescribed in case of violation, have been replaced by the obligation of the State Audit Office to prepare and publish an annual summary of the affected NGOs.

The new regulation obliges NGOs with an annual balance sheet total of over HUF 20 million to have documents such as accounting policy, inventory rules, and rules for cash and asset

management. The legislation therefore tries to apply an objective criterion by setting up a presumption: a non-governmental organization that has an annual budget above a certain amount is able to exert a significant influence on public life, "the functioning of the democratic state".

On May 17, 2022 (1 day before the 1-year anniversary of the adoption of the new Lex NGO in 2021, as well as during the period of acceptance and submission of reports for the previous year), the State Audit Office instructed hundreds of NGOs that within 10 days the office submit the necessary documents via its online interface, e.g. internal financial regulations and guidelines.

In December 2021, eight affected NGOs applied to the Constitutional Court (case number: IV/01857/2017) with an exceptional constitutional complaint, but a year later, the body rejected their request citing lack of reason.

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 an excellent tool for the government to transform the structure of civil society and push into the background "real" civil organizations that express opinions critical of 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 HUF 550 million. The chairman of the foundation's board of trustees 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 so-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 are often the donors (represent the business and political interests of persons and organizations providing operating funds).

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", he 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

In line with the previous country reports, the report only contains that the issue has no 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 organizations in many cases" (paragraph 38 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, paragraph (4) b) of the Convention.

The 2021 report cannot add anything to this either, although civil society organizations have indicated in their comments in all previous National Implementation Reports that public participation in this area does not work at all.

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 regulation cited in the report, which was renewed in 2013, which represents a serious step back compared to the previous rules after the change of regime.

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 material 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.

We note that, similarly to the international procedures discussed in the previous point, the 2021 report copies the text of the previous country report verbatim.

8. Provision of environmental information upon request

The reporting period was greatly affected by the development of the coronavirus pandemic and the emergency measures introduced as a result. Unfortunately, during this period, the Hungarian Government saw it as justified to increase the deadline for the release of public interest data to 45 + 45 days as a response to the emergency. This question was already formulated by civil society organizations in the criticism of the 2021 report, but the report itself did not address it, so it was definitely considered incomplete.

The reference in the report that the environmental protection, nature conservation and water inspectorates publish their final decisions on their website, and that after the reorganization the environmental protection and nature protection departments of the government offices follow the same practice, was accompanied by the criticism that, however, user-friendly data display could not be ensured. These communications were a very fragmented and hard-to-find source of information.

The report talks about the level of reimbursement for the release of public interest data, but does not mention that, unfortunately, the environmental protection authorities used the charging of costs de facto to limit the public access to information, as there were several cases where outrageous fees were charged for otherwise sometimes unjustified data management operations as a cost.

Although the issue was not directly environmental protection, the narrowing of the concept of public budget in the Constitution had the effect of making access to data of public interest a degree more difficult. Of course, this also seriously affected data access for environmentally questionable investments financed with public money.

Civil society organizations welcomed the digitization of environmental data, but it has not yet been possible to make OKIR (the National Environmental Protection Information System) an easily searchable, user-friendly interface, practically the errors indicated 10 years ago still exist today. It also did not change that the data of the National Forestry Database were not completely public. There is now a small improvement in this openness, but it still does not facilitate data access for users.

9. Proactive dissemination of environmental information

Regarding the proactive publication of data of public interest, the report - we can safely say that it certainly does - proudly lists the data sources where environmentally relevant information can be accessed. The author of the report forgets that all of this, due to fragmentation, does not help data access, but rather increases confusion. Quantity does not translate into quality here, but on the contrary: too many data sources, specialized data content, information that always appears in different places, but otherwise in many cases connected, means that those looking for environmental data either get partial information, or spend most of their time by searching different databases. However, this is not mentioned in the report.

The lack of publication of the State of the Environment Report of Hungary publication since 2017 has been a great loss, as already explained in the NGO position attached to the 2021 report.

We can hardly find a list of factors hindering the application of Article 5 of the Aarhus Convention, although it is much broader than what is contained in the report - since it is not correct that difficulties were experienced only in the context of access to nature conservation data.

10. Participation in individual decision-making procedures

Regarding the regulation of public participation in individual decision-making procedures, several significant changes have taken place since the completion of the previous National Implementation Report. On the one hand, the old administrative procedure law was repealed, and now the new one regulates the basics of the parties' legal status. The rules for contestability of administrative violations through judicial review are laid down. The National Implementation

Report does not address the latter legislation, although some of its provisions are important in connection with participation in individual cases.

The new law introduces another condition for civil society organizations. According to this, a civil society organization can be a plaintiff in a public administrative legal dispute, which has continued its registered activity in order to protect a fundamental right or enforce a public interest in the geographical area affected by the public administrative activity for at least one year, if the public administrative activity affects the organization's registered activity. In our opinion, the one-year limitation narrows the opportunities for civilians to act in individual cases. If, for example, in a settlement where there was no local environmental NGO before, an association is created through the self-organization of the residents, it will most likely not be able to meet the conditions of the administrative procedure, so the authority's decision, the permit, cannot be challenged in court.

In addition, the possibility of appeal in environmental protection authority cases has also ceased, i.e. environmental licensing has become single level. The decision made in the public administrative procedure becomes final and enforceable with its notification. The ordering of suspensory effect can be requested from the court as immediate legal protection (injunction), but this is not automatic, and the investment can even be started.

Another shortcoming is the unsolved civil comments and complaints related to the regulation of priority investments attached to the previous National Implementation Report. This National Implementation Report also does not mention the fact that the authorization of priority investments limits public participation in several aspects and reduces its effectiveness. On the basis of the law on priority investments, almost any project, even if it is partially or fully supported by the state or the EU, can be declared priority, and thus placed under a special procedural regime. In this special procedural regime, the limitation of access to information and the narrowing of the governing deadlines all adversely affect the enforceability of participation rights.

The National Implementation Report refers to the notification of civil society organizations and also to the fact that the legislation on which it was based has been repealed. In this connection, it should be noted that only those county authorities continued the practice of notification for some time after the repeal of the legislation, where this was previously automatic, and this was later discontinued in these counties as well.

It should still be mentioned as a problem that the public cannot meaningfully participate in the process of declaring individual investments as priority and in the decision-making about them.

In relation to the authorization of priority investments, it can be mentioned as a particularly disadvantageous practice that the authorities do not display the decision (permit), but only the announcement about the decision being made on their internet. In addition to the subject of the case, number and other procedural information, the announcement only states that the decision can be obtained from the authority. Since almost all deadlines in priority cases, including the notice period, are much shorter than in general cases, and the conditions for contesting a decision are stricter, in these cases, citizens are often deprived of the opportunity to meaningfully participate and seek legal redress. This is also of particular importance from the point of view that priority investments usually also represent a significant environmental burden due to their size and the volume of environmental use.

Despite the fact that the coronavirus epidemic was a defining event of the year 2020 from a social point of view, the National Implementation Report does not mention the special procedural rules ordered because of it. In our opinion, the omission of public hearings and the introduction of a simplified notification procedure system have severely reduced public participation when issuing individual permits.

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

The legislation on strategic environmental assessments did not change much in the period between 2016-2021. It is worth mentioning here the amendment of Article 4 and 8 of the Government Decree 2/255, which was not included in the National Implementation Report. To decide the significance of the expected environmental impact, the developer requests the opinion of the bodies responsible for environmental protection on whether a significant environmental impact is expected. The drafter of the plan or program requests the opinion of the authorities immediately when the information necessary is available and sets a deadline of no more than 15 days for giving the opinion. Previously, this deadline was at least 15 days. Based on the current rule, the developer can set a shorter deadline, which is not necessarily enough to form a well-founded opinion, given the volume of the individual plans and programs.

The practical problems mentioned in connection with the previous National Implementation Report were not resolved. One of the most important shortcomings is that a database that provides national coverage and covers all plans and programs has not yet been created, from which all completed or ongoing strategic environmental studies can be queried. It is not only necessary to ensure that plans and programs, as well as their environmental assessment reports, are accessible. It would be necessary to make available in the database the developer's decisions regarding plans or programs and the opinions of the authorities, in the case of which the strategic environmental assessment was omitted, saying that it is not expected to have significant environmental effects.

12. Participation in legislation

As we pointed out above, the National Implementation Report refers in several places to the law regulating social consultation related to legislation (Act CXXXI of 2010 on social participation in the preparation of legislation) as the basic document defining the framework for social consultation, which, however, in terms of its practical application, has many we faced a shortage.

The prerequisite for participation in the preparation of legislation is that the citizens and the population obtain information about the legislative process. Point 112 of the National Implementation Report stipulates that the ministries preparing legislative drafts publish on their websites the concepts, draft legislation, draft ministerial decrees, as well as the related submissions and professional justifications for the preparation of legislation within their jurisdiction and provide a minimum of 10 (5 in exceptional cases) working days for comments . According to our experience, in many cases the publication of draft legislation was also delayed, even if it was published, it was difficult to find it on the ministry's website. The background documents and the professional materials that formed the basis of the draft were missing almost without exception. In the majority of cases, 10 working days were not available to exercise the public's general right to comment. The short deadlines of 1-2 days constitute a practical obstacle to submitting substantive comments.

In connection with the general consultation and wide-ranging opinions, we consider the fact that the legislative bodies did not provide feedback on the civil and public comments and proposals as a decisive shortcoming, and their overall evaluation and publication of the evaluation was/is always lagging behind in the process of domestic legislation, almost without exception.

Civil delegates in the working committees of government organizations, civilians participating in the operations of the National Environmental Council and the National Sustainable Development Council also pointed to the short amount of time they were given to prepare their opinions and comments as a general problem.

Point 109 of the National Implementation Report records the positive result that the ministry responsible for environmental protection concluded a strategic agreement with several civil society organizations related to the nature conservation sector in 2019, we recommend extending the practice to other areas of environmental protection as well.

13. Right to remedy

In relation to the first pillar of public participation, access to information, in the case of non-fulfilment, refusal, charging of costs, or excessive amounts, the report describes both the court route and the possibility of turning to the National Data Protection and Freedom of Information Authority as a legal remedy. A lawsuit can also be used as a legal remedy. Regarding the expedited proceedings of the courts, we consider it necessary to mention that, despite the provision of adjudicating in expedited procedures, in the majority of cases, it took several years before the above-mentioned legal remedies were exhausted, and the public interest data requests of the affected parties were met, and their possible rights violations were remedied.

An essential condition for the exercise of the right to redress related to the second pillar, participation in decision-making, is for the person concerned to become aware of the decision and the possibilities for redress. In point 8 above, we have already pointed out that although the report states that environmental protection, nature conservation and water inspectorates publish their final decisions (including information on legal remedies) on their websites, and after the reorganization, the environmental protection and nature conservation departments of government offices follow the same practice, user-friendly data display could not be provided. These communications were a very fragmented and hard-to-find source of information.

After January 1, 2020, with the transformation of the legal remedy system related to public administrative decisions (as a general rule, public administrative authority procedures became single level, appeals are allowed in exceptional cases by individual legislation, the reform made the initiation of public administrative lawsuits a general rule), in environmental cases the only legal remedy against the decision is to initiate a lawsuit.

In connection with the judicial review, it was a serious obstacle that the submission of the statement of claim does not have suspensive effect on the execution of the decision, the court decides to order the full suspensive effect of the statement of claim solely on the basis of a request to order immediate legal protection, but in practice this only happened in exceptional cases.

With the transformation of the legal remedy system, judicial remedy was also available to those organizations that did not participate as parties in the official licensing procedure, but by the fact that the only way to challenge the decision is to initiate a lawsuit, which required more serious preparation, expertise, and legal knowledge from the individuals concerned, from NGOs, the

changes cannot be considered unilaterally positive. The report does not mention that civil society organizations could submit court claims only electronically, which had to be submitted to the decision-making body, these bodies had various electronic interfaces, and finding and using them was a serious challenge for law-seeking citizens.

In connection with litigation, it should also be mentioned that the number of investments prioritized from the point of view of the national economy increased continuously during this period as well, and in the procedures for the review of the decisions made in these procedures, the legislation prescribes mandatory legal representation, which meant additional costs for environmental law enforcing citizens, as well as for the population.

The report does not go into detail, but only mentions the expert costs and legal costs that may arise in connection with the initiation of a lawsuit. The jurisprudence of the mandatory substantiation of professional opinions with expert opinion brought the result that the plaintiffs who initiated the review of the decision were burdened with high expert costs, in connection with which there were no legal constructions providing discounts in Hungarian law.

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:

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