Civil report about the implementation of Aarhus Convention in Hungary for the Second Conference of the Parties (Almaty, Kazakhstan, 25-27 May 2005)[*/]

1. Introduction, the justification of the civil report

According to our view the aim of the conference organized by the Parties of the Aarhus Convention is to provide the participants opportunity to get to know the positive and negative experiences gained in the individual countries in the course of implementing the Convention, and then with this knowledge to elaborate recommendations collectively in order to "operate the Convention more efficiently". So the success of the conference fundamentally assumes national reports that are aimed at completeness and summarise the experiences honestly. Namely the attitudinal-institutional-legal obstacles impeding the implementation may bear lessons just as the results achieved.

According to the opinion of the Hungarian environmental movement, the National Report compiled for the conference can not be regarded as a progressive analysis synthesizing the opinion of those concerned in the issue. Instead of an objective presentation the Ministry of Environment and Water Management (KvVM, in what follows Ministry of Environment) compiling the Hungarian document published a "self-justifying report" that shows above all how the Ministry of Environment would like to see the implementation of the Convention. In fact the situation is unfortunately not so favourable – and this could provide its own lesson too.

As we did not see a chance to represent the deficiencies connected to the implementation, we decided to compile our own civil report summarizing the green organizations' opinion.
We must add that we are not fully satisfied with the performance of the non-governmental organizations (NGOs) either, and there are a lot of useful information in the official National Report as well. So are the laws quoted; although most of them were created before the Aarhus Convention entered into force, they could have provided an excellent legal basis "to introduce" the spirit and the legal institutions of Aarhus.

2. The process of compiling the National Report

The problems hindering the effectiveness of the Convention in Hungary – to be detailed later on – were continuously reported by the NGOs to the current environmental minister (we have had three of them in the period of reporting) who was responsible for the implementation. We objected that the harmonized measures needed to implement the Aarhus Convention fail to come about both on ministerial and governmental – legislation and law-application – levels. The TAI-reports examining the topic in detail in the framework of a targeted survey have come to a similar conclusion on the whole (essentially).

We summarized the problems (and our views related to them) in the opinion expressing period of the official report (December 2004) according to the structure of the report. Although the National Report refers to our materials as sources used, our opinion was in fact not represented in the document (as were left out the critical statements of the TAI-reports too) that was compiled according to a peculiar logic.
The National Report should have been approved originally on 12 January 2005 by the Aarhus Working Group formed in a hurry of the delegates of the Ministry of Environment and the green

[*/] Note from the UNECE secretariat of the Aarhus Convention: the official national implementation report from Hungary referred to in this document has to date not been received by the secretariat.

movement. However due to the existing major differences of opinions and the lack of time the Working Group saw no reason to deal with the draft in detail.

Suggestions to the content of the environmental movement's own report could be delivered between 13 and 31 January 2005 on the public webpage and mailing list of the movement. The prepared draft of the Civil Report could be opinioned, completed by the NGOs till 20 February. The finished Civil Report was approved by the Conciliation Forum of the Environmental Organizations on its session of 23 February in the present (final) form.

3. The significant circumstances related to the implementation of the Convention

We consider it a significant circumstance (legal characteristic) that there is no special law in Hungary on the access to environmental information. In the procedures connected to the topics affected by the Convention practically the legal regulations already available previously (above all the data protection and the environmental provisions) are applied. However this situation, due to the particularly different part-regulation of the single legal territories, hinders the formation of unified law-application and law-interpretation in accordance with the Convention.

The chances of implementing the Convention were fundamentally determined by the fact that no appropriate financial source was provided for it by the central budget, respectively the Ministry of Environment. Nevertheless there are issues that are not a matter of money, but rather a matter of proper attitude.
Such step would have been if the Ministry of Environment undertakes the elaboration and coordination of the implementation strategy. The strategy could have determined the priorities, the division of labour among the individual sectors, the necessary legislation schedule and institutional-organisational frames (with special regard to the tasks connected to capacity building). Unfortunately the lack of strategy determined fundamentally the further destiny of the Convention's implementation.

The coordinator in the green movement commissioned to deal with the topic initiated the starting of the implementation procedure several times within the three years. There was no response on the merits.
The Interdepartmental Committee presented to coordinate the implementation was in fact not established despite the frequent promises. On the other hand the joint Aarhus Working Group of the Ministry of Environment and the NGOs was formed in January 2005, on the week before adopting the Report.

4. The application of Article 3 (General provisions)

A concrete measure or legislation serving specifically the implementation of the Convention did not take place in the past years – and we are unfortunately not aware of such national programme either.
Neither do we know of such a law that would help the adaptation of the guidelines 2003/4/EC and 2003/35/EC issued to implement the Convention on EU-level, into the domestic code of laws (point a).

In the subject matter of environmental education we consider one of the most significant document of the given period the National Environmental Education Programme prepared by the non-governmental professional alliance (point b).

Regarding the governmental sources of the NGOs in the period 2002-2005 in fact not a growth, but a significant decrease has occurred. The financial budget frame (Environmental Budget Frame – KAC, later Environmental and Water Management Budget Frame – Kövice) supporting the environmental tasks was ceased, the source that can be used for environmental protection in the Ministry of Education is available only on programme level, and the National Civil Fund that functions since 2004 substitutes only for a fragment of the sources lost. The governmental sources available for the environmental and nature conservation NGOs in 2005 are expected to mount up to about the quarter of the level of 2002, although even the level of 2002 was merely half of the European Union average (point c).

The repeal of Act 1 of 1977 on the announcements, complaints and proposals of public interest we consider a step back. In the Act 29 of 2004 replacing it only a fragment of the previous provisions are included, and nothing of the act's enacting clause.

5. Hindering factors

We consider it a hindering factor that the environmental ministers commissioned by law to implement the Convention (three of them followed each other in the period given) did not feel the importance of the topic themselves. No senior civil servant is responsible for the task in the Ministry of Environment, the creation of the laws needed for the implementation and the harmonization of the job with other ministries concerned was not initiated.
The Prime Minister's Office (MEH) usually responsible for the "civil issues" does not feel itself affected in the topic of Aarhus, while in other ministries concerned even the knowledge of the Convention is problematic. The Interdepartmental Committee meant to coordinate the implementation is not even established yet, and no material was published to promote wide-range public propagation.
This latter one – for lack of financial sources – could not be substituted for by the environmental non-governmental organizations either.

6. Examples of the practical implementation

In the procedure of access to data of public interest the prevailing Hungarian Act on data protection (Avtv.) contains a few more favourable provisions for the citizens than the Convention. It is fortunate that these provisions (e.g. the deadline to fulfil the request) were not modified according to the points 5 and 6 of Title II.

However in other "coincident cases" it occurs that the proceeding authorities, violating the principle of constitutionality, apply the rule less favourable for the citizen of the applicable laws/interpretations. It's also because of this that the precise legal adaptation of the Aarhus definitions would have been important.

7. The application of Article 4 (Access to environmental information)

For the access to environmental information of public interest the Act of 1992 on data protection, respectively the related interpreting provisions of the data protection ombudsman issued ever since provide a legal frame of adequate level. Of these latter ones several recommendations were issued based on NGO initiative.
A related regulation of major importance of the reporting period is the so-called "glass-pocket act" (Act 24 of 2003) that has spread the notion of knowable data in the spirit of the Aarhus Convention. On one hand it specified the definition of "business secret", on the other hand it

introduced the notion of "public data of general interest". This latter one made the access to environmental information of public interest administered at non-governmental organs possible.

The practice of access to information indicates that it is much more problematic on ministerial levels, than at the local environmental authorities (the standard within this is varying). The most frequent office deficiencies: omission of deadlines, reference to unworkability, lack of reaction or delivery of not the requested data.
The cause of this latter one is that the adaptation of the Aarhus Convention's definitions (Article 2) into the Hungarian act did not occur. The data denials or false deliveries can be traced back to the uncleared notion of "environmental information", respectively to its narrowed interpretation – and they are connected above all to the authority positions, expert opinions, survey records used in decision-making.

The authorities usually ensure the right of inspection of documents in certain state administration procedures according to what is prescribed in the referring act, which provides the acknowledged clients the possibility to get to know environmental data, information.

8. Hindering factors

Factors hindering the access to information and their causes:

- the slow computer-processing of the data received by the authorities (mainly in the case of annual reports and comparing series of data),
- the lack of information suitable to show the trends (mainly in data concerning health and security),
- distrust and ignorance of the regulations (false conditioning, the neglect of capacity building within the organization),
- ambiguous secrecy protection regulations giving opportunity to misuse of authority (data classification). The harmony is missing between the Hungarian provisions regulating the denial of access to data and those written in the guideline 2003/4/EC,
- data access fees appointed on an unjustified high level (because of the income plans of data administering authorities e.g. in the forest and water management administration),
- the legally uncleared notion of "document for internal use", respectively "document for decision preparation".

9. The practical implementation of providing access to information, statistics

The clients' register of the Information Service of the Ministry of Environment is not relevant here, as the major part of information requests on the merits is received not there, but at the various (environmental, public health, water management etc.) authorities administering environmental data. However the data administering authorities keep statistics at most about the requests denied (as according to the Act on data protection they are obliged to deliver a report about these each year for the data protection ombudsman). By the way the data protection ombudsman regularly examines the practice of access to data of public interest (including environmental data) in the individual state administration sectors.

Besides the Information Service of the Ministry of Environment mentioned in the report, nineteen NGOs also operate eco-counselling offices of similar profile, where the citizens can obtain free of charge information about the known environmental data, respectively legal help for data collection from authorities (Hungarian Network of Eco-counselling Offices - Köthálló). Using the experiences of the network's offices, in order to help the access to environmental data

in practice the Reflex Association published two brochures for the population (Data-hunting 1-2, 2002 resp. 2004).

In the case of a denied request the client may turn to the data protection ombudsman or to the court. One of the major cases of information denial is connected with the Paks Nuclear Power Plant Corporation. The non-governmental organizations wished to get to know the expert materials of the authorization procedure of restart after the "extraordinary event" of 2003, but the request was denied by the authority referring to business secret (court procedure in progress).

10. The application of Article 5 (Collection and dissemination of environmental information)

Due to the indicated legislation deficit the relevant definitions of the Convention ("environmental information", "affected public") gain different (usually narrowed) interpretation by legal branches and procedure types.
The antidiscrimination expectation indicated in point 9 of Article 3 is not effective in the practice: the economically, socially disadvantaged layers of society have less chance than the average to enforce the democratic rights provided by the Convention.

The most serious deficiency on this field is that we can not speak about a systemic collection, processing, publishing of environmental information. Although the Act on environmental protection prescribed already in 1995 the establishment of the monitoring survey network and of the National Environmental Information System (OKIR) processing the data, to this day even its enacting clause is not issued yet.
The lack of regulation of the rights related to information provision and use favours unfortunately much more the data retention, data trade rather than the publicity.

In fact professional web-pages regarding some of the environmental elements do really operate with more or less deficiencies, but they do not elaborate the topic fully, they lack data, and they are updated irregularly. Thus the appearance and authenticity of data is accidental.

11. Hindering factors

The absence of establishment of the national monitoring network and the National Environmental Information System can be traced back in the first place to material reasons, in the second place to the lack of legislators' will.
The knowledge of local (regional) environmental data is fundamentally hindered by the fact that only a few environmental inspectorates and municipalities have their own webpage on the Internet. Where it exists, the lack of expertise, money or capacity hinders the data processing and the clear visualization.

Pursuant to the paragraph (3) of article 51 of the Act on environmental protection the local municipalities have to inform the population at least once a year about the state of environment. Not many municipalities fulfil this obligation, this can be traced back on one hand to the lack of appropriate data, on the other hand to the methodology to be applied. The local municipalities (as environmental authorities, respectively data-processors) do not deal with public education at all. At the regional environmental authorities (apart from two or three places) the lack of infrastructure and staff suitable for customer service hindered the public education.

It can be stated that in case of emergencies on national and local level unfortunately even today still often the damaging conditioning related to information retention, prevarication is effective. This characterized the communication related to the "extraordinary event" of the Paks Nuclear Power Plant in 2003, or the serious drinking water pollution caused by the waste incinerator plant of Dorog (northwest Hungary) in autumn 2004 in Esztergom. At the same time took place the "Hungarian paprika scandal", where the authorities and the industry together retained the information for false economic interests about the carcinogenic additives.

12. Further examples of the collection and dissemination of environmental information

The Ministry of Environment publishes each year the book elaborating the most recent data in the possession of Hungarian authorities, respectively the environmental information produced by them. The book published under the title "The environmental indicators of Hungary" provides help according to the Preface to forming a more democratic environmental policy resting upon the information of the society.
However according to the imprint "the multiplication of any part of the document in any electronic or mechanic form, or recording it in any information-storage and -retrieval system without prior authorization is forbidden". No comment.

Serious anxieties are raised by the fact that in 2003-2004 the six-years waste management plans were prepared in Hungary (on national, regional, then municipal level) in a way that there are no reliable statistical basic data yet about the municipal waste. Compared to this it is not likely that in the plans the deadline tasks prescribed by the EU, waste management and reduction ratio numbers can really be fulfilled, and the sectors involved provide real information. It is to be feared that the tasks will be fulfilled merely "on a statistical basis".
This fundamentally raises the issue of social control of the otherwise public environmental data and their processing, which is absolutely unsolved in Hungary today.

13. The application of Article 6 (Public participation in decisions on specific activities)

The adaptation of the Aarhus Convention's definition of "environmental information" into the prevailing Hungarian law did not occur. Accordingly we can speak of regulated public participation – in the sense of Aarhus Convention – only in the case of "environmental activities, investments" bound to environmental impact assessment (and to IPPC). In the decision-making of not strictly environmental activities, as well as of the "environmental" activities not bound to impact assessment – though they may have a significant effect on the environment – the application of Article 6 of the Aarhus Convention is still accidental today.

We note that the paragraphs 2 and 4 of Article 6 guarantying efficient public participation are not secured even in the case of environmental impact assessment. Namely in the absence of publication obligation those affected have no chance to engage in the early phase of the decision-making procedure ("when all options are open" still). The information listed in paragraph 6 can be known by those affected at most after issuing the environmental license, or the resolution prescribing the detailed environmental impact assessment. However, by this time usually the investor's PR-mechanism is launched already as well, not shrinking back even from the harassment of the appellant in public.
By the way the Hungarian environmental authorities do not insist on the detailed examination of the (settlement, technological) alternatives prescribed in the law, and they try to interpret the notion of affected public as narrowly as possible.

It is a general deficiency that the authorities, when starting their procedures, do not use voluntarily their information possibility (informing the public) provided by the paragraph (2) of article 13 of the Act on state administration procedure, and they do not use for that the opportunities offered by the Internet. When the law – e.g. for the resettlement plans – prescribes the publication "in the locally usual way", then it is often done formally (e.g. in a paper not available for everybody, hanged on dark corridors, at the other end of the city etc.).

It is another general deficiency that the authorities do not apply in their procedure the paragraph (2) of article 2 of the Act on state administration procedure (helping the rights to become effective). This way the affected lay people do not know, what kind of rights exactly when can be used, what and how detailed to refer to, what they should do in order to make their remarks be effective successfully in the decision-making procedure. Namely due to the absence of information the participation is not of proper level. A logical consequence of this will be its ignorance in decision-making. Naturally after the "proper measure consideration" of the opinion.
The arrangement of public participation at this level bears serious social-environmental conflicts with an effect for decades, in the respect of which the responsibility of authorities arranging the procedures comes up as well. However this responsibility can not be called to account legally.

How the information flow between the environmental NGOs and inspectorates is formed on local levels depends for the most part on personal relations. There are more open inspectorates, more prepared NGOs ready for regular cooperation, while in some places they fully misunderstand each other.
Based on special agreement made with the environmental inspectorates a few major NGOs can be informed in time about the starting of environmental impact assessment procedure, and inform the public as well about this. However today this is still an exception.

14. Hindering factors

In general it can be stated that due to the legal-attitudinal deficiencies we can not speak about a service public administration in Hungary yet. In the respect of the legal regulation standard of public participation, respectively of the skills of office staff there is a significant difference among the individual sectors.
According to our hopes with the establishment of unified (nature conservational – environmental – water management) green authorities in 2005 the (relative) openness of the environmental sector will be universal in the procedures.

On "civil side" the environmental non-governmental organizations have the widest publicity, legal participation possibility. Based on the legal unity resolution 1/2004 of the Supreme Court, which interprets the article 98 of the Act on environmental protection in an extending way, they can take part today already as clients in all the cases where the environmental authorities act as special authorities. Thus the contribution on the merits has become possible for the organizations also in the so far "forbidden" construction, water management, road management etc. procedures.

The other extremity is the seriously anti-constitutional and humiliating legal regulation of the radiating telecommunication establishments (cell-phone transmission towers, base stations). In the construction procedure of antenna towers even the direct plot neighbours can not get client's license. Namely at the settlement of these establishments that are problematic from public health aspect, the Hungarian law does not provide any possibility for public participation (accordingly

no jurisdiction legal remedy either). This is for the time being not allowed to be changed even with reference to the Aarhus Convention, it obviously indicates the economical-political interests situated behind.

15. Further overview for the application of Article 6

In none of the sectors are we aware of authority statistics related to public participation in decision-making. However the trend is indicated by the fact that on legislator (parliament, government) level concepts are born again and again in limit certain participation rights of the non-governmental organizations. Such a debate initiated by the Ministry of Economics and Transport is going on about a comprehensive "act on investment protection", but the modification of the Act on environmental protection ("interpretation" of the article 98 of the Act on environmental protection and the "rationalization of public participation" in the environmental impact assessment procedures) urged by the Ministry of Environment also opposes the spirit of Aarhus.

The deficiency above is indicated by the survey of the State Audit Office made about the ISPA large investments of the period 2000-2004. According to the evaluation, in the phase of planning and preparation the project proposals lack the criteria of enforcing partnership and arranging social interest-harmonization, and the sources of its financing.
The regulations did not contain the requirements concerning the information of the affected public, the way and fulfilment justification of information activity and social interest-harmonization needed before the elaboration and submitting of project proposals.
Due to the absence of prior social harmonization – the subsequently held referendums – the locality of the already supported projects has several times become questioned.

In the case of local referendums related to investments the enforcement of direct democracy is hindered by the following:

- those entitled to vote are taken into account not based on the people affected by the investment's sphere of influence, but rather based on the full public administration territory of the community,
- the result of the referendum – inasmuch as it does not correspond to the idea of the municipality – is qualified as opinion expressing instead of decisive (that is not of obligatory force),
- the question asked in the referendum is qualified law-violating subsequently (as it could not be asked according to the law on local municipalities).

16. The application of Article 7 (Public participation concerning plans, programmes and policies relating to the environment)

As we have indicated the Hungarian legislation has not yet adapted the definition of environmental information according to the Aarhus Convention. The Act 53 of 1995 on environmental protection was completed only in July 2004 with a reference to the environmental assessment of plans, programmes, and the (enactment) law entered into force at the end of January 2005.
Thus in the national professional plans, programmes prepared in the reporting period the involvement of the public was accidental. Even if there was formal public participation, the procedural norms of Article 6 to be applied here (paragraphs 3, 4 and 8) were usually ignored. As the cause of the omission of social harmonization process, the lack of alternatives, the indication of unrealistic opinion expressing time, the absence of harmonization the ministries

named the urging proximity of EU accession. This is how for example the national, regional waste management plans for a period of 6 years were prepared.

Compared to the programme's significance, the public could get involved in the process of preparation of National Environmental Programme II unfortunately only late and not with proper weight. In the Interdepartmental Committee established to implement the Programme the representatives of non-governmental organizations were not invited.

Due to the reasons above accordingly a minimal advance has been made also in the publicity of elaboration of environmental plans, programmes prepared on local level, which bear further serious conflicts in themselves.

17. Possibilities of public participation in the elaboration of environmental policy

The National Environmental Council (OKT) established by the Act on environmental protection – as the advisory organ of the government – could play theoretically an important role in the foundation of environmental policy in the society. The weight of its opinion is increased by the fact that also the representatives of science and economy are present in equal ratio with the civilian delegates.
However its efficiency is reduced to a great deal as the Council receives the proposals late, the documents are incomplete, there is no available alternative and their positions formed remain insignificant in the governmental decision-making procedure.

The civilian people delegated into certain professional committees of the Environmental Fund (KAC, Kövice) – as they took part in pointing out the annual development, support aims – had earlier a possibility provided by law to form the national environmental policy. However the significance of these professional committees has continuously diminished, then in 2005 they ceased to function along with the Environmental Fund.
A few major NGOs undertake a determining role with their successful lobbying work in the elaboration of the environmental policy of Regional Development Councils.

18. Hindering factors

To our opinion the hindering factors related to the implementation of Article 7 can be traced back first of all not to material, but rather to attitudinal limits.
The sectoral ministries do not implement the provisions of the Act on environmental protection, according to which they should send their legislation plans each year in advance to the Ministry of Environment.
The implementation of the Aarhus aims would have made it particularly necessary to establish the Interdepartmental Committee coordinating the cooperation of the sectors affected in the elaboration of development plans and programmes. This has been promised by the Ministry of Environment for three years, but it was never formed.

Besides the professional ministries the background institutions and political decision-making bodies elaborating the plans, programmes do not really feel the importance of public participation either. This is shown by the fact that the various (parliamentary, municipal) "environmental committees" with decision-preparation sphere of authority involve the civil environmentalists at most formally, and this contributes to the feature that instead of the professional arguments the political interests decide in environmental issues, investments.

On local level this characterizes the procedures related to the adoption, modification of the community environmental programmes, respectively the resettlement (regulation) plans. It is a regrettable experience that the neglect of the guarantee elements of public participation (information of the public, time and way of publishing, considering the opinions duly), or their formal application is not considered unlawful by the public administration offices carrying out legal supervision either.

19. Further information to the application of Article 7

In relation to public participation the roughest step back so far is connected to the law-package concerning the acceleration of the development of high-speed road network. The so-called "highway act" hinders in its several elements the efficient lobbying activity of citizens, NGOs affected by the environmental effects of the investment. The shortening of time available for public participation and the limitation of the right to legal remedy fundamentally damage the expectations of the EU and the spirit of Aarhus Convention.
The complaint articulated by non-governmental organization got to the Compliance Committee in December 2004, which formulated further suggestions on the issue.

The particular law interpretation related to "professional concepts" of the public administration offices can be traced back to the omission of the definitions' adaptation. According to this in the procedure related to the concept – as grammatically it is not a plan and not a programme – the provisions of the Convention are not to be applied even if the "conception decision" affects the environmental elements in a clearly serious way. For example the municipality of Győr (northwest Hungary) opened a free way in this manner for the settlement of twelve new shopping centres excluding absolutely the public participation! ("Trade development concept, Győr, 2004").

20. The application of Article 8 (Public participation during the preparation of executive regulations and/or generally applicable legally binding normative instruments)

In the reporting period the participation of non-governmental environmental organizations in the legislation of the Ministry of Environment was regulated by a former ministerial "Communiqué" (dated of 1996). The internal norm with a binding power for the office administration would have made an open legislation possible – if its instructions were in fact applied by the ministry.
However the draft laws arrived irregularly, unrealistic short deadlines were set for opinion expression, there were no harmonizing initiations, and the opinions were not taken into account. We have not received feedback about the reasons of neglecting our independent draft laws introduced, modification proposals and suggestions raised.

In the legislation procedure of other ministries – as we were not informed about it – we could only rarely get involved. We consider a feature violating the Article 8, limiting public participation the practice of a few ministries that they classify their draft laws for 30 years. This is based on a false law interpretation, its ceasing can be expected together with the new Act on legislation entering into force.

21. Hindering factors

The way of cooperation in fulfilling the locally arising environmental tasks should be controlled by municipality decrees, in which the rights, duties of individual actors should be regulated in

full circle (article 10 of the Act on environmental protection). Moreover “in each phase of fulfilling the environmental tasks”. However such a local decree was created only in a few major communities, but the practice of Aarhus is usually not included in them either.

22. Further information about the implementation of Article 8

According to our knowledge in 2004 the Ministry of Environment regulated again the way of contacting non-governmental environmental organizations(including their participation in legislation). Unfortunately this regulation is also an internal norm, furthermore the guarantee expectations of the Convention are not present in its provisions (that indicates a further step back). Thus the non-governmental organizations announced: they increase their efforts in order to make the rules of the Aarhus Convention be enacted in practice.

We note that the publication of draft laws of the Ministry of Environment on Internet homepage is really a fact (since about one year), and this will be prescribed by the new Act on legislation already universally and in an obligatory way. However the efficiency of the legal institution is influenced to a large extent by the fact that only a small percentage of those entitled to express opinion have access to the Internet.

23. The application of Article 9 (Access to justice)

The practical application of Article 9 of the Aarhus Convention succeeded to be rather one-sided today still in Hungary.

To be more precise the efficient court legal remedy possibility written in paragraph 1 is available only in the case of denial of access to environmental information. This is due to the regulations of the Act of 1992 on data protection, and to the examinations, positions of the data protection ombudsman connected to it. A significant part of the positions was initiated just by the environmental organizations experiencing insults.
The court remedy of insults related to access to environmental information of public interest is inexpensive (the exemption from duty of these lawsuits was introduced by the “glass pocket act”). The procedures are in theory quick too, as the Act on data protection prescribes the “out of order” negotiation of the case, although this is not taken into account already by a few (mainly superior) courts.

In the authority procedures related to certain activities the court legal remedy is secured for the citizens and organizations acknowledged as clients. The legal unity resolution 1/2004 of the Supreme Court is important from the aspect of the application of Article 9 as well, as the extension of the client’s cooperation possibilities – after the unsuccessful legal remedy – opened the court’s way too. However for this the acknowledged client has to prove violation of law. However the enactment of Article 9 of the Aarhus Convention is strongly deteriorated by the fact that the Hungarian courts do not consider the violation of procedural laws so heavy that it would justify the revision of the decision (ordering a new procedure).

It can be traced back exactly to this that the legal remedy possibilities connected to the “other elements“ of Aarhus Convention show a rather mixed picture. The negligence of state, municipality organs in disseminating environmental information, the omission of public participation in the decision-making procedures, or getting done with it formally – as a procedural violation of law – hardly founds a successful action against the people affected (if they acknowledge their due interestedness at all).

24. Hindering factors

Hindering factors are that the high appeal duty fees applied in certain licensing procedures deter those affected from the legal remedy against public administration resolution (thus the court way is not opened either). This is characteristic mainly at the lined establishments (road construction, gas and electric pipeline licensing) with considerable affectedness. We have initiated the modification of the laws three years ago at the Constitutional Court, but our request was not negotiated yet.

A further hindering factor is the neglect of the Convention's expectations related to capacity building. The organized training of the staff of territorial environmental organs, municipalities did not take place, the appointment experts responsible for the issue failed to come about. The efficiency of court law-enforcement is limited significantly – besides the fear from the costs of the case – also by the courts' traditional indifference and unpreparedness in environmental topics.

We are not aware of statistics "related to environmental issues", which got to the courts. The cases of legal advice services operated by the green organizations are registered and are regularly discussed on the webpages, mailing lists of the movement.

25. Further information to the implementation of Article 9

The enforcement of access to justice assumes professional preparedness, legal knowledge and taking material burdens. It is a regrettable fact that altogether not more than five lawyers are available for the Hungarian environmental and nature conservation NGOs (and for the 19 public eco-counselling offices). There are about 6-8 major organizations that can produce a lawsuit risk-fund in order to finance a few cases of precedent character.

26. On the significance of the Convention

According to our experience of the three pillars of the Convention for the time being access to (environmental, public interest) information is the only territory, the legal background of which could in fact guarantee efficient law-enforcement. Could guarantee it, provided the fourth pillar: capacity building works well. However as there are serious problems with this, even in case of access to data we can speak about part-successes only. Moreover this is not due to the utilization of rights provided by the Convention either – much more to the really high standard Act on data protection (and the activity of the data protection ombudsman).

To our opinion in the three years' reporting period of the Aarhus Convention Hungary shows unfortunately a significant implementation deficit. The conditions of access to information and its dissemination are hardly improved. The unified, system-approach legal regulation of the public participation of environmental decision-making, and its entrenching in due organizational-procedural guarantee rules did not occur.
We have not fulfilled the expectations related to capacity building, there was hardly any move towards the service public administration in the authorities' attitude. All in all the conditions of participation in decision-making are continuously becoming more and more difficult, the legal remedy possibilities stagnate.

The distinguished significance of the Aarhus Convention was soon recognized by the non-governmental organizations fighting for open society, and they took a determining role in its preparation. Acknowledging that in the reporting period we ourselves did not work with due

efficiency(mainly on the territory of self-education and information dissemination), all in all it was not the fault of non-governmental organizations that on the field of obligations and expectations related to the Convention's implementation Hungary delivered a poor performance.