

**Attn.: Ms Fiona Marshall**

Environmental Affairs Officer - Secretary to the Compliance Committee  
Convention on Access to Information, Public Participation in Decision-making  
and Access to Justice in Environmental Matters  
United Nations Economic Commission for Europe  
Environment Division  
Palais des Nations  
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RE: Communication ACCC/C/2014/109

Dear Ms Fiona Marshall,

Thank you for your letter dated June 29 2015, enclosed with the Communication ACCC/C/2014/109 (“Communication”).

Hungary has conducted the necessary investigations regarding the content of the Communication, and as a result we submit the following standpoint to the Compliance Committee pursuant to Article 23 of the Annex to Decision I/7 of the Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the “Aarhus Convention” or the “Convention”).

**I. Introduction**

Tibor Ferenc Zsák, president of the Society of Conservationists of Eastern Hungary has submitted a Communication on the 9<sup>th</sup> of December 2014 to the Compliance Committee of the Aarhus Convention. As per the assumptions of the Communication, Hungary has violated the following provisions of the Aarhus Convention:

Article 3, paragraph 8

Article 3, paragraph 9

Article 8, point c

Article 9

Of all the statements in the Communication, the Compliance Committee of the Convention **has only considered one complaint regarding the supposed breach of Article 3 paragraph 8 to be admissible and merits further investigation.** As per the cited Article: „Each Party shall ensure that persons exercising their rights in conformity with the provisions

of this Convention shall not be penalized, persecuted or harassed in any way for their involvement.”

## **II. Opinion of Hungary**

The Convention was established in order to facilitate public access to **information**, public **participation in decision-making** and **access to justice** in environmental matters. Point 3 of Article 2 of the Convention thus determines the concept of environmental information and with that sets the substantive scope of the Convention. This substantive scope is further mirrored by the further implementation legislations.

**In our view the Complainant Ferenc Zsák does not base his claim on the regulations of the Aarhus Convention. The investigation, the criminal case, the imprisonment and the procedure in front of the European Court of Human Rights set out in great detail in the Communication do not fall under the jurisdiction of the Aarhus Convention and the Compliance Committee of the Aarhus Convention. The investigating authority has not taken action against Ferenc Zsák on account of his participation of the environmental authorization process and his appeal against the final decision – i.e. not in relation to exercising his rights laid down in the Aarhus Convention - the investigation has been initiated because of serious suspicion of bribery on one count.**

**However, considering that the Compliance Committee has partially found the complained procedure as stated in the Communication to merit an investigation, Hungary would like to emphasize, that the existing Hungarian legislation provides adequate, and in many cases even higher level of guarantee than those set out in the Convention for the vindication of rights contained in the Convention.**

### **1. Client status guaranteeing a wide scope of rights**

Hungarian legislation contains several warranty regulations that guarantee to the civil society and to individuals the possibility to effectively stand up as separate entities during investment decision-making processes concerning the environment. Environmental concerns are being defined very extensively by legislation so there is a wide range of opportunities for client right enforcement.

Such wide range interpretation of participation rights made it possible, that the Complainant’s organization, the Society of Conservationists of Eastern Hungary had the opportunity to take part in the complained procedure as a client, armed with a significant range of rights.

Act CXL of 2004 on the General Rules of Administrative Proceedings and Service (“Administrative Act”) provides civil society organizations – with well-defined boundaries - the chance to participate as clients and shape the course of the administrative procedure. The

Administrative Act prescribes what kind of rights and obligations are applied for the concerned parties when participating in the procedure. Besides regular clients – *regular clients are: whose rights or rightful interests are affected, whom the administrative body establishes contact in order to inspect, the entitled ones with properties in the impact areas of investments, and authorities whom are concerned because of their duties* – civil organizations may participate in the procedure as clients, and may exercise a number of client rights.

Participation possibilities for civil organizations are further strengthened by paragraph 12 of Act LIII of 1995 on the General Rules of Environment Protection (“Environmental Act”) as a sector specific legislation that provides client status for those civil organizations that are occupied with environmental activities. It needs to be noted, that this right has been incorporated into Hungarian law and it serves as a very strong environmental guarantee to this day.

In order to give a single interpretation of involvement rights, in 2010 the Supreme Court of Hungary adopted a decision No 4/2010 on the legal status of civil organizations in environmental administrative procedures. The decision complementing decision No 1/2004 stated that client status may be given to civil organizations where the environmental protection authority acts as a public authority or in cases where the regulation prescribes the involvement of environmental protection authority as an environmental protection administrative authority.

## **2. Legal aid, affordable costs of procedure**

The Communication contains statements about the high costs of legal aid and high legal costs for clients.

In Hungary the Administrative Act prescribes, as a basic principle that the administrative authority must proceed by taking into account the client cooperation requirements. According to the Administrative Act the administrative authority ensures that the client and other participants of the procedure are informed of their rights and obligations, and helps with exercising client rights. The authority will inform clients not having legal representation about the provisions of the regulation relevant to the case, the rights and obligations of the client, and the legal consequences of not fulfilling his/her obligations, furthermore on the prerequisites of the use of legal aid for natural person clients. Paragraph (4) of Article 5 of the Administrative Act states, that the authority provides right of viewing documents to clients and other concerned parties, holds public hearing if the sectorial regulations states so, and furthermore the authority conveys its decision to the concerned parties.

Pursuant to the amendment of the Administrative Act that entered into force on the 1 of October 2009, it became possible, for authorities to involve administrative mediators in any procedure related to environmental protection. It is the administrative mediator’s duty – among others - to maintain contact with clients and concerned parties during which

- ensures, that the concerned parties are provided with authentic, professional and readily understandable information on the objective of the procedure, its expected

consequences, and the measures taken to prevent, or mitigate unforeseen disadvantageous changes,

- informs clients about the authoritative regulation, and the clients' rights pursuant to the substantive- and procedural law regulations,
- mediates between the authorities and the clients and between clients with conflicting interests,
- collects and provides authorities with any comments on the topic of the procedure from clients in an orderly fashion.

Furthermore, in certain cases the Administrative Act prescribes disclosure requirements for the authorities with regard to final (res judicata) decisions, or decisions declared enforceable without appeal.

Pursuant to Act LXXX of 2003 on Legal Assistance the legal supporter prepares documents and provides legal counsel 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.

Furthermore, the Administrative Act establishes a database in order to facilitate the involvement of civil and representation groups into the procedure. This database ensures that if civil or representation groups indicate that the fulfilment of which basic right or public interest they wish to ensure, in which types of administrative procedures, the authorities will provide them with a notification at the initiation of such procedures. Registration into the database is of course not a prerequisite of participation of organization in the procedure, it merely facilitates that all concerned organizations are notified of the initiation of the administrative process.

Administrative cost including fees, are fixed by law. Fees for legal remedy (appeal) processes are pursuant to Regulation No 14/2015 of Minister of Agricultural replacing Regulation No 33/2005 of Minister of Environment on the costs services of environmental-, nature protection and water management authorities. Pursuant to the regulation in force, for natural persons and civil organizations, the amount of applicable fees in case of environmental impact assessment bound activities, under the effects of the unified environment use permit, and the costs of legal remedy in the event of the preliminary impact assessment cases is 1% of the rate laid down in the annex of the pertaining regulation. The relevant provision has not changed since the entry into force of the new regulation on the 1 April 2015. Legal remedy procedures initiated by civil organizations are also an exception - if the authorisation procedure has not been initiated by application from the civil organization - in such cases the applicable fee is also 1% of the rate laid down in the annex of the pertaining regulation.

**The amount of fee thus decreed is an equitable amount that allows the public to exercise its right to legal remedy.**

At this point it is important to draw attention to Article 21 of the Annex to Decision I/7 of the Parties to the Aarhus Convention, that the **Complainant has not exhausted all available**

**legal remedies, which is a very important factual aspect, when determining whether the Communication is admissible or not.** The appeal presented on the 28 April 2011 by the Society of Conservationists of Eastern Hungary has later been revoked.

### **3. The Protection of clients**

In the Hungarian administrative authority system the Administrative Act ensures the adequate protection of the clients. The regulation ensures equality before the law, the prohibition of discrimination, partiality during administrative procedures, discrimination leading to the impairment of client rights, limitation and ban, the right for respectable administrative management, decisions in due time and legal remedy.

Furthermore, Paragraph (2) of Article 1 of the Administrative Act states as a basic principle that no administrative authority may abuse its authority when exercising its jurisdiction and must proceed by the requirements of professionalism, simplicity and cooperation with the client. Paragraph (2) of Article 4 of the Administrative Act also states that any impairment caused by procedures unlawful to the governing regulation by the authority constitute for a compensation claim in the Hungarian judicial system.

In administrative procedures, beyond basic client rights the Administrative Act allows for anyone to submit a complaint, or community announcement through the authority entitled to the procedure. The complaint enables the enforcement of interests relating to the infringement of individual rights or interests, while the report in the public interest enables such enforcement of interests in connection with circumstances affecting a community or society as a whole. Pursuant to Paragraph (2) of Article 143 of Act XXIX of 2004 on the modification-, abolishment- and establishment of laws relating to joining the European Union, no complainant or applicant submitting a complaint or an application may be subject to any penalization whatsoever.

### **4. European Commission standpoint concerning the Audi investment**

It is important to mention, that as member of the European Union, Hungary has strict obligations in the execution of the provisions of the Aarhus Convention, as the Aarhus Convention has been transposed into EU law. Should Hungary fail to meet its obligations it would breach Union regulations and the European Commission would have the right to challenge Hungary before the European Court of Justice. It is important to note here that on request of Hungary the European Commission published its opinion (C (2011) 351) on the 25 January 2011 on the procedure complained about in the Communication. In its opinion the Commission approved, that the planned location for the investment has no other „more sustainable” alternative. Then the environmental permit was granted by the Hungarian authorities. The Commission has also decreed that Hungary must compensate for the adverse impacts of the investment procedure. As mitigation for the negative effects caused to Natura 2000 areas by the investment, mitigation/compensational steps must be made, pursuant to the Natura 2000 impact assessment and Hungary must report these steps towards the Commission

every two years. The European Commission has not launched an infringement procedure or pilot procedure against Hungary in connection to the Audi investment thus it should be evident that Hungary is in compliance with the relevant EU legislation and the Aarhus Convention as previously stated.

##### **5. The procedure of Ferenc Zsák before the European Court of Human Rights and the criminal case of Ferenc Zsák**

**The detriments mentioned by the Complainant in the Communication have been reviewed through the appropriate procedures.**

###### Case in front of the European Court of Human Rights

Ferenc Zsák has submitted a complaint to the **European Court of Human Rights (ECHR)** on the 17 November 2011.

Because of the circumstances of Ferenc Zsák's pre-trial detention, after the suggestion of the European Court of Human Rights, the declaration on the peaceful resolution of the case has been signed by the Applicant and the Hungarian State, in which the Hungarian State has vowed to pay 6500 Euros to Ferenc Zsák in order to remedy the impairment of his rights. The Claimant has undertaken that with regard to the facts serving as the basis of his claim, he will rescind any other demands towards Hungary. In light of the agreement, the ECHR has deleted the procedure from its list of procedure on the 19 November 2013.

###### Criminal case

In the **criminal case** referred to in the Communication an investigation has been launched on the accusation of Audi Motor Hungária Kft. on the 26 of May 2011 against an unknown perpetrator. In February 2012, based on the case files a prosecution suggestion was submitted to the competent Attorney General against Ferenc Zsák on the serious suspicion of committing bribery on one count.

The impounded documents and other evidences served as criminal evidence until the legal closure of the criminal process. The intention of impounding items and data was to use them as proof, not to hinder the Society of Conservationists of Eastern Hungary.

**The investigating authority has considered the case to be a priority during the whole time of the investigation, while the attorney general has also carried out the proceedings as primacy. No illegal action was taken in connection with collecting evidence and there were no breach of rights of the accused.**

**The Hungarian Criminal Court has sentenced Ferenc Zsák to three years in prison in the first instance in February 2015 for the crime of bribery. The appeal (second instance) court has mitigated the first instance sentence to two years of imprisonment which has been suspended for a probation period of four years.**

### **III. Conclusion**

**Hungary refuses the claim of the Communication that Hungary would have breached Article 3 paragraph 8 of the Convention.**

**The investigating authority has not acted against Ferenc Zsák for exercising his rights set out in the Aarhus Convention, rather than in the interest of investigating a common crime case.**

**Above it was clearly shown in details that the Hungarian legislation provides adequate, typically even higher level guarantee than those set in the Aarhus Convention itself and this is also applied in practice.**

**Therefore Hungary asks the Compliance Committee to terminate the procedure based on the claims of the Communication.**

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Hungary