

NATIONAL REPORT ON THE IMPLEMENTATION OF THE AARHUS CONVENTION - Hungary -

1. The process of the preparation of the national report

Primary responsibility for the implementation of the Aarhus Convention (the Convention) in Hungary is delegated to the Ministry of Environment and Water (the Ministry). The Ministry has drawn up this national report through broad public consultation. In addition to Decisions I/8 and II/10 of the Meetings of the Parties the Ministry also took into consideration the substantive and procedural recommendations of the Compliance Committee¹ (selected questions raised by the Compliance Committee are indicated in *italics*). Steps of the consultative process include:

- on 17 September 2007 the Ministry published on its homepage the draft questions of the report (as well as forwarded it to a number of non-governmental organisations) soliciting comments until the beginning of October 2007;
- on 12 November 2007 the Ministry, in view of the comments received, published on its homepage the first draft of the report (as well as transmitted it to a number of NGOs) soliciting comments until 3 December;
- simultaneously, the Ministry requested
 - o the National Council on the Environment (*see below*), and
 - o other relevant ministries (Ministry of Economic Affairs and Transport, Ministry of Agriculture and Rural Development, Ministry of Municipalities and Regional Development, Ministry of Health) and authorities (National Environmental, Nature Conservation and Water Chief Inspectorate, National Meteorological Service)to deliver an opinion on the draft report;
- on the basis of the comments received from all parties consulted the Ministry finalised the report on 29 December 2007.

In order to ensure the transparency and user-friendliness of the report the Ministry did not opt for an updating of the 2005 report but drew up a comprehensively new text.

2. Particular circumstances relevant for understanding the report (optional)

3. Application of Article 3 (general provisions)

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

Since the finalisation of the 2005 report no legislative changes have taken place in Hungary in environmental or other, environmentally relevant legislation that limit public participation. This is in line with point 5 of the 2005 Almaty Declaration.

¹ Guidance on Reporting Requirements, prepared by the Compliance Committee, ECE/MP.PP/WG.1/2007/L.4.

Previously, with reference to the infringement of existing participatory rights a Hungarian environmental NGO brought, on two different occasions, action against Hungary before the Compliance Committee. Both procedures concerned Act CXXVIII of 2003 on the Public Interest and the Development of the Expressway Network of the Republic of Hungary and Decree of the Minister of Transport and Water Management No. 15/2000. (XI. 16.) on the licensing of the construction, opening and termination of roads (cases no. ACCC/C/2004/04 and ACCC/C/2005/13). The Compliance Committee delivered its findings on case no. ACCC/C/2004/04 before the finalisation of the first national report and was endorsed by the 2nd Meeting of the Parties.

In case ACCC/C/2005/13 the Compliance Committee examined whether, on the one hand, the simplified permitting rules applicable to so-called special extraction sites for highways and, on the other hand, the amended provisions governing the designation of the tracks of highways constitute to an infringement of the Convention or reduce existing rights of public participation. The Compliance Committee established that as the environmental impact assessment section of these two procedures (*i.e.* the one which ensures public participation) remained unchanged, the existing participatory rights could not be regarded as having been reduced. The Compliance Committee accepted the arguments of the Hungarian government to the effect that neither the procedures relating to the opening of mines nor those on the permitting of roads *per se* fell under the Convention. Consequently, any amendments to these procedures also remain outside the reach of the Convention.

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

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

One of the fundamental principles of Act CXL of 2004 on the General Rules of Administrative Procedures and Services (the Administrative Procedures Code) is that administrative authorities must conduct their proceedings in the spirit of cooperation and fairness. The authority must ensure that any persons involved in the procedure be informed of their rights and obligations, as well as promote the full application of the clients' rights. Any person engaged in a procedure without legal representation must be informed of the legislative provisions relative to the case, the legal consequences of any omissions, as well as the availability of legal assistance.

Pursuant to Act LXXX of 2003 on Legal Assistance the provider of legal assistance prepares documents and provides legal consultancy to the client free of charge (the cost of legal assistance is incurred by the state). The Act clearly defines the cases where such legal assistance is available.

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

Information to the public concerning access rights is actively provided by the Public Relations Bureau of the Ministry and its network of Green Point Offices. The activity of the Public Relations Bureau of the Ministry, operative since 1997, was complemented in 2005 by a network of so-called Green Point Offices maintained by the regional offices of environmental inspectorates, environmental and water directorates and national park directorates. The Green Point Offices have been established with a view to providing up-to-date environmental

information and assistance to handling cases or complaints by citizens (for data *see* below). At present 46 such offices operate performing the main following tasks:

- handling of citizens' complaints and requests;
- collection and dissemination of environmental information;
- establishment and maintenance of databases, providing access to legislative texts;
- networking with the information bureaux of other ministries, authorities and of NGOs;
- registration of complaints and requests.

In addition, the Customer Service of the Ministry of Health provides information and assistance to the public in relation to environmental health issues with a similar profile.

The state-funded network of information offices is supplemented by a comparable network of environmental information offices established by NGOs called KÖTHÁLÓ (Network of Hungarian Eco-counselling Offices). KÖTHÁLÓ, which at present has 22 offices countrywide, is an umbrella organisation of NGOs whose main specialisation is public interest environmental consultancy. Its activities cover maintenance and updating of databases, preparation of publications, organisation of events, etc. In addition, KÖTHÁLÓ provides assistance to the public in legal matters relating to the environment.

It must be noted that during the preparation of this report the Hungarian Parliament adopted an act on the creation of the post of a new ombudsman specialising on environmental matters. Such a new ombudsman will exercise broad rights to supervise the application of participatory rights.

Are there specific training programmes for officials of public authorities and for judges?

The relevant officials of the environmental, nature conservation and water inspectorates – *i.e.* the bodies responsible for the bulk of environmental administrative procedures – have, during 2006, participated in a training programme concerning the new environmental impact assessment and IPPC² procedure, introduced by Government Decree No. 314/2005. (XII. 25.). This Decree sets out the details of the application of the first and second pillars of the Convention (*see* below). A more general training cycle was held for officials in 2005 as a result of the entry into force of the (then) new administrative procedures code (*see* above) which provides the general framework for the application of citizens' rights in administrative procedures.

The Ministry of Environment and Water is planning to carry out a specific training programme in 2008 for the officials involved in the direct implementation of the Convention. No specific trainings have been held for judges in Hungary as yet.

Article 3.3 (environmental education and awareness raising)

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

Environmental education forms a fundamental part of curricula in Hungary. In accordance with Act LXXIX of 1993 on Public Education the Ministry of Environment and Water and the Ministry of Education and Culture collaborate on the basis of a cooperation agreement. Basic relevant documents in the field are the National Educational Framework Programme, the

² Integrated Pollution Prevention and Control

National Kindergarten Educational Framework Programme and the National Environmental Programme. Environmental education is carried out in Hungary in the following structure:

(a) *Environmental education networks and programmes (lower- and medium-level education):*

- Through the *Green Kindergarten Network* the promotion of environmental awareness reaches the lowest level of education. Important centres of environmentally sensitive kindergarten pedagogy have emerged in recent years together with the necessary intellectual and material infrastructure. The two relevant ministries publish a yearly tender for the title of “Green Kindergarten”; to date 109 such titles have been awarded.
- The *Hungarian Network of Ecological Schools* has been operating in Hungary since March 2000 as a part of an international network under the auspices of the OECD-CERI ENSI project. The network provides a platform for cooperation, exchange of information and organisational assistance to schools dedicated to environmental education. The two ministries publish a tender every year for the title of “Ecological School”. All Hungarian public educational institutions are eligible for the title; to date 272 titles have been awarded.
- Short term, *in situ* curricular environmental educational cycles are carried out in the framework of the *Forest School Programme*. The aim of the Programme is that every pupil be able to participate in a short term, on-site course at a forest school. Forest school certificates are issued by the two ministries upon a recommendation by a Coordination Board whose members are delegated by the relevant ministries as well as the institutions and other organisations concerned by the Forest School Programme. To date 76 forest schools have obtained a certificate. A new quality assessment procedure has been introduced in 2007 with the aim of ensuring that a network of some 150-160 schools be developed and operated at a uniformly high level by 2013. Linked to the Forest School Programme is a network of some 30 forestry schools maintained by forest operators. Forestry schools also contribute to environmental education.
- Hungary joined the *GLOBE (Global Learning and Observation to Benefit the Environment) Environmental Education Programme* in 1999. At present 30 secondary schools participate in the international activities of the programme. The national programme is supported by the two ministries, GLOBE base school tenders will be published in order to ensure a continuous participation.

(b) *Environmental and water management professional training:*

The Ministry of Environment and Water is in charge of administering the environmental and water management professional training programmes in co-operation with the Ministry of Social and Labour Affairs. The future framework of such programmes have been laid down under the EU funded National Human Resource Development Operative Programme.

(c) *Environmental protection in higher education:*

An important platform for environmental awareness-raising is the thematic conferences organised by and for university students. The National University Students Conference on the Environment is organised biannually under the patronage of the minister of environment and water. A text book entitled “*Environmental management*” came out recently that is used as auxiliary material at a number of universities in non-environmental courses.

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

The Ministry of Environment and Water has in the past two years organised a series of television campaigns concerning the separate collection of waste, in particular with regard to electronic waste, hazardous waste, PET bottles, batteries, medicines, etc. The Ministry regularly commissions posters, mainly on nature conservation and topical issues such as climate change. The posters and fliers concerning similar topics are distributed by the Green Point Offices.

As regards event-organising the following should be highlighted: World Environment Day, Earth Day, World Water Day, National Parks Week, Mobility Week, Car Free Day, and a thematic environmental expo held annually in the autumn (Ökotech). In addition, the Ministry regularly participates with an information stand in most significant of youth/culture events.

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

NGOs play an important role in environmental education in Hungary. In fact most NGOs carry out some sort of educational/awareness raising activities in connection with their mainstream activities. NGOs maintain a strong presence both in the formal and the informal environmental educational scene (preparation and distribution of educational toolkits, implementation of training programmes, press campaigns, organising green events, etc.).

In addition, a number of NGOs conduct environmental education as their mainstream mission, such as Magyar Környezeti Nevelési Egyesület (Hungarian Society for Environmental Education), Természet és Környezetvédelmi Oktató Központok Országos Szövetsége (Alliance of Environmental and Nature Conservation Training Centres), Természet és Környezetvédő Tanárok Egyesülete (Society of Environmental and Nature Conservation Teachers) or the Erdei Iskola Egyesület (Forest School Association). The voluntary activity of these associations has been instrumental in the emergence of the forest school movement that served as a basis for the introduction of the government's own national forest school programme (*see* above). They have held specific training programmes for "the greening of schools" as well as, since 2005 have annually awarded the only environmental education prize: the Lehoczky János Prize.

The educational programmes of NGOs have been financed partly by the Ministry and targeted financial schemes, and been supported by a large amount of voluntary work. In addition, in 2007 the European Economic Area/Norwegian Fund disburses money for NGO activities in the field.

The above is supplemented by a so-called "Hungarian-Hungarian Green Programme" designed for Hungarian communities living in the neighbouring countries. It is a civil society initiative (raised by Ökofórum) that is aimed at the promotion of cross-border environmental relations. The preparation and implementation of the educational and awareness raising programme of the initiative is in progress under the coordination of the Ministry of Environment and Water.

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

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

Registration of NGOs is carried out in a fairly simple procedure in Hungary that guarantees a quick registration and excludes the exercise of any administrative or political discretion. Act II of 1989 on the Right of Association provides that NGOs can be established for any purpose that is in conformity with the Constitution and is not prohibited by law. An NGO can be established by at least 10 natural or legal persons upon a decision on the articles of association and their executive officers. NGOs are registered by a competent court of justice. Registration cannot be refused if the NGO fulfils all statutory requirements. Registration has to be completed within 60 days. If registration is not effected within that deadline the president of the court has to take action for immediate registration within 8 days. If those additional 8 days pass without action the application has to be regarded as being effective as of the 9th day of the original deadline.

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

Since the entry into force of Act LIII of 1995 on the General Rules of the Protection of the Environment (the Environment Act) environmental NGOs have participated in a range of decision-making and consultative bodies. These include:

- *National Council on the Environment*: the advisory and consultative body of the Government in environmental matters. The Council disposes of a wide range of rights to elaborate comments on draft legislative proposals, concepts relating to the environment or plans and programmes with a likely significant impact on the environment. It may also table proposals to the Government. It has 21 delegated members: 7 elected by environmental NGOs, 7 elected by industrial and trade associations, 7 appointed by the President of the National Academy of Sciences.
- *Gene-technological Advisory Committee*: the Committee delivers an opinion on all applications for the authorisation of activities involving genetically modified organisms. NGOs participate in the work of the Committee through 2 representatives.
- *Inter-ministerial Coordination Committee on Chemical Safety*: in order to ensure the coordination of the various tasks relating to chemical safety and to enhance the efficiency of decision-making an inter-ministerial committee has been established. The Committee has the right of initiative and can make comments with regard to any proposal concerning the adoption and review of legislative or individual measures concerning chemical safety. Environmental NGOs are represented by one delegate in the work of the inter-ministerial Committee.
- *Eco Label Assessment Committee*: the use of eco labels is subject to a series of environmental and other conditions that are fixed in relation to individual product categories. These conditions are determined – and reviewed every 5 years – by the assessment committee. Environmental NGOs are represented by one delegate in the work of the assessment committee.

- *Working groups for the allocation of environmental funds:* in accordance with Decree No. 3/2004. (II. 24.) of the Minister of the Environment and Water on use and control of the targeted environmental and water management funds working groups are established to assist the minister in the assessment of tender bids for funding. In these working groups NGOs participate with one delegated voting member.
- *National Regional Development Council:* the Council assists the Government in the implementation of certain tasks relating to regional development and spatial planning. Environmental and nature conservation NGOs participate in the Council's activities with two delegates as observers.
- *Aarhus Working Group:* in 2005 the Ministry established a working group for the monitoring of the implementation of the Convention in Hungary. Two delegated NGO representatives are official members of the Working Group.

The Hungarian NGO community holds an annual meeting where they select their representatives for the above positions.

Does the government provide financial support to environmental NGOs?

Environmental NGOs receive funding through a number of government support schemes. NGOs may submit a tender responding to calls issued under Decree No. 3/2004. (II. 24.) of the Minister of the Environment and Water for certain projects from targeted funds. These funds contain a separate budget line for the funding of programmes and projects by NGOs ("Green Resource"). The Ministry publishes its call for tenders annually. In 2006 the total sum allocated was HUF 256 000 000 (ca. EUR 1 124 000), while the amount available in 2007 was HUF 103 850 000 (ca. EUR 415 000).

The funds available in 2007 were allocated along the following topics: participation in the implementation of the thematic action programmes of the National Environmental Programme (HUF 36 350 000, ca. EUR 145 500), implementation of environmental educational programmes (HUF 9 500 000, ca. EUR 38 000), tasks relating to mitigation of greenhouse gas emissions (HUF 58 000 000, ca. EUR 232 000).

In addition, under Act L of 2003 on the National Civil Framework Programme the national budget provides core funding for registered non-governmental organisations. 60% of all funds at the disposal of the Framework Programme has to be disbursed for such purposes.

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

Hungary supports the initiatives aimed at the enhancement of transparency of international decision-making procedures.

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

The Ministry of Environment and Water holds consultations with regard to the national position at some outstanding international events. In the context of the Convention

government positions to be represented in the relevant international meetings are discussed in the Aarhus Working Group (*see above*).

At the Second Meeting of the Parties (Almaty 2005) two non-governmental representatives were included in the Hungarian governmental delegation: the chairman of the National Council on Environment (then chairman of the Göncöl Alliance) and an expert of the Confederation of Hungarian Employers and Industrialists.

Article 3.8 (prohibition of penalization for public participation)

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

Furthermore, Act XXIX of 2004 (on the amendment of certain acts in relation to the accession of Hungary to the European Union) (re-)introduced a formal complaint and notification procedure *vis-à-vis* competent administrative authorities (in addition to those already available under the Code). The complaint procedure provides a platform to communicate any grievances of individual right or interest. The so-called notification procedure allows citizens to express an opinion in relation to issues in the interest of the wider public. The Act provides that no citizen submitting a complaint or notifying an issue in the public interest may be subject to penalisation of any sort.

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

It arises more and more frequently that in connection with the exercise of the rights laid down in the Convention or Hungarian law a developer considers to have been subject to libel or have suffered pecuniary or moral damage. Typical law suits are concerned with the harm of business reputation or aimed at the indemnification of damage for unjustified delay of the permitting procedure.

Such cases have appeared in relation to the construction of waste incinerators as well as other such installations where, with reference to the dilatory effects of the opponents' activities or the emergence of additional costs, developers filed civil actions against NGOs.

No uniform court practice can be identified as yet, and even though the Hungarian Supreme Court has repeatedly established harm to good business reputation no financial damages have been awarded to the plaintiffs.

4. Obstacles in the implementation of Article 3

Principal obstacles to the effective implementation of Article 3 are the lack of funding due to budgetary restrictions and the occasional passive attitude of the competent authorities. Outstanding issues indicated by NGOs include:

- Financial resources dedicated from the national budget to environmental protection have decreased substantially during the reporting period. This has repercussions on the implementation of the Convention both by the administration and the non-governmental sector.
- During the reporting period the budgetary sources targeted for environmental NGOs or for environmental educational programmes have decreased substantially, causing considerable problems in the maintenance or development of existing capacities and programmes. This problem is not alleviated by EU funds as their magnitude or certain administrative requirements (posterior financing) render participation by small NGOs virtually impossible.
- Due to the lack of funding the national environmental education bureau of the Ministry of Environment and Water and of the Ministry of Education, in charge of the coordination of the forest school programme, has ceased its activities as well as the programme entitled “Higher education for sustainability” has been terminated in 2005.
- The Aarhus Working Group designed to enhance the implementation of the Convention did not operate during 2006 and resumed its activities only in autumn 2007.
- No institutionalised system exists as yet for the involvement of the public in the preparation of government positions to be presented in EU decision-making forums. Participation has been rather *ad hoc*.
- No targeted environmental training programme has been devised and implemented for the judiciary in Hungary. This has evident repercussions on the adjudication of environmental cases.

5. **Further information on the implementation of Article 3 (optional)**

6. **Relevant web site addresses**

www.kvvm.hu

www.justiceandenvironment.org

www.emla.hu/taieurope

www.foek.hu

www.kothalo.hu

www.vedegylet.hu

www.lmcs.hu

www.rec.hu

7. **Application of Article 4 (Access to information)**

The rules governing access to environmental information in Hungary are laid down by Act LIII of 1995 on the General Rules of the Protection of the Environment (Environment Act), by Act LXIII of 1992 on the Protection of Personal Data and the Disclosure of Information of Public Interest (Data Protection Act) and Government Decree No. 311/2005. (XII. 25.) on the public access to environmental information.

The Data Protection Act provides a general framework for the management of public information. It classifies as “public information” all information which is held by any government or municipal bodies (or persons) or relates to the performance of their public functions provided that it does not qualify “personal data”. Any person – without having to show an interest – may request the disclosure of public information. The data requested must be provided by in a comprehensible manner and, unless it involves excessive costs, in the form requested. The request must be fulfilled as soon as possible but in any case within 15 days. Refusal, with its reasons, must be made in writing or electronic form within 8 days of receipt. Copies may be requested of the relevant document (or parts thereof), the fees imposed cannot exceed the cost of copying.

The legal framework of active data provision is determined by Act XC of 2005 on the Freedom of Electronic Information (Electronic Information Act). The Electronic Information Act aims to ensure, *inter alia*, the regular dissemination of a well-defined range of electronically held public information as well as free access thereto. The Electronic Information Act requires public authorities (including those with environmental responsibilities) to publish on their web sites the data listed in its annex relating to their structure, personnel, responsibilities as well as their fiscal management. The web site also must provide, in an easily comprehensible manner, information on the modalities of how to make individual requests for data and on access to justice.

Particular rules concerning environmental information are specified by the Environment Act and Government Decree No. 311/2005. (XII. 25.). The Environment Act univocally qualifies “environmental information” as data of public interest and declares that any person has a right to access to such information. The scope of “environmental information” is laid determined by Government Decree No. 311/2005. (XII. 25.) in conformity with the respective definition in Article 2 of the Convention.

The Environment Act requires public bodies (be it governmental agencies, municipalities, or any persons or organisations performing a public service or any function relating to the environment) to provide, upon request, access to environmental information held by them or to publish certain environmental information on a systematic basis. The type and range of documents to be published are defined by Government Decree No. 311/2005. (XII. 25.).

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

The Data Protection Act provides that all public authorities must draw up their internal rules of procedure for fulfilling requests for public information. The so-called data protection ombudsman has to be informed on an annual basis of all requests refused as well as the reasons of refusal. The data protection ombudsman, elected by Parliament, constitutes a special institutional guarantee in the Hungarian data protection/disclosure regime. The ombudsman oversees the implementation of the data protection legislation, provides guidance for data holders for the uniform application of these legislation, investigates individual complaints and maintains a data protection registry. Any person who considers any impairment of his rights of data protection or access to public information may apply to the ombudsman, except where the case is *sub judice*. No person can be penalised for recourse to the data protection ombudsman.

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

Under the Data Protection Act preparatory materials of an administrative decision automatically remain confidential for 10 years. Confidentiality may be suspended by the head of the organisation concerned in view of the public interest served by the disclosure. Access to such a document within the 10 year deadline can be refused if it is likely to jeopardise the lawful or impartial operation of the authority concerned, in particular the free expression of professional opinion in the preparatory phase. Specific legislation may lay down a shorter time period for administrative confidentiality.

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

Disclosure of commercial information is governed by Act IV of 1959 on the Civil Code. According to the Civil Code getting hold of or disclosing business secrets without authorisation or any other abuse thereof amounts to an infringement of personal rights. The aggrieved party may file a civil law suit for redress. In the context of access to environmental information no request may be refused with reference to commercial secrecy if it concerns emissions to the environment.

The collision between commercial secrecy and the freedom of public information has, on several occasions, been investigated by the data protection ombudsman and repeatedly been subject to civil litigation since the end of the 1990s. The data protection ombudsman consistently held that reference to the integrity of business information may not provide a safe haven for those infringing environmental and other legislation. In particular, commercial secrecy cannot be invoked against the disclosure of information relating to damage to the environment, or a decision establishing the violation of environmental provisions or imposing sanctions, etc. Civil law may not be used for market protection by the violators of law.

This is all the more important as the Environment Act obliges not only public authorities to disclose environmental information but all “users” of the environment are required to provide information to any person on their activities resulting in the pollution of, damage or threat to the environment. *E.g.* it was a subject of civil law suit whether an installation carrying out a dangerous activity may withhold information on the hazards its activity implied based on commercial secrecy. It was decided that it is the holder of the information that has to demonstrate that the disclosure of the information would indeed result in a violation of commercial secrecy or intellectual property.

8. Obstacles in the implementation of Article 4

The principal obstacle in the implementation of Article 4 is the occasionally diverging practice of the competent authorities. It has occurred on several occasions that information has been provided in consideration of excessive fees. Also, based on a narrow interpretation of the definition of “environmental information” request have been turned down. With a view to fostering the development of a uniform practice on access to information the Ministry of Environment and Water aims to hold, in 2008, a comprehensive training cycle for environmental authorities.

As mentioned above a recurring problem is the unjustified application of the rules of commercial secrecy to environmental information. The data protection ombudsman held that where environmental information is contained in a document subject to copyright it is for the copyright holder to decide on the disclosure of the information. But refusal to disclose is always open to judicial review. Some environmental inspectorates have turned down requests for access to their decisions imposing sanctions with reference to the protection of business reputation.

9. Further information on the implementation of Article 4

The customer relations of the Green Point Service have progressed in the years 2005-2007 as follows. A long term path of an annual 15% growth in incoming requests is experienced, with a growing importance of the use of electronic tools in the management of client requests.

In **2005** 18 262 requests were registered at the Green Point Service. Thematic break-down of requests is as follows:

Waste management	6102
Air quality protection	577
Noise protection	142
Damage to nature	605
Nature conservation	827
Economic instruments	1513
Other environmental information	8487
Total	18.262

The number of weekly requests based on the above is 345, out of which

- Telephone inquiry: 190
- Inquiry in person: 110
- Letter, e-mail: 45

The number of requests made in **2006** was 16 809. Thematic break-down of requests is as follows:

Waste management	5789
Air quality protection	678
Noise protection	284
Damage to nature	505
Nature conservation	727
Economic instruments	744
Other environmental information	8082
Total	16 809

Means of communication used:

- | | |
|---------------------|------|
| - Telephone inquiry | 8969 |
| - Inquiry in person | 915 |
| - E-mail | 6652 |
| - Letter | 273 |

Up to 30 June 2007 the number of requests registered were 8302. Thematic break-down is as follows:

Waste management	1997
Air quality protection	378
Protection against noise	84
Damage to nature	187
Nature conservation	77
Economic instruments	308
Other environmental information	5082
Total	8302

Means of communication used:

- Telephone inquiry	4069
- Inquiry in person	315
- E-mail	3652
- Letter	266

The activity of the voluntary environmental consulting network maintained by NGOs (KÖTHÁLÓ) was characterised in 2006 by the following data:

- Inquiry: 51 600 cases that covers some 86% of the all KÖTHÁLÓ activity. Emails, letters, telephone inquiries were made in ca. 26 000 cases while consulting activity made at various events amounted to 25 000 cases. In addition some 600 on-spot visits were made.
- Consulting in administrative matters: 7800 cases (13%).
- Legal consultancy: 180 cases (0.3%).

10. Relevant web site addresses

www.emla.hu

www.tasz.hu

www.kothalo.hu

www.kozadat.hu

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

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

The environmental monitoring system of Hungary is instituted by the Environment Act which provides for the systematic monitoring of the state and the use of the environment, the collection, analysis, registration and dissemination of information concerning environmental pollution. To that end the Act obliges the minister of environment and water to establish and maintain a monitoring, sampling and control system entitled the National Environmental Information System (NEIS).

Sources of information under the NEIS are twofold: the monitoring networks of various environmental media provide data on water quality, air quality, etc. At the same time the operators of individual polluting installations or activities are required to regularly submit reports on their environmental performance (emissions and discharges of polluting

substances, waste production, etc.). Monitoring and reporting by installations are regulated by government decrees. Data under the competence of the Ministry of Environment and Water concerning the state of the environment are inventoried in a uniform spatial information system. In order to link up all data sets on diverse subjects a uniform identification system has been devised which contains a geographical identification code as well as an activity identification code. Individual identification across all specific data sets is ensured through the Basic Environmental Registry.

In the reporting period progress has been made in the systematic linking of the specific databases and data sets, as well as in the provision of map view services on the basis of the uniform spatial information mentioned above. The following data bases are already accessible through the Internet: waste management data, waste handling permits, the National Air Quality Monitoring Network, the water quality sampling network as well as data of the EPER reports. Internet access to data pertaining to the remainder of the NEIS will be provided in the near future.

At the present NEIS is composed of the following ten databases:

- Basic Environmental Registry (KAR)
- Groundwater and Soil Registry (FAVI)
- Environmental Remediation Information System (KÁRINFO)
- Surface Water Quality Information System (FEVI)
- Municipal Waste Disposal Registry (LANDFILL)
- Air Quality Protection Information System (LAIR)
- Administrative Registry (HNYR)
- Waste Management Information System (HIR)
- IPPC/PRTR Information System
- Spatial information access system assisting the above databases (KAR-tér).

Attached to the NEIS is the Nature Conservation Information System as a semi-independent database (TIR). TIR contains, analyses, displays and disseminates, in an EU compatible manner, nature conservation spatial information. The TIR is aimed to assist the databases used by the Ministry of Environment and Water, national park directorates and environmental inspectorates.

A module operated under the TIR provides free of charge access to a user-friendly map view service (<http://geo.kvvm.hu/tir/viewer.htm>) that can be easily reached from the main nature conservation web site (www.termeszetvedelem.hu).

The National Environmental Health Institute disseminates on its web site (<http://efrirk.antsz.hu/oki/index.html>) up-to-date information concerning the following:

Drinking water quality:

- summary of drinking water quality
- ammonium (NH₄) and nitrite (NO₂) concentrations in the water provided through the drinking water network
- arsenic (As) concentrations in the concentrations in the water provided through the drinking water network
- boron (B), fluoride (F), nitrate (NO₃) concentrations in the concentrations in the water provided through the drinking water network.

Bathing water quality in lakes and rivers:

- water quality of lake Balaton (2007)
- evaluation of the bathing water quality data of 2007.

Reports of the Aerobiological Network of the National Public Health Service:

- evaluation of the 2007 weed pollen situation
- weekly forecasts and reports on the ragweed pollen situation.

A specific area of data provision under the Convention (Article 5.1 (c)) is the dissemination of environmental emergency information. Government Decree No. 311/2005. (XII. 25.) on the public access to environmental information provides that in case of an imminent threat to the environment or to public health the authority holding the relevant information must immediately inform the public concerned.

Detailed rules of the Hungarian environmental emergency information system are laid down by Act LXXXIV of 1999 on the Control and Administration of Disaster Management and the Protection against Major-Accident Hazards involving Dangerous Substances and by its implementing decree (Government Decree No. 18/2006. (I. 26.)). These legislation determine *inter alia* the responsibilities for the provision of access to documentation (*e.g.* in the licensing of dangerous installations), informing the public (*e.g.* publication of the safety report and the external emergency plans).

Under the Act it is the duty of the management of the relevant industrial establishments to assess the environmental risks associated to the dangerous substances present in their establishment, to evaluate the likely significant effects of a major-accident, to determine and implement all necessary environmental and public health preventive measures. These information must be included in the safety report and analysis of the establishment concerned. Safety reports are public documents and can be consulted at the premises of the municipality.

In order to manage a major industrial accident the mayor of the relevant municipality is required to draw up, in cooperation with the competent disaster management authority, an external emergency plan that lays down the relevant responsibilities, means and equipment.

With a view to ensuring that the public affected familiarise with the potential industrial hazards in their environment the above Government Decree requires that the mayors of municipalities in the vicinity of major dangerous industrial installations prepare an information booklet for the public. The booklet is aimed to inform the local population and public institutions (schools, hospitals, etc.) about the location, the nature of the dangerous establishments and the associated hazards, as well as the prevention and protection measures.

The National Environmental Health Institute publishes daily air quality data for Budapest as well as health warnings, if need be, on a web page that can also be accessed through the general web site of the National Public Health Service. Heat wave warnings and information on protective measures are also published on the general web site of the National Public Health Service (www.antsz.hu).

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

The Ministry of Environment and Water issues a wide range of publications or information materials on the state of the environment. The main publications between 2005 and 2007 were as follows:

- Chief environmental indicators of Hungary (2005)
- OECD environmental database (2005)
- The state of the environment in Hungary (2005, 2007).

Materials published by the Central Statistical Office between 2005 and 2007 were:

- Environmental statistical data (2005)
- Environmental statistical year book (2005, 2006)
- Sectoral environmental indicators (2005)
- Pollution indicators of Hungary (2006)
- Sustainable development indicators of Hungary (2007).

Publication by the National Environmental Health Institute:

- Environmental health in Hungary (2007).

In addition, under the Environment Act the minister of environment and water is required to prepare to the Government an annual report on the state of the environment. Municipalities are obliged to draw up local environmental reports as appropriate, but at least every two years.

The minister of agriculture and regional development issues an annual report on the state of forests. Up-to-date data concerning forests can be downloaded from the web site of the Forestry Directorate of the Agricultural Authority (www.aesz.hu).

Article 5.5 (dissemination of information of strategic and normative materials)

Draft environmental legislative texts can be downloaded from the web site of the Ministry of Environment and Water. In addition, detailed, searchable legal databases are maintained by non-governmental organisations, such as “Greenfo.hu” (http://www.greenfo.hu/zold_jogasz/index.php) and the directory of court and administrative decisions operated by the Environmental Management and Law Association (<http://emla.zoldpok.hu/ekd/drupal/>).

Article 5.6 (encouraging operators to actively disseminate information)

Implementation of the objectives of Article 5.6 are fostered in Hungary by the EU eco-label regime, the national “environmental friendly product” award as well the EU’s Environmental Management and Audit Scheme (EMAS).

The national product quality/conformity assessment scheme was introduced in 1993. The (then) Ministry of Environment and Regional Development determined the conditions of the participation in the scheme and established the “Environmental Friendly Product Non-profit Company” (www.kornyezetbarat-termek.hu) whose principal responsibility was the coordination and administration of the scheme.

By the date of EU accession Hungary has introduced the legal and institutional framework necessary for the participation in the EU’s eco-label scheme. Administration of the EU

scheme in Hungary also falls under the competence of Environmental Friendly Product Non-profit Company. All information relating to the national and EU eco-label scheme (including eligibility criteria, verification bodies, awards given, etc.) can be downloaded in English and Hungarian from the specific eco-label web site of the Ministry of Environment and Water: <http://okocimke.kvvm.hu>.

Upon EU accession Hungary also joined the EU's EMAS scheme. The designated competent body is the National Environmental, Nature Conservation and Water Chief Inspectorate while accreditation is the responsibility of the National Accreditation Body. Information on the legal and institutional framework of EMAS, on EMAS registrations and accredited verifiers is published on the specific web site of the Ministry of Environment and Water (<http://emas.kvvm.hu/>). It also contains the environmental declarations of EMAS registered bodies and provides topical EMAS-related news.

Article 5.9 (pollutant release and transfer registers)

Hungary aims to fulfil Article 5.9 through the European PRTR ("E-PRTR", introduced by EU Regulation 166/2006/EC, replacing the former EPER reporting system in view of the Convention's PRTR Protocol) and the gradual implementation of a national PRTR.

Hungary, as the only new EU Member State, participated in the first EPER reporting exercise: it prepared and submitted in January 2004 the first EPER report of the country to the European Commission as well as published it on its web site. This report contained emission data for 86 industrial and agricultural installations. The second EPER report for 2004 data was prepared in 2006. Data for 96 installations were published on the national web site (<http://eper-prtr.kvvm.hu>), together with information not included in the EU report (additional tables, dynamic search function, etc.). The web site, operative since November 2006, provides information on air emissions and groundwater discharges, contains analyses, relevant legal databases, links, etc.

Hungary makes intensive preparations for the national implementation of the E-PRTR. Legal harmonisation on the expansion of the range of installations and the scope of installations is complete (Govt. Decree No. 194/2007. (VII. 25.), Decree No. 25/2007. (VII. 30.) of the Minister of Environment and Water) and the necessary IT developments are in progress. In 2007 the IPPC installations register (LNYR) and the E-PRTR establishment register program module has been completed, and a uniform administrative decision editor program has been installed. The two registry programs will enable the uniform electronic collection and registration of the relevant data relating to IPPC installations and E-PRTR establishments.

In light of the above developments, Hungary will in 2008 be capable of the implementation of the PRTR Protocol. The planned date of ratification is the first semester of 2008.

12. Obstacles in the implementation of Article 5

The poorly developed links among the various thematic databases included in the NEIS are considered a fundamental obstacle to users. The NEIS does not constitute a single, user-friendly system, the thematic pages cannot be directly accessed from the official web site of the Ministry of Environment and Water. Due to the lack of funding, the provision of environmental information through publications was rather uneven during the reporting period.

An internal obstacle within the administration is that there is no free-of-charge data transfer among the various governmental spatial databases. E.g. some of the basic information of the Nature Conservation Information System (e.g. aerial photographs, topographic maps, etc.) are generated and updated by institutions under the auspices of the Ministry of Agriculture and Regional Development. The Ministry of Environment and Water have to purchase these data at market prices.

Provision of local environmental information by municipalities under Article 51.3 of the Environment Act varies greatly.

13. Further information on the implementation of Article 5

Non-governmental organisations, based on independent data gathering or official datasets, also maintain environmental databases. Some of these databases are horizontal (www.greenfo.hu, www.kothalo.hu) while some are thematic in nature (www.humusz.hu – waste, www.mme.hu – nature conservation, www.emla.hu – law). In addition, several NGOs publish on a regular or ad-hoc basis materials containing information on the state of the environment.

Local environmental information can be obtained in the official web sites of several municipalities.

14. Relevant web sites

www.kornyezetbarat-termek.hu
<http://okocimke.kvvm.hu>
<http://emas.kvvm.hu/>
<http://eper-prtr.kvvm.hu>
<http://www.eper.ec.europa.eu>
<http://www.ippc.hu>
www.biosafety.hu
<http://biodiv.kvvm.hu>
<http://www.fvm.hu/main.php?folderID=1382>
<http://gmoinfo.jrc.it/>
www.katasztofavedelem.hu
www.aesz.hu
www.antsz.hu

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

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

The activities listed in Annex I to the Convention are subject to environmental impact assessment (EIA) and/or the integrated environmental permitting procedure in Hungary. Both procedures are in line with relevant EU legal acts, such as Directive 2003/35/EC amending the underlying EU legal acts, Directives 85/337/EEC and 96/61/EC.

Environmental impact assessment is regulated by the Environment Act and by Government Decree No. 314/2005. (XII. 25.) on environmental impact assessment and the integrated environmental permit. Certain general issues are governed by Act CXL of 2004 on the General Rules of Administrative Procedures and Services (the Administrative Procedures Code) or, in the case of access to information in the relevant procedures, the Data Protection Act.

The provisions of Articles 6 are implemented in Hungary in the following manner. The relevant annexes to the Government Decree determine the activities that are subject, unconditionally or subject to certain conditions, to EIA. These annexes cover a range of activities broader than laid down in the Convention, or apply thresholds lower than those in the Convention. In order to commence an activity subject to EIA a so-called “environmental permit” has to be obtained, or where the activity also falls under the scope of the IPPC but out of the EIA rules, an integrated environmental permit has to be sought.

Early and effective information/participation is already ensured in the *preliminary phase of the EIA procedure* (screening). Following the submission by the developer of the application for permit and the preliminary assessment documentation the competent environmental, nature conservation and water inspectorate publishes a public notice at its premises and on its web site. The content of the public notice is defined by the Administrative Procedures Code and the Government Decree in accordance with the relevant provision of the Convention. The preliminary assessment documentation, the original application for permit as well as the public notice are also forwarded to the clerk of the municipalities concerned who have to ensure access to these documents at designated premises and have to publicise the project through bill posting or any other appropriate way. The public concerned may inspect the documents and make comments in writing within 21 days of publication.

Before reaching a decision, the competent authority has to examine the merit of all comments received. The decision is publicised by way of a notice drawn up in accordance with the Administrative Procedures Code. When the decision becomes final it is also made public in its entirety by the authority.

If it is determined that an *EIA is necessary* the procedure starts following the completion of the preliminary assessment phase. Commencement of the procedure is publicised by the competent authority by way of public notices and newspaper advertisements. The content of the public notice is defined by the Administrative Procedures Code and the Government Decree in accordance with the relevant provision of the Convention. The environmental impact study, the application, the public notice and the non-technical summary are also forwarded to the clerk of the municipalities concerned who have to ensure access to these documents at designated premises and have to publicise the project through bill posting or any other appropriate way. The public concerned has 30 days to make comments in writing.

It is mandatory to hold a public hearing at the least at the municipality of the location of the activity. The invitation for the hearing must be published by the competent authority 30 days before its planned date in a local or national daily newspaper as well as request the clerk to publicise it through bill posting. Environmental NGOs participating in the procedure are individually invited by the inspectorate. The minutes taken at the hearing are publicly accessible documents.

Before reaching a decision, the competent authority – and all other authorities involved in the procedure – has to examine the merit of all comments received. The reasoning of the decision has to provide a summary of the involvement of the public as well as the comments received. The decision is publicised by way of a notice and is sent to the municipalities concerned. When the decision becomes final it also has to be made public in its entirety by the authority.

As described above a wide range of information and documents relating to the EIA procedure (such as notices, public hearing minutes, final decision) have to be actively published by the environmental authorities, while the remainder of the documents generated in the procedure (e.g. expert opinions) have merely to be made accessible to the public. Access to certain documents is restricted however as they constitute state or service secret, or – based on the classification by the applicant – are considered as confidential commercial information. Furthermore, there is no public participation in procedures subject to military confidentiality (defence projects). In these cases however the environmental inspectorates duly inform the clerks of the affected municipalities.

Public participation in the *integrated environmental permitting* procedure (i.e. with regard to activities not subject to an EIA) is regulated by the above-mentioned Government Decree No. 314/2005. (XII. 25.). This Decree provides for access to the documentation of the procedure, the possibility to make comments and the consideration thereof, information provision to the public on the procedure and its outcome.

The public concerned is informed of the procedure by way of bill posting or any other appropriate way. Guidance on participation is also provided in the public notice issued by the environmental inspectorate on its own news board and web site. The public notice contains a brief description of the location and the nature of the planned activity (as in the application for permit), with a particular attention to the use of the best available technique, the description of the affected area. It must also specify how and when the original application can be consulted and must also contain a call for written comments that are to be submitted to the environmental inspectorate or the clerk of the affected municipalities.

The comments are forwarded by the environmental authority to the applicant for permit who may react on these comments. Before reaching a decision the competent environmental authority – together with all other authorities involved in the procedure – has to examine the merit of all comments received. The legal and factual evaluation of the comments has to be summarised in the reasoning part of the resolution. The public is informed of the final decision of the environmental authority through its publication, by both the competent authority and the clerk of the affected municipalities.

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

The permitting procedure of genetically modified organisms (GMOs) in Hungary is laid down by Act XXVII of 1998 on Gene Technological Activities. The permitting authority – the Ministry of Agriculture and Regional Development – issues authorisations based on the opinion of the Gene-technological Advisory Committee, provided that permitting falls under national competence. As mentioned earlier, the representatives of the environmental, health protection, biotechnological and consumer protection NGOs participate in the work of Gene-technological Advisory Committee.

The gene-technological authority has to publish for public consultation the draft permit in its official gazette and its web site, excluding data subject to commercial confidentiality, intellectual copyright or patent. Comments on the draft can be made within 15 days from publication. The comments are evaluated by the Gene-technological Advisory Committee within 10 days, the competent authority has to reach a decision on the authorisation within further 5 days.

16. Obstacles in the implementation of Article 6

One of the main obstacles in the efficient implementation of Article 6 is the divergent practice of the environmental, nature conservation and water inspectorates. In the opinion of NGOs the competent authorities have a tendency to interpret narrowly the definition of the “public concerned” (e.g. in the case of motorway constructions), they focus on the formal application of the law rather than substantive implementation, public comments are not taken properly into consideration. Statistics on the public participation are either lacking or deficient.

17. Further information on the practical implementation of the provisions on public participation in decisions on specific activities (optional)

18. Relevant web sites

<http://www.ippc.hu/>

<http://www.kvvm.hu>

<http://www.fvm.hu/main.php?folderID=1382>

19. Application of Article 7 (public participation during the preparation of plans and programmes relating to the environment)

Basic rules concerning the environmental assessment of plans and programmes relating to the environment are laid down by the Environment Act, while applicable detailed rules are set out by Government Decree No. 2/2005. (I. 11.) on the environmental assessment of certain plans and programmes. These legislation are in line with the EU’s relevant directive: Directive 2001/42/EC. Thus, the Hungarian regime covers all fundamental elements of the assessment cycle such as preparation of the environmental report, commenting by other authorities and the public, international consultations (if need be), consideration of the comments and the findings of the consultation in the finalisation of plans and programmes.

The applicable legislation requires that the scope and methods of public consultation be determined early in the procedure, upon the finalisation of the scope and content of the assessment. The public must be informed by the author of the plan or programme of the environmental report and the modalities of submitting comments. This information must be provided in the manner that best suits the size of the public concerned: from local media to national newspapers and Internet notices. A period open for comments has to be at least 30 days. The opinions received have to be taken into consideration before the adoption of the plan or programme. The summary of the comments received have to be attached to the final documentation of the plan or programme that is tabled for adoption. Public access to the adopted plan or programme must be ensured. A final document must contain a summary on the preparation of the plan or programme with a record of the comments and their consideration.

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

The main bodies of institutionalised public participation are described above. Among these bodies an outstanding role is enjoyed by the National Council on the Environment which, in accordance with the Environment Act, is an advisory body to the Government.

Public participation in the preparation of policies relating to the environment is provided in the widest sense by the open consultation procedures conducted by the Ministry of Environment and Water in the context of all major policy decisions. Open consultations are held in addition to other formalised procedures, in particular those instituted under the Freedom of Electronic Information Act (*see below*).

Examples include the public consultation concerning the draft National Climate Change Programme and its various supporting documents, the New Hungary Development Plan, the Environment and Energy Operative Programme and its various action programmes. The latter has been jointly organised by the Ministry of Environment and Water and the National Development Agency. The process included special consultation forums and meetings specifically organised for NGOs.

21. Obstacles in the implementation of Article 7

At local level the quality of implementation of the public participation requirements of the adoption of plans and programmes varies greatly and in certain occasions shows great deficiencies. At national level a recurring observation by NGOs is that public participation is reduced to formalities, no substantive consideration is given to the results of consultation in the real planning process.

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

A particular field of the implementation of Article 7 in EU Member States is the river basin planning under the so-called Water Framework Directive (2000/60/EC). The preparation of river basin management plans involves a specific public participation strategy. This strategy has been drawn up in close cooperation with NGOs. Consultation in the early phase of preparation, long deadlines for comments and the establishment of forums specifically designed for the river basin management planning serve as a positive example for future cooperation between authorities and NGOs.

23. Relevant web sites

www.kvvm.hu

www.emla.hu

www.jogalkotás.hu

www.euvki.hu

24. Application of Article 8 (public participation during the preparation of executive regulations and other legally binding rules)

The general rules concerning public participation in the preparation of legislative provisions are laid down by Act XC of 2005 on the Freedom of Electronic Information (Electronic

Information Act). The Electronic Information Act requires ministries to publish on their web sites all draft legislative texts, concepts, any related proposals as well as their full explanatory documentation. Exemptions from this obligation are specifically listed in the Act.

The homepages of ministries have to ensure that comments can be uploaded. The general deadline for comments is 15 days from publication. Public comments have to be evaluated and a summary thereof has to be published on the same web site that also contains the reasons for refusal.

In addition, the Environment Act explicitly spells out that environmental NGOs have a right to comment on any draft legislation on environmental matters. Upon a general request, the Ministry of Environment and Water sends individual invitations for NGOs to comment on particular legislative texts. A special forum of public consultations on environmental legislation is the National Council on the Environment (*see above*). The Council has to be consulted upon on each draft bill and decree before adoption.

25. Obstacles in the implementation of Article 8

The relevant ministries have been repeatedly criticised that the draft legislative texts are published for consultation too late for effective commenting. At local level involvement of the public in the elaboration of legislative texts is at the early phase of development.

26. Further information on public participation during the preparation of executive regulations and other legally binding rules (optional)

27. Relevant web sites

www.kvvm.hu

www.oktt.hu

www.emla.hu

www.jogalkotas.hu

28. Application of Article 9 (access to justice)

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

Act LXIII of 1992 on the Protection of Personal Data and the Disclosure of Information of Public Interest (Data Protection Act) provides that where a request for information has not been fulfilled the applicant may have direct recourse to judicial review. The grounds for and the legality of the refusal has to be demonstrated by the holder of the information. The court procedure can be initiated within 30 days from the receipt of the refusal or the elapse of the deadline for response. The court handles these cases in a fast-track procedure.

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

Administrative and judicial remedies available in environmental administrative procedures (including the permitting procedure attached to environmental impact assessment) are defined by the Administrative Procedures Code (Act CXL of 2004). Remedies can be sought by any person who is affected by the decision of the environmental authority (“client”). The

procedures that can be initiated by the client are as follows: appeal procedure, judicial review, reopening procedure and procedures for special consideration.

The most commonly used procedure is the appeal procedure: a request addressed to supervisory authority of the decision-maker to annul or modify the decision. An appeal is subject to the payment of a filing fee. The right to appeal is not linked to any specific ground, an appeal may be made for any reason that the person affected deems unjust.

The client can initiate the judicial review of an administrative resolution with reference to illegality, once the resolution is deemed final. The review petition must be lodged within 30 days from the delivery of administrative resolution to a competent court. Judicial review is only available if the client has already exhausted his right to appeal or no appeal is allowed under the Code against the decision concerned. Enforcement of the decision is not automatically suspended even though the client may initiate such a suspension in its petition. Detailed rules of judicial review are determined by Act III of 1952 on Civil Procedures.

Legal remedies in administrative procedures are attached to the person of the “client”. Under the Administrative Procedures Code a client is a natural or legal person whose rights, legal situation or legitimate interests are affected by the decision. This is further specified in particular cases, *e.g.* in procedures relating to constructions all owners or registered users of properties situated in the affected are considered clients.

The term “client” is construed extensively by the Environment Act in so far as its clearly spells out that an environmental NGO, in its geographical area of operation, automatically enjoys the status of a client in all administrative procedures relating to the environment. This privileged legal standing is also confirmed by Government Decree No. 314/2005. (XII. 25.) on environmental impact assessment by declaring that NGOs operating in the area affected by the activity subject to EIA always have to be deemed “affected”.

Some outstanding issues of access to justice, such the legal standing of NGOs have been extensively deliberated by the Hungarian Supreme Court. Its conclusions have been summarised in a binding “uniformity decision” (No. 1/2004). The Supreme Court held that environmental NGOs enjoy the status of a “client” not only in cases where the environmental inspectorates are the leading permitting authorities, but also in cases where they participate in the procedures as co-authority. As a result, NGOs have in reality gained access to justice – far beyond the scope of the Convention – in a wide range of procedures which are not primarily environmental cases, but where the environmental inspectorates hold partial responsibilities.

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

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

In addition, as mentioned above under Act XXIX of 2004 any person may lodge an official observation or complaint with the competent environmental authorities with a view to intervene in a polluting activity.

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

The authority of second instance or the court may, depending on the type of remedy, reinforce, modify, annul the resolution of first instance and may simultaneously order a fresh procedure. In case of a repeated procedure the first instance authority is bound by the findings of the appeal body or the court.

The costs associated with administrative appeal in environmental cases are specified by Decree No. 33/2005. (XII. 27.) of the Minister of Environment and Water. The filing fee of appeal is fixed, as a general rule, at 50% of the administrative fee of the contested procedure. Exceptions from the 50% rule are also determined by the Decree. Thus, the filing fee for a private person contesting an administrative decision concerning an activity subject to EIA is 1% of the otherwise applicable fee. Similarly, NGOs may make an appeal in permitting procedures for 1% of the otherwise applicable fee (unless the procedure itself has been initiated by the same NGO). Practice in Hungary shows that these fees can be considered equitable and not prohibitively expensive.

Act XCIII of 1990 on Duties specifies preferential duty tariffs for the judicial review of administrative decisions at a general flat rate of HUF 16 500 (ca. EUR 70).

Article 9.5 (informing the public of administrative and judicial review)

Under the Administrative Procedures Act all administrative resolutions have to contain a precise reference to the availability of appeal or, as appropriate, judicial review. The resolution has to be officially communicated (delivered) to the client and any other person to whom it conveys rights and obligations.

29. Obstacles in the implementation of Article 9

It must be mentioned that in the case of some environment-related activities (*e.g.* construction licensing of roads) that do not fall under the scope of the Convention the filing fee for administrative review is prohibitively high.

The length of court procedures (except in the case of access to information) constitutes a general obstacle to effective access to justice. The effectiveness of court procedures is also weakened by a relative lack of knowledge about the rights under the Convention.

30. Further information on access to justice (optional)

31. Relevant web sites

www.kvvm.hu

<http://abiweb.obh.hu/abi>

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