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Case Summary posted by the Task Force on Access to Justice

HUNGARY: Tubes Hill case, Kfv.IV.37.629/2009/70

1. <i>Key issue</i>	Public access to information in decision-making procedure on specific activities serving national defence purposes
2. <i>Country/Region</i>	Hungary
3. <i>Court/body</i>	Supreme Court (Legfelsőbb Bíróság)
4. <i>Date of judgment /decision</i>	2010-03-17
5. <i>Internal reference</i>	Kfv.IV.37.629/2009/70
6. <i>Articles of the Aarhus Convention</i>	Art. 4, 6, paras 2 and 6, and article 9
7. <i>Key words</i>	Standing, right to bring an action, exclusion of private persons from the action, access to environmental information, environmental impact assessment, scope of review, decision-making on activities serving national defence purposes

8. *Case summary*

The case concerned the plan of the Ministry of Defence of the Republic of Hungary to build a radar-station on Tubes Hill above the city of Pécs forming part of NATO's early warning defence system. Tubes is part of the Misina-Tubes nature protection area, it has local protection as part of the Municipal Forest Park, furthermore, providing habitat for several protected species of plant and it is part of the Natura 2000 network of nature protection areas.

In the review procedure, the Supreme Court quashed the decision of the defendant (the construction department of the Ministry of Defence) and ordered the first-instance administrative authority to conduct a new procedure. The Supreme Court also quashed the partial decision of the Municipal Court of Budapest, in which the court excluded private persons from the action.

In their petition for judicial review, the plaintiffs referred to the Aarhus Convention enacted by Act LXXXI of 2001. According to the plaintiffs the defendant violated the provisions of the Convention as it did not meet the requirement to provide information on environmental matters.

In an earlier Administrative Legal Unity Resolution (No 1/2004), the Supreme Court declared that environmental NGOs have legal standing not only in cases where the environmental administrations are the leading licensing authorities but also in cases in which they participate in the procedure as a co-authority (in this case, in the construction permitting administrative procedure by the construction department of the Ministry of Defence). Consequently, environmental NGOs shall have legal standing even in procedures that not primarily about environmental cases, but where the environmental inspectorates hold at least partial responsibilities.

Article 9, para. 1, of the Convention states that any person who considers that his or her request for information has been ignored, wrongfully refused, whether in part or in full, inadequately answered, or otherwise not dealt with, shall be granted access to a review procedure before a court of law. It followed that the plaintiffs' claim could not have been rejected based simply on the impact assessment of radiation. The Supreme Court considered that the right to bring an action based on the international convention required careful examination on the part of the proceeding court since the rejection would violate not only national law but the international obligations of the Republic of Hungary.

<p>9. Link to judgement/ decision</p>	<p>http://ukp.birosag.hu/portal-frontend/stream/birosagKod/0001/hatarozatAzonosito/Kfv.37629_2009_70//</p> <p>http://birosag.hu/ugyfelkapcsolati-portal/anonim-hatarozatok-tara</p> <p>http://www.unece.org/fileadmin/DAM/env/pp/a.to.j/Jurisprudence_prij/HUNGARY/Hungary_2010_Tubes_Radar_Station_judgement.pdf</p>
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