

Annex 1

To: The Romanian Government
Ministry of Economy
Public Relations Department
Attn: Mrs. Anca Tudor, senior consultant

053/24.03.2009

E-mail: dezbateri_publice@minind.ro
Fax: +40 21 202 5108

Request for information concerning the possible locations of a new nuclear plant

Brussels / Bucharest, 24 March 2009

Dear Mrs. Turcea,

On the 6th day of February 2009, our organisation sent you a request concerning the possible locations of a new nuclear plant in Romania, following the study conducted by the Ministry of Economy in this respect. At your demand, on the 10th of February 2009 we sent the request again, written in Romanian.

Considering that we have received no answer from your institution to this date and taking into account the legal provisions in force (art. 7 paragraph (1) of Law 544/2001 regarding the free access to information of public interest stipulates that an answer must be provided within 30 days from the request registration date, and art. 7 paragraph (2) states that any refusal to provide the information requested must be justified and notified within 5 days following the receipt of the petition), we hereby resend you the request for the following information:

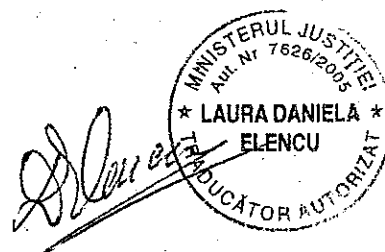
- A list of the locations evaluated for the building of new nuclear plants in Romania;
- The exact site of the ten possible locations;
- The exact site of the two locations that were mentioned as preferred;
- A copy of the official decision specifying this choice;
- All the documents related to the choice of those two locations.

Please send us the above documents to the following e-mail addresses: jan.haverkamp@greenpeace.org and crisanta.lungu@greenpeace.ro.

Yours sincerely,

Jan Haverkamp
Greenpeace EU policy campaigner dirty energy
E-mail: jan.haverkamp@greenpeace.org

Crisanta Lungu
Greenpeace campaigner in Romania
Phone: +40 7220 544000
E-mail: crisanta.lungu@greenpeace.ro



To: The Romanian Government
Ministry of Economy
Public Relations Department
Attn: Mrs. Anca Tudor, senior consultant

E-mail: dez bateri_publice@minind.ro
Fax: +40 21 202 5108

Request for information concerning the possible locations of a new nuclear plant

Brussels / Bucharest, 6 February 2009

Dear Mrs. Turcea,

This week, the Ministry of Economy has announced that it has identified ten locations suitable for building a new nuclear plant in Romania, two of which are preferred locations.

On the basis of Law 544/2001 regarding the free access to information of public interest and of Law 52/2003 regarding decision transparency in the Public Administration, and on the basis of the right to access environmental information as stipulated by the Aarhus Convention, we hereby request access to the following information on behalf of the Greenpeace organisation:

- A list of the locations evaluated for the building of new nuclear plants in Romania;
- The exact site of the ten possible locations;
- The exact site of the two locations that were mentioned as preferred;
- A copy of the official decision specifying this choice;
- All the documents related to the choice of those two locations.

Please send us the above documents to the following e-mail addresses: jan.haverkamp@greenpeace.org and crisanta.lungu@greenpeace.ro.

It has been mentioned in the press that the above information or part of it is confidential. We would like to remind you that this information is of particular interest to NGOs such as Greenpeace, because such NGOs play a democratic role in reviewing the Government's decisions regarding environmental issues that have an impact on our members and supporters. If we lack this information, we cannot review the quality of the Government's decision concerning the choice of the said locations. In addition, we hereby ask you to provide us with a detailed argumentation in case you should decide not to reveal some of the information requested.

Yours sincerely,

Jan Haverkamp
Greenpeace EU policy campaigner dirty energy
E-mail: jan.haverkamp@greenpeace.org

Crisanta Lungu



Fw: Greenpeace formal letter of request for information

Subject: Greenpeace formal letter of request for information
From: crisanta.lungu@greenpeace.ro
Date: Tue, 7 Apr 2009 10:53:31 +0200
To: Catalina Radulescu <catalina@crj.ro>

----- Forwarded by Crisanta Lungu/Romania/GPCEE on 04/07/2009 11:53 AM -----

Crisanta Lungu/Romania/GPCEE

To dezbatere_publice@minind.ro
cc

02/10/2009 12:28 PM

Subject Greenpeace formal letter of
request for information

Dear Mrs. Turcea,

Please find attached the Greenpeace request for information that we sent last week,
translated into Romanian as requested.

Wishing you a nice day,

Crisanta LUNGU, PhD
Team Leader & Climate Campaigner
GREENPEACE

63 Carol I Blvd., Fl. 5, App. 15
Sector 2, Bucharest, Romania, 020916

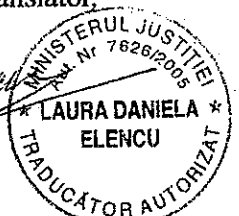
M | +40 720 544000
T/F | +40 21 3105743
@ | crisanta.lungu@greenpeace.ro
W | www.greenpeace.ro

Greenpeace is an independent, campaigning organisation using non-violent, creative
confrontation to expose global environmental problems and to force the solutions
which are essential to a green and peaceful future.

Adresa_Min_Ec_PP_ro.doc **Content-Type:** application/octet-stream
Content-Encoding: base64

.....
I, Elencu Laura-Daniela, holder of authorization no. 7626/2005 issued by the Ministry
of Justice, hereby state that I am a certified translator between the Romanian language
and English and that the official Romanian document presented to me has been
accurately translated from Romanian into English to the best of my knowledge.

Translator,

Annex 2

FILE NO. 18773/3/CA/2009

ROMANIA
BUCHAREST TRIBUNAL – IXth DEPARTMENT
OF THE ADMINISTRATIVE AND FISCAL COURT
Judgment in Civil Matters No. 2722
PUBLIC SESSION FROM October 14th, 2009
LAW COURT COMPOSED OF:
PRESIDENT – LILIANA PETROVAN
COURT CLERK – ELENA LAZA

*Round stamp of the BUCHAREST TRIBUNAL – ROMANIA/
IXth Department of the Administrative and Fiscal Court / Dispatches*

Pending the determination of the civil matter formulated by the plaintiff GREENPEACE CEE ROMANIA 87, against the defendant MINISTRY OF ECONOMY, having as object the communication of public interest information.

At the roll call made in public session the plaintiff responded through its attorney, the defendant being absent.

The subpoena procedure is lawfully fulfilled.

The court clerk of the session made the report of the matter, after which:

There being no other claims to be formulated, the tribunal gives the floor to the present party on the exception of the preliminary procedure lack, on the tardiness exception and on the merits of the case.

The plaintiff, through attorney, claims the rejection of the prematurity exception and of the exception of the preliminary procedure lack, according to the provisions of article 21 and 22 under the Law 544/2001¹.

As regards the action's tardiness exception, the plaintiff rests the case on its rejection, as groundless, demonstrating that the public authorities and institutions are obliged to reply in writing to the request for public interest information within a term of 10 days or, as the case may be, within maximum 30 days from the request registration, depending on the difficulty, complexity and volume of the documentary works and on the request's urgency. In case that the duration necessary for the identification and dissemination of the requested information exceeds 10 days, the response will be communicated to the petitioner within maximum 30 days, provided that the latter is notified in writing about this fact within a term of 10 days.

On the merits of the case, the plaintiff requests the admission of the action as it has been formulated, the coercion of the defendant to the communication of the information requested through the application dated March 24th, 2009, under the sanction of the comminatory damages in amount of 100 lei/day of delay and the coercion of the defendant to the payment of moral damages in amount of 1 lei. Without court costs.

THE TRIBUNAL,

Deliberating on the case establishes the following:

Through the action registered on the roll of the Bucharest Tribunal – IXth Department of the Administrative and Fiscal Court under no. 18773/3/2009 on May 5th, 2008 the plaintiff GREENPEACE CEE ROMANIA 87 has requested against the defendant MINISTRY OF ECONOMY the latter's coercion to communicate to the plaintiff the public interest information requested through the application dated March 24th, 2009 under the sanction of delay penalties in

¹ Law on the free access to public interest information



amount of 100 lei/day of delay and the defendant to be coerced to pay moral damages in amount of 1 lei to the plaintiff.

Within the in fact reasoning of the action exempted from stamp tax according to the provisions of the Law no. 544/2001, the plaintiff has evidenced that on the date of March 24th, 2009 it had requested to the defendant to communicate to it the list of places that had been assessed for the building of new nuclear power plants in Romania, the exact location of the 10 possible sites, the exact location of the two sites mentioned to be preferred, a copy of the official decision that stipulates this choice, all legal documents on the choice of these two sites, public interest information on the grounds of the Law no. 544/2001. It has been pointed out that the defendant did not provide the requested public interest information, in which case it has violated the obligation stipulated by article 7 under the Law no. 544/2001, for which reason it has caused a prejudice to the plaintiff through the psychological sufferings, because the defendant has brought about a feeling of frustration, of inferiority to the plaintiff, the latter being humiliated by the defendant who has disregarded and ignored it.

By law, the action was grounded on the provisions of the Law no. 544/2001.

In proving the plaintiff has submitted to the file the application for the public information communication registered under no. 10198/March 30th, 2008.

The defendant MINISTRY OF ECONOMY, through the statement of defence, invoked the exception of the preliminary procedure lack and the tardiness exception. On the merits of the case it pointed out that the study regarding the nuclear locations had not been finalized, it having to be fulfilled also in agreement with the International Atomic Energy Agency and at present the locations for the emplacement of new nuclear power plants in Romania have not been established.

The proof by documents has been permitted in the case according to art. 167 paragraph 1 under the Civil procedure code and it has been produced.

Based on art. 137 paragraph 1 Civil procedure code, the court has prevalently analyzed the procedure exceptions and the ones on the merits.

Deliberating on the exception of the preliminary procedure lack, the court considers that it is groundless because, according to art. 22 under the Law no. 544/2001, for the refusal of information noncommunication a court action can be formulated directly, thus this article stipulates „In case that a person considers itself damaged in its rights, stipulated by this law, it can file a complaint to the administrative court department within the tribunal in which territorial range it resides or in whose territorial range the public authority or institution has its headquarters. The complaint will be made within a term of 30 days from the expiration date of the term stipulated under art. 7”. Thereby, the special law prevalently applies towards the general law and the law 544 does not stipulate the compulsoriness of formulating a preliminary complaint, as it is defined in art.7 under the law 544/2004. On the other hand, there is no administrative document against which a preliminary complaint can be formulated, but a notification for a disciplinary action against the person designated with a view to the issuance of the answer (art. 21 under the law 544/2001), so that the defendant confuses the preliminary complaint – graceful appeal – with the disciplinary notification procedure stipulated by the law 544.

That being the case, the court will reject the exception of the preliminary procedure lack as ill-founded.

Towards the action's tardiness exception, the court retains that this exception is also groundless for the following reasons:

Art. 22 stipulates that a complaint is being formulated in 30 days from the expiration of the legal term of 30 days stipulated by art. 7. Thus, from the application's submission date the defendant had a term of 30 days to communicate the answer to the application or to communicate the reasoned refusal of noncommunication within 5 days. In this case, the defendant didn't communicate any answer within 5 days, so that the plaintiff has awaited the legal term of 30 days to receive the answer. From the expiration of this 30 day term, the plaintiff has the 30 day term stipulated by art. 22 under the law 544. Therefore, the court retains that from the application formulation date March 24th, 2009 and until the action formulation date May 5th, 2009 the 60 legal



days for the prescription of the material right to action did not pass, for which reason it rejects this exception as groundless, too.

Analyzing the file's documents and works, on the merits, the tribunal retains the following:

According to the Law no. 544/2001 on the free access to public interest information, any person has the right to request and to obtain public interest information from the public authorities and institutions, and the public authorities and institutions are obliged to ensure to the persons, upon their request, the public interest information requested in writing or orally.

In the light of the principle established by art. 31 under the Constitution of Romania, the person's right to have access to any public interest information cannot be restricted and the public authorities, according to their competences, are obliged to ensure the accurate information of the citizens on the public activities and on their problems of personal interest.

Likewise, according to art. 52 under the Constitution of Romania, the person damaged in one of its rights by a public authority through an administrative act or through the nonresolution of an application within the legal term is entitled to obtain the acknowledgement of the alleged right or of the legitimate right, the annulment of the act and the damage recovery.

In accordance with art. 2 under the Law no. 544/2001, by public interest information it is understood any information that regards the activities and/or that results from the activities of a public authority or institution, regardless of the support, the form or the expression manner of the information.

The information requested by the plaintiff through the application dated March 24th, 2009, as well as the communication of a copy of the official decision that stipulates this choice, all legal documents for the selection of these two places concern acts resulted from and/or produced in the defendant's activity and are being framed in the category of public interest information, meant to be disclosed to the citizens, not being part of the information category listed in art. 12 under the Law no. 544/2001, information to which citizens cannot have an unrestricted access.

The court ascertains that the plaintiff's application meets all conditions stipulated by art. 6, paragraph 3 under the Law no. 544/2001, that the information requested by it are of public interest in the meaning of art. 2, letter b under the Law no. 544/2001, it results from the defendant's activities of public authority, not being framed in any of the exceptions stipulated by art. 12 under the same law, that the given answer is an unjustified refusal of communicating the information and documents, for which reason, based on articles 1, 7 and 22, paragraph 1 and 2 under the Law no. 544/2001 related to articles 1, 10 and 18 under the law 554/2004, to art. 31 under the Constitution of Romania and to art. 10 under the European Convention on Human Rights (ECHR), is going to oblige the defendant to communicate the requested information in writing to the plaintiff.

Moreover, the tribunal appraises that there are no arguments for concluding the claim regarding the moral damage as groundless. Thereby, the tribunal also takes into consideration the praxis of the High Court of Cassation and Justice, this court establishing that "Even if the request has been solved positively, the guilty noncommunication of the answer within a reasonable term to the requesting person, through the direct prejudice caused to it, entitles the granting of reparations under the form of moral damages, on the grounds of the provisions of art. 998 Civil Code" (the decision no. 4282/September 14th, 2005). Thus, the court appraises that towards the defendant's attitude of disregarding the plaintiff's right to the communication of the requested information, the noncommunication of the public interest information, in regard to its obligation stipulated by art. 7 under the Law no. 544/2001, represents the manifestation of disrespect against the citizen and its disregarding, following that the material and moral damage invoked by the plaintiff have been caused by this. Or, the moral damage can be retained as a just repair measure for the fact that a prejudice to the plaintiff's image has been caused, with the mention that it cannot be determined in the requested amount and subjectively quantified by the plaintiff. According to art. 998 Civil Code: "any deed of man that causes a prejudice to another man obliges the one out of whose guilt it occurred to redress it". In the specialty literature the moral damage is appraised as representing a



harm brought to the person's physical existence, to the corporal integrity and health, to the honesty, dignity and honor, to the professional prestige and so on. According to the provisions of art. 1169 under the Civil code, the burden of proof in the claim regarding the granting of moral damage devolves upon the plaintiff. According to the ordinary law rules, the plaintiff must evidence the existence of the experienced moral damage of the illicit nature of the defendant's deed, committed by the latter with guilt and the causality condition between the respective prejudice and the defendant's deed. In the administrative law and administrative contentious matters, the right to the granting of the moral damage is stipulated by art. 18 under the law no. 554/2004 related to art. 22 under the Law no. 544/2001. In this case, through its abusive and illegal behaviour – as result of the noncommunication of the requested public interest information – the defendant has damaged a fundamental right to the plaintiff, the one of free and unrestricted access to public interest information, causing prejudices of moral nature to it, by affecting its image and credibility.

As regards the determination of the moral damage amount, the court will consider that it will have compensatory effects, not being able to constitute excessive fines for the authors of the prejudice nor unjustified income for their victims. Unlike the other civil compensations, which imply a probative support, with relation to the moral damage one cannot appeal to material proof, the judge being the only one who, in proportion to the consequences suffered by the damaged party, will assess a certain lump sum that would compensate the caused moral damage. Towards the foregoing ones, the court will coerce the defendant to the payment to the plaintiff of the amount of 1 lei with the title of moral damages.

Taking into consideration that the comminatory damages are a method of constraint in the fulfilment of an obligation to make it personally, obligation that only the defendant can fulfill, and distinguishing that the main claim, on the way of consequence it will also admit the subsequent claim and will coerce the defendant to the fulfilment of the obligation to communicate the information and documents requested through the application dated March 24th, 2009 under the sanction of comminatory damages in amount of 100 lei per day of delay.

**FOR THESE REASONS,
IN THE NAME OF THE LAW
DECIDES:**

Rejects the exception of the preliminary procedure lack and the action tardiness exception.

Admits the action formulated by the plaintiff **GREENPEACE CEE ROMANIA 87**, with the elected headquarters in Bucharest, 63 Bd. Carol I avenue, 5th floor, ap. 15, 2nd district, as well as at the headquarters of its attorney „Centrul de Resurse Juridice”²² in Bucharest, 19 Arcului street, 2nd district, against the defendant **MINISTRY OF ECONOMY**, with the headquarters in Bucharest, 1st district, 152 Calea Victoriei street.

Obliges the defendant to communicate to the plaintiff the information requested through the application dated March 24th, 2009 under the sanction of comminatory damages in amount of 100 lei / day of delay.

Obliges the defendant to moral damages in amount of 1 lei.

With appeal within 15 days from communication.

Delivered in public session today, October 14th, 2009.

*Round stamp of the Bucharest Tribunal – ROMANIA/
IXth Department of the Administrative and Fiscal Court / Dispatches*

PRESIDENT, LILIANA PETROVAN

COURT CLERK, ELENA LAZA

Drawn up by Judge LP in 5 copies

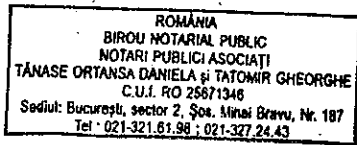
² Center for Legal Resources



TRANSLATOR

The undersigned MIHAELA TĂNASE, sworn translator authorized by the Ministry of Justice in Romania with License No. 16576/2006, I certify the accuracy of this translation with the original document in ROMANIAN, seen by me, which photocopy I attached hereto.

Translator MIHAELA TĂNASE, authorized with License No. 16576/2006



ROMANIA
THE OFFICE OF THE NOTARY PUBLIC

Registered office: BUCHAREST

Authentication Conclusion of the Signature of the

Translator No. 208
from the year 2010 month May day 31

Tanase
Ortansa Daniela, Notary Public, on the grounds of art. 8 letter e and j of the Law no. 36/1995, I authenticate the above signature of Mrs TĂNASE MIHAELA, authorized translator, on the basis of the signature specimen laid down, on the 2 copy of the document.

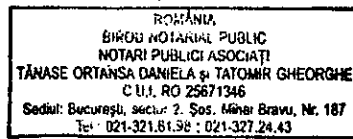
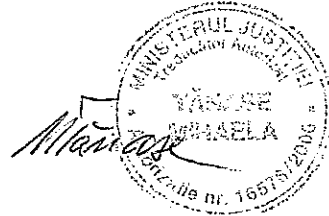
The fee of 24,99 lei was collected, with receipt no. 0004520.

NOTARY PUBLIC,

TRADUCĂTOR

Subsemnata TĂNASE MIHAELA, traducător autorizat de Ministerul Justiției cu nr. 16576/2006, certific exactitatea traducerii în limba ENGLEZĂ cu textul documentului original în limba ROMÂNĂ, văzut de mine, a cărui fotocopie am anexat-o.

Traducător TĂNASE MIHAELA, autorizat cu nr. 16576/2006



ROMÂNIA
BIROUL NOTARULUI PUBLIC

București

Încheiere de Legalizare a Semnăturii Traducătorului

Nr. 208
din anul: 2010 luna: Mai ziua: 31

Tanase
Ortansa Daniela, Notar Public, în temeiul art. 8 lit.e și j din Legea nr. 36/1995, legalizez semnătura de mai sus a dnei TĂNASE MIHAELA, traducător autorizat, în baza specimenului de semnătură depus, de pe 2 exemplare ale înscrisului.

S-a perceput onorariul de 24,99 lei, cu chitanța nr. 0004520.

NOTAR PUBLIC,

Annex 3

- Translation from Romanian -

Official emblem of the Ministry

Ministry of Economy
General Legal and Institutional Relations Directorate
Endorsement, Legislation and Contentious Matter Department

No. XIV/120/44/November 27th, 2009

BUCHAREST TRIBUNAL
IXth Department of the Administrative and Fiscal Court
File no. 18773/3/2009

The **Ministry of Economy**, with the headquarters in Bucharest, 152 Calea Victoriei street, 1st district, taxpayer identification number 24931499, bank account no. RO98TREZ70023510120XXXXX opened at B.T.O.M.B., defendant in the file no. 18773/3/2009, in trial with **GREENPEACE CCE Romania 87** through the attorney „Centru de Resurse Juridice” (Center for Legal Resources) as plaintiff, on the Merits – communication of public interest information (Law 544/2001), in accordance with the provisions of art. 299, art. 304 point 8, art. 312³⁾ point (1), point (2), point (3) Civil procedure code, corroborated with the provisions of art. 20 under the Law 554/2004 on the Administrative contentious matter, with its subsequent amendments, we submit,

APPEAL

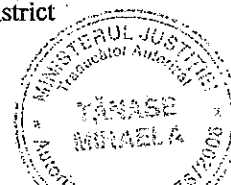
against the judgment in civil matters no. 2722 delivered by the Bucharest Tribunal – The IXth Department of the Administrative and Fiscal Court in the file no. 18773/3/2009 on October 14th, 2009 by which we demand you to admit the appeal through the judgment that you will deliver, to entirely modify the judgment in civil matters no. 2722/October 14th, 2009 and rejudging the case to order the rejection of the claim in the main as premature, respectively tardily formulated and, on the second place, as groundless.

In fact, through the Judgment in civil matters no. 2722 delivered on October 14th, 2009, the court:

- rejected the exceptions invoked by the Ministry of Economy, namely the exception of the preliminary procedure lack and the action tardiness exception;
- admitted the action formulated by the plaintiff;
- coerced the ministry to communicate to the plaintiff the information requested through the application dated March 24th, 2009 under the sanction of comminatory damages of 100 lei/day of delay;
- coerced the ministry to the payment of moral damages in amount of 1 leu.

We consider that the court has erroneously interpreted the legal document put on trial and that it has visibly altered its nature and meaning and moreover, it has erroneously retained that we have refused the communication of the information regarding the location of new nuclear power plants in Romania, although they were not under the incidence of art. 12 under the Law no. 182/2002.

152 Calea Victoriei street, 010096 Bucharest 1st district
Tel.: +4021.2025.423, Fax: +4021.2025.473



Or, we ask you to retain that precisely because of the fact that the requested information are under the incidence of the Law no. 182/2002 on the protection of classified information, with its subsequent amendments, they cannot be communicated in this moment.

As a matter of fact, we have pointed out this aspect in the statement of defence, but the court, easily passing over the ones invoked, admitted the plaintiff's claim on the reason that « *the requested information are framed in the public interest category and not being part of the category of information enumerated in art. 12 under the Law no. 544/2001, the citizens can have unrestricted access* ».

We mention that the study regarding the locations of new nuclear power plants in Romania has not been finished yet, it having to be performed also in agreement with the International Atomic Energy Agency (IAEA).

Consequently, the locations with a view to the emplacement of new nuclear power plants in Romania not being established yet, the information requested by the plaintiff cannot be communicated at this moment, they have a classified nature and enter under the incidence of art. 12 under the Law no. 182/2002 on the protection of the classified information, with its subsequent amendments.

I. With regard to the prematurity exception rejected by the court as groundless.

Although the Law no. 544/2001 does not explicitly stipulate the compulsoriness of the administrative complaint procedure, in accordance with the provisions of art. 15 point (2) under the **Government Decree (H.G.) no. 123 dated February 7th, 2002** for the approval of the enforcement guidelines of the Law no. 544/2001 on the free access to public interest information, this procedure is mandatory, in the meaning that:

- in case that a person considers that its right regarding the access to public interest information has been violated, it can address an administrative complaint to the head of the institution within a 30 day term from becoming aware of the refusal to provide the requested public interest information, following that the analysis of the administrative complaint to be performed within the framework of the „Commission of analysis regarding the violation of the access right to public interest information” constituted within the institution according to the provisions of the Law no. 544/2001 and of the Government Decree (H.G.) no. 123/2002.

It doesn't result from the documents submitted to the case file that the plaintiff has covered this procedure stipulated by the legislator, for which reason we ask you to reject the claim as being prematurely formulated.

II. With regard to the action's tardiness exception, rejected as groundless, we mention that:

According to art. 16 under the Enforcement guidelines of the Law no. 544/2001 on the free access to public interest information « The terms for the communication in writing of an answer to the solicitors of public interest information are the ones stipulated by the Law no. 544/2001, namely:

- a) 10 working days for the communication of the requested public interest information, if it has been identified within this term;
- b) 10 working days for the announcing the petitioner that the initial term stipulated under letter a) has not been sufficient for the identification of the requested information;
- c) 30 working days for the communication of the public interest information identified over the term stipulated under letter a);



d) 5 working days for the transmission of the refusal to communicate the requested information and the refusal grounding. »

In accordance with the legal provisions, we consider that the legal term within which the plaintiff should have filed a complaint against the lack of answer to the request formulated on the grounds of the Law no. 544/2001 is of **40 days** (10 days during which our institution should have formulated the answer + 30 days – the term in which the complaint can be formulated starting from the expiration moment of the response term).

As it can be observed and as the plaintiff also specifies, the latter has addressed the Ministry of Economy with an application regarding the communication of some public interest information on March 24th, 2009.

Calculating by days, the last day for the filing of the complaint was May 04th, 2009 and not May 05th, 2009.

Taking into consideration the fact that the claim has been filed at the Bucharest Tribunal by exceeding the legal term, we ask you to reject the claim as tardily formulated.

III. With regard to the admissibility of the count of claim regarding the granting of moral damages to the plaintiff, respectively delay penalties.

The provisions of the Law no. 544/2001 are not explicit on this line, they only stipulated the possibility of their granting.

We consider that the plaintiff should have proved the generation of the prejudice, and the court should have analyzed, before pronouncing itself on this aspect, if a real prejudice had been generated to the petitioner through the noncommunication of the requested data, since the quantification of damages is a complex enough process and has determination criteria that depend on the case facts, on the violated right and on the violation gravity.

Or, in the given situation and taking the plaintiff's claim into consideration, we ask you to reject these counts of claim as groundless through the judgment that you will deliver.

Conclusively, we ask you to admit the appeal through the judgment that you will deliver, to entirely modify the judgment in civil matters no. 2722/October 24th, 2009 and rejudging the case to order the rejection of the claim in the main as premature, respectively tardily formulated and, on the second place, as groundless.

By law, we ground on the provisions of:

- art. 299, art. 304 point 8, art. 312³⁾ point (1), point (2), point (3) Civil procedure code, corroborated with the provisions of art. 20 under the Law 554/2004 on the Administrative contentious matter, with its subsequent amendments;
- the Law no. 544/2001 on the free access to public interest information.

We reserve ourselves the right to make additions to the appeal grounds at the moment when we shall hold new information with regard to the locations concerning the building of the nuclear power plants in Romania.

We submit this statement in duplicate.

DEPUTY GENERAL DIRECTOR,
Magdalena NICULESCU - illegible signature

Stamp of the Ministry of Economy – ROMANIA /
General Legal and Institutional Relations Directorate



TRANSLATOR

The undersigned MIHAELA TĂNASE, sworn translator authorized by the Ministry of Justice in Romania with License No. 16576/2006, I certify the accuracy of this translation with the original document in ROMANIAN, seen by me, which photocopy I attached hereto.

Translator MIHAELA TĂNASE, authorized with License No. 16576/2006



**ROMANIA
THE OFFICE OF THE NOTARY PUBLIC**

Registered office: BUCHAREST

Authentication Conclusion of the Signature of the Translator No. 210 from the year 2010 month May day 31

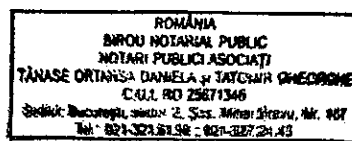
Tanase Ortansa Daniela, Notary Public, on the grounds of art. 8 letter e and j of the Law no. 36/1995, I authenticate the above signature of Mrs TĂNASE MIHAELA, authorized translator, on the basis of the signature specimen laid down, on the 2 copy of the document.
The fee of 24,99 lei was collected, with receipt no. 000.452.01.

NOTARY PUBLIC,

TRADUCĂTOR

Subsemnata TĂNASE MIHAELA, traducător autorizat de Ministerul Justiției cu nr. 16576/2006, certific exactitatea traducerii în limba ENGLEZĂ cu textul documentului original în limba ROMÂNĂ, văzut de mine, a cărui fotocopie am anexat-o.

Traducător TĂNASE MIHAELA, autorizat cu nr. 16576/2006



**ROMÂNIA
BIROUL NOTARULUI PUBLIC**

București

Încheiere de Legalizare a Semnăturii Traducătorului Nr. 210 din anul: 2010 luna: Mai ziua: 31

Tanase Ortansa Daniela, Notar Public, în temeiul art. 8 lit.e și j din Legea nr. 36/1995, legalizez semnătura de mai sus a dnei TĂNASE MIHAELA, traducător autorizat, în baza specimenului de semnătură depus, de pe 2 exemplare ale înscrisului.
S-a perceput onorariul de 24,99 lei, cu chitanța nr. 000.452.01

NOTAR PUBLIC,

Annex 4

MINISTRY OF ECONOMY, TRADE and BUSINESS ENVIRONMENT

ORDER
No. 743 / 22 April 2010

In accordance with the provisions of article 32 of Law 182/2002 on the protection of classified information, as subsequently amended and supplemented,

Based on the dispositions of article 9 paragraph (4) of the Government's Decision no. 1634/2009 regarding the organization and functioning of the Ministry of Economy, Trade and Business Environment - as subsequently amended and supplemented,

the Minister of Economy, Trade and Business Environment hereby issues the following

ORDER:

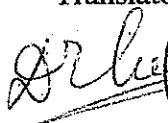
Art. 1 It is approved to declassify the list of the 102 locations that were subject to a preliminary assessment for the purpose of designating the candidate locations, as well as all the related data included in the "Study on determining the location of a new Nuclear Power Plant", approved by Order no. 2253/2008 issued by the Ministry of Economy and Finance. The study was prepared by the Subsidiary of Technology and Engineering for Nuclear Projects of the National Authority for Nuclear Activities (RAAN-SITON) and it was funded by the Sectoral Plan for Research and Development in Industry for 2008-2009.

Art. 2 The General Directorate for Energy, Oil and Gas, as well as the National Authority for Nuclear Activities – Subsidiary of Technology and Engineering for Nuclear Projects shall enforce the provisions of this order.

The Minister of Economy, Trade and Business Environment

ADRIEAN VIDEANU
[Illegible signature]
[Stamp of the Minister]

I, Elencu Laura-Daniela, holder of authorization no. 7626/2005 issued by the Ministry of Justice, hereby state that I am a certified translator between the Romanian language and English and that the official Romanian document presented to me has been accurately translated from Romanian into English to the best of my knowledge.

Translator

MINISTERUL JU.
Aut. Nr 7626/2
*LAURA DANIE
ELENCU

[Header of The Subsidiary of Technology and Engineering for Nuclear Projects]

To: THE MINISTRY OF ECONOMY, TRADE AND BUSINESS ENVIRONMENT –
The General Directorate for Energy, Oil and Gas

RAAN
SUBSIDIARY OF TECHNOLOGY AND
ENGINEERING FOR NUCLEAR PROJECTS
THE RECORDS OFFICE
ISSUE No. 3264
Year 2010 Month 06 Day 09

102 potential locations, namely:

<u>Dobrogea</u> (the Danube)	<u>Moldavia</u>	<u>Northern Transylvania</u> (the Someș river valley)	<u>Central Transylvania</u> (the Mureș river valley)	<u>Southern Transylvania</u> (the Olt river valley)
1. Măcin	12. Izvoru Muntelui	34. Jucu	58. Gârbova	79. Dopca
2. Hârșova	13. Viișoara	35. Bonțida	59. Teiuș	80. Bogata
3. Pecineaga	14. Agârcia	36. Fundătura	60. Oarda	81. Fântâna
4. Turcoaia	15. P. Neamț	37. Beclean	61. Lancrăm	82. Comana
5. Orșova	16. P. Neamț – Poiana Nicorești	38. Cristeștii Ciceiului	62. Vințu de Jos	83. Veneția
6. Bahna	17. P. Neamț – Izvoare	39. Mănășturel	63. Balomir	84. Parău
7. Drobeta Tr. Severin	18. Dumbrava Roșie	40. Mica	64. Vinerea	85. Grid
8. Babadag	19. Dumbrava Deal	41. Jichiș	65. Aurel Vlaicu	86. Șercaia
9. Tulcea	20. Dochia	42. Dej (Sălișca)	66. Mărtinești	87-92 Făgăraș (6 choices)
10. Murighiol	21-28 Roznov (8 choices)	43. Cățcău	67. Sântandrei	93. Sâmbăta
11. Dăieni	29. Mălini	44. Ileanda	68. Cristur	94. Viștea de Jos
	30. Fălticeni	45. Rus	69. Brănișca	95. Scoreiu
	31. Verești	46. Răstoci	70. Bătuța	96. Victoria
	32. Ruginoasa	47. Surduc	71. Bata	97. Cârța
	33. Traian	48. Benesat	72. Conop	98. Porumbacu de Sus
		49. Șomcuța	73. Odvos	99. Avrig
		50. Satulung	74. Mihoc	100. Turnu Roșu
		51. Ardușat	75. Ususău	101. Boița
		52. Pomi	76. Milova	102. Tâlmăciu
		53. Ilba	77. Clădova	
		54. Lipău	78. Păuliș	
		55. Tătărești		
		56. Lăpuș		
		57. Leordina		

DIRECTOR,

Adrian PANAIT
[Illegible signature]

I, Elencu Laura-Daniela, holder of authorization no. 7626/2005 issued by the Ministry of Justice, hereby state that I am a certified translator between the Romanian language and English and that the official Romanian document presented to me has been accurately translated from Romanian into English to the best of my knowledge.

Translator

MINISTERUL JUSTIȚIEI
Aut. Nr. 7626/2005
* LAURA DANIELA
ELENCU
TRADUCĂTOR AUTORIZAT

Annex 5

To: The Romanian Government
Ministry of Economy
Public Relations Department
Attn: Mrs. Anca Turcea, senior consultant

135/02.11.2009

E-mail: dez bateri_publice@minind.ro
Fax: +40 21 202 5234

Request for information concerning the location of a new nuclear plant on the river Someş

Brussels / Bucharest, 2 November 2009

Dear Mrs. Turcea,

On the 22nd day of October this year, Mediafax published a piece of news stating that Romania's second nuclear plant would be installed on the river Someş. According to the same report, the exact place is not yet known because four possible locations are currently being analysed.

Taking into account the legal provisions in force (Law 544/2001 regarding the free access to information of public interest), we hereby request you to submit to us the relevant information concerning the four locations that are still being analysed.

Please provide us with the following information as well:

- What quantity of the Someş water can be used as a cooling agent?
- What capacity can the new nuclear plant on the river Someş have?


Please send us the above documents to the following e-mail addresses: jan.haverkamp@greenpeace.org and crisanta.lungu@greenpeace.ro.

Yours sincerely,

Jan Haverkamp
Greenpeace EU policy campaigner dirty energy
E-mail: jan.haverkamp@greenpeace.org

[Stamp: GREENPEACE
Romania, Bucharest]
[Illegible signature]

Crisanta Lungu
Greenpeace campaigner in Romania
Phone: +40 7220 544000
E-mail: crisanta.lungu@greenpeace.ro


MINISTERUL JUSTITIEI
Aut. Nr. 7626/2005
* LAURA DANIELA
ELENCA
TRAD.
2017

Translation from Romanian

Crisanta
Lungu/Romania/GPCEE
02.11.2009 09:59

To dezbatere_publice@minind.ro
cc jan.haverkamp@greenpeace.org
bcc
Subject Request for information

Dear Mrs. Anca Turcea,

Please find attached a request for information from the Greenpeace organisation.

We are looking forward for your answer.

Have a nice day!

Crisanta LUNGU, PhD
Team Leader & Climate Campaigner
GREENPEACE

63 Carol I Blvd., Fl. 5, App. 15
Sector 2, Bucharest, Romania, 020916


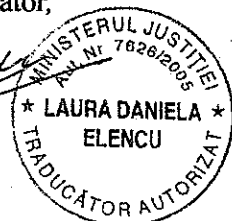
M | +40 720 544000
T/F | +40 21 3105743
@ | crisanta.lungu@greenpeace.ro
W | www.greenpeace.ro

Greenpeace is an independent, campaigning organisation using non-violent, creative confrontation to expose global environmental problems and to force the solutions which are essential to a green and peaceful future.

.....

I, Elencu Laura-Daniela, holder of authorization no. 7626/2005 issued by the Ministry of Justice, hereby state that I am a certified translator between the Romanian language and English and that the official Romanian document presented to me has been accurately translated from Romanian into English to the best of my knowledge.

Translator,

Annex 6

Ref: Request for information according to Law 544/2001 regarding „Romania's second nuclear power plant” – NGO Greenpeace formal letter no. 135/2.11.2009

Please find attached our reply to the aforementioned formal letter, with the specification that the requested information does not fall under Law no. 544/2001 on free access to information of public interest. According to article 12, paragraph (1) points b) and c) of the said law, any exploratory technical and economical data (as well as any social and political information belonging to the Romanian State) regarding a new nuclear power plant in Romania are secret; moreover, such data still need to be supplemented until a decision can be made in this respect. Besides, the ministry management has made public all the information of public interest, including on Ministry of Economy website.

Because Greenpeace has been in contact with the Ministry specialists quite often through its Romanian subsidiary, being involved in all the public actions in the field of nuclear energy (turning on the second reactor of the Cernavodă Nuclear Power plant, public debates regarding the radioactive waste, etc.) we shall present to you in the attachment the full legislative framework that binds us at international, European and national level. We can very clearly conclude from this framework that one cannot invest in a nuclear facility without previously informing and having the public's acceptance.

ATTACHMENT

The building of Romania's second nuclear power plant is the subject of several exploratory studies regarding the development alternatives for the National Energy System on the long term. Along the same lines, there are studies regarding the implementation of clean coal technologies and other studies, either completed or under way, prepared within the context of the sectoral plan of research and development of the energy sector.

No decision has been made yet regarding the location of a new nuclear power plant. Such a government decision, taking into account the market conditions and the obligations Romania assumed when being admitted to the European Union (provisions of the Euratom Treaty; preparation of several decision-making alternatives; technology transfer; horizontal development of the indigenous industry; private, mixed or governmental financing mechanism; solving the final storage problem for radioactive and spent nuclear fuel; public acceptance and many other aspects), has to be grounded on a strategy and an action plan that are anchored in a long-term economical development plan for Romania.

Besides, the legislative framework of the European Union and that of Romania are very restrictive regarding the building of a new nuclear power plant, namely:


MINISTERUL JUSTITIEI
Act. Nr. 7626/2005
* LAURA DANIELA *
ELENCA

1. At European Union level, once Romania has adhered to the European Community for Atomic Energy (the Euratom Treaty), according to article 41 and article 42 thereof all investment projects for new nuclear power plants – among others – have to be notified to the European Commission at least 3 months prior to concluding any contract with a nuclear technology supplier or prior to starting the works if the respective nuclear technology is created by using the country's own national resources;
2. **Law no. 22/2001** for the ratification of the Convention on the impact assessment on environment in cross-border context – adopted in Espoo on 25 February 1991 – specifies in Appendix 1, point 2 that any new nuclear power plant shall be subject to the Espoo Convention;
3. At national level, the following legal provisions are to be mentioned:
 - a. **The Government Ordinance no. 7/2003 regarding the promotion, development and monitoring of nuclear activities – as subsequently amended and supplemented – provides in article 5, paragraph (1), that** *“the location of power and research nuclear reactors, as well as that of the permanent storage sites for nuclear waste and spent nuclear fuel shall be approved **by law**, based on the National Strategy for Nuclear Development and on the authorizations issued by the appropriate regulatory body”* (The National Commission for Nuclear Activity Control). **The obvious conclusion is that no decision can be made in this regard without observing the decisional transparency requirement;**
 - b. **LAW no. 111/1996** regarding the safe performance, regulation, authorization and control of nuclear activities – **as subsequently amended and supplemented** – provides in article 8, article 18, article 37 and article 40 that, as early as the design and/or placement phase of a new nuclear power plant, any legal or non-legal entity that is duly established and listed in Appendix no. 4 to the aforementioned law needs an authorization, which shall be issued under very restrictive conditions (article 18). In the authorization process established by Law no. 111/1996, prior approvals and/or agreements are requested for environmental, health and intervention purposes in case of radiological hazard at various stages of the nuclear power plant construction. **We must underline the fact that we are not at this stage.**
 - c. **LAW no. 13/2007 on electric energy – as subsequently amended and supplemented** – also provides new authorization and licensing restrictions in Section 1 (Authorizations and Licenses) and Section 2 (Procedures for new energy producing facilities). Moreover, according to article 24: *“subject to transparency and non-discrimination requirements, the*

relevant ministry can initiate a tendering procedure or any procedure equivalent in terms of transparency and non-discrimination in order to award a contract, based on published criteria; by means of such a procedure, the ministry shall invite new economic operators or existing production license holders to bid for the building of new electric power facilities". In addition, according to paragraph 4 of article 24, "The tendering procedure for new power facilities, as well as the list of criteria that serve as a basis for selecting the offers and awarding the contract shall be approved by Government decision, at the proposal of the relevant ministry and competent authority".

By summing up the above, one can state that the decisional process for building a new nuclear power plant in Romania has to be completely transparent, taking into account that both the Parliament, the Government and the responsible ministries and authorities are involved in this process.

Knowing the fact that many Greenpeace members are well informed on this matter, at a specialist level we consider it obvious that, if Romania will resort to a nuclear reactor technology, it will be a 4th Generation technology. Therefore, such an approach is similar to OFFSET agreements and it includes a powerful commercial component, but it also has a political component that should be previously analysed including at CSAT (Supreme Council for National Defence) level. Also at a specialist level, we believe that the decision-making strategy for building a new nuclear power plant will have to take into account several possible locations and technological pathways before initiating the legislative process detailed above, as well as to analyse the potential of envisaging new locations. This is why we believe that identifying / naming a certain location has no relevance at all at this stage.

The public opinion will, first and foremost, play a very important role in this decision both at national, local and cross-border level in accordance with the Espoo Convention.

In 2006, the National Agency for Radioactive Waste conducted a national survey whose results showed that 56% of the respondents were completely and partially in favour of continuing the project of the Cernavodă Nuclear Power Plant. When those who had declared not to be in favour of the project were asked the following question: "If you were convinced that the radioactive waste was safely stored and did not represent a danger for the population and the environment, would you change your position regarding the use of nuclear energy?", 24% gave an affirmative answer and 19% maintained their initial negative opinion. At this point, we must underline that the respective percentages are significantly higher in the area of the nuclear power plant located near the town of Cernavodă.

In this context, the Government's main priority concerning the nuclear energy sector, as well as concerning the other activities in the nuclear field, must be to demonstrate


MINISTERUL JUSTITIEI
Nr. Nr 7526/2015
* LAURA DANIELA *
ELENCU

that Romania, along with the institutions and authorities involved, are able to solve the problem of managing and finding a final storage for the radioactive waste, under conditions of nuclear safety and by using high-quality technology. On the short term there are three major priorities in this field, namely: to upgrade the Băița-Bihor National Repository for Radioactive Waste; to decommission the VVER research reactor and update the IFIN-HH Măgurele Radioactive Waste Treatment Facility; and to approve (by law) the final location of the Final Repository of Low and Medium Radioactive Waste at Saligny. The three priorities represented a commitment within the pre-accession process to the European Union and they are monitored by the European Commission through the Phare program, which has partially attracted non-reimbursable funds for the aforementioned targets. If these priorities / goals are not completed within the following two or three years, the favourable percentage of the public opinion in Romania on nuclear energy and the other institutional applications will be questioned, both regarding the completion of units 3 and 4 at the Cernavodă nuclear power plant and regarding the building of a new nuclear power plant in Romania.

To conclude, let us present the following synthesis:

- * The location study regarding the second nuclear power plant has not been completed yet; we are certain only about the 103 possible locations on the first short list;
- * ~~This study is classified~~, it is confidential information in accordance with the legislation in force;
- * The exact location will be established with certainty when other elements that might influence the decision regarding the location are known (technology used, opinion of the possible private investors participating in the investment);
- * Once the exact location is known with certainty, this information will be made public and the authorities will perform the notification and consultation actions stipulated by the legislation in force;
- * Regarding the information published by Mediafax, we have to mention that:
 - no decision has been made regarding the placement of the new nuclear power plant on the river Someș;
 - if a nuclear power plant should be built in the surrounding area of this river, the quantity of water needed for cooling purposes will depend on the technology used;
 - the installed power capacity of the new power plant has not been established yet, as this parameter depends on the type of technology that will be used.

.....

I, Elencu Laura-Daniela, holder of authorization no. 7626/2005 issued by the Ministry of Justice, hereby state that I am a certified translator between the Romanian language and English and that the official Romanian document presented to me has been accurately translated from Romanian into English to the best of my knowledge.

Translator,

Elencu



Annex 7

FILE NO. 49156/3/2009

ROMANIA
THE BUCHAREST COURT – SECTION IX
FOR CONTENTIOUS ADMINISTRATIVE AND TAX BUSINESS

Civil sentence no. 1040

PUBLIC HEARING OF: 29 March 2010

THE COURT IS FORMED BY:

Chairperson: LAVINIA MAGDALENA PĂTRĂȘCHIOIU
CLERK OF THE COURT: CRISTINA OLARU

[Stamp of the Bucharest Court]

The pending case to be settled concerns the plaintiff GREENPEACE CEE ROMANIA 87, through its authorized agent THE LEGAL RESOURCE CENTRE, in opposition to the defendant THE MINISTRY OF ECONOMY, TRADE AND BUSINESS ENVIRONMENT on the subject of communicating information of public interest.

The debates and arguments of the parties took place during the public hearing of 26 March 2010, being recorded in the hearing report for that day, which is a part of this judgment; on the aforementioned day, because it needed more time to deliberate, the Court postponed the delivery of the ruling for today, when it decided the following:

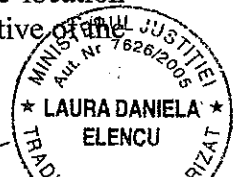
THE COURT,

After having deliberated, acknowledges:

In the *complaint* it registered on the docket of this Court under no. 49156/3/14.12.2009, the plaintiff GREENPEACE CEE ROMANIA 87 requested, through its agent the LEGAL RESOURCE CENTRE, that the Court order the defendant MINISTRY OF ECONOMY, TRADE AND BUSINESS ENVIRONMENT to communicate the information that the plaintiff asked for in the request it submitted on 2 November 2009, to pay 100 RON/day in delay penalties and order the defendant to pay the amount of 1 RON as compensation for non-material damages.

To justify its complaint, the plaintiff showed that on 2 November 2009 it asked the defendant to disclose information regarding the four locations considered for building Romania's second nuclear plant, regarding the amount of water from the river Someș that could be used as cooling agent, as well as the potential capacity of a new nuclear plant located on the river Someș.

The plaintiff also showed that, on 17 November 2009, the defendant issued a formal letter, claiming that the information requested was not of public nature, on the grounds of article 12 paragraph (1), letters b and c of Law no. 544/2001; however, the defendant itself admitted that procedures were required to be transparent in situations such as this, but ignored the provisions of the Aarhus Convention - ratified by Romania through Law no. 86/2000 - and those of the Espoo Convention - ratified through Law no. 22/2001, in the sense that the public should be notified and consulted before the project has been completed and the decision has been made. The plaintiff showed that the public should be informed about all the location studies for a new nuclear power plant and, to this purpose, it invoked the SEA Directive of the European Union, transposed through Government Resolution no. 1076/2004.



The plaintiff also criticized the fact that, through its answer, the defendant contradicts itself because, on one hand, it shows that the technology to be used is 4th generation, meaning that it the technologies expected to be used are already known, and on the other hand it shows that the amount of water necessary for cooling will be determined based on the technology if the nuclear plant is built near a river. However, if the 4th generation technologies that might be used are already known, the amount of water necessary for a new nuclear plant can be estimated based on the plant that the location studies are being prepared for. Furthermore, the plaintiff showed that no location studies could be prepared unless the beneficiary knows what kind of nuclear plant it wants to build, as the 4th generation technologies already exist and are well known.

To justify its claim for delay penalties, as provided by article 18 paragraph (5) of Law no. 554/2004, the plaintiff invoked the defendant's bad faith as the latter exceeded the 5-day term for communicating the refusal and thus willingly infringed the national and Community legislation.

Regarding the non-material damages claimed, the plaintiff showed that the tort of refusing to communicate information is an infringement of articles 31 and 34 of the Romanian Constitution.

De jure, the plaintiff invoked the provisions of Law no. 544/2001, the Romanian Constitution and the Aarhus Convention.

As proof of the complaint, the plaintiff asked the Court to hear witnesses and study the documents submitted. The plaintiff submitted to the file a copy of the request to the defendant (pages 3, 7) and the defendant's answer to the formal letter no. 135/02.11.2009 (pages 4-5).

To its defence, the defendant filed a statement of *defence* requesting for the complaint filed to be dismissed as ill-grounded, for the reason that the defendant did not refuse to communicate the information, but answered to the plaintiff at length, explaining that the information requested did not and still does not exist, that there are 103 locations still under analysis and therefore no decision has been made as far as the final location is concerned, and implicitly no decision has been made regarding the placement of the nuclear plant on the river Someş; that the amount of cooling water will depend on the technology to be used, that the capacity of the plant could not be decided yet and that the list of the 103 locations analysed to that date was classified as confidential information.

The defendant also claims that, once the appropriate site is decided, the information will be made public and it will take the actions necessary to notify and consult the citizens according to the legislation in force; the actual building of the nuclear plant will be initiated after this step.

At the same time, the defendant shows that the answer it communicated to the plaintiff is quite explicit, therefore the latter's allegations regarding the defendant's contradictory arguments are erroneous.

Moreover, the building of Romania's second nuclear power plant is the subject of several alternative studies regarding the development of the National Energy System on the long term, including studies regarding the implementation of clean coal technologies; the assessment of a series of potential locations led to the conclusion that currently known technologies of 3rd generation and 3rd generation plus – which are quite diverse in terms of facility power and cooling water required – might also be used, while the 4th generation

technologies are not fully known yet, therefore the defendant cannot claim that the new plant would use this technology.

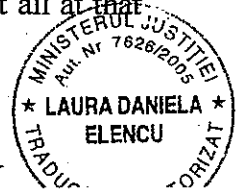
Regarding the non-material damages and periodic penalty payments claimed, the defendant indicates that the plaintiff must bring evidence for the damage incurred and that the Court should analyse whether the failure to disclose the requested data caused real damage to the plaintiff, since the quantification of such data is a quite complex process whose criteria depend on the factual situation, on the right infringed and on the seriousness of the infringement; nevertheless, considering the claim filed and the actual situation, there is no refusal, but an impossibility to provide an answer, since the defendant does not have the information in question.

On the hearing held on 26 March 2010, the defendant filed a point of view issued by the defendant through the Department of the Spokesperson and Public Relations (pages 23-24).

After having analysed the deeds and proceedings of the file, the Court considers that, de facto, by the request registered by the defendant under no. 135/02.11.2009 (pages 4-5, 7), the plaintiff sought - through its representative - information regarding the four locations considered for building Romania's second nuclear power plant, the amount of water from the river Someş that could be used as cooling agent, as well as the potential capacity of a new nuclear plant placed on the river Someş.

From the defendant's formal letter (page 4) it results that the defendant issued an answer to the plaintiff, where it showed that the information requested did not fall under the provisions of Law no. 544/2001, according to article 12 paragraph (1), letters b and c, since the technical and economical exploratory data (but also the social and political data of the Romanian State) regarding a new nuclear plant in Romania were secret and needed to be supplemented before a decision could be made in this respect, and also that the Ministry of Economy had already made public the available data on its official website.

On the other hand, in the same answer the defendant explained to the plaintiff that the building of Romania's second nuclear power plant was the subject of several alternative studies regarding the development of the National Energy System on the long term, including studies regarding the implementation of clean coal technology as well as other studies, either completed or under way, prepared within the context of the sectoral plan of research and development of the energy sector; that no decision had been made yet regarding the location of a new nuclear power plant, that such a decision, based on the market conditions and the obligations Romania assumed when being admitted to the European Union, had to be grounded on a strategy and an action plan anchored in a long-term economical development plan for Romania, and that the legislative framework of the European Union and that of Romania were very restrictive regarding the building of a new nuclear power plant. To that effect, the defendant presented the legislative framework under which it believed the request for information fell under and concluded by stating that the decisional process for building a new nuclear power plant in Romania had to be completely transparent, taking into account that both the Parliament and the Government were involved in the process, and that in order to determine what technology should be used the authorities required a previous analysis at CSAT (Supreme Council for National Defence) level, as well as the analysis of several locations and technological pathways before initiating the legislative process; therefore, the defendant believed that identifying / naming a certain location had no relevance at all at that stage.



[Handwritten signature]

It results from the same answer that the defendant knows the important role of public opinion at both local, national and cross-border level, as at the end of its answer the defendant presented to the plaintiff the main short-term priorities of the Government in the field of nuclear energy and stated that, if those priorities were not completed within the following two or three years, the favourable percentage of the public opinion in Romania on nuclear energy would be questioned both regarding the completion of units 3 and 4 at the Cernavodă nuclear power plant and regarding the building of a new nuclear power plant in Romania.

In the conclusion to its answer, the defendant showed that the location study regarding the new nuclear power plant had not been completed yet and that only the 103 possible locations „on the first short list” were certain; that the study was classified as confidential information; that the exact site would be established based on other elements that might influence the decision regarding the location (technology used, opinion of the possible private investors participating in the investment); that, once the exact location is known with certainty, the information would be made public and the authorities would perform the notification and consultation actions stipulated by the legislation in force; regarding the source of information requested by the plaintiff, namely Mediafax, the defendant showed that no decision had been made regarding the placement of the new nuclear power plant on the river Someş; if it were to happen, the quantity of water needed for cooling purposes would depend on the technology used, and the installed power capacity of the new power plant had not been established yet, as that parameter depended on the type of technology to be used.

The Court considers that the request filed is partly well-founded because the defendant failed to answer to the plaintiff according to the provisions of Law no. 544/2001 and did not communicate the information of public interest requested by the latter.

According to article 2 letter b of Law no. 544/2001 regarding free access to information of public interest, information of public interest means *any piece of information regarding or resulting from the activities of a public authority or institution*, regardless of the support, shape or means of expression of such information.

According to article 1 of Law no. 544/2001, free access to information of public interest cannot be restricted; moreover, article 6 paragraph (1) of the same legislative act provides that any person is entitled to request and obtain such information from public authorities and institutions, within the requirements of the law; a correlative obligation is that such authorities and institutions should, upon request, make available to the people the information of public interest sought after in written or verbal form – paragraph (2).

The Court finds that the defendant proves to have, according to the plaintiff's opinion, a contradictory attitude within the frame of its own defence. Thus, on the one hand the defendant claims in its answer that the respective information is an exception to the citizens' right of free access according to article 12 letters b and c of Law no. 54/2001 and, on the other hand, it explains at length that the information requested is not final because the defendant has not established an exact location for the new nuclear plant yet; however, it does not deny the existence of exploratory analyses and studies, it admits there already is a first “short list” of 103 certain locations, but it shows that it will make the information public only when the desired site has been established, although in front of the Court the defendant claims it has not made the information available because it does not have it.

Therefore, the plaintiff was right to observe that the defendant's attitude proves an obvious refusal to disclose information of public nature.

In this sense, in order to decide whether the plaintiff's request is well-founded or not, the Court relies on the provisions of Law no. 544/2001, not on the defendant's own opinion whether it is relevant to supply the requested data, namely the identification/nomination of a certain site, during the preliminary stage that the defendant has disclosed and explained to the plaintiff.

The information requested by the plaintiff is of public interest because it concerns and results from the plaintiff's activity.

Thus, in accordance with article 2 point 3 of the Aarhus Convention (adopted 25 June 1998) on access to information, public participation in decision-making and access to justice in environmental matters - a convention that Romania ratified by Law no. 86/2000 -, **environmental information** means any information in written, visual, aural, electronic or any other material form on: *the state of elements of the environment*, such as air and atmosphere, water, soil, land, landscape and natural sites, biological diversity and its components, including genetically modified organisms, and the interaction among these elements; *factors*, such as substances, energy, noise and radiation, and activities or measures, including *administrative measures, environmental agreements, policies, legislation, plans and programmes, affecting or likely to affect the elements of the environment*, cost-benefit and other economic analyses and assumptions used in environmental decision-making, as well as *the state of human health and safety*, conditions of human life, cultural sites and built structures, inasmuch as they are or may be affected by the state of the elements of the environment or, through these elements, by the factors, activities or measures included in the notion of "factors".

In accordance with the provisions of article 1 paragraph (3) of the Government Decision no. 1076/2004 for setting up the environmental assessment procedure of certain plans and programmes, which transposes Directive 2001/42/EC of the European Parliament and Council on the assessment of the effects of certain plans and programmes on the environment (the „SEA Directive”), the **environmental assessment** is an integral part of the procedure for adopting the plans and programmes, which is defined in article 2 letter b as „*preparing the environmental report, consulting the public and the public authorities interested in the effects of the plan and programme implementation, taking into account the environmental report and the results of such consultations during the decision-making process and ensuring proper notification of the decision made.*”

At the same time, according to article 5 of the same legislative act, the environmental assessment is required for those plans and programmes which may have significant effects on the environment, namely for those which:

a) are prepared for the following areas: agriculture, forestry, fishing and aquaculture, **energy**, industry including the extraction of mineral resources, transport, waste management, water management, telecommunications, tourism, regional development, land management and city planning or land use, and which determine the frame for issuing future single agreements for the projects specified in appendixes 1 and 2 to the Government Decision no. 918/2002 on establishing the frame procedure for environmental impact assessment and for approving the list of public or private projects that fall under this procedure.

Appendix 1 to the Government Decision no. 918/2002, which includes the list of projects submitted to environmental impact assessment, includes the following text at point 3.2: „**Nuclear plants and other nuclear reactors, including the decommissioning or disassembly thereof, or reactors (with the exception of research facilities for the production and**

conversion of fissionable and radioactive materials, whose maximum power does not exceed 1 kW of continuous thermal output)".

By interpreting these provisions in a logical and systematic manner, the Court considers that, due to the fact that they may have a significant impact on the environment, the plan and programmes invoked by the defendant comply with all the requirements of the Government Decision no. 1076/2006 and those of the Government Decision no. 918/2002; therefore, the defendant's task to perform an environmental assessment procedure for such plans and programs subsists, in the sense that the defendant is required to submit such plans to the procedural steps regulated by the legislative act, in accordance with the law.

The Court also considers that the environmental assessment procedure for plans that have a significant effect on the environment, such as the establishment plan for a nuclear plant, implies different stages: zoning, completion of the plan/programme layout and preparation of the environmental report, followed by a quality analysis of the report and by the decision to implement the plan – all these stages involving an express obligation for the public authorities to inform and consult the public.

In its capacity of plan/programme holder, the defendant is required to, as early as during the zoning stage, notify in writing the competent environment protection authority and inform the public about having initiated the plan/programme drafting process and about having completed the first version thereof, by means of repeated announcements in the media and by displaying such information on its official website (article 9 of the Government Decision no. 1076/2004); in its turn, the public may formulate written comments and proposals regarding the first version of the plan/programme proposed and its possible effects on the environment and submit them to the office of the competent environment protection authority.

In accordance with article 29 of the Government Decision no. 1076/2004, during the zoning stage the plan/programme holder is required to publish the following information in the media twice, at a three-calendar day interval, and to announce it on its website: *drafting of the first version of the plan/programme, nature of this plan/programme, beginning of the zoning stage, place and time for consulting the first version of the plan/programme and possibility to send written comments and suggestions* to the office of the competent environment protection authority within 15 calendar days from the latest announcement.

At the same time, according to the provisions of article 30, the responsibility for getting the public involved in the completion stage of the plan/programme layout and the responsibility for preparing the environmental report falls with the plan/programme holder, who is required to publish the following information in the media twice, at a three-calendar day interval, and to announce it on its website: availability of the plan/programme layout, completion of the environmental report, place and time for consulting them and possibility for the public to send written comments and proposals to the office of the plan/programme holder and to that of the competent environment protection authority within 45 calendar days since the latest announcement was published.

In this respect, the Court cannot consider the defendant's argument that the desired site will be made public after the location study has been completed, because it is obvious that consulting the public at that moment would become a formal and superfluous action that would, however, seriously infringe the right to environmental protection and the goals of the Community environmental policy, as provided in article 6 of the EC Treaty.

The environmental assessment is a procedure involving not only the preparation of the environmental report, but also a consulting process within which both the public and the authorities responsible for protecting the environment are allowed to express their opinions and suggestions; thus, it becomes clear that the **consulting** process is an inseparable part of the assessment. Moreover, the decision-making process has to **take into account** the results of the consultation. If a single element of those listed above is missing, the environmental assessment is *a priori* non-compliant with the requirements of the legislative act. This fact underlines that the legislator bestows great importance on consultation within the environmental assessment process, such consultation being a way to get the public timely involved in the SEA procedure and to ensure conformity with both the Community provisions and the international provisions, namely with the Aarhus Convention.

The environmental assessment of the plans/programmes should influence the way they are prepared, so that the content of the plan/programme should include the results of the environmental report and the final version of the plan/programme should represent the best alternative for achieving the intended goals from an environmental perspective.

Therefore, the Court can even less consider that the information requested – which include elements of the site plan for a nuclear power plant – can be included in the category of exceptions from the citizens' right of free access according to article 12 of Law no. 544/2001, as the defendant could not prove that such information complies with the requirements of article 12 letter b or letter c of the aforementioned Law.

Thus, a grammatical interpretation of article 12 paragraph (1) letter b of Law no. 544/2001 shows that not every piece of information regarding defence, national security and public order is excepted from public access, but only those which are *classified according to the law*.

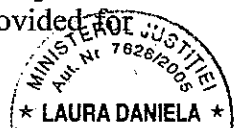
According to article 15 letter b) of Law no. 182/2002, classified information means any piece of information, data and documents of interest for national security which must be protected due to their level of importance and to the possible consequences of the unauthorized disclosure or dissemination thereof. The systematic interpretation of Law no. 182/2002 shows that information representing a secret of the state or confidential information must be classified for protection purposes.

Although in its answer to the plaintiff the defendant claimed that the technical and economical exploratory data (but also the social and political data of the Romanian State) regarding a new nuclear plant in Romania are secret and that the location study regarding Romania's second nuclear plant is also classified as confidential information, the defendant has not submitted any proof in this respect and it results that no normative provision labels the information requested by the plaintiff as belonging to the category of confidential information.

At the same time, although the defendant also invoked the provisions of article 12 letter c of the Law, the Court considers that this case does not fall under this article either because the information requested concerns neither commercial nor financial activities, its purpose being to inform the people about the economical plans and programmes that affect or may affect the elements of the environment, as well as about the economic assumptions employed for making this environmental decision.

In accordance with the norms of the aforementioned Convention, it was the defendant's task to prove, if applicable, the confidential nature of the procedures performed during the process of analysing the location of a new nuclear plant in case the national legislation provided for such confidentiality (article 4).

Laura Daniela



It cannot be denied that the location-related data analysed by the defendant in order to determine the building site for a nuclear plant in Romania have the nature of environmental information. The circumstance that the plaintiff grounded its request for such data on a public source of information, namely a press agency, strengthens its classification as information of public interest, obviously within the limits allowed by law and by the legislative acts that transpose the European Union directives. However, the Court sees that the defendant has not proven that such information is classified in nature, nor has it proven that the information regards commercial or financial activities or that communicating the locations analysed for the purpose of building a new nuclear plant might affect the principle of fair competition.

As long as, according to the defendant's own statements, the establishment of a new nuclear plant in Romania is only at the stage of the initial exploratory analysis, which has been condensed into a location study that already includes a list of 103 analysed locations, it is obvious that such information cannot affect any commercial or financial activities and it can even less influence the principle of fair competition, especially since, on the other hand, the defendant invokes the political nature of the analyses performed in order to establish the location.

Besides, the Court will dismiss the claim that the location study is confidential information also for the reason that, in fact, the plaintiff did not request the disclosure of the study, but that of the information related to the locations known to be under consideration – among which the river Someş – and that such information, as seen above, should be the subject of notification to the public by default.

Inasmuch as the defendant had proved the study to be classified in nature, the Court would have analysed to what extent the information singularized by the plaintiff could be extracted from the study and could acquire public status within the obligations provided under the Government Decision no. 1076/2004; however, in the absence of such evidence the Court will consider that the demand formulated in the request dated 02 November 2009 is a request for information of public interest and that it is well-founded under each head of claim.

Consequently, the Court will also rule out the argument that the defendant did not have this information, because by not denying the location invoked by the plaintiff, namely the river Someş, it can be logically deduced that the parameters claimed – namely the quantity of water required for cooling and the potential power (capacity) of a power plant located on that site – were also included in the analysis regardless of the technology chosen.

Moreover, according to article 4 paragraph (5) of the Aarhus Convention, if a public authority does not have a piece of information sought, such public authority is required to either notify the requester as soon as possible about which public authority it thinks might have the respective information, or to forward the request to that authority and notify the requester at the same time. However, it can be stated neither that the defendant has reasonably justified its claim of not having this information, nor that it has proven any diligence in pointing to the plaintiff another public authority that might have the information requested.

On these grounds, seeing the defendant's unjustified refuse to communicate the information requested, the Court will order the defendant to do so, under the sanction of paying 100 RON/day in delay penalties in favour of the plaintiff, according to article 18 paragraph (5) of Law no. 554/2004.

Regarding the non-material damage requested, the Court finds that the requirements provided in article 22 of Law no. 544/2001 have not been met, taking into account that the plaintiff assessed the damage suffered to be of 01.00 RON but that it has proven neither the existence of such damage nor the causality relation between the non-disclosure of the information sought and the damage claimed. The Court judges that, according to article 1169 of the Civil Code in conjunction with articles 998-999 of the Civil Code, the plaintiff was required to prove, along with the infringement, that the defendant was guilty for the damage occurred due to the non-disclosure of the information, as well as to prove the existence of the damage itself and the causality relation between the damage and the infringement.

Since no proof has been filed to this respect, the Court shall dismiss the request for non-material damage as ill-founded.

**FOR THESE REASONS,
IN THE NAME OF THE LAW
THE COURT HEREBY RULES:**

The Court partly accepts the complaint submitted by the plaintiff GREENPEACE CEE ROMANIA 87, through its agent THE LEGAL RESOURCE CENTRE, with registered office in Bucharest, sector 2, 19 Arcului street, in opposition to the defendant THE MINISTRY OF ECONOMY, TRADE AND BUSINESS ENVIRONMENT with registered office in Bucharest, sector 1, 152 Calea Victoriei.

The Court orders the defendant to communicate to the plaintiff the public information sought in request no. 135/02.11.2009, under the sanction of paying 100 RON/day in delay penalties in favour of the plaintiff.

The Court dismisses the head of claim regarding the payment of non-material damage for being ill-founded.

The decision is final.

An appeal may be filed within 15 days from the notification of this judgment.

Pronounced in public hearing today, 29 March 2010.

CHAIRMAN
LAVINIA MAGDALENA PĂTRĂȘCHIOIU
[Seal of the Bucharest Court]

CLERK OF THE COURT
CRISTINA OLARU

.....

I, Elencu Laura-Daniela, holder of authorization no. 7626/2005 issued by the Ministry of Justice, hereby state that I am a certified translator between the Romanian language and English and that the official Romanian document presented to me has been accurately translated from Romanian into English to the best of my knowledge.

Translator
MINISTERUL JUSTITIEI
Nr. 7626/2005
LAURA DANIELA
ELENCU
TRADI
BRIZAT