

**Hungary's Extended Reply to the Communication of the Aarhus Convention
Compliance Committee dated 4 October 2019**

ACCC/C/2019/169

Thank you for the opportunity to be able to explain my view regarding the questions of the Committee.

We have already answered in writing the questions set out to the Hungarian Party, and we have also pointed out some procedural deficiencies of the Communication. We have shortly reacted to the statements of the Communicants as well.

Participation in an administrative procedure is linked to the client status. However, it is important to highlight that the Hungarian law provides several possibilities to participate as a client.

Contrarily to the allegations of the Communicants, **it is only a facilitating, complementary rule that organizations active in the impact area are automatically provided with the client status** in case they request it.

Furthermore, they could have participated in the procedure based on the **general rules** if **they proved that their rights or lawful interests are affected by the case**. The Hungarian legislation is, therefore, in full compliance with the regulation of the Aarhus Convention which states: *having a sufficient interest* or, *maintaining impairment of a right*. Furthermore, the Communicants' standing was also guaranteed by Article 4 (4) of Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003, which is directly applied by the Hungarian courts.

Based on the before mentioned, the competent authority (i.e. the Barany County Government Office) would have provided the participation of the Communicants and also an opportunity for the Österreichisches Ökologie Institut to appeal the 29 September 2016 decision, but the Communicant failed to submit its statute to the authority. Moreover, the authority expressly informed the Communicant that **they could have also asked the use of their native language or of an intermediary language** from the authority. The authority in its order drew the attention of the Communicants to this fact too. The Österreichisches Ökologie Institut failed to respond to the authority, and no other Communicant came even this close to filing an appeal.

In our opinion the Communicants mistakenly interpret the Hungarian law since **there is no separate "registration process" for providing the client status**.

Thus, I repeatedly ask the Distinguished Committee **to find the Communication "Not Admissible"**, *having regard to paragraph 21 of the annex to decision I/7*, **because Communicants did not use all the possibilities available in the Hungarian law for the purposes of their legitimate interests**.

Regarding the views expressed by the Communicants, we would like to make the following comments.

In connection to the question of the certain deadlines we would like to note that according to Article 32 paragraphs (2) and (3) of the German administrative procedure code (Verwaltungsverfahrensgesetz (VwVfG)), the subjective deadline of an application for excuse is two weeks, while its objective deadline is one year. According to Article 33 of the Austrian administrative procedure code (Verwaltungsgerichtsverfahrensgesetz (VwGVG)) the objective deadline for the replacement of the non-culpable missed procedural action is two weeks.

In their oral comments, the Communicants argued that Hungarian law only formally provided them the possibility of using local remedies, but in reality they were barred from exhausting those remedies. Hungary respectfully disagrees. While it is true that whether or not the Communicants could have filed an appeal against the 29 September 2016 decision is only a theoretical argument at this point, the sole reason for the theoretical nature of the argument is that none of the Communicants have actually filed an appeal to either the competent authorities or the Hungarian courts. In other words, the Communicants never tested whether they could have had standing to challenge the 29 September 2016 decision, and therefore, it is rather controversial that now their main argument is that they would not have been granted client status. Hungary is of the view that the main purpose of the requirement of „exhaustion of local remedies” – in addition to safeguarding state sovereignty – is to avoid such theoretical arguments by compelling the communicants to seek local remedy before pursuing international proceedings.

Hungary is firmly of the view that the Communicants had standing to challenge the 29 September 2016 decision both under the general client definition of the Ket. and under Article 4 (4) of the above referenced Directive.

We further note that the 29 September 2016 decision contained information as to how to challenge the decision. Upon receiving the Österreichisches Ökologie Institut's complaint, the Baranya County Government Office gave specific instructions to the Communicant, yet the Österreichisches Ökologie Institut chose not to further pursue the matter.