

**SUPPLEMENTARY COMMUNICATION TO THE AARHUS
CONVENTION COMPLIANCE COMMITTEE**
Clean Air Action Group
Hungary

Reference number:

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State concerned: Hungary

Aarhus Convention articles concerned:

6.4; 6.7; 9.2

On behalf of the Clean Air Action Group I supply a supplement to our Communication (Reference Number: ACCC/C/2004/04) to the Aarhus Convention Compliance Committee (hereafter: Committee) submitted on the 21st April 2004.

I request the Committee to assess the non-compliance of the *GKM Ministerial Decree Number 99/2004 (VII. 4.)* which has amended the *KöViM Ministerial Decree Number 15/2000 (XI. 16.) on permission of construction, opening and termination of roads* (hereafter: Decree) with the provisions of the *Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters* (hereafter: Convention).

In addition I request the Committee to call on the Hungarian Ministry of Economic Affairs and Transport to establish compliance with the Aarhus Convention in regard to the following sections of the Decree.

1.) Section (1) of Para 5/A in the amended Decree declares that:

“In case of road construction bound to environmental permission... ...the environmental, nature conservation, landscape protection and water conservancy authorities shall not be

involved in the procedures described by this decree (e.g. construction permission procedures) as professional authorities”

The clear objective of the above mentioned rule is to simplify – according to the Ministry: ‘to remove the barriers from’ – the execution of Act CXXVIII/2003 on Public Interest and Development of the Expressway Network in the Republic of Hungary (Expressway Act) which was seriously criticized in our original communication.

Previously during the construction permission procedures of expressways the environmental authorities were entitled to take a stand as ‘professional authorities’. According to the Hungarian judicial practice this procedure is qualified to be an environmental decision-making process. Therefore – as it is declared by the Hungarian Environmental Protection Law (Act Nr. 53/1995) and by the Convention – the public concerned and the environmental NGOs representing the interests of the citizens had the right to make remarks during the procedure and appeal against the environmental authority’s decision (and therefore against the whole construction permission) to the court.

The consequence of the adoption of the Decree is that the residents and the public at large have no opportunity to participate in the construction permission procedures of expressways. Moreover it is impossible to appeal to the court for the review of the final administrative decision.

During the construction permission procedures the environmental interests could be seriously violated. Therefore the role of the environmental authority as a ‘professional authority’ is essential because it could set up special conditions to be met at the implementation phase of road construction. Besides, the environmental authority could control the compliance with the basic environmental permission during the construction permission procedure as well. The above could make public participation in decision-making indispensable.

The Decree precludes the possibility of the environmental authorities to take part in the construction permission procedure and therefore it excludes the right of environmental NGOs to appeal to the court. This violates articles 6.4; 6.7 and 9.2 of the Convention:

Article 6.4

“Each Party shall provide for early public participation, when all options are open and effective public participation can take place.”

Article 6.7

“Procedures for public participation shall allow the public to submit, in writing or, as appropriate, at a public hearing or inquiry with the applicant, any comments, information, analyses or opinions that it considers relevant to the proposed activity.”

Article 9.2

“Each Party shall, within the framework of its national legislation, ensure that members of the public concerned

(a) Having a sufficient interest or, alternatively,

(b) Maintaining impairment of a right, where the administrative procedural law of a Party requires this as a precondition,

have access to a review procedure before a court of law and/or another independent and impartial body established by law, to challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of article 6...

...To this end, the interest of any non-governmental organization meeting the requirements referred to in article 2, paragraph 5, shall be deemed sufficient for the purpose of subparagraph (a) above.

2.) According to Section (2) Para 5/A of the amended Decree:

“The transport authority is entitled to request an expert opinion from the National Environmental Inspectorate in connection with the execution of the environmental permission. The National Environmental Inspectorate provides the expert opinion within 15 days starting from the date of the request.”

This rule is perilous for several reasons.

- The above mentioned expertise is a much “softer” tool in the hand of the environmental authority to influence the construction permission because it is not binding for the transport authority. Moreover the public concerned is not entitled to participate in the decision-making procedure, to make observations and – above all – to appeal against the expert opinion.
- A 15 day period for such a complicated decision is a very short period of time. The environmental authority will be unable to take into consideration all facts and circumstances, to collect all the different opinions from the public in such a short time.

- It's disquieting that according to the Decree the expert opinion is the discretion of the National Environmental Inspectorate and not of the regional ones who are in possession of all the relevant local information which is needed for a well-founded decision.

Therefore the institution of the expert opinion is an inadequate substitute for a procedure involving 'professional authorities'.

In our opinion it is alarming that the Hungarian Government is determined to carry out expressway construction in the shortest possible time removing all checks and balances as 'barriers'. They consider the environmental authorities, the inhabitants of settlements involved and at the environmental NGOs as major hindrances of the motorway projects. The Government wishes to achieve fast results by curtailing the rights of the public as clearly stated in international conventions and in the Hungarian environmental law rather than guaranteeing thorough planning and due consideration for the interests of the environment.

Budapest, September 16, 2004.

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