

23 September 2014

Ms. Fiona Marshall
Secretary to the Aarhus Convention Compliance Committee
United Nations Economic Commission for Europe
Palais des Nations, Room 429-2
CH-1211 Geneva 10, Switzerland

Dear Ms. Marshall,

Re: Communication to the Aarhus Convention Compliance Committee (ACCC/C/2014/105)

On 11 June Energiaklub Climate Policy Institute & Applied Communications and the Hungarian Greenpeace Association submitted a communication concerning compliance by Hungary in connection with a plan to extend the Paks Nuclear Power Plant by new reactors. The communication has been registered under ACCC/C/2014/105.

In your letter on 15 September 2014 you informed us that the Committee has on a preliminary basis determined it to be admissible, however, requested additional information on the domestic remedies available regarding public participation on decisions No. 40/2008. (IV. 17.) Ogy and No. 25/2009. (IV. 4.) Ogy.

Please, find below our answer to the Committee's request:

1. The decision-making procedure of the plans regarding the new nuclear power plant at Paks started with the aforementioned parliamentary decisions. Decision No. 40/2008. (IV. 17.) Ogy instructs the Government to „start with the preparation of the decision on new capacity of nuclear power plants”, while the one year later decision No. 25/2009. (IV. 4.) Ogy concerns „to start the preparatory activities of establishing new block(s) at the site of the Paks nuclear power plant”.
2. Under Article 7 of the Aarhus Convention a public participation procedure should have started after these decisions. However, the term “preparatory activities” in decision No. 25/2009. (IV. 4.) Ogy was not defined, whether it referred to preparations needed for making the decision (meaning: preparing a plan or policy), or to preparations of the construction already.
3. On May 28, 2009 Energiaklub submitted a complaint about this ambiguity – among other technical issues raised - to the Constitutional Court. The Constitutional Court however

declined the complaint claiming that it cannot investigate decisions about particular cases, only general issues. Therefore this question remained open.

4. At the time of the decisions the rule of law in force did not regulate public participation in detail in Hungary. And even for those issues that allowed some kind of participation, legal remedies for the lack of such procedures were not at all available. In case of the Paks plans, no official procedures started after the two parliamentary decisions that could have led to a formal public participation process. There was no policy paper to be prepared, which could entail a formal procedure under Article 7. No strategic environmental assessment has been conducted. No publication of the facts and their analyses relevant in framing a major environment-related policy proposal took place. The public was totally excluded from this process.
5. On May 28, 2009 Energiaklub also filed a complaint to the Office of the Hungarian Ombudsman for Future Generations, who reacted by issuing a formal statement¹. The resolution contains a number of recommendations and calls upon the Government to act regarding certain points. The statement says: "Publicity and participation has to be ensured in every stage of the process. This can guarantee the total exploration of societal risks from every aspect and the discussion of such organizations and individuals who are professionally and financially not committed to the nuclear expansion." The Ombudsman Office has never received answers from the Government.
6. After issuing the statement, Energiaklub sent letters several times to the Minister of National Development, requesting information on how the Minister responsible for energy issues plans to react to those recommendations. Energiaklub has also not got answers to any of the letters. But according to regulations in force, there was no possibility for legal remedies to such lack of action.
7. In 2010 the remaining legal remedies started to be abolished. The Constitutional Court could have examined such structural organization principles, however, the previously existing action popularis was abolished, hence only the Ombudsman or the Government could complain to the Constitutional Court. At the end of 2011 the Office of the Ombudsman for Future Generations also ceased to exist. In 2010 a new law was formed regarding public participation in lawmaking (Act CXXXI 2010), which, in its Paragraph 5 (4), states that a plan or concept cannot be sent to the public for consideration, if it concerns, among others, very important national security issues. This environment has

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http://energiakontrollprogram.hu/sites/energiakontrollprogram.hu/files/jno_allasfoglalas_os_sze_foglalo_english_0.pdf



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not been in favour of the participation process regarding the Paks case since. The fact that currently no legal remedy exists in this case and that the used legal remedies were not replied to is a violation of art. 9(2) of the Convention.

8. It has to be emphasized that infringements of Article 4 and 5 of the Aarhus Convention entails to a certain extent the infringement of Article 7. Withholding relevant information and delaying access to information processes as far as possible prevent the public from participating, and even if some social discussions had been provided (which had not), they would be far from being meaningful and effective without the relevant information.

Please, find attached an Annex containing a summarizing table on domestic remedies used in connection with the whole of the communication.

Yours sincerely,

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