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

ACCC/C/2019/169

INTRODUCTION

In its communication dated 4 October 2019, the Aarhus Convention Compliance Committee (the "**Committee**") sent 13 questions to the parties in relation to the issue of the preliminary admissibility of communication PRE/ACCC/C/2019/169 concerning Hungary (the "**Communication**") submitted by the Österreiches Ökologie-Institut and others (the "**Communicants**") on 20 May 2019.

In Section I. of this submission, we will address the Committee's questions to Hungary, followed by Section II. in which we raise the issue of the Communication's incompliance with formal requirements. Finally, in Section III. of this submission we will briefly address the questions asked from the Communicants, as well as the Communicants' responses to those questions.

I. QUESTIONS TO THE PARTY CONCERNED

9. Please confirm whether the right to appeal the 29 September 2016 environmental permitting decision for the two new reactors at the Paks nuclear power plant (NPP) was limited to those having the status of "clients". If the right of appeal was not only limited to "clients", please indicate the criteria for standing to appeal the decision.

Under Hungarian administrative law, the right of appeal is limited to those having the status of clients. However, we stress that the term *client* has a broad meaning under Hungarian procedural law, and the meaning of the term is consistent with the provisions of Article 9 (2) of the Aarhus Convention (the „**Convention**").

Act CXL of 2004 on the General Rules of Administrative Proceedings (the „**Ket.**") contains the general procedural rules applicable to all administrative proceedings conducted by the Hungarian authorities, including environmental permitting proceedings. The general definitions of a client is defined under Section 15 (1) of the Ket, according to which:

> *15. § (1) Client shall mean a natural or legal person and any association lacking the legal status of a legal person whose **rights** or **lawful interests** are affected by a case, who is subjected to regulatory inspection, or who is the subject of any data contained in official records and registers.* [emphasis added]

Thus, the requirements set out in the Ket's general client definition (rights or lawful interests being affected) are essentially the same as the requirements set out in Article 9 (2) of the Convention (sufficient interest or impairment of a right):

> *Art. 9 (2) Each Party shall, within the framework of its national legislation, ensure that members of the public concerned*
> *(a) Having a **sufficient interest***

or, alternatively,
(b) Maintaining ***impairment of a right***
have access to a review procedure before a court of law and/or another independent and impartial body established by law, to challenge the substantive and procedural legality of any decision […]. [emphasis added]

We further note that the Convention was adopted by the European Union via Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 (the "**Directive**").[1] Following the deadline for its implementation by Member States,[2] the Directive has a direct effect and it takes precedents over the national legislation of Member States. The Directive's direct effect means that individuals may invoke its provisions before national courts, and national courts are bound to apply those provisions due to the supremacy of EU law.

Hungarian courts do indeed apply the provisions of the Directive. For example, non-governmental organisations successfully established their client status and standing on Article 4 (4) of the Directive, and convinced the Budapest Metropolitan Court to annul an environmental permit and a building permit concerning a road infrastructure development project. In its judgment No. 24.K.30.647/2006/20., the Budapest Metropolitan Court found that:

> *"For these reasons the plaintiffs can successfully establish their standing – in relation to the building permit – on the provisions of community law."*[3]

It follows that the Communicants could not only stablish their client status and standing on the general client definition of the Ket., but they could do so with reference to the Directive as well.

We also stress that exercising their right of appeal was not merely a theoretical possibility for the Communicants, but, in the case at hand, the authorities were ready to acknowledge the Communicants' client status. Notably, the Baranya County Government Office did not bar the Österreichisches Ökologie Institut from appealing the 29 September 2016 environmental permitting decision. The Baranya County Government Office merely asked the Communicant to clarify whether its letter dated 21 February 2017 was intended as an appeal, and, if so, (i) to pay the administrative fee, (ii) to verify the power of its representative, and (iii) to provide its statute so that the Österreichisches Ökologie Institut's standing as a client can be ascertained.[4]

We note that in *Armenia ACCC/C/2009/43*, the Committee established that *„[w]hether or not an NGO promotes environmental protection can be ascertained in a variety of ways, including, but not limited to, the provisions of its statutes and its activities.*" Thus, the Baranya County Government Office's request concerning the Österreichisches Ökologie Institut's statute was in conformity with the Committee's practice.

[1] **Annex H/1**, Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003

[2] The deadline for implementing the Directive expired on 25 June 2005.

[3] **Annex H/2**, Judgment in Case No. 24.K.3064 7/2006/20. by the Budapest Metropolitan Court. Extract – Convenience translation.

[4] See the Baranya County Government Office's decision submitted to the Communication under Annex VIII.

The Baranya County Government Office did not refuse to grant standing to the Communicant as a client. It only requested that the Communicant verify its client status by submitting its statute. However, the Communicant has left the request unanswered. It follows that the Communicant's failure to exercise its right of appeal was not attributable to the Baranya County Office but to the Communicant itself.

Finally, we also note that in accordance with Section 10 (2) of the Ket., the Communicants had the right to request the administrative authorities to use their native languages or another intermediary language in which their request is worded, provided the they agree to cover the costs of translation and interpretation. This possibility was expressly stated in the Baranya County Government Office's order:

> *"You are hereby informed that pursuant to Paragraph 9 (1) of the Ket., the official language of the public administration proceedings in Hungary is Hungarian, and pursuant to the provisions of Paragraph 10 (2), except for the client set forth in Paragraph 9 (3), non-Hungarian speaking clients may request, while bearing the cost of translation and interpretation, that the public administration authority consider their motion put forward in their native language or in an intermediary language, in matters not subject to the provisions of paragraph (1), as well"*

This means that the Österreichisches Ökologie Institut could have responded to the Baranya Government Office's request in its native language or even in English (as an intermediary language), and the Baranya County Government Office would have arranged the translation itself. The Österreichisches Ökologie Institut chose to ignore this possibility and left the Baranya Government Office's request unanswered.

10. If the right to appeal the 29 September 2016 permitting decision was indeed limited to "clients", would it have been possible for a member of the public to apply for client status after the permitting decision had been taken (in order to be entitled to challenge that permitting decision)? If so, what would have been the final date that a member of the public could have submitted an application for client status with respect to the 29 September 2016 permitting decision?

Pursuant to Section 98 (1) of the Ket., the right of appeal is limited to clients. In other words, any individual or entity qualifying as a client in accordance with Section 15 of the Ket. – or in accordance with the Directive transposing the text of the Convention into EU law – had the right to file an appeal against the 29 September 2016 permitting decision (the "**Environmental Permit**").

We stress, however, that there is no "application process" to acquire client status. Anyone who is entitled to a client status qualifies as a client by the force of law; and the client status is not dependent on an application process. It is therefore sufficient if a client files an appeal against an administrative decision, which is not conditional upon previous involvement in the administrative proceedings. Naturally, the client must refer to its client status in the appeal in order to verify its standing, but there is no such thing as a standalone application process.

This also means that there is no deadline for applying for client status. In general, clients can intervene in administrative proceedings at any time. If the client's intervention in the administrative proceedings takes the form of an appeal, the deadline for submitting an appeal must be observed, however. In case the deadline for appeal is missed, the client may submit

an application for excusal pursuant to Section 66 of the Ket, and a) if the client was already involved in the administrative proceedings it must submit – along with the application for excusal – the appeal, or b) if the client was not previously involved in the administrative proceedings, it must also verify its client status.

11. According to the environmental impact study, the impact area of the planned activity would affect the town of Paks, as well as Dunaszentbenedek, Uszód, Foktő and Gerjen.*[Communication, annex VIII, p. 22]* Please specify which of the following organizations could, in principle, have met the requirements of either article 15(1) or article 15(5) of the Ket *[Party's comments on preliminary admissibility, 28 June 2019, p. 3.]* (in conjunction with article 98(1) of Act LIII of 1995 on the general rules of environmental protection) to obtain "client" status with respect to the proposed activity:

(a) A Hungarian organization whose "operating area" includes the towns of Paks, Dunaszentbenedek, Uszod, Fokto and Gerjen;

As we have explained in our previous submission dated 28 June 2019, the general definition of client under Section 15 (1) of the Ket. is supplemented by Sections 15 (3) and (5) of the Ket., according to which sectoral laws may specify certain individuals or organizations who shall be regarded as clients automatically without the need to ascertain whether they fulfil the requirements under Section 15 (1) of the Ket. (i.e. rights or lawful interests).

Section 98 (1) of Act LIII of 1995 on the General Rules of Environmental Protection (the "**Environmental Protection Act**") provides for such a „short cut", since it stipulates that „[a]ssociations formed to represent environmental interests, other than political parties and interest representations - which are active in the impact area - (hereinafter referred to as "organizations") shall be entitled in their areas of operation to the legal status of client in environmental administration proceedings."

Accordingly, those Hungarian organizations who are active in the impact area qualify as a client pursuant to Section 98 (1) of the Environmental Protection Act – without the need to ascertain whether their rights or lawful interests are affected by the administrative proceedings pursuant to Section 15 (1) of the Ket. In other words, the organizations specified in paragraph a) of this question qualify as a client under Section 98 (1) of the Environmental Protection Act (read together with Sections 15 (3) and (5) of the Ket.)

(b) A Hungarian organization whose "operating area" includes all of Hungary;

Our answer is the same as the answer given to paragraph a) of this question.

(c) A Hungarian organization whose "operating area" covers another region of Hungary and not the towns of Paks, Dunaszentbenedek, Uszod, Fokto and Gerjen;

Since the client status under Section 98 (1) is conditional on being active in the impact area, those organizations who are not active in the impact area may base their client status on the general client definition stipulated under Section 15 (1) of the Ket, as well as on Article 4 (4) of the Directive as explained above.

We further note that the Environmental Permit has indeed made a reference to the possibility of becoming a client in accordance with Section 15 (1) of the Ket:

„Non-governmental organisations (other than the associations specified in the Environmental Protection Act)[5] *can also be recognised as clients in this procedure, provided they indicate their right or lawful interests as described in Section 15(1) of the Administrative Proceedings Act […].”*[6]

(d) A foreign organization whose "operating area" is outside of the Party concerned.

Our answer is the same as the answer given to paragraph c) of this question.

12. Once the deadline in article 66(4) of the Ket *[Party's comments on preliminary admissibility, 28 June 2019, p. 4.]* expired, were there any other legal mechanisms that members of the public could have potentially used to challenge the 29 September 2016 permitting decision? If so, please outline the relevant legal mechanisms, including who would have standing to use them. What would be the last date for members of the public to have used these mechanisms to challenge the 29 September 2016 decision? Would it in principle still be possible for any members of the public to seek to challenge the 29 September 2016 decision now? If so, please specify which legal mechanisms would still be open and who would have standing to use them.

In accordance with Section 99 (1) of the Ket., the deadline to appeal the Environmental Permit dated 29 September 2016 was 15 days.

Section 66 of the Ket. gains relevance when a client is unable to keep a deadline for reasons beyond its control. As we explained in our previous submission dated 28 June 2019, any client who misses the deadline for appeal due to reasons beyond its control (e.g. because the decision was not serviced at all or was not serviced properly to the client) may file an application for excusal pursuant to Section 66 (1) of the Ket.

Section 66 (4) of the Ket regulates the deadline for filling an application for excusal. According to Section 66 (4), the application for excusal shall be submitted within eight days from the time of becoming aware of the default or from the time the obstruction is eliminated, where applicable, but not later than within six months from the last day of the time limit or deadline in question.

Considering the objective deadline[7] of 6 months, the final date on which an application for excusal could have been filed in the present case was 14 April 2017.[8] We stress that the Communicants have became aware of the Environmental Permit well before 14 April 2017, since they filed complaints with the Pest County Government Office on 21 February 2017 in

[5] We note that the translation of the text between the brackets is erroneous in the translation submitted by the Communicants. The original bracketed text makes a reference to the associations specified in Section 98 (1) of the Environmental Protection Act (the Hungarian abbreviation of this Act is Kvt.) while the translation submitted by the Communicants makes a reference to the Administrative Proceedings Act (i.e. the Ket.). The error in translation is presumably a result of the translator confusing the abbreviations Kvt. and Ket.

[6] See on the top of page 101 of the translation of the Environmental Permit submitted with the Communication under Annex I.

[7] The reason for the objective deadline is the principle of legal certainty. There is an obvious need for administrative decisions to become final and binding after a certain period of time, so that the rights flowing from such decisions can be exercised without the fear of potential annulment of such decision.

[8] Calculated as follows: 29 September 2016 + 15 days to file an appeal + 6 months to file an application for excusal.

relation to the Environmental Permit.[9] (We note that Communicants have not specified the exact dates on which they become aware of the Environmental Permit.) It follows that the Communicants had ample time and opportunity to file an application for excusal before the expiration of the 6 months objective deadline.

We further note that following the appeals of Energiaklub and Greenpeace Hungary against the Environmental Permit, the second instance environmental permit was delivered on 18 April 2017. Pursuant to Section 330 (2) of the Code of Civil Procedure, the deadline to challenge the second instance decision before the Hungarian courts was 30 days.

An application for excusal can also be submitted if the 30 days deadline for submitting a court appeal is missed. The rules concerning excusal in court proceedings are set out in Sections 106 to 110 of the Code of Civil Procedure. According to Section 107. § (1):

> *107 (1) An application for excusal may be submitted within fifteen days. This deadline shall start on the last day of the deadline. However, if the party or his counsel gained knowledge of the omission past that time or if the obstacle was eliminated afterward, the deadline for the application for excusal shall begin at the time of gaining knowledge or the time of elimination. After three months following the time of omission no application for excusal may be submitted.*

Accordingly, the Communicants could also file an application for excusal in relation to missing the 30 days deadline for a court appeal. Such an application could have been filed within 15 days from the date the Communicants became aware of the fact that they missed the deadline, but no later than within 3 months from the last date of the missed deadline, i.e. by the middle of August 2017.

In summary, the Communicants could have filed an application for excusal in the administrative proceedings by no later than 14 April 2017, and could have filed an application for excusal in relation to the court appeal by the middle of August 2017. In their application the Communicants could have clarify that the reason for their failure to meet the relevant deadlines was that the Environmental Permit was not served to them (and they could have also referenced the fact that the Environmental Permit is only available to them in Hungarian and the translation of the document takes time).

However, the Communicants did not even try to exercise their right to appeal; neither in the administrative proceedings nor before the Hungarian courts. As regards the administrative proceedings, the Österreichiches Ökologie-Institute left the Baranya County Government Office's request unanswered, while none of the Communicants even attempted to file a court appeal.

13. Is decision No. 1/2019, KMJE of January 2019 of the Curia *[Communication, annex VI.]* relevant to the issue of the date until when any members of the public (including those identified as clients in the procedure) would be entitled to challenge the permitting decision of 29 September 2016? Please provide reasons for your answer.

[9] See the Pest County Government Office's decision (submitted with the Communication under Annex VIII) referencing the Communicants' comments received on 21 February 2017 in electronic form and through mail.

The Curia decision[10] referenced by the Communicants safeguards the right to appeal in cases where the deadline for challenging an administrative decision is missed due to the inproper service of the administrative decision. In particular, the Curia found that the improper service of administrative decisions shall not result in a limitation to the right to remedy. According to the Curia:

> *„the client may not be deprived of his right to legal remedy by reason of the improper service of the decision if he can exercise that right by the due date. Legal consequences of lateness may not be applied to the detriment of the party since in the absence of proper service the time limit for filing a legal action did not run therefore the claimant could not be in default with filing his application. […] For this reason, improper service may not give rise to the infringement of the client's right to seek legal remedy."*

With reference to our answer given to question No. 12. above, in the referenced decision the Curia confirmed that

> *„A party can be relieved of the detrimental legal consequences of a legally invalid service such as missing a deadline through filing an application for excusal."*

and, further,

> *„In view of the obligation to act in good faith arising from Section 6 (1) of the Ket., should non-serviced clients obtain knowledge of the decision, they are obliged to file an application for excusal by the time limit prescribed by law, to submit an appeal against the decision or to request the service of the decision, and exercise their right to appeal subsequently."*

Therefor the Communicants are wrong to assert that the Curia decision made it impossible for them to exercise their right of appeal. The Communicants learned about the Environmental Permit by February 2017 the latest, but it was by their own fault that they did not file an appeal and/or an application for excusal in relation to the decision. The Curia decision merely confirms that in accordance with the obligation to act in good faith, the Communicants should have filed an application for excusal and/or an appeal and/or a request for proper service of the decision after they learned about the Environmental Permit.

However, the Communicants did nothing. They did not even attempt to exercise their right to remedy – neither in the administrative proceedings nor before the Hungarian Courts. The Österreichiches Ökologie-Institute left the Baranya County Government Office's request concerning its statute unanswered, while none of the Communicants even attempted to file a court appeal.

We further stress that the Communicants admit in Section VII. of the Communication that they were waiting for Greenpeace Hungary and Energiaklub to appeal the Environmental Permit, and they were considering to intervene in that procedure:

> *„During 2017 and the start of 2018, the Hungarian NGOs Energiaklub and Greenpeace Hungary […] prepared an appeal. Their appeal in second instance was unsuccessful by their own fault […].*

[10] **Annex H/3**, Decision No. 1/2019, KMJE of January 2019.

The communicants had waited for this procedure in order to intervene there. When it became clear that this was no longer possible, the communicants sought advice on a direct appeal from their side […]"[11]

In other words, the Communicants had no intention to file an appeal against the Environmental Permit on their own behalf. They only considered this possibility once the appeals of the Hungarian NGOs were dismissed by both the second instance authority and the Hungarian courts. Naturally, by that time the Communicants missed their deadlines to file an appeal or to fila an application for excusal. The Communicants' failure to keep these deadlines, however, had nothing to do with the Curia decision. The Communicants' failure to keep these deadline resulted exclusively from their own decision to wait for Greenpeace Hungary and Energiaklub to challenge the Environmental Permit and not the exercise their right of appeal themselves.

The Communicants are therefore wrong that they were not provided effective legal remedies. They were, but they chose not to exercise them. The Curia decision referenced by the Communicants themselves confirms that the Communicants could have exercised their right of remedy even if the Environmental Permit was not serviced to them properly. Yet, by their own admission the Communicants chose not to exercise their rights.

I. THE COMMUNICATION'S INCOMPLIANCE WITH FORMAL REQUIREMENTS

In Hungary's view, the Communication should be regarded as inadmissible not only due to the Communicants' failure to use available domestic remedies, but also because the Communication is manifestly unreasonable, as well as, incompatible with the provisions of Decision I/7 adopted at the first meeting of the Parties held in Luca, Italy, on 21-23 October 2002 („**Decision I/7**").,

The Communication is manifestly unreasonable primarily in relation to the alleged breach of Article 9 of the Convention, since, as shown above, the applicable Hungarian an EU legislation ensured access to review procedures both by the Hungarian courts and the competent second instance authority. Yet, the Communicants chose not to exercise their right of appeal and – by their own admission – were waiting for Hungarian NGOs to challenge the Environmental Permit.

We further note that the Communication does not comply with many of the formal requirements set out in Decision I/7, as well as with the instructions regarding the required format available at the UNECE website (https://www.unece.org/env/pp/cc/com.html) (the "**Instructions**").

In particular, we stress that the Communication was submitted on behalf of 5 organizations and 2 natural persons. Yet, the Communication seems to have been only signed by the Österreichiches Ökologie-Institute. According to the Instructions, the communication must be signed by the communicant, and, if the communication is submitted by an organization, a person authorized to sign on behalf of that organization must sign it. In the present case, the Communication should have been signed by both natural persons and the authorized representatives of all of the five organizations.

[11] Communication, Section VII., page 15..

We further stress that the allegations presented in the Communication are difficult to follow, vague, and even contradictory. In addition, relevant supporting documentation was not annexed to it. In particular, the Communication does not provide a detailed account of the Communicants' conduct in engaging the competent Hungarian authorities and their decision not to exercise their right of appeal. These errors are substantiated by the fact that the Committee had to address 7 questions to the Communicants, 6 of which concern the factual background of their complaints.

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For the reasons detailed in Sections I. and II. above, we respectfully request the Committee to determine that the Communication is inadmissible in accordance with Articles 20 and 21 of Decision I/7.

III. QUESTIONS TO THE COMMUNICANTS

1. Did any of the communicants file administrative or judicial review proceedings to challenge the permitting decision of 29 September 2016? If so, on what date was the proceeding filed and what is the status of the case, including any outcome?

The Communicants did not file administrative or judicial review proceedings to challenge the Environmental Permit dated 29 September 2016. As explained in the Communicants' response to this question, the Österreichisches Ökologie Institut filed various complaints with its local Espoo contact point and an Austrian Ministry, but did not challenge the Environmental Permit before the competent Hungarian authorities and courts. None of the other Communicants filed any review proceedings either.

As it was admitted in Section VII. of the Communication, the Communicants decided not to file such review proceedings because they were waiting for Greenpeace Hungary and Energiaklub to do so.

Please also see our answers given to questions 12 and 13 in Section I. of this submission.

2. Did Oesterreichisches Oekologie Institut submit the information requested by the Baranya County Government Office within the 30-day deadline stipulated by that entity's ruling of 22 March 2017? If so, what was the outcome of its application?

As it is confirmed by the Communicants' response to this question, the Österreichisches Ökologie Institut left the Baranya County Government Office's request unanswered.

According to the Communicant's response, the Österreichisches Ökologie Institut refrained from providing the requested information because it was impossible to arrange for the translation of its statue in the given deadline. We would like to note in this regard that it would have been possible for the Österreichisches Ökologie Institut to submit its response within the deadline in its own native language, and the authority would have arranged the translation itself. This possibility was clearly stated in the Baranya County Office's request:

> *"You are hereby informed that pursuant to Paragraph 9 (1) of the Ket., the official language of the public administration proceedings in Hungary is Hungarian, and pursuant to the provisions of Paragraph 10 (2), except for the client set forth in Paragraph 9 (3), non-Hungarian speaking clients may request, while bearing the cost of translation and interpretation, that the public administration authority*

consider their motion put forward in their native language or in an intermediary language, in matters not subject to the provisions of paragraph (1), as well"

We further note that the Communicant could have also filed an application for excusal in accordance with Section 66 of the Ket. to excuse its failure to comply with the deadline due to the time it took to arrange the translation of its statute.

3. Did any of the other communicants submit a fully completed application for client status either during the EIA procedure or since the 29 September 2016 permitting decision was taken? If so, what was the outcome of their application?

As we have explained in our answer to question 10 in Section I. above, there is no standalone application process in relation to acquiring client status. The Communicants could have file an appeal against the Environmental Permit, in which they could have made a reference to the fact that they qualify as a client (and thus, have standing to file an appeal) under Section 15 (1) of the Ket and Article 4 (4) of the Directive.

According to the Communicants' answer to this question, none of the Communicants were made aware of the necessity to register as „client". This is because there is no registration process. When the Baranya County Government Office notified the Österreichisches Ökologie Institut that it is required to submit its statute to verify its client status (which is consistent with the Committee's practice, see *Armenia ACCC/C/2009/43*), it left the request unanswered. None of the other Communicants attempted to file an appeal.

4. Please provide evidence to substantiate your claims that "Hungarian authorities were not ready to grant environmental organisations with a scope of activity in neighbouring countries nor individuals living in a distance of more than 30 km from the Paks site" either:

(a) "the status of a legal client";

(b) "a remedy against the permitting decision".

Please see our answers given to questions 9 and 11 in Section I. of this submission. The Baranya County Government Office did not refuse to grant standing to the Communicant as a client. It only requested that the Communicant verify its client status by submitting its statute.

In their response to this question, the Communicants make reference to the opinions of their legal advisors, who „made clear to us that we had no right on applying for the status of "client" and hence could not file an appeal". Clearly, the Communicants received bad legal advice. They could have based their client status on Section 15 (1) of the Ket. and Article 4 (4) of the Directive (instead of the "impact area" criterion under the Environmental Protection Act).

Thus, the Communicants' argument that they would not have been regarded as client by the Hungarian authorities and/or courts is based on questionable legal advice they received from unnamed "legal advisors". The truth of the matter is, however, that the Communicants did not even attempt to test whether the Hungarian authorities and/or courts would have regard them as clients. Alone on this basis, it is clear that the Communicants' complaint is manifestly unreasonable.

Finally, we note that the NGO *Egészséges Ivóvízért és Környezetért Egyesület* (Association for Healthy Drinking Water and the Environment) was refused the status of "client" because they based their client status Section 98 (1) of the Environmental Protection Act, which is conditional upon being active in the "impact area". Thus, the NGO tried to use the "shot cut" under the Environmental Protection Act (see our answer to question 11.a) without being eligible to do so.

5. Please comment on the statement of the Party concerned that the communicants did not use all remedies because they did not use the possibility of an application for an excuse pursuant to article 66(1) of Act CXL of 2004 on the General Rules for Administrative Proceedings and Services (the Ket).

Please see our answers to questions 12 and 13 in Section I. above.

We stress again that the Communicants chose not to exercise their right of appeal and – by their own admission – were waiting for Hungarian NGOs to challenge the Environmental Permit.

Furthermore, the Baranya County Government Office was ready to acknowledge the client status of the Österreichisches Ökologie Institut, and gave it precise instruction of necessary steps:

> *"2. If the motion is intended as an appeal for legal remedy, the following additional steps are needed: […]"*[12]

Yet, the Österreichisches Ökologie Institut refused to follow these steps.

Finally, we also note that the Communicants claim that they have been assisted by a "renowned Hungarian lawyer".[13] We find it difficult to believe that any Hungarian lawyer (let alone a renowned lawyer) would not have informed the Communicants about the possibility to file an application for excusal in case a procedural deadline is missed.

6. On what grounds was the administrative appeal of Energiaklub and Greenpeace Hungary against the permitting decision for the new reactors at the Paks NPP dismissed by the responsible authority?

Energiaklub and Greenpeace Hungary challenged the Environmental Permit on its merits and put forth various arguments. The second instance authority reviewed the challenged decision and has found that the appeal of Energiaklub and Greenpeace Hungary was without basis. In reaching its conclusion, we note that the second instance authority engaged an independent expert to provide an expert opinion and requested and took into account the opinions of various other authorities having competency in the issues raised in the appeals.

7. Regarding the court appeal brought by Energiaklub and Greenpeace Hungary against the permitting decision for the new reactors at the Paks NPP:

(a) On what date did Energiaklub and Greenpeace Hungary file their court appeal?

[12] See the Baranya County Government Office's request submitted with the Communication under Annex VIII.

[13] See in the introductory part of Communicants' response to the Committee's questions on page 1.

Energiaklub and Greenpeace Hungary filed their court appeal on 19 May 2017 via registered post.

(b) On what date was Energiaklub and Greenpeace Hungary's court appeal rejected?

The Administrative and Labor Court of Pécs rejected the court appeal on 7 August 2017.

Energiaklub and Greenpeace Hungary then filed an appeal against the decision of the Administrative and Labor Court of Pécs. The Court of Appeal of Pécs rejected the appeal on 5 October 2017.

As regards the Communicants' explanation of the reason for the rejections, we would like to note that the change of the names of the first and the second instance authorities is completely irrelevant. Under Hungarian procedural laws, court appeals against administrative decisions must be filed with the first instance authority and not the second instance authority. However, due to the mistake of their lawyers, Energiaklub and Greenpace Hungary filed the court appeal with the second instance authority. For this reason, by the time the first instance authority received the appeal the deadline for appeal has expired. Thus, the change of the name of the authorities had nothing to do with the fact that the Hungarian NGOs filed their appeals with the second instance authority instead of the first instance authority.

8. You claim that decision No. 1/2019, KMJE of January 2019 of the Curia has "changed the rules of operation vis-à-vis appeals where the complainant argues he could not keep prescribed time limits because he was not properly informed". What is the basis for your assertion that the Curia's judgment is applicable to a case in which the complainant alleges it was not notified in due time by the authority who took the challenged decision? Assuming that the Curia's judgment would indeed be relevant to the present case, what end date for filing an appeal does it set? Please provide references to the relevant part of the judgment or to subsequent case law of the Party concerned's courts to support your answers.

Please see our answer to question 13 in Section I. above.

The Communicants are wrong in asserting that the Curia decision „changed the rules of operation vis-à-vis appeals". The relevant parts of the Curia decision merely confirmed the guarantees of Hungarian procedural law safeguarding the right of appeal. In particular, the Curia confirmed that improper service of administrative decisions cannot result in the infringement of the client's right to appeal, and confirmed the possibility to file late appeals and/or applications for excusal in such cases.

List of Annexes:

Annex H/1:- Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003
Annex H/2 - Judgment in Case No. 24.K.3064 7/2006/20. by the Budapest Metropolitan Court. Extract – Convenience translation.
Annex H/3 - Decision No. 1/2019, KMJE of January 2019.

Budapest, 31 October 2019