

A new age for environmental democracy: the Aarhus Convention in Hungary

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Introduction

The Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters ('the Aarhus Convention') has been hailed by political leaders as an 'ambitious venture in environmental democracy'¹ with particular relevance for the countries of the former socialist block for whom it could serve as an 'inspiration for the further development of the democratic process.'² Indeed, the active participation of environmental organisations from Central and Eastern Europe in the negotiations over the Aarhus Convention testifies to the high hopes that environmental advocates have placed in the long-term value of this instrument in their efforts to strengthen environmental democracy and policy in their countries.³ Now, over two years after the Convention came into force, the question is whether it is living up to its potential.

The countries-in-transition ('CITs') of Central and Eastern Europe have faced common challenges in establishing policies based on the rule of law, transparent and democratic procedures, and impartially applied standards of justice. Differences in the rate and quality of these transformations are in part reflected in the degree of progress these nations have made in realizing their ambitions to join the European Union,⁴ with the first wave of

countries, which includes Hungary, set to join the EU in the spring of 2004. Other countries such as Romania and Bulgaria are working feverishly to prepare themselves for accession several years later and still others that entertain hopes of joining the Union, such as Ukraine and Georgia, are lagging far behind in making the necessary reforms. Yet a common criticism of even the most 'advanced' CITs is that many reforms are superficial and that business-as-usual continues just below the surface of formal change. Most typically, critics assert that legal changes are often not accompanied by the creation of implementation structures that could carry out the law. Sometimes even implementing legislation and regulations are lacking, making something of a mockery of the fine laws passed through parliaments under the pressure and advice of the EU and Western experts. The Aarhus Convention, with its inherently anti-statist norms and prescriptions, is a likely candidate for official neglect and political contestation at the implementation level in countries that have not yet completed the transition to democracy at the level of political culture.⁵ For even while many CITs have signed and ratified the Aarhus Convention,⁶ the spirit of the Convention challenges the ingrained political culture of secrecy and privilege inherited from the state socialist period.⁷

This article examines the status of the Aarhus Convention in Hungary, taking account of both legal compliance and the broader process of implementation. As will be shown, while formal compliance is sufficient to

1 Statement of Kofi Annan, Secretary General of the United Nations, cited in United Nations Economic Commission for Europe Press Release of 29 October 2001, 'Environmental Rights Not a Luxury'.

2 *Ibid.*, statement of Vardan Aivazyan, Minister of the Environment, Republic of Armenia.

3 In addition to the Regional Environmental Center for Central and Eastern Europe, an international organisation that supports regional NGOs, the Environmental Management and Law Association of Hungary, the European Eco-Forum, the Regional Environmental Centres of Ukraine, Russia, Moldova, Central Asia and the Caucasus, Ecojuris of Russia, and Eco-Pravo of Ukraine took part in the negotiations. The negotiations also drew participants from other NGOs in the region who participated as delegates from some of the organisations listed above.

4 A number of CITs, including Russia, Belarus, and the Central Asian states do not have a policy of moving towards accession to the EU. Ukraine and the countries of the Caucasus, do have this ambition.

5 All of the new accession states, including Hungary, are fully democratic in the formal sense of having elected leaders and the institutions of democracy.

6 Twenty of 27 parties to the Convention are CITs. This remarkable fact has not yet been adequately explained. Observers have speculated that some CITs, especially Central Asian and Caucasian countries, have ratified the Convention in order to gain international legitimacy without having a clear understanding of the implications of the Convention for their relatively autocratic regimes, or without having any intention of implementing it.

7 G. Tunesen and J. Hartvig Simonsen (2000), 'Compliance with the Aarhus Convention', *Environmental Policy and Law* 30(6).

meet legal obligations, fully implementing the Aarhus Convention remains a low priority for the government, and it has yet fully to embrace the far-reaching potential of the Convention to transform political culture and environmental policy making practices. At the same time, elements of the government and civil society organisations have quickly recognised the potential value of the Convention and have been active in implementing it and exploring the potential for its future utilisation.⁸ These steps, however, are still at an embryonic stage. Neither a governmental nor an NGO strategy for implementing the Aarhus Convention has been developed, and a great deal more effort will be required in order to make the Convention an effective instrument for significant political and policy change in Hungary.

The legal and institutional framework for compliance

The Constitution of the Republic of Hungary⁹ provides for the basic rights and freedoms prerequisite for compliance with the Aarhus Convention, including the right to assembly and association,¹⁰ freedom of speech,¹¹ freedom of the press,¹² the right to access information of public interest,¹³ and the right to seek legal remedies before a court of law in the case of infringement of other legally provided rights.¹⁴ While it is not possible for citizens to bring lawsuits directly on the basis of the Constitution, legal practice in Hungary requires the establishment of additional laws implementing the provisions of the Constitution, violations of which provide the basis for legal action under those laws. The laws most relevant to compliance with the Aarhus Convention are the 1992 Personal Data Protection and Disclosure of Public Data Act,¹⁵ the 1995 Environmental Protection Act,¹⁶ and the 2001 Governmental Order on Environmental Impact Assessment.¹⁷

While the government has taken the position that the legal framework existing prior to ratification of the Aarhus Convention is sufficient to meet its legal obligations under the Convention, critics insist that additional implementing decrees and regulations are necessary. The government is not currently taking steps to develop further implementing legislation or regulations. It is, however, working in relatively close co-operation with environmental organisations in disseminating environmental information through a publicly supported NGO network. NGOs, particularly the Environmental Management and Law Association (EMLA), Ökotárs, and the Ecological Institute of Sustainable Development,¹⁸ have also been active in examining the state of and capacity for implementing the Convention in Hungary.¹⁹ The implementation structure for the Aarhus Convention thus consists of a body of pre-existing law coupled with a modest investment of administrative resources in the Ministry of Environment and steady NGO support.

Access to information

The Hungarian Constitution establishes the principle of the public's right to information of public interest in Article 61(1), linking it with the right to freedom of expression:

In the Republic of Hungary everyone has the right to freely express his opinion, and furthermore to access and distribute information in the public interest.

The right to access information, including environmental information, is further elaborated in the Protection of Personal Data and Disclosure of Public Data Act, the Environmental Protection Act, and the Governmental Order on Environmental Impact Assessment. The Data Protection and Disclosure Act establishes a basis for both the passive access to information and the active dissemination of information required under the Aarhus Convention. Section 19(3) directs authorities to 'grant access for anyone to the data of public interest processed'²⁰

8 I. Takacs (2002), 'The Implementation of the Aarhus Convention in Hungary with Special Reference to the Actors, Chiefly the NGOs', MSc thesis, Central European University, Budapest, Hungary.

9 The Constitution of the Republic of Hungary, adopted 20 August, 1949 established by Act XX of 1949.

10 *Ibid.*, Articles 62 and 63 respectively.

11 *Ibid.*, Article 61 (1).

12 *Ibid.*, Article 61 (2).

13 *Ibid.*, Article 61 (1).

14 *Ibid.*, Article 57 (5) and Article 70 K.

15 Act LXIII of 1992.

16 Act LIII of 1995.

17 Governmental Decree 2001:20 (II14.).

18 EMLA is primarily a public interest law firm while the other organisations are more activist-oriented environmental NGOs.

19 For instance, the EMLA was one of the core partner organisations that organised 'the Access Initiative', which examined the state of access to information, participation, and justice in decision-making in selected countries. See E. Petkova, C. Maurer, N. Henninger, and F. Irwin (2002), 'Closing the Gap: Information, Participation, and Justice in Decision-Making for the Environment', World Resources Institute, Washington, DC.

20 'Processing' under this law includes recording, storing, and using data.

by' with the exception of information protected on the basis of national defence or security, criminal or other judicial or police procedures, monetary or currency policy, or international relations and relations to international organisations. Moreover, the Act provides that:

The authority shall regularly publish or otherwise enable access to [the] most important data relating to its activity, in particular to the authority, competence and structure of it, as well as the categories of data possessed by it and the law governing its activity.²¹

Authorities are directed to provide information of a public nature promptly upon being asked for it, or at least within 15 days of receiving the request.²² Denials of access to requested information must be issued in writing within eight days of the rejection and include a justification of the denial.²³ Applicants then have up to 30 days to initiate legal proceedings against the governmental authority that issued the denial²⁴ and courts are directed to deal with such cases 'with dispatch'.²⁵

The Environmental Protection Act of 1995 specifies the particular right to environmental information:

Everyone shall have the right to acquire knowledge about facts and information on the environment, thus, in particular, about the state of the environment, the level of environmental pollution, the environmental protection activities as well as the impacts of the environment on human health.²⁶

The Act further obliges the state, including local governments, to 'monitor within their scope of activities the state of the environment and its impact on human health'²⁷ and to make such information accessible to the public. The Act also directs all entities, including private entities, that constitute 'users of the environment' to

provide information 'in respect of their loading, utilisation, as well as posing hazard to the environment.'²⁸

The Environmental Protection Act devotes a chapter to 'The Groundwork for Environmental Protection', which contains provisions for environmental information, research, and education. The Act establishes an environmental information system the outputs of which include the annual state of the environment report and regular reporting on local environmental conditions by municipalities. The Ministry regularly publishes information on its website and in reports. The environmental inspectorates also publish information on their websites and are planning to create positions for public information officers.²⁹ The Ministry of the Environment also has a public information office that handles upwards of 650 requests for information each month,³⁰ although many of these do not involve environmental information as specified in the Aarhus Convention.

Public participation

The rights to assembly and association are the main constitutional guarantees related to the public participation provisions of the Aarhus Convention, although the Constitution also establishes the right to appeal to governmental authorities:

In the Republic of Hungary everyone has the right to present, individually or together with others, written petitions or complaints to the relevant public authority.³¹

The right to petition and complain does not necessarily provide a basic right to participate in decision-making, as the Aarhus Convention envisions, although it does require public authorities to receive the views of citizens on matters in their purview at any point before, during, or after the decision-making process. Specific rights to more active participation are provided for under the Environmental Protection Act, the governmental order on environmental impact assessments,³² as well as a scattering of other sector-

21 Act LXIII of 1992 on Protection of Personal Data and Disclosure of Data of Public Interest Section 19 (2).

22 *Ibid.*, section 20(1).

23 *Ibid.*, section 20(2).

24 *Ibid.*, section 21(3).

25 *Ibid.*, section 21(6). The literal translation from the Hungarian reads as 'apart from the line', or 'out of order', indicating that extraordinary cases of this sort should be moved to the head of the line. Normally, cases are heard in the order in which they are received.

26 Act LIII of 1995 on the General Rules of Environmental Protection, section 12(1).

27 *Ibid.*, section 12(3).

28 *Ibid.*, section 13(4).

29 *Ibid.*, at 3 to 4.

30 Environmental Management and Law Association (2002), 'Hungary Report for The Access Initiative', at 7, available on the World Resources Institute website at <http://www.accessinitiative.org/hungary.html>.

31 Note 1 above, Article 64. Interestingly, Act I of 1977 established the right of citizens to challenge the practices of any governmental body, including the courts. While this right was not exercised under the socialist regime, it is now a powerful tool in the hands of citizen activists.

32 Hungarian Governmental Order 2001:20 (II.14).

specific laws dealing with such items as the siting of power plants.

The Environmental Protection Act establishes a basis for broad public participation in environmental decision-making at the regional development, programme, and project levels. Citizen participation in environmental decision-making and environmental protection is established as a general principle in the Environmental Protection Act, which specifies that:

The citizens are entitled to participate in procedures concerning the environment in ways specified in this Act and in other legal rules.³³

Everyone shall have the right to call the attention of the user of the environment and the authorities to the fact that a hazard is being posed to the environment or if the environment is being damaged or polluted.³⁴

Citizen participation is broadly understood as participation as an individual acting directly or through a representative, a non-governmental organisation, or local government.³⁵ As will be discussed below, participation through non-governmental organisations is a legally privileged means for citizens to affect environmental decision-making in Hungary.

Public authorities are required to hold public hearings near the location of the site of a proposed project. Public hearings must be advertised to people likely to be affected by a project and the public, NGOs, and others are entitled to submit comments on the project prior to or at the hearing. Before making a decision, the authorities must 'study the comments important in the matter from the aspect of evaluating the impact on the environment on their merits.'³⁶ This is a vague enough construction to allow for a range of interpretations. The rule cannot, however, reasonably be construed as a limitation on the discretionary authority of governmental decision makers. Rather, this provision seems to indicate a primary emphasis on establishing accurate assessments of the likely environmental impacts of projects.

Hearings must involve local governments, affected citizens, the applicant for a licence for the project, and, specifically, 'the associations formed to represent environmental interests'.³⁷ This provision of the law giving

specified rights to environmental organisations is further developed under section 98 of the Environmental Protection Act:

- (1) Associations formed by the citizens for the representation of their environmental interests ... and active in the impact area ... shall be entitled in their area to the legal status of being a party to the case in environmental protection state administration procedures.
- (2) The organisations shall have the right, by representing the interests of their members, to
 - (a) co-operate in drawing up regional development plans and environmental protection programmes affecting their area of operation or activities;
 - (b) participate in the environmental licensing procedure – in accordance with the provisions of this Act;
 - (c) give their opinion on the state Bills and local government draft by-laws.³⁸

The Environmental Protection Act thus establishes special rights for environmental non-governmental organisations, thereby providing incentives for citizens to form such formal organisations in order to participate in environmental decision-making. In fact, the number of environmental organisations in Hungary has grown during the transition period³⁹ even while popular support for the environmental movement plunged shortly after the collapse of the communist regime in 1989.⁴⁰

The level at which most public participation in environmental decision-making in Hungary occurs is the project level, although environmental organisations do also have the legal right to participate in the development of environmental policies, laws, and regulations. It is estimated that between 200 and 250 preliminary EIAs and 20 final

38 *Ibid.*, section 98(1), (2)(a), (b), (c).

39 The fourth edition of the *NGO Directory* produced by the Regional Environmental Centre for Central and Eastern Europe lists 505 environmental NGOs in Hungary, of which 237 were registered between 1991 and 2001. The majority of Hungarian environmental NGOs are local and regional. Further information on NGOs in Hungary and throughout the Central and Eastern European region can be found in The Regional Environmental Center for Central and Eastern Europe (2001), *NGO Directory: A Directory of Environmental Non-Governmental Organisations in Central and Eastern Europe*, (4th edn), REC, Szentendre, Hungary. The electronic version of the Handbook is available from the REC web site at www.rec.org.

40 See S. Baker and P. Jehlicka (eds) (1998), *Dilemmas of Transition: The Environment, Democracy and Economic Reform in East Central Europe*, London, Frank Cass.

33 Note 16 above, section 9 (1).

34 *Ibid.*, section 97(2).

35 *Ibid.*, section 97(3).

36 *Ibid.*, 93(6).

37 *Ibid.*, section 93(2).

EIAs are performed in Hungary each year.⁴¹ The Hungarian EIA framework consists of provisions of the Environmental Protection Act that deal with impact assessment and a governmental decree on EIA that elaborates these provisions. The public is involved in both a preparatory phase and a detailed impact assessment phase of the EIA process in terms of being able to contribute knowledge to the assessment.

Access to justice

The status of the judiciary in the transition process from socialism to democracy in some Eastern Europe countries has been particularly controversial due to the fact that the courts had been an instrument of Communist Party oppression, especially during the Stalin era. The milder form of Hungarian socialism, however, allowed a relatively independent judiciary to develop by the 1980s which was rarely used for political repression.⁴² Instead, the judiciary was left in a state of benign neglect, a condition that it suffers from to this day.

Unlike other countries such as Poland and the Baltic States, the majority of Hungarian judges from the socialist period retained their positions after 1989. The judiciary as a branch of government won formal independence in 1989. Nevertheless, the judiciary has experienced significant difficulties during the transition period. These include challenges overcoming the bureaucratic mentality and practices inherited from socialism and gaining the technical competence to hear complex cases. At the end of the first decade of transition, however, the Hungarian judiciary had made progress by having clearly established its independence and investing resources in the development of judicial capacity.⁴³

The Hungarian Constitution invests the courts with the responsibility to 'supervise the legality of the decisions of public administration'⁴⁴ and the right to deal with 'claims deriving from infringement of fundamental rights and objections to state (administrative) decisions in regard to compliance with duties'.⁴⁵

The Environmental Protection Act gives broad standing to environmental organisations to sue operators for posing hazards to the environment. Specifically, the law states that:

In case a hazard is being posed to the environment or the environment is being damaged or polluted, organisations are entitled to intervene in the interest of the protection of the environment and (a) to request the government organ or local government to take appropriate measures falling under its powers or (b) to file a lawsuit against the user of the environment.⁴⁶

This provision of the Environmental Protection Act is an unusual and arguably awkward and impractical basis on which NGOs can pursue justice in environmental matters. While seeming to give standing to NGOs to sue over environmental matters in general, the Act does not clarify under which laws NGOs may have standing, nor even whether their complaints must be based on violations of law at all. Rather, read literally, the Act empowers organisations to sue over any type of environmental damage or pollution without, of course, outlawing pollution per se. It is unclear how NGOs should take advantage of this right.

Access to justice in cases when environmental information has been requested and denied is provided under the Protection of Personal Data and Disclosure of Public Data Act and the Administrative Procedures Act. The Data Protection and Disclosure Act explicitly gives persons who have been denied access to information the right to appeal to a court of law within 30 days of being refused access.⁴⁷ The Act also establishes a Commissioner, or Ombudsman, for Data Protection among whose responsibilities are overseeing implementation of the Act and taking complaints from citizens, including taking cases when citizens have been denied access to information.⁴⁸ However, the Data Protection Ombudsman has no real authority to make decisions, and after reviewing cases can do little more than issue statements and cajole authorities to abide by his interpretation of the law. His statements carry some moral authority, but governmental agencies are neither obliged nor often inclined to reverse decisions on the basis of the Ombudsman's statements.

41 A. Cherp (1999), 'Environmental Assessment in Countries in Transition', PhD dissertation, University of Manchester, Manchester, UK.

42 S. Andras (1993), 'The Judiciary in Contemporary Society: Hungary', *Case Western Reserve Journal of International Law*, Vol. 25(2).

43 A. Kover (2002), 'Judicial Capacity in Hungary', in *Monitoring the EU Accession Process: Judicial Capacity*, Open Society Institute, Budapest.

44 See Note 9 above, Constitution of Hungary, Article 50(2).

45 *Ibid.*, Article 70/K.

46 See Note 16 above, Environmental Protection Act, section 99 (1) ('EPA').

47 See Note 15 above, Data Protection Act, section 21.

48 *Ibid.*, section 27.

Implementation and compliance in Hungary

General comments

While Hungary seems technically to comply with the letter of the Aarhus Convention, it has only begun to realise the potential social and policy benefits that vigorous implementation of the Convention could provide. Hungary lacks a comprehensive implementation and compliance strategy for the Convention and is not at this time planning to develop one. The fact that the European Union will soon become a party to the Convention and has issued the first two of three Directives implementing it has not affected Hungary's essentially passive official stance towards implementation. The government has instead taken a narrowly legalistic approach to the Convention, arguing that existing legal and regulatory frameworks are clearly in compliance with the Convention and that further significant action is unwarranted. This approach leaves much to be desired, although it does attest to the fact that Hungary's legal framework for access to information, public participation, and access to justice in environmental matters was relatively advanced even prior to ratifying the Aarhus Convention. This is partly a function of the 'leap-frogging' that many CITs were able to effect during the transition period, in which state-of-the-art practices and policies were adopted from various Western sources without first going through the contentious developmental process that Western countries experienced. However, leap-frogging at the legal and policy levels does not automatically translate into successful practice, and it is not uncommon to find cases in which excellent environmental law and policy co-exists with poor practice in CITs.⁴⁹

Overall administrative capacity to implement the Aarhus Convention is sufficient but not exemplary in Hungary. The Ministry of Environment has appointed a mid-level officer to oversee compliance and implementation but the officer in charge has not received a mandate to aggressively and creatively use the Convention as a tool to promote better environmental policy-making practices by promoting transparency and participation and ensuring access to justice. Instead, implementation is approached on a day-to-day basis, and most initiatives to go beyond mere legal compliance originate in the NGO sector. While the officer in charge has attempted to insert some Aarhus related priorities in the country's National Environmental

Programme (NEP), the priorities are oriented mainly around the information pillar, and include the need for further development of databases and additional computer hardware. The NEP does not contain a strategic approach to implementation.

The office responsible for implementing the Convention suffers from an absence of any mechanisms that could provide the officer with an overview of issues related to implementation of any of the three pillars. For instance, there is no reporting requirement for the regional inspectorates in regard to requests for environmental information, meaning that the officer at the Ministry does not know how often or whether the inspectorates, or the headquarters of the Ministry itself for that matter, refuse access to information requested by the public.⁵⁰ Nor does the officer have a mechanism for keeping track of whether or how well environmental NGOs are allowed and able to participate in decision-making and planning processes, or even whether Aarhus-related cases are being brought before the courts. In the absence of a mandate from the Ministry to develop a comprehensive implementation strategy, the officer is unlikely to gain access to the administrative resources necessary to put such tracking mechanisms into place.

In addition to an implementation strategy, the most glaring lacuna in the government's approach to Aarhus has been its refusal to issue any additional implementing regulations or decrees. Neither has it developed guidelines on implementing the Convention for the regional inspectorates, nor has it systematically trained inspectors in the implementation of the Aarhus Convention. While some guidelines in regard to water-related issues do exist, they have been developed by the Regional Environmental Centre for Central and Eastern Europe, an international organisation headquartered in Hungary that works closely with NGOs and governments in the region to promote environmental policy.

To date, the most promising trend in the implementation of the Convention is the willingness of a segment of the NGO community to take the lead in advocating for an expanded use of this instrument and in directly participating in implementation itself. The NGO Information Network is composed of over a dozen organisations throughout the country who provide government-gathered environmental

49 A. Cherp and A. Antypas (forthcoming), 'Dealing with Continuous Reform: Towards Adaptive EA Policy Systems in Countries in Transition', *Journal of Environmental Planning and Management*.

50 Interestingly, the regional inspectorates are required to report denials of access to information to the Data Protection and Information Ombudsman, who keeps a record of these cases. Some observers believe that the inspectorates may not be observing this requirement, although this has not yet been systematically examined.

information to the public. The Network is supported by government grants, and processes approximately 120 requests for information monthly.⁵¹

Access to information

The organisational culture of Hungarian bureaucracies is still undergoing transition from the socialist period, and in some quarters a culture of secrecy and hostility to working with civil society and the public still predominates, or exists alongside countervailing norms introduced since 1989.⁵² A striking example of the ingrained habit of secrecy occurred in 2001 when the Chairman of the Environment Committee of the Parliament requested that the Ministry of Environment provide him with a list of top 20 firms which had received the largest fines for violations of pollution control laws. The Minister informed the Chairman in writing that the information he had requested was secret and would not be provided. The Chairman then filed a complaint with the Ombudsman for Data Protection, upon which the Minister reversed his decision and provided the information.⁵³

Authorities increasingly deny requests for information on the basis that the information constitutes a 'business secret', although in the absence of clear guidelines from the Ministry of Environment as to what type of information falls into the category of business secrets the legitimacy of these denials is questionable at best. What falls into the category of a business secret that cannot be disclosed by public authorities may be unclear in Hungarian law, in which the Data Protection and Freedom of Information Act may be in conflict with provisions of the Civil Code that protect proprietary information.⁵⁴ A regulation or guidelines from the Ministry of Environment to the regional inspectorates may be sufficient to resolve the problems that this legal ambiguity poses in practice, although legal reform may be necessary to resolve this issue for the legal system as a whole.⁵⁵

Although no study has yet been done to analyse systematically how often and why requests for information are denied by governmental authorities, there are

indications that compliance with the first pillar is inconsistent throughout the country. The environmental NGO Ökotárs sent information requests to all 12 regional environmental inspectorates, asking for identical information that it clearly had a right to under the law. Only eight of the 12 complied, and four denied access to the information.⁵⁶ A GEF-funded project that involved the REC and Hungarian NGOs tested the functioning of the information provision system in Hungary and 'found that Hungarian government officials often demand justification [for requests for information] and deny access to those they deem not interested enough'.⁵⁷

In many cases citizens must struggle to obtain information from unco-operative authorities and have resorted to unconventional methods of overcoming initial resistance. Two members of Parliament have become lightning rods for citizens who have been denied environmental information. The Parliamentarians are regularly contacted by citizens to intervene on their behalf with authorities that have denied their requests for information. In most cases, correspondence with authorities has resulted in reversal of the decision to deny information.⁵⁸

The government has, however, taken positive steps to make access to information easier for the public. The Ministry of the Environment set up a Public Information Office in 1997 that receives on average 650 requests for information each month,⁵⁹ many of which concern tenders offered by the Ministry but some of which are requests for environmental information.⁶⁰ Most requests for environmental information are passed on to relevant offices within the Ministry. The Public Information Office does not, however, track how these requests are processed and whether they are accepted or denied, nor has the officer responsible for implementation of the Aarhus Convention developed a programme of co-operation with the Public Information Office that would support implementation monitoring.

Hungary publishes a state of the environment report every year and provides environmental information on its

51 See Note 30 above, at 7.

52 A. Vari and J. Caddy (1999), *Public Participation in Environmental Decisions: Recent Developments in Hungary*, Akadémiai Kiadó, Budapest.

53 Personal communication, Zoltan Illes, Chairman of the Environment Committee of the Hungarian Parliament in 2001.

54 R. Greenspan Bell and S. Fülöp (2003), 'Like Minds? Two Perspectives on International Environmental Joint Efforts', *Environmental Law Review*, May.

55 *Ibid.*

56 See Note 30 above.

57 R. Greenspan Bell, J. Bloom Stewart and M. Toth Nagy (2000), 'Fostering a Culture of Environmental Compliance through Greater Public Involvement', *Environment* 44 (8):40.

58 Personal Communication, Zoltan Illes, Member of Parliament, Fidesz party.

59 See Note 30 above, at 7.

60 The Public Information Office tracks requests by category but has not yet published comprehensive statistics that clearly distinguish requests for environmental information from requests for other types of information.

website and on the sites of the regional inspectorates. However, databases at the regional level are of varying quality. Some are not well maintained, and lack up-to-date information on different media and pollutant releases. The Ministry has not as yet allocated sufficient funds to ensure that all relevant environmental information is gathered and published for all regions of the country. Most importantly, the information system is not integrated, meaning that data cannot easily be centrally aggregated and analysed. Most environmental data gathered by the environmental inspectorates are not published on the web or integrated at a national level. Instead, they are collected locally and regionally for licensing and fee administration purposes and end up in compilations that are stored in the archives of the inspectorates, effectively accessible to no one. Furthermore, the unclear rules regarding business secrets discussed above have made some inspectorates reluctant to release information on specific polluters. There are no efforts currently underway either to integrate the environmental information system or to clarify the business secrets issue.

Public participation

The Hungarian environmental NGO movement has a long history of activism dating back to and even prior to the socialist period when nature conservation organisations were active in protection efforts.⁶¹ During the period of political change in 1989 environmental NGOs and environmental movement organisations were active in promoting democracy and saw an enormous increase in public support and exposure.⁶² While public support during the transition period of the past 14 years has dropped significantly, environmental organisations have undergone a fundamental transformation, becoming both more technically competent and specialized, and more capable of providing expert input into decision-making processes.⁶³

Hungarian environmental NGOs have gained a great deal of experience in participating in environmental decision-making processes during the transition period. Most larger cities host at least one major regional environmental organisation that, in many cases, has several local branch affiliates in smaller towns. In addition to

developing campaigns around key issues, these organisations also have developed a practice of taking on citizen complaints and pursuing cases either through the courts or with public advocacy tactics. Some organisations have in-house lawyers, and all of them have access to EMLA, which acts as a public interest environmental law firm throughout the country. Additionally, the spontaneous formation of grassroots organisations in response to local environmental problems is a common phenomenon.

Without direct implementation of the Aarhus Convention through new legislation, however, environmental NGOs and citizens who seek participatory rights in planning or decision-making processes remain subject to administrative and legal traditions and interpretations that developed in Hungary prior to the ratification of the Convention. For example, in 2000 an environmental organisation was denied the right to participate in a decision making process that involved a proposal to further develop one of the quays on the Danube in Budapest on the grounds that this was a 'transportation' rather than 'environmental' issue, and that the law did not give environmental groups the right to participate in decision-making involving transportation.⁶⁴ In fact, a trend can be detected in Hungary in which environmental organisations are excluded from participating in decision-making that has obvious environmental impacts but that is not explicitly labelled 'environmental' in the law. Having said that, environmental authorities themselves have become used to public involvement and are usually receptive when approached by environmental NGOs seeking participation in their activities.

Access to justice

The Environmental Management and Law Association reports that legal remedies in cases where access to environmental information has been denied are 'quick, cheap, impartial and fair on the level of both the laws and the [sic] legal practice'.⁶⁵ In contrast to many other East European countries, Hungarian environmental NGOs are not deeply averse to bringing legal cases against authorities, and have gained significant litigation experience since 1989. The Environmental Management and Law Association provides consistent legal advice and representation to other NGOs seeking legal remedies.

61 M. Persanyi (1993), 'Red Pollution, Green Revolution, Revolution in Hungary: Environmentalists and Societal Transition', in B. Jancar-Webster (ed.), *Environmental Action in Eastern Europe: Responses to Crisis*, New York: M.E. Sharpe, at 134 to 157.

62 D. Fisher, (1993), 'The Emergence of the Environmental Movement in Eastern Europe and Its Role in the Revolutions of 1989', *ibid.*

63 T. Steger (2004, forthcoming), 'Environmentalism and Democracy in Hungary and Latvia', PhD dissertation, Syracuse University, Syracuse, New York.

64 See Note 30 above, at 6 to 7.

65 *Ibid.*, at 7.

However, the right of citizens and NGOs legally to contest environment-related decisions is currently poorly established in Hungary, despite the seemingly unambiguous language of the Environmental Protection Act discussed above. In *Somogy Nature Conservation Organisation v Ministry of Traffic, Telecommunications and Water Management* the Supreme Court ruled that the Somogy Nature Conservation Organisation did not have the legal standing to challenge a Ministry decision to build a highway extension. The court narrowly interpreted the rules of standing for environmental NGOs, arguing that environmental NGOs could claim standing only in cases involving laws designated as environmental, or in cases involving EIAs or environmental audits. Consequently, environmental NGOs are barred from intervening in cases where environmental impacts may be high but the body of law governing the activity in question is not designated environmental.⁶⁶ In clear violation of at least the spirit of the Aarhus Convention as well as Hungary's own Environmental Protection Act, and in contravention of EU-wide efforts to integrate environmental and sectoral policies and decision making, legislative action is clearly called for to clarify and strengthen the rules of standing for environmental organisations.

Hungary also lacks a transparent, low-cost and accessible administrative appeals procedure. While lower level administrative decisions can be appealed to higher levels, the appeal is not adjudicated by an impartial administrative law judge or officer but rather is subject to internal decisions of the governmental authority. To some extent the lack of an adequate administrative review process is compensated for by the provision of an expedited and low cost judicial review process. However, the existing system has to be considered a poor implementation of Article 9(1) of the Convention, which states that persons denied access to information should have:

... access to an expeditious procedure established by law that is free of charge or inexpensive for reconsideration by a public authority or review by an independent and impartial body other than a court of law.

As Lee and Abbot claim,⁶⁷ while this construction is ambiguous and leaves room for a number of interpretations,

it goes some way in establishing the principle that an alternative adjudicative forum should be made available to persons challenging administrative decisions. The Ombudsman system also goes some way to meeting this requirement, although the lack of coercive authority invested in this institution significantly reduces its effectiveness as an alternative forum in which justice can be sought.

Conclusion

The body of Hungarian law pertaining to issues of access to information, public participation, and access to justice in environmental matters was solid and in some respects progressive prior to ratification of the Aarhus Convention in 2001. Like other CITs, Hungary was able to 'leapfrog' policies and practices that had been prevalent in the West in the past and adopt current best practices, approaches, and principles through a process of selective 'policy transfer' from Western nations. Consequently, the framework Environmental Protection Act of 1995 gave citizens and NGOs broad rights to access environmental information, placed a positive responsibility on governmental authorities to publish environmental information, codified the right to participation in environmental planning and decision-making, and provided NGOs with a special right to seek judicial intervention in cases of environmental degradation.

However, the government has taken a passive approach to the Aarhus Convention itself, relying on existing legislation to implement the Convention and appropriating few new resources to supporting its implementation. The main enforcement structure for the Aarhus Convention in Hungary is the not-for-profit sector led by the Environmental Management and Law Association, Ökotárs, and other environmental organisations. Other environmental NGOs participate in the NGO Information Network, which provides an important service in providing the public with environmental information gathered by the authorities and citizens. However, environmental NGOs have not organised a nation-wide campaign around the Aarhus Convention and progress in developing the potential of the Convention in Hungary has largely stalled since ratification in 2001.

Having said that, the Convention has strong supporters in government and the NGO sector and the long-term prospects for developing it as an instrument for supporting a culture of democracy and participation and for producing better environmental decisions and outcomes are good, especially as Hungary enters the European Union in 2004. A high professional standard in the national-level NGO community and strong ties between Hungarian NGOs and

66 For a review of the case see S. Stec (ed.) (2003), *Handbook on Access to Justice under the Aarhus Convention*, Regional Environmental Center for Central and Eastern Europe, Szentendre, Hungary.

67 M. Lee and C. Abbot (2003), 'The Usual Suspects? Public Participation Under the Aarhus Convention', *The Modern Law Review* 66(1).

other European and international NGOs and organisations creates an awareness of the challenges that Hungary still faces with regard to openness and inclusiveness in decision-making. The capacity of the NGO sector to launch campaigns to put pressure on the government to creatively and vigorously implement the Aarhus Convention is therefore high. Given the government's stance towards the Convention to date, the NGO community must continue to take the lead in pushing for better implementation. Towards this end, NGOs, in co-operation with allies in Parliament and in the administration, should not hesitate independently to develop a comprehensive Aarhus Convention implementation strategy that can serve as a model for an official strategy in the future. As a first step, NGOs, in partnership with allies in Parliament and the administration, should convene a series of open meetings that review and assess implementation of the Convention.

Additionally, NGOs should campaign for several immediate steps to be taken by the government:

- The promulgation of a governmental decree and/or regulations specifically implementing the Aarhus Convention;

- Training of environmental inspectorates in their legal obligations to provide information and access to participation in decision-making in order to create uniform and fair standards throughout the country; and
- Legislative action to clarify and broaden the rules on standing for environmental organisations in legal cases involving environmental impacts and interests.

Hungary, like all CITs in Central and Eastern Europe, is still experiencing rapid social, political, and economic change. Principles such as the public's right to information and participation in decision-making are relatively novel in the political and administrative milieu and therefore are likely to meet consistent resistance even while official governmental policy is supportive of them. This back-and-forth, or the simultaneous existence of contradictory norms, is neither unusual in these historical circumstances nor cause for much consternation. Rather, environmental advocates and supporters of expanded democratic rights must develop effective strategies to overcome the formal and informal institutional challenges to freedom of information, participation, and access to justice that still remain in this transitional setting.