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Application of rights included in pillars of Aarhus Convention during the  
environmental impact assessment of the Paks II. investment\*\*

## 1. Introduction

Development of the nuclear power plant in Paks is one of the most important and current investments in the national energy sector<sup>1</sup> at present. The significance of this investment is that the Paks Nuclear Power Plant<sup>2</sup> has a great importance in electricity supply<sup>3</sup> in Hungary, it produces<sup>4</sup> 50% of the electricity. However the operating blocks will be stopped between 2032 and 2037, for this reason the lack in electricity production must be recovered (this necessity is also enhanced by the reason, that according to statistics, in the future the demand on electricity will

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<sup>1</sup> In connection with legal regulation on energy sector see especially: Olajos István – Szilágyi Szabolcs: A kistélepléseken létrejövő távhő és termeletetési rendszerek energijogi problémái, *Magyar Energetika* 2012/6, 22-27.; Olajos István – Szilágyi Szabolcs: A megújuló energiaforrások európai uniós jogi szabályozása, különös tekintettel a megújuló energiaforrásokra vonatkozó irányelvekre, *Publicationes Universitatis Miskolciensis Series Juridica et Politica*, 2014/31, 441-450.; Bányai Orsolya: *Energiajog az ökológiai fenntarthatóság szolgálatában*, Debrecen, Dela Könyvkiadó Kereskedelmi és Szolgáltató Kft, 2014; Bányai Orsolya – Fodor László: Some environmental law questions related to the extension of Paks nuclear power plant, *Environmental Engineering and Management Journal*, 2013/13 2757-2763.; Szilágyi Szabolcs: Környezeti hatásvizsgálat a csernelyi biomassza alapú energetikai rendszer vonatkozásában; in: Csák Csilla (edit.): *Jogtudományi tanulmányok a fenntartható természeti erőforrások témakörében*, Miskolc, Miskolci Egyetem, 2012, 170-179.; Szabolcs Szilágyi: The legal doctrinal basis of energy efficiency, in: Szabó Miklós (edit.): *Studia Iurisprudentiae Doctorandorum Miskolciensium – Miskolci Doktoranduszok Jogtudományi Tanulmányai*, 2014/14, 269-275.

<sup>2</sup> See in details related to regulation of nuclear energy: Szilágyi János Ede: Az atomenergia szabályozása, in: Szilágyi János Ede (edit.): *Környezetjog II.: Tanulmányok a környezetjogi gondolkodás köréből*, Miskolc, Novotni Alapítvány, 2010.

<sup>3</sup> See this topic in details: Olajos István – Gonda Éva: A villamosenergia és földgázszolgáltatás Magyarországon, különös tekintettel a Magyar Telekom szolgáltatásaira, *Miskolci Egyetem Közleményei: Anyagmérnöki Tudományok*, 38. volume 1. exercise, 2013, 83-93.

<sup>4</sup> See the topics of sustainability of the production and necessity of the development in details: Csák Csilla: A jogi szabályozás aktualitásai a fenntarthatóság jegyében, *Műszaki Földtudományi Közlemények*, 2013/1, 72-79.; Fodor László: Néhány jogi kérdés a Paksi Atomerőmű bővítése kapcsán, *Miskolci Jogi Szemle*, 2013/2, 23–42.

be increased with 1% yearly in Hungary).<sup>5</sup> MVM Paks II Nuclear Power Plant Development Private Limited Company<sup>6</sup> has not started the exact construction yet, since a complex investment like this, requires a very difficult permitting procedure, and several permits (during this procedure). Up to now, the project has the site permit, and the environmental permit (which is in the focus of this study), thus the next significant step will be the acquisition of the construction permit.

In this study I would like to examine the procedure of environmental impact assessment related the investment from an aspect which may be different from the general. In my research my hypothesis is the following: rights concluded in the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (which was adopted on 25 June 1998 in Aarhus)<sup>7</sup> are ensured during the procedure.

After examining the related theoretical basis and legal background, I will show the procedure of the environmental impact assessment on Paks II. investment. However – in order to stay within the framework of the chosen topic – I will focus only those parts of that, which are relevant from the aspect of the Convention.

For this reason questions examined in the study will be the followings: were the rights concluded in Aarhus Convention guaranteed during the Paks II. investment? If they were – how can it be verified? Did anybody raise objections or submit comments related the observation of certain rules of the Convention during the procedure? How did these objections and comments been handled? Did they have a real effect on decision-making?

## 2. Theoretical basis and legal background

First of all, we shall examine the theoretical basis and legal background, in order to understand the connections adequately. Thus on the one hand, in this chapter I will review the most important theoretical relations and regulations on environmental permit, and on the other hand I briefly introduce the Aarhus Convention and its importance from the aspect of the topic.

Accordingly, I start the analysis with the concept of use of the environment. According to the Act LIII of 1995 on the General Rules of Environmental Protection<sup>8</sup> the use of the environment is an activity involving the utilization or loading of the environment or a component thereof.<sup>9</sup>

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<sup>5</sup> Aszódi Attila: *A paksi kapacitás-fenntartási projekt aktualitásai* titled presentation, Miskolci Akadémiai Területi Bizottság Klub (Regional Committee of the Hungarian Academy of Sciences in Miskolc), 25 May 2016

<sup>6</sup> In further: investor.

<sup>7</sup> In further: Aarhus Convention.

<sup>8</sup> In further: GREP.

<sup>9</sup> GREP. 4. § 9. point

This paragraph shows clearly, that *contra legem* activity is not a part of the definition, for this reason either legal or illegal activity could mean use of environment, if it involves the utilization<sup>10</sup>, or loading<sup>11</sup> of the environment or a component thereof. The Paks II. investment obviously fulfil the criteria of this definition.<sup>12</sup> Refrigeration of the power plant and its new blocks is a good example for this – in the one hand it means the utilization of a component of the environment, namely the utilization of water, since according to the current plans, the investor intends to use the water of Danube to this purpose. On the other hand, this activity (the refrigeration of the power plant) cause the loading of this component as well, since the refrigeration procedure generates heat load related to the water of Danube, moreover it also has effects on nature of the Danube. Furthermore the investment may cause exposure<sup>13</sup> on the environment, which would have effects on the sustainability of biodiversity, preservation of the species and natural habitats, and protection of ecosystems.

According to the effective regulation, utilization of the environment should have started only after the environmental permit of the environmental protection authority got into force, and operation has the same criterion too. Environmental permit (which is one of the main topics of this study) is an integrated permit given by the environmental protection authority (types of it are the followings: (a) environmental permit given in an environmental impact assessment procedure, (b) integrated pollution prevention and control permit, (c) environmental operating permit), a sectorial permit, or any other authority's permit issued on the basis of administration resolution of the environmental protection authority.<sup>14</sup> If an activity has significant impacts on the environment (as the Paks II. investment has), one of the integrated permits must be acquired to do it.

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<sup>10</sup> According to the 4. § 4. point of the GREP, definition of utilization of the environment is the following: „*causing changes in the environment, making use of the environment or any of its components as natural resource.*”

<sup>11</sup> According to the 4. § 6. point of the GREP, definition of loading of the environment is the following: „*direct or indirect emitting a substance or energy into the environment.*”

<sup>12</sup> See assessment documents related to the environmental impact study on Paks II. investment on MVM Paks II. homepage, under the following link: <http://www.mvmpaks2.hu/hu/Kozerdeku/KozerdekuDokumentumok/KornyezetvedelmiEngedelyezes/VizsgalatiAnyagok/Lapok/default.aspx> (24.06.2017).

<sup>13</sup> International Commission on Radiological Protection (ICRP) also pays attention to importance of examination of exposure, and it issued a recommendation on it, moreover International Atomic Energy Agency also has similar provisions. – Isotoptech Zrt.: Az élővilág sugárterhelésének jellemzése, MVM Paks II. homepage, in: <http://www.mvmpaks2.hu/hu/Kozerdeku/KozerdekuDokumentumok/KornyezetvedelmiEngedelyezes/VizsgalatiAnyagok/Documents/Az%20elővilág%20sugárterhelésének%20jellemezése.pdf> (24.06.2017)

<sup>14</sup> Horváth Szilvia: Általános rész, in: Miklós László (edit.): *A Környezetjog alapjai*, Szeged, JATEPress, 2011, 55.

For this reason, the investor, who use or load the environment significantly, or its activity earns the significant extent during its operation, shall acquire the environmental permit based on environmental impact assessment, or the integrated pollution prevention and control permit, or in case of a permitted activity, the environmental operating permit.<sup>15</sup>

Among these three permission type the environmental operating permit is an exception, because it is not an instrument of prevention, it must be acquired by an existing facility or during a formerly permitted activity. Since the GREP. declares, that „*environmental audits shall be carried out for the exploration and study of the environmental impacts of certain activities as well as for checking whether the environmental protection requirements are met.*”<sup>16</sup> It is not necessary to order the content of permits prescribed in special law in the environmental operating permit based on environmental audit, however it could be the criterion of the further operation to acquire, or renew these permits, if they are expired.<sup>17</sup>

Contrarily, the aim of the environmental impact assessment<sup>18</sup> is (a) the preliminary examination of the environmental specialities of those investments and activities, which may be dangerous for the environment, or may have a significant effect on it, moreover (b) to give a basis to the decision of the permitting authority, and (c) is to give a help, or direction to the investor, in order to ease to fit its plans to the environmental protection prescriptions.<sup>19</sup> The ‘basic document’ of the EIA is the environmental impact assessment study<sup>20</sup>, in which results of the EIA procedure must be set by the applicant.<sup>21</sup> The integrated pollution prevention and control permit procedure<sup>22</sup> is similar to the EIA. According to rules of the GREP., in order to prevent that certain activities – set in special laws – to load the environment, measures related to reduction or elimination of emissions loading the environmental components, and environmental impacts, which are based on the best acceptable technology, must be decided during the process of integrated pollution prevention and control.<sup>23</sup> Essentially, IPPC procedure is related to determination of the environmental usage conditions, including the BAT, and thresholds based on it. This procedure can be related to new and already operating facilities as well.<sup>24</sup> One of the specialities of the IPPC is that, all of the permits belonged to the scope of the inspectorate and set in special laws, shall be integrated to the permit given in the IPPC procedure, thus in this case, the applicant has no need to apply for other permits.<sup>25</sup>

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<sup>15</sup> Horváth 2011, 56.

<sup>16</sup> GREP. 73. § (1) subparagraph

<sup>17</sup> Horváth 2011, 58.

<sup>18</sup> In further: EIA

<sup>19</sup> Csák Csilla: *Környezetjog. I. kötet. Előadásvezetők az általános és különös részj környezetjogi gondolkodás köréből*, Miskolc, Novotni Alapítvány, 2008, 57.

<sup>20</sup> In further: EIAS

<sup>21</sup> GREP. 69. § (1) subparagraph

<sup>22</sup> In further: IPPC permit procedure

<sup>23</sup> GREP. 70. § (1) subparagraph

<sup>24</sup> Csák 2008, 65.

<sup>25</sup> Horváth 2011, 58.

Consequently the EIA and the IPPC are similar procedures concerning to prevention – which is needed to permit an activity or a facility, is declared in the related annexes of the Governmental Decree No. 314/2005 (XII.25.) on environmental impact assessment and IPPC consent procedures. The following table contains that, according to this regulation, under which procedure fall the activities among application of nuclear energy (see: 1. illustration).

314/2005. (XII. 25.) Government Decree	
EIA	IPPC
Nuclear facility producing or enriching nuclear fuel	Disposal or utilization of hazardous waste
Facility reprocessing spent nuclear fuel	Storage of hazardous waste
Temporary or permanent storage of spent nuclear fuel	Uranium mining, mining over 100000 ton/year uranium
Radioactive waste processing plant	
Radioactive waste storage facility for temporary or permanent storage	
Nuclear power plant, nuclear reactor, and extension of operation time of a nuclear power plant or nuclear reactor, furthermore closure of a nuclear power plant or a nuclear reactor, namely definitive removal of the nuclear fuel and other radioactive parts of the nuclear facility, or parts which are polluted by radioactive materials	
Nuclear heating plant, and closure of nuclear heating plant, including removal of all nuclear fuel and other radioactive parts of the nuclear facility, or parts which are polluted by radioactive materials	
Facility utilizing or disposing by burning hazardous waste, facility disposing by deposit, chemical or biological procedure	
Research or teaching nuclear reactor, and closure of them, including definitive removal of all nuclear fuel and other radioactive parts of the nuclear facility, or parts which are polluted by radioactive materials	

*1. illustration*

*Activities required authorization in EIA or IPPC permit procedure among usage of nuclear energy<sup>26</sup>*

According to the table above, it is obvious (see left column, 6. row), that the present Paks II. investment falls under the EIA procedure. Therefore, this study does not deal further with the two other procedures in details.

The followings laws were applied during the EIA procedure related to the investment: (a) GREP., (b) 314/2005 Government Decree, (c) Act II of 2014 on promulgation of Convention on cooperation between the Government of Hungary and the Government of the Russian Federation in the field of peaceful uses of nuclear energy (this act contains only a few of environmental protection rules, however in its preamble it declare those international treaties, of which Hungary and Russia are members, and among which several treaties have environmental protection rules and objectives). The European Union (for this reason Hungary as well) had joined to (d) the Convention on Environmental Impact Assessment in a Transboundary Context, the so-called Espoo Convention, which was signed on 25 February 1991, moreover (e) the Aarhus Convention in 1998. – these conventions also have environmental protection rules, which thus must be applied in the EIA procedure.

<sup>26</sup> Own illustration according to No. 1-2. annexes of the 314/2005 Government Decree

Additionally, there are some other union legal documents, which also must be applied in the EIA procedure related to the Paks II. investment: (f) the 2011/92/EU Directive on the assessment of the effects of certain public and private projects on the environment, and (g) the 2014/52/EU Directive<sup>27</sup> (it amended the 2011/92/EU Directive), moreover (h) the 2001/42/EC Directive<sup>28</sup> on the assessment of the effects of certain plans and programmes on the environment.<sup>28</sup>

The other main topic of this study is the already mentioned Aarhus Convention, in connection with this document we need to emphasize the following important information. The Convention which was signed on 25 June 1998 in Aarhus, is about the access to information, public participation in decision-making and access to justice in environmental matters. Therefore, its rules could be classified in three pillars, which are in harmony with the title. The pillars are the followings: (a) access to information, (b) public participation in decision-making, (c) access to justice. Furthermore, the Convention has another pillar, (d) enabling to participation, however it is not a legal pillar, the rules of it promote the certain group of persons to get to know legal regulation concerning on them, and methods of enforcement of their rights.

As it was mentioned, the aim of the first pillar is the promotion of access to information. According to the own definition of the Convention the „*environmental information*’ means any information in written, visual, aural, electronic or any other material form on: (a) 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; (b) 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 within the scope of subparagraph (a) above, and cost-benefit and other economic analyses and assumptions used in environmental decision-making; (c) 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 referred to in subparagraph (b) above”<sup>29</sup>

The information right ensured by this pillar basically has two types: (a) active right to information, which aims to ensure the information about the current status of the environment to the society regularly, moreover (b) passive right to information, which enables the members or groups of the society to get information without giving any reasons, this kind of application can be refused only in justified cases.<sup>30</sup>

<sup>27</sup> According to Gábor Kecskés, from the aspect of the paks investment, one of the most important provisions of this amending directive, is that the 14. point of this directive declares, that European Commission must be informed about the project in every sixth year. – Kecskés Gábor: Milyen környezeti jogi vetülete van az Európai Bizottság döntésének? presentation, Az Európai Bizottság a Paksi Atomerőmű bővítésével kapcsolatos döntése: mozgáster az EU állami támogatási jogában round table discussion, Budapest, MTA TK JTI, 20.04.2017

<sup>28</sup> Kecskés 2017.

<sup>29</sup> Aarhus Convention 2. Article 3. point

<sup>30</sup> Gyula Bándi: *Környezetjog*, Budapest, Szent István Társulat, 2014, 61.

The second pillar promotes public participation in decision-making. As László Fodor emphasizes, according to the No. 28/1994. (V.20.) decision of the Constitutional Court, the obligation on ensuring rights to participation and information by the state, is a kind of organizational guarantee of ensuring the right to environment as well.<sup>31</sup> This pillar is concerning to two fields: (a) decision-making related to specific activities,<sup>32</sup> (b) procedures on plans, programmes and policies related to the environment.<sup>33</sup> The Paks II. investment obviously falls under the first one among these fields. The following rights belong to this field: (a/1) general right to apply for procedure, (a/2) general client right, (a/3) right to public hearing, (a/4) right to participation in special procedures.<sup>34</sup> Among this the most important is the third one, the right to public hearing. This right is ensured by another international treaty too, by the Espoo Convention, since it prescribes international environmental impact assessment, including to holding public hearing in those cases, when the environmental effects of the activity may come forward in territories of other countries too.<sup>35</sup> By containing these regulations, the main objective of the Convention is to ensure the social grounding of decisions,<sup>36</sup> and thus to get the promotion of the society, and to ease the further execution.

The 'Case of nuclear waste storage of Ófalu' is a good example for the importance of ensuring the rights of the first and second pillars. At the end of the 1970's emerged the idea to build a storage in this territory, in order to unload the nuclear waste coming from the Paks Nuclear Power Plant. After making the relevant examinations, the area was ranked as suitable for this purpose, for this reason the decision was made about the establishment of the waste storage in 1983. However the residents were informed only four years later, when the related plans were already made, thus they could not participate in the planning period. Naturally, it caused serious protestation of the residents (beside keeping back the information on the plan, the protestation was strengthened by the fact they were afraid to the risks of the facility, and their fear was raised by the Chernobyl disaster in 1986). By the effect of this protestation, in 1988 the state party rejected the construction permit in the territory of Ófalu.<sup>37</sup>

The pillar of access to justice aims to ensure the right to legal remedies, namely the opportunity of a review in case of injury. The main element of this pillar is that this review shall be made by the court or any other independent and neutral body established by the law.

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<sup>31</sup> Fodor László: *Környezetjog*, Debrecen, Debreceni Egyetemi Kiadó, 2015, 100.

<sup>32</sup> Aarhus Convention 6. Article

<sup>33</sup> Aarhus Convention 7. Article

<sup>34</sup> Bándi 2014, 74.

<sup>35</sup> Fodor 2015, 148.

<sup>36</sup> Fodor 2015, 100.

<sup>37</sup> Nagy Roland – Glied Viktor – Barkóczi Csaba: *Nukleáris energia, társadalom és környezettudatosság az Atomvárosban. Helyi társadalmi hatások az építkezéstől a bővítésig*, Pécs, Publikon Kiadó, 2014, 44-46.

This opportunity shall be ensured those members of the concerned publicity, who have the right interest in the decision, and/or they think, that any of their rights was injured in connection with the case. Accordingly sufficient and effective remedy must be ensured, in a timely, equitable, and not extremely expensive procedure.<sup>38</sup>

### 3. Environmental permitting procedure on Paks II. investment

Although the Paks II. investment and its preparation starts earlier, but the beginning of the environmental permitting procedure was on 10 November 2012, when in front of the Inspectorate for Environment, Nature and Water of Southern Transdanubia<sup>39</sup> the MVM Paks II Nuclear Power Plant Development Private Limited Company, as user of the environment, requested a preliminary consultation, which was done by the inspectorate.<sup>40</sup>

The concrete impact assessment study was made in 2014, thus the on 19 December 2014 was the environmental permit applied for.<sup>41</sup> The finished EIAS examine questions related to the environment like: (a) noise pollution, (b) dust load, (c) heat load of the Danube, (d) effects of radioactive wastes, (e) possible changes in the nature.

In order to inform the publicity widely, in March and April of 2015 the investor organized several public consultations, where the EIAS was shown, and the publicity had the opportunity to submit their comments and questions in connection with the case. After that, the official public hearing was held on 7 May 2015 in Paks. The Baranya County Government Office noticed the residents in its own notice-board and homepage, moreover in order to promulgation the public hearing information were sent to the notaries connected to the procedure. Naturally, the Government Office sent information about the public hearing to the participating special authorities, the Developer and the Author, the Office of the Commissioner for Fundamental Rights, the environmental organisations that joined the procedure by that date as clients, the Ministry headed by the Minister responsible for environmental protection as the body conducting the transboundary environmental impact assessment procedure and organisations involved in the framework of legal assistance.<sup>42</sup> According to Attila Aszódi, the Government Commissioner responsible for maintaining the capacity of the Paks Nuclear Power Plant, during the public hearing and the public consultations principally residents were not worried about the dangers of the activity, and the risks arising from that.

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<sup>38</sup> Bándi 2014, 78-79.

<sup>39</sup> In further: inspectorate.

<sup>40</sup> Later the Government Office acted as legal successor of the inspectorate in the permitting procedure.

<sup>41</sup> No. 78-140/2016. decision of the Baranya County Government Office on granting the environmental permit (in further: I. instance permit), 23.

<sup>42</sup> I. instance permit, 25.



The rest of the question concerned was about, that what could be the advantages of the investment for them (e.g. from the aspect of job opportunities – either concerning concretely to the investment, construction, or to giving accommodation to the employees taking part in realization of the investment, etc.)<sup>43</sup>

Since this kind of investment would have significant impacts not only on the whole territory of the country, but also on other countries, thus on 2 April 2015 the international impact assessment procedure was launched as well (pursuant to the obligations rising from the Espoo Convention).<sup>44</sup> In the framework of this procedure, international public hearings were held as well. Any Member States of the European Union was eligible to take part in the procedure, however 30 countries were directly notice about this opportunity too. From this 30 countries, all together 11 countries joined to the procedure, and 7 countries asked to hold in its own territory a public hearing, or public forum. These countries were the followings: Germany, Austria, Slovenia, Croatia, Serbia, Romania, Ukraine. The investor and the Government Commissioner consulted with the experts of the active party countries of the procedure, and they answered the questions raised during the public hearing, the public forums, and the expert consultations. Finally consultation period of the international environmental impact assessment procedure was ended on 26 August 2016.<sup>45</sup>

Finally, after the long permitting procedure, the Paks II. investment got the environmental permit from the Baranya County Government Office. The office made its decision after a deep consideration, with a detailed explanation. According to our topic, it must be emphasized, that (as the text of the decision shows too) the investor intended to fulfil its obligations arising from the Aarhus Convention, and to inform the affected persons about the steps of the procedure, and those related documents of the procedure which could be reached by the publicity.<sup>46</sup> In order to that, e.g. it published the procedure related documents in its own website, and in order to all affected persons get the right information about the investment, some documents were published in foreign languages as well (e.g. English, Russian, German, etc.).<sup>47</sup> Therefore in my opinion, rights concluded in the I. pillar of Aarhus Convention were ensured during the procedure.

Otherwise several environment protection organisations took part in the procedure as clients. These were the followings: (a) Energiaklub Szakpolitikai Intézet és Módszertani Központ Egyesület,<sup>48</sup> (b) Greenpeace Magyarország Egyesület,<sup>49</sup> (c) Levegő Munkacsoport, (d) REFLEX Környezetvédő Egyesület, (e) Védegylet Egyesület, (f) Pécsi Zöld Kör, (g) Reális Zöldek Klub.

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<sup>43</sup> Aszódi 2016

<sup>44</sup> I. instance permit, 74.

<sup>45</sup> Aszódi 2016

<sup>46</sup> I. instance permit, 24-26, 74.

<sup>47</sup> Environmental permitting, MVM Paks II. homepage, in: <http://www.mvmpaks2.hu/hu/Kozerdeku/KozerdekuDokumentumok/KornyeztvedelmiEngedelyezes/Lapok/default.aspx> (26.06.2017)

<sup>48</sup> In further: Energiaklub

<sup>49</sup> In further: Greenpeace

There was only one non-governmental organization (NGO), which submitted an application for recognizing the client status, however the Government Office refused to recognise it, that was the Egészséges Ivóvízért és Környezetért Egyesület. According to the office, the reason of the refusal was that although the activity of the organisation was targeted at protecting the right to a healthy environment as a fundamental right, and it was also confirmed that the area of operation of the organization did not coincide with the impact area which is subject to this EIA procedure.<sup>50</sup> Beside approving client status (and the abovementioned notifications), with the evaluation of comments of domestic and international organisations and individuals, and their detailed examination in the decision, participation in decision-making was ensured by the Government Office. During the procedure a comment was submitted e.g. in connection with the inappropriate method of the public hearing in Paks (starting time, length of the hearing, notification). However the Government Office emphasized, that the beginning of the hearing (17.00 hour) was selected with the aspect, that it shall be after daily working hours normally end, since there objective was the widest publicity to taking part in the hearing. During the public hearing they gave the opportunity to everybody to make remarks, and it was closed only after there was no more speaker. And according to the notification about the public hearing (as I already mentioned it), everybody was informed about it in an appropriate method and time.<sup>51</sup> Furthermore a comment was submitted to the office in connection with that during the public hearing not all of the comments were evaluated appropriately, and there was a limited time (3 minutes) for each comments. In agree with the Government Office, I think that did not harm the right to participation in decision-making concluded in the Aarhus Convention, since only those comments were rejected, which with regard to their topic do not connected to the EIA procedure. Moreover limitation of length of the comments is needed in order to do not limit this right on its own by the publicity (since an unreasonably long speech takes time from the later comments), and on the other hand limitation of the length does not mean the limitation of explanation of speaker's opinion, since the number of comments of one person was not declared.<sup>52</sup> Furthermore a comment was submitted to the Government Office in connection with that the publicity was joined too late to the procedure, which harms the 4. point 6. Article of the Aarhus Convention, which prescribes that Each Party shall provide for early public participation, when all options are open and effective public participation can take place. The Government Office did not settled this injury. In the one hand it referred to that the Aarhus Compliance Committee (operating in the framework of the UN) pointed out in its decision ACC/C/2016/16 (Lithuania) that in case national law envisages public participation during the preliminary consultation (scoping), it appears to provide for early public participation. On the other hand it referred to the 4. paragraph 6. Article of the EIA Directive, according to which the public concerned in an early time, if it was occurred before the decision about the application for

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<sup>50</sup> I. instance permit, 72.

<sup>51</sup> I. instance permit, 83-85.

<sup>52</sup> I. instance permit, 85-87.

permitting was made.<sup>53</sup> To sum it up, in my opinion the right concluded in the II. pillar of the Aarhus Convention, namely the public participation in decision-making, was also ensured perfectly in the EIA procedure. Here it must be emphasized, that the fact, that a decision was made contradictory to the comment, or opinion of a certain organisation, does not mean the injury of this right, since the authorities must consider several contradictory opinions and interests during a huge, complex investment like this.

Ensuring of the third pillar of the convention (access to justice) could be examined in the most perfect way, if we analyse the 'afterlife' of the 2016. September decision of the Baranya County Government Office. Since after a while, on 17 October 2016, Energiaklub and Greenpeace appealed in front of the Pest County Government Office. According to these organisations the EIAs which was the base of the given permit has several shortcomings. Their main reasons were the followings: *"(a) requirements of the authorities are often not accountable, and do not clear the tasks of the applicant (namely the MVM Paks II Nuclear Power Plant Development Private Limited Company), neither in case of radioactive emission. It is true to management, gathering, and storage of the spent, for several years emissive heating elements as well. (b) Furthermore, the permit does not prescribe what concrete measures shall be taken in order to prevent nuclear catastrophes. (c) There is a lack of an analysis and acting plan in the ELAS, with which serious accidents caused by human fault or deliberate damage (eg. terrorism, sabotage, act of war). (d) The Natura 2000 impact assessment of the ELAS is also wrong. Since the whole Hungarian passage of the Danube falls under Natura 2000, Paks II. will directly concerned to the protected river with European importance. The ELAS gives no guarantees to that the cooling water will not warm the Danube more than the permitted temperature. Beside this, heat load and nuclear load of the Danube harms the obligations set in the Water Framework Directive and in river basin management plans too. (e) Development of the nuclear power plant would become unnecessary with development of the secure, clear and competitive renewable energy resources, and Hungary could reduce its energy dependency from Russia."*<sup>54</sup>

So subject of the appeal is not concerned to the rights and obligations concluded in the Aarhus Convention, however the guarantee of the opportunity of appeal, and the fact, that the Paks County Government Office, after a substantial examination, and with asking several authorities, examined the application of the 'greens', proof that the right on access to justice concluded in the III. pillar of the Convention was also ensured during the EIA procedure. Finally, the Pest County Government Office affirmed the I. instance decision. However, further justification of ensuring this pillar is that on 26 May these two organisations have appealed to the Administrative and Labour Court of Szekszárd (exercising their right to remedies).

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<sup>53</sup> I. instance permit, 91-92.

<sup>54</sup> Zsuzsanna Koritár: Paks II környezetvédelmi engedélye jogszabálysértő és megalapozatlan, Energiaklub homepage, in: <http://energiaklub.hu/hirek/paks-ii-kornyeztvedelmi-engedelye-jogszabalyser-to-es-megalapozatlan-4031> (30.03.2017)

#### 4. Summary

To sum it up, I think my hypothesis – rights concluded in pillars of the Aarhus Convention were ensured during the environmental permitting procedure of the Paks II. investment – was justified.

It was confirmed mainly during the analysis of the I. instance permit, in the second chapter of this study. The investor held several press conferences, public forums, and public hearings in order to inform domestic and foreign residents (concerned in the investment). Furthermore, it published on its own website and in other ways the documents falling under publishing obligation (and other documents giving information about the investment, and the EIA). Thus I think it fulfilled its obligation set in the I. pillar of Convention, it ensured the right of the publicity on access to information.

The affected persons joined to the procedure in its early period (e.g. NGOs). Their opinion and comments were always examined satisfactory by the authority. Thus the second pillar, namely the right of the publicity on participating in decision-making was also ensured in the procedure.

The first and the second instance decision was appealed by the 'green organisations' as well. Although the court hearing has not been held yet, but according to the II. instance decision of the Pest County Government Office, the appeal was examined on the merits, and the final decision was made after a deep consideration. Thus the third pillar, namely the right on access to justice also was ensured during the procedure.

However, some comments were submitted related to injury of certain articles of the convention (e.g. harming the II. pillar by late notice about the public hearing), however the Baranya County Government Office examined all circumstances of the case in connection with all of the comments, interpreted the related legal regulation, and finally it rejected the injury.

Finally, I would like to emphasize the importance of the convention again, since injury of its rights, lack of their guarantees could lead to wrecking the investment (like in the case of 'nuclear waste storage of Ófalu'). Since via giving appropriate information by the investor and the authorities, and giving the opportunity to join to the procedure for the publicity, several doubts could be ceased which rises from the lack of information, and thus social acceptance could be raised as well.