

Sándor Fülöp,
Environmental Management and Law Association, Hungary

IDENTIFIED LEGAL, INSTITUTIONAL AND PRACTICAL BARRIERS TO PUBLIC ACCESS TO ENVIRONMENTAL INFORMATION TO SUPPORT PUBLIC INVOLVEMENT IN HUNGARY FOR DANUBE POLLUTION REDUCTION GOALS

Introductory notes:

In our study we shortly describe the Hungarian laws, regulations and practice on access to environmental information in general, and also refer to the same in connection with water protection and water management. We will see the typical Eastern European pattern: pretty good laws and regulations with a much poorer implementation because of lack of proper institutional background and because of lack of proper mindset both on the side of the authorities and on the side of the public.

Can we say at all, that a certain regulation is good enough once it feeds a faulty practice? Certainly not. A regulation which is good or at least acceptable according to the Western standards, within circumstances of a different (legal) culture, might be insufficient for an Eastern or Central European country. The Hungarian regulation on access to environmental information is not enough detailed and clear, it fails to give the proper institutional (involving budgetary ones) and procedural rules, too.

It needs no further explanation here that access to information is only one of the basic element ("pillar") of the system of legal institutions we call public participation regulation. The problem becomes a little more sophisticated if we compare these institutions to the notion of standing. Standing in our view means the whole set of rights public participation regulations contain, plus decisive entitlements, like decision about starting and/or finishing the given administrative case, determining or strongly influencing the hearing of evidences etc. Needless to say that if a client has standing, he/she is furnished the broadest possible range of participation rights and rights to information in the given case.

However, in contrary to standing, public participation rights are not always used. Despite the relatively relaxed standing requirements (i.e. standing is not a barrier), people don't take advantage of the opportunities for public participation. Only in a few percents or sometimes just a few tenth of a percent of cases will the members of the public actually use their entitlements. The possibility of participation in itself is the key element of transparency and accountability of an administrative system. Let us examine, how much this possibility is given to the Hungarian public on the paper of law books and in the practice of the small offices somewhere in the countryside.

In every chapters below we try to examine the given topics from general environmental protection viewpoints and from special water protection and water management

viewpoints, too. We also add to the chapters a section describing the opinion of our interviewees. We asked a detailed interview on our topics from the representatives of the central and local government, from water protection and water management experts, from the representatives of industry and of the environmental protection NGOs, too. Although, these interviews will not be enclosed in their full length, we will reflect them in the background study.

1.

State of laws/regulations on access to information and requirements for monitoring/reporting/disclosure of information; permit reporting requirements

A.

General regulations

In this section we shortly introduce the relevant constitutional norms and after that we check the main substantial and procedural issues of right to information according to the logic of Article 4 of the Aarhus Convention. However, the terms "substantial" and „procedural" are highly relative in this respect, in many cases one can hardly decide whether a public participation regulation is substantial or procedural in its nature.

The regulation of right to environmental information is not well balanced in our laws in that sense that the quality of the environmental information is not yet guaranteed in them. Actually, this basic condition of the substantial fulfillment of our rights to information has only sporadic regulations in the Hungarian environmental law.

a.

Constitutional rights to information

The Hungarian Constitution and other basic environmental rules, like the Environmental Code use the "right" language both in connection with environmental rights and with rights to information (and in connection with right to environmental information, too). However, in the statue law systems the Constitutional stipulations have much less meaning than in the case law countries.

At the Hungarian courts few constitutional references actually take place, usually no direct court decisions could be deducted from the meaning of a single constitutional provision. The Constitution is rather used in Hungary to interpret laws and regulations and to decide general (mostly legislative) issues by the Constitutional Court.

According to the Constitution Article 61., Par.(1) in the Hungarian Republic everybody has the right for the freedom of opinion, furthermore to learn and disseminate facts and information of public interest.

According to the Act LIII. of 1995. on Environmental Protection (hereinafter: Kvtv.)

Article 12., Paragraph (1): "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."

b.

Conditions of access to information

It is a long standing debate which is the best way to regulate right to environmental information: solely or together with the general issues of right to any kinds of public interest information. Hungary has selected the second solution. It has disadvantages (no environmental specificity) and advantages also (no arguments about the environmental traits of a given case or of a given information). Although one can hardly believe that it was a conscious decision that Hungary "has chosen" that solution, it was a really big step forward when in 1992 our Parliament has accepted its Act LXIII. on the protection of personal data and on the publicity of public interest data (hereinafter: Atv.).

As concerns the possible conditions of accessing to the data, Atv. Article 19, Paragraph (3) directly refers to unconditionally: 'The authority shall grant access for anyone to the data of public interest processed by it.'

c.

Data or information

This issue is a question of basic guarantees of access to information, since the mere data could be good for nothing in a complicated case, but the information without data could raise distrust and the possibility of abusing the laymen's lack of professional insight. There should be more discussion in the beginning of the study with regard to information vs. data, especially so because Hungarian legislation refers mostly to data, but it seems to cover both data and processed data (information, and other forms of information). On the other side, the data/information dichotomy has a growing economic importance, too: rough data are collected from the public¹, without any payment, as a rule, but the information produced is in many cases a result of very expensive special efforts from the side of the authorities. Fees, contractual payments² - in reasonable amount - might take place in case of information servicing, while data production is usually (not totally without exemption) free. In general, "information" is data put into context or subject to some analysis, which effort requires person-power and resources.

¹ Public means here not only the pollutants, but any other persons, who are using waters and have meaningful data about water quality etc.. Permittees are typical example of such source of environmental information.

² The Hungarian laws do not use these terms consequentially. In some cases the price of the environmental information shall be paid in form of a fee (more frequently according to the older regulations) in other cases as a contractual payment (mostly in the newer legislation).

As we saw, Atv. speaks only of data and the same happens in Kvtv. in its Article 12, Paragraph (3) which refers back to Atv. in this respect. Information (more exactly: processed data) is mentioned in Point 8.1. of Annex 4. of Governmental Decree No. 102/1996. (VII. 12) on Hazardous Wastes and in other detailed rules of environmental protection.

d.

The price of the data/information

The Hungarian regulation allows the authorities to request a certain payment for supplying the data³. As Atv. Art. 20., Par. 3. provides: "The head of the authority may charge expenses, to the actual extent thereof, for the communication of data of public interest. The applicant upon request shall be informed about the amount of expenses in advance."

Point IV. in the Annex of Act. XCIII. of 1990. on litigation and procedural fees regulates the so called copy or extract fees. Expenses are different on authenticated or non-authenticated copie or extracts made during the state administrative procedure, and even there are differences between the price of the first page, and following pages - all based on the referred Act..

The mentioned Annex of the Hazardous Waste Government Decree stipulates that inspection is free to all government-held data on hazardous wastes, but a fee is payable for processed data, up to the expenses of collecting, sorting and processing data. Such way, similarly to Atv. the amount of the fee strictly depends on the service supplied. This means that the fee includes a general labor cost, and this also means that the authorities in such cases are not entitled to request any additional payment for data/information.

In the code of litigation fees we can find several exceptions with regard either to the applicant or to the data. For instance NGOs, foundations are exempt from charge, unless they pursued taxable business activity in the year preceding that of the procedure by Art. 5., Par. (1) Points d./, f./ and Par. (2) of the code. The cases of exemption from charges - which also includes the fee of photocopies, according to point 4. in the cited annex - are detailed in some 30 point in Art. 33., Par. (2) of the code. Among these also appears the 'enforcing certain constitutional rights and meeting obligations', which can be used in information accession cases. However, proceedings on environmental and nature protection are not generally free of charge.

e.

³ The Atv. uses the term "data", which could mean information, too. However, noone could claim on the basis of Atv. that the authority make special efforts to develop certain information especially for the purposes of the requester. That means, information is in question in Atv. when the authority worked through the rough data for purposes other than that of the requestor.

The types of environmental data/information the Hungarian environmental authorities are obliged to collect

In the Hungarian legal system there is a vast number of laws regulations on collection of environmental data/information. Not only, and not first of all because of the public need for such information but in order to be able to fulfill their administrative responsibilities, environmental authorities have to collect many kinds of environmental information and several other administrative bodies are obliged to send information to the environmental authorities, too.

This system of regulations obliging data collection and transfer is far not satisfying even the administrative needs of the environmental inspectorates. That's why in the practice all of them strives to develop their own information networks. The main source of information is their own administrative work. From the files they try to distill the generally useful information and apart from this, they sometimes - especially in the environmental impact assessment cases - oblige the clients to produce them environmental information which is not only (not first of all) necessary to solve the given case, but rather it is needed to feed the database of the inspectorate. Even if authorities are requesting more information than they are entitled to, and if data collection is an expensive activity, there are practically no cases where enterprises have refused to supply the "extra" data. Naturally, they are interested in fulfilling these obligations in order to maintain the good will of the authorities.

The legality of such obligations is questionable, and there is another shortcoming of this unplanned, everyday administrative-needs-born data collection, that is the lack of harmony amongst the data systems of the twelve environmental inspectorates. No central, or larger regional conclusions could be deducted from these scattered databases.

There are at least 30 such laws and regulations which prescribe environmental information collection from operators or from administrative bodies, we are going to bring some water specific examples in the next sub-chapter.

f.

Legal standard for quality of information that must be provided by the authorities

Naturally, if we cannot see the systematic legal regulation of the environmental information system, we will not be able to find regulations on the quality of the information service. We just mention two area of our existing law, two legal institutions which in the future might serve as samples for the development of these regulations. *Public authenticity* is a notion in civil procedural law and in land register regulations which covers the responsibility of the state organizations to issue valid, trustable documents. Public authenticity means a legal presumption that the information given by the authorities is true. This sets a high standard to these authorities, but makes the life of the clients easier. However, if other evidences show, naturally, publicly authentic data

could be contradicted, modified, added to, etc. Such notion of public authenticity and consequent fear of liability could produce a chilling effect on the provision of information by the authorities, but it is a necessary guarantee for the clients.

The other legal tool which could ensure the quality of the environmental information the authorities serve the public with is civil law damage. Naturally again, if the served information is faulty and the clients based on it wrong decisions (investments, constructions etc.) than the environmental authority will be liable for the damages happened in causal relation with its information service.

B.

Water specific regulations

Naturally, the general and environmental protection rules, mentioned in Chapter A here, are valid for water protection and in a growing level in management matters, too. However, in the water protection and water management legislation there are some specific rules about gathering and disseminating water related information.

a.

Water specific types of environmental data/information the Hungarian environmental authorities are obliged to collect

Let us bring some examples of water related environmental information several laws and regulations oblige the authorities to collect. We can see that even if the given data is collected by the water management authorities, they have to send them to the sibling authority, the environmental inspectorates, in order to keep the scope of authority of these bodies "clean" and in order to provide the sibling authorities with the information they need to perform their duties.

Governmental Decree No. 132/1997. (VII. 24.) Korm. on Water Quality Damage Restoration in its Article 9, Paragraphs (2)-(4) obliges the water management authorities to send information to the environmental inspectorates about large water pollution.

Decree of the Ministry of Industry and Commerce No. 44/1997. (VIII. 14.) IKIM on the industrial accidents in mining facilities in its Article 2, paragraph (1) obliges mining enterprises to send an immediate announcement about mining accidents to the inspectorates in all cases where underground water quality might be concerned.

Governmental Decree No. 102/1996. (VII. 12.) Korm. on Hazardous Waste in its Article 7, Paragraph (4) and in several other paragraphs prescribes the enterprises to send data to the environmental authorities on their regular activities, and accidents, too. This Decree does regulate the data processing, too in its Annex IV, Point 7.3, according to which the inspectorates send the data to the Ministry of Environment, where they have to process

them with help a uniform HAWIS (Hazardous Waste Information System) computer program.

Decree of Ministry of Public Welfare No. 37/1996. (X. 18.) NM on the public bathes in its Article 6, Paragraph (2) obliges all the operators of such facilities to announce to the inspectorates any pollution on the protection zones of their bathes.

We saw the shortcomings of the lack of system nature of the information related obligations about environmental information. The obvious fault of this very new set of regulations is: all of them speaks only about collecting information, but with one exemption, we hurried to quote, no regulation gives the rules of processing and disseminating of the information.

As the matter of fact, our Environmental Code as early as 1995 stipulated that the National Environmental Information System should be created (with no deadline, which means: immediately). However, no detailed regulations, no measurements came out to ensure the budget, the institutional and legal background to this system. No wonder that 5 years after the "immediate" responsibility of forming the System there is no sign of start of any related operations.

b.

Water management registering

We saw that the system of water protection data processing is still very initial. Contrary to this, the water management registering has a much more developed system. We have to warn that the regulation came out decades earlier, the quoted below regulation is just an amendment (rewriting) of the old versions.

Decree of Minister of Transport, Communication and Water Management No. 23/1998. (XI. 6.) KHVM has three main information topics: the register of water management facilities, the technical register and the Water Book. This three is called together water management register.

The water management register aims to fulfill the responsibilities ensuing from international agreements, and also aims to ensure a solid informational basis for water management decisions. It contains the quantity and quality data of the waters, their banks and other natural water reservoirs and also the water management facilities.

Data of the register comprises technical, economic and legal facts and any other facts important for the water management decisions. The source of data are the water management permits, the documentation to the permit requests, the researches, measurements (and data processing) made by the water management authorities and the mandatory statistical data collection.

The water management facility register aims to identify the most important facilities, in order to serve as a basis for the rest of the data processing. It comprises the national and the local facilities, too. Data on the national facilities are collected and maintained by the National Water Management Main Directorate, while local data are handled by the regional directorates, but they are also aggregated on national level at the Main Directorate.

The criteria for whether a facility should be listed on the water management facility register are given in Articles 3-5 of the Decree. There is no definite threshold to determine this, the list of the nationally and locally most important facilities is put together by the minister and by the director of the regional water management directorate, respectively.

The technical register contains the technical data of the facilities, the main data of water resources and uses and the water balances. The water use data comprises the permitted and the actual water uses, too, according to each facilities. The water balances mean a comparison between the water resources and water uses. The data collection and processing is done the same way as in the case of facility register. Water balances shall be done in each year.

Finally the Water Book is a legally oriented data collection. It contains the detailed data of permits, i. e. timing of several rights and responsibilities, modifications of them, permits issued and modified or expired, the persons entitled by the permits, and the other details of the permits, including data of controlling the compliance, the method of sewage treatment and the type and aim of the activity done in the facility according to the permit.

The three main types of the permitted activities are: construction of a water related facility, water related other activities and water usage. All the rights and other data are to be connected to these three main categories.

In contrary to the "anybody" language in Atv. Article 19, Paragraph (3), the Water Management Permitting Governmental Decree No. 72/1996. (V. 22.) Korm., in its Article 22, Paragraph (3) allows to visit the pages of the Water Book only for clients and for those who at least can "make it reasonable" with mentioning proper interests concerned. Practically the same is stipulated in the water management registering decree, analyzed in point a. here. It only concretizes the conditions, saying that the Water Book can be seen by those, whose information is explained by their legal entitlements ensuing from any laws or regulations. Unfortunately, this "concretization" makes the situation even more vague.

c.

Water mapping activity of the water management authorities

According to Decree of Minister of Transport, Communication and Water Management No. 22/1998. (XI. 6.) KHVM water mapping activity comprises all the surveying, assessing and foretelling of quality and quantity of surface and underground waters.

The Ministry (i.e. the infrastructural one) coordinate the whole process, including the international relations and information of the public, too. However, there are no detailed rules of the latter in the Decree.

As the addition to the above rules, the National water Management Directorate (OVF), besides its lower level coordination tasks, is obliged to ensure data protection. OVF also operates the central water mapping database, and it evaluates the data in it, too. It has to, however, edit the Annual Water Mapping Book, and other water mapping booklets.

Water management directorates collect the data, and process them. They also have to ensure the availability of the technical conditions of collection of data on a regular, planned basis. The directorates also have public information tasks, also without detailed rules.

Although the information tasks of the bodies in the water management system are not described in details, Article 5 of the Decree give detailed rules of access to information of the Water Mapping Database these bodies put together and maintain. The Decree calls the data of the Database "authentic" which means that other administrative bodies or courts have to accept them as valid up until the contrary is not proven. The examination of the data in the Database is free, copies could be required on paper and copying cost. Other information service could be given for labor proportional fees. Any further use (apart from use in administrative/civil proceedings) of the data ensuing from the Database is only allowed together with nomination of the source.

d.

Collection of other basic data in connection with water management

Governmental Decree No. 178/1998. (XI. 6.) Korm. ensures that any other authorities and even any kinds of enterprises which deals with or directly connected to water management activities could be obliged to serve with data about the use of waters, pollution prevention or water constructions if these data are necessary to solving the water management state responsibilities. These data are stored and processed in the central water management information system (VIZIR) at OVF. VIZIR represents a subsidiary system in comparison to the systems described in points a. and b.

Article 6 of the Governmental Decree announces that the basic water management data are to be considered public interest data and should be given to the requesters according to the stipulations of Atv. However, a request for information which is prepared by the water management authorities from the existing data, counts not to be public interest data, so its servicing depends on the individual decision of the leader of the given authority.

e.

New regulations on information collection in the underground water regulation

Since the activities connected to the quantity of waters cannot fully separate from activities connected to the quality of waters, water management rules are always partly environmental protection rules, too. Yet, Governmental Decree No. 33/2000. (III. 17.) Korm. on the protection of underground waters is the second Hungarian legislation which could be called fully environmental one.

According to Article 14 of the Decree, those, who run activities which are considered to be dangerous to the underground waters⁴, have to report the relevant details of their activities to the environmental inspectorates annually. Permittees, and those who are obliged to report by the authority definitely belong to this circle. Data are stored and processed in the Underground Water Registering System (FAVI), operated by the Ministry and by the inspectorates. Data of FAVI counts to be public according to Atv., unless they represent state or service secret according to the rules of Act LXV of 1995.

f.

Regular reports from the Permittees

We saw that underground water Permittees are subject of regular reporting. There is another, much older regulation which contains similar regulation in connection with surface waters. However, there are important differences, too. According to Article 8, Paragraph (2) of Decree of National Water Protection Agency No. 3/1984. (II. 7.) OVH, the self measurement of the polluters is optional, although the dischargers and the environmental inspectorate might fix the conditions of self control in a contract. The incentive of the polluter to "self-measure," is that such way it can control its own discharges and can amend the operation before the inspectorate interferes. The self control system is regularly controlled by the inspectorate and if there are differences between the measured and reported data, the inspectorate will use its own data.

C.

Opinions of the interviewees

The Hungarian rules and regulations of water protection and water management are generally considered strong and detailed enough.

The regulation of the prices is also considered to be just and fair, although, naturally, the data consumer side would like to have cheaper information or at least more possibilities to make fee waiver in the cases of the most socially acceptable information requests. There is

⁴ The circle of the facilities obliged to report is decided by Article 10, Par. (1) and by Article 14, Par. (2)-(7). The decisive factors are: the materials handled, the amount of the material and the type of activity the facility runs. However, above all of this there is a discretionary power of the inspectorate to oblige further facilities to report.

also a wide acknowledgement that the ambient data should be totally free, while the emission data and all the analyzed forms should cost more or less to the requesters.

The data/information differentiation turned to be strange even to many of our expert interviewees. Some said, however, that data collection might easily become a self-purpose, pretty much independent from the real goals of the whole information system. They say that information has an additional meaning of a certain purpose, while data in itself is nothing more than the rough material from which we can develop information.

D

Short summary

We saw that there is a rich system of information gathering and processing in the water management laws and regulations, and we know that it is not only a written system, it actually works, too. It is a detailed, carefully developed in the last half century system - contrary to the brand new, faint, not consequential environmental information system. However, environmental law seems to be more "democratic", its information dissemination side is well developed enough, which is less detailed in the water management regulations, and much less used in the practice.

2.

Status of enforcement and implementation of laws/regulations analyzed in Point 1

A.

General assessment - water protection and water management assessment

In this chapter we discuss together the general and water related topics. Our analysis rests upon the opinion of our eleven interviewees and upon the seven year practice of our public interest environmental law office. At first in all the following sub-chapters we always give the floor to our experts we made interviews with and then - if we have something to add or maybe in case of slight disagreement - we give our own opinion.

a.

Availability of the general environmental and water related information in the practice

Many contributed to Mr. Zoltán Verrasztó's statement that there is a plenty of environmental information, much more than needed, but there is a lot of superfluous, parallel, badly standardized, incomparable information, too. This is a vast problem, because far the most expensive part of the information chain is collecting the data - if it is not streamlined enough, the whole system faces with bankruptcy.

In the case of water quality information the biggest problem is that the accurately collected local, regional data is not properly worked through on central level and there is no feedback from the central information units to those who collect - and might disseminate to the public - that information in piecemeal work. Only one barrier to the central aggregation of the data is that the local and regional data collection activity is not totally standardized. The most decisive factor is rather the lack of the genuine administrative and political will to form the nationwide environmental databases. Growing public pressure on the government for better and better environmental information could be a decisive factor in strengthening that mentioned will.

As we said there are satisfactory data collection systems in Hungary. However, the regular and accurate measurement activity takes place only in the case of our biggest rivers, the Danube and the Tisza and only a couple of more, but the small and medium watercourses stay without any institutionalized monitoring. Here the activity of the enthusiastic local communities - with the help of professional, specialized NGOs - could be decisive, but they receive very few encouragement from the government now, not speaking about budgetary contribution or dissemination of the simplest tools of measurement devices - these activities from the governmental side are totally missing.

Finally, we should highlight a promising background factor of developing a solid environmental and water related information basis: the existence of the Central Environmental Budget Chapter (KAC), and its information earmarked parts. This could form a good financial basis for developing a coherent environmental information system and for developing the dissemination system, too. NGOs, however urge the Government to strengthen the public control on KAC and also to ensure the more problem oriented use of this large financial tool in service of environmental protection goals.

b.

Access to the general environmental and water related information in the practice

The level of availability of the existing information is good enough in Hungary - that's again a general opinion of our interviewees. However, almost everybody adds, that the availability is not automatic, people have to know the sources well, they have to make some special efforts to cope with the bureaucracy and those have the best chances who have some direct personal connections to the authorities possessing the given information.

From the official side some even considers that the openness of the environmental information in the Hungarian practice is so wide that some local groups might even use it to destroy some industrial capacities in their vicinity. This goes through revealing all the sensitive economic and environmental data and making it public in such way which undermine the good-will of the given enterprise, which might lead to the loss of the economic connections and loss of a great part of consumers. Others - the majority of the respondents, whose opinion we share, too - do not consider the relative openness of the Hungarian environmental information system to be a real danger.

We also have seen from the answers that authorities tend to ask the reason of the request for information, and might deny those, who are not "interested enough" in the given case.

There is an interesting approach emerged in the interviews: does the environmental and water related environmental information reach its desired effect in the public or it can cause misunderstandings or even unnecessary panic, too? These opinions highlight the importance of the general environmental awareness raising, environmental education and other tools of capacity building, because environmental information servicing in itself really worth nothing, it must be part of a full-fledged public participation system.

It is the other side of the coin that the well formed and well targeted environmental information could be in itself a basic starting element of a designed capacity building program, too. The active air quality information servicing in the bigger cities of Hungary can be a good example to follow on the field of water protection and water management information.

Even criticizing the central information processing and dissemination facilities, we should mention a very good and effective information servicing tool of the Ministry of Environment: the Public Information Office, which is open to anybody on all workdays at the Budapest headquarter of the Ministry. They have the main ambient environmental data and processed data on computers and in several brochures and even in the periodical called "Data about the state of our country". The work of the Office is flexible enough that if they do not have a certain information, they contact the proper central or local department of the Ministry of Environment or even they turn to independent institutes, too, in order to be able to serve their clients. The activity and availability of the Office, however, is not widely known by the public, it would need (deserve) bigger publicity. This last par. might fit better under the next item: inst. Arrangements.

3. and 5.

Institutional arrangements for provision of access to environmental information

a.

Institutions, offices dealing with collecting, processing and disseminating environmental and water related information

As we concluded in the chapter discussing the substantial legal background of information handling, the environmental protection authorities have weaker organizational conditions for collecting the information, but they are far better furnished with offices, departments or sub-departments serving the dissemination of environmental information. Here we just refer back to the fact that the data collection on local and regional level is usually done just as a secondary task of departments of the environmental inspectorates while in the Ministry of Environment there is an Informatics Chief Department for the collection (from the inspectorates basically), aggregation, evaluation and dissemination of environmental

information. The latter task, however is mostly done by another organizational element in the Ministry, called Social Connections Chief Department. This chief department maintains the already mentioned Public Information Office, too.

As concerns the water management authorities, in chapter 1, point B we already showed that all the three levels of these authorities (the Ministry, OVF and the directorates) have their clear-cut information tasks. These tasks are fulfilled by specialized departments and sub-departments in these bodies.

In the system of the water management authorities, we would like to highlight the Regional Water Management Council, which could be an excellent tool of information and participation of the concerned members of the public.

The Hungarian legal culture contains the necessity of public participation in long range plans and policies. The best examples are public participation in spatial planning plans, which is regulated in detail by the Act on Protection of Built Environment or the National Environmental Council with strong civil participation according to the Environmental Code. On the field of water management, there is a quite similar regulation on regional (basically: county) level Water Management Councils, which is Decree of the Minister of Transport, Communication and Water Management, No. 5/1998. (III. 11.) KHVM. However, the decree is not in all part equivalent with the mentioned best Hungarian regulations, because there are only indirect possibilities for NGO and community involvement. Article 2, Paragraph (1) enlists the members of the Council: local municipalities, civil organisations of municipalities, county spatial planning council members, agricultural, industrial and engineer chambers, water management corporations and other enterprises dealing with water supply and sewage services. The members of public and environmental NGOs might have a certain level of participation, but this is not a direct entitlement for them, although the Council has strong rights in controlling and influencing the professional matters of regional water management, planning, water related constructions and services. It issues official opinions on important regional and local water management investments, developments and constructions, involving the financial matters, too.

According to Article 3, Paragraph (2) of the Decree, the Council enhances the uniform and harmonised implementation of the water management, water construction, planning and service regulations and makes proposals on

- a) preparation or amendment of legal norms,
- b) setting priorities for international agreements,
- c) handling regional and interregional water management problems,
- d) harmonising water management programs - taking into consideration the national program on sewage water channelling and treatment.

b.

Relationships among different bodies that have relevant information

Naturally, not only the environmental protection and water management authorities have relevant information about the environment and waters. Public health, forestry, soil protection, mining and other authorities frequently deal with environment and water related cases. However, they do not have that information processing and disseminating systems, the environmental protection and water management authorities do. In principle they should collect such information and send them to the environmental inspectorates or water management directorates.

The legal basis for this is created in Article 10 of Act IV. of 1957 on the General Rules of Administrative Process (Áe.). According to this rule, every administrative body shall fulfill the requests (for information or for any official actions falling into their scope of authority) of other administrative offices within 15 days.

In the everyday practice of these organizations, at the time being, such official requests very seldom happen. As we saw in Chapter 1, however, some non-environmental administrative bodies (e.g. mining authorities) in certain cases are obliged by law to send information to the environmental inspectorates.

c.

Personnel, infrastructure and budget for providing access to environmental and water related information

We haven't collected the exact numbers of personnel, infrastructure and budget available for departments, sub-departments in the environmental protection and water management authorities, but asked our interviewees to give their expert estimate on these issues.

While on the level of Ministry of Environment there are specialized persons to serve the public environmental information requests, on local, regional level (at the inspectorates) there is not a single official who is charged with this work. This work seems to be a surplus responsibility for the otherwise extremely overwhelmed environmental protection personnel. However, Éva Farkas, the leader of the Public Information Office sees a slow process, in which the environmental inspectorates and national park directorates will gradually nominate and train those persons, whose (at least part time) job is going to be to deal with public access to environmental information.

Personal computers seem to be a basic technical equipment for data collection, processing and dissemination. However, this basic condition is not sufficiently ensured on the local and regional level (inspectorates). Naturally, all officials have access to computers continuously, but the hardware and especially the software needs are not fully satisfied yet.

In general, we have to share the opinion of the former leader of the Social Connection Chief Department at the Ministry of Environment, Gyöngyi Benkő, that all the institutional background for environmental information is on half way of development and the only

thing which could effectively accelerate this process is the consumers' need and regular claim for information.

However, we also share the opinion of an NGO water related information project manager, Ivan Dukay, according to whom, the government spends a huge amount of money on the information institutional background but with very low effectiveness.

d.

Database linkages for environmental and water related information

Although almost all the existing data and information is computerized at the Hungarian environmental and water management authorities, there is only few amongst them which are put onto the internet. Some initial steps, however, has happened both on the environmental and water management authorities' side and at NGO side, too. Some of the websites we enlist below contains environmental or environment related information some contains information about possibilities of public participation.

Governmental Agencies, Organizations and Affiliates

The Hungarian Parliament's web-site (www.mkogy.hu) has a link to The Parliamentary Commissioner for Data Protection and Freedom of Information Hungary (www.obh.hu). This commission's site, in turn, has links to various cases, informational pages and Act No LXIII of 1992 on Protection of Personal Data and Disclosure of Data of Public Interest. The latter site breaks up its information into Data Protection and Freedom of Information⁵, and both sites are available in either Hungarian or English.

The Környezetvédelmi Minisztérium (Environmental Ministry) also has a web-site, which is exclusively in Hungarian. The site goes by the name of "GRID-Budapest" and is at www.gridbp.ktm.hu.⁶

The Ministry of Transport, Communications and Water Management or the Közlekedési, Hírközlési és Vízügyi Minisztérium (KHVM), has a site at <http://www.eto.dk/contacts/hungary.htm>. There is not much data provided on it, but there are explanations of duties and roles of the Ministry and the organization it rules, along with contact information.

The World Health Organization Europe Office has an extensive network of downloadable databases which one can reach via its site at. There are health reports available per country, and the search feature contains information, too, and Ppress releases on public

⁵ The two parts of the web-site corresponds to the two main fields of activity of the Data Protection Ombudsman. The Freedom of Information part contains case descriptions and legal analyses relating to the text of Atv. Article 18 and above.

⁶ This site contains country reports, ambient status maps and description of the various activities of the national GRID committees.

participation in Hungary. The entire site is in English and the information is downloadable with Adobe Acrobat. At www.who.dk/NEHAP/Hun/H93.htm, the site provides an overview of the administrative structure in Hungary, too.

The United Nations Environmental Programme's site, at www.unep.org, also provides links to information on public participation in Hungary via its search engine. The site, too, is in English.

As concerns the water management authorities, the infrastructural ministry has its water related homepages in two main parts: flood protection and water management. These sites are not totally ready yet, but in some cases (e.g. water level forecast) it is possible to contact to the Internet pages of VITUKI, the scientific satellite organization of the ministry. As concerns the regional information basis, there are two water management directorates with ready websites: the Győr Directorate in North Hungary (www.kdtvizig.hu) and the Székesfehérvár one in middle West Hungary (www.edvvizig.hu).

Non-Governmental Organizations (NGOs) and international organizations

The Regional Environmental Center (REC) has a Home Page with links to several other organizational sites (www.rec.org). The Database section of the site has search engines for looking up governmental agency sites, local government agency sites and NGO sites. It also allows access to the catalog of REC's library and listings of other relevant libraries. In addition, there is a site map accessible from the main menu which, along with a full database of REC bulletins, contains informational pages, several of which pertain to public participation. On the main page, there are abstracts from news articles and press releases, including some relating to the pollution of the Tisza and Danube Rivers. Under www.rec.org/Climate/monitoring.html, there is information a set of links specifically about access to information. The entire site is in English.

The Environmental Management and Law Association (EMLA or Környzeti Management es Jog Egysület) has an English-language Home Page at www.emla.hu. The site, which is under construction, has contact information and summaries of projects and cases, many of which relates to public participation (tight to environmental and water related information) issues.

Association of Environmental Service Companies has developed a complex environmental information system, including the environmental enterprises and the description of their activity, too, called Helixir. The computerized system is available on compact disk form, too.

4.

Procedures for requesting/providing environmental information and procedures for appealing non-disclosure decisions

In Chapter 1 we examined the substantial side of legal regulation concerning access to environmental information. Some aspects of those substantial issues, like the price of the information could be considered procedural, too, but this differentiation is losing its meaning in the modern law, especially in the environmental law, where the historical logical frames and categories melt down quickly.

Anyway, the format of the request, and the deadline of servicing with the information can be called procedural legal rules, for sure. At first we analyze their legal background, and then we turn our attention to the practice, using the valuable contributions of the reports we got from our interviewees.

A.

Legal background

a.

The format of the request

There is no legal requirement in the Hungarian law, according to which the requester should use special format for his/her request for environmental information. In contrary, Áe. Article 16, Paragraph (3) stipulates, that any request issued by the clients should be handled according to its content, notwithstanding its format or the term the client use to denominate his/her request.

b.

The deadline of settling a request

The Hungarian data protection and service regulation contains a very friendly deadline for all kinds of information requests. According to Atv. Article 20, Paragraph (1): "An application for access to data of public interest shall be granted in an intelligible form by the authority, as soon as possible after being notified, but at the latest within 15 days".

Furthermore, in such cases, where the requester corresponds to the legal requirements of the client in Áe. Article 3, Paragraph 4, the information service should be even faster Áe. does not stipulate any deadline of fulfilling a request of a client and other interested parties for document inspection but it rather prescribes a settlement without delay. It means if the client submits his/her request personally, it is fulfilled on the spot, if she/he inquires in letter it will be replied by return.

Further examining the procedural questions of information servicing, we have to highlight that Atv. does not allow to prolong its 15-days deadline and there is no special deadline for the authorities to express their readiness to supply information. We could learn this

conclusion from the already made quotation of Atv. Article 20, Paragraph (1) about the 15-days deadline refers to the settlement of the request (and not only respond to that with a "status report on the search").

In the Hungarian law, there is a special deadline for a negative answer. According to Atv. Art. 20., Par. (2): "The applicant shall be notified in writing, within 8 days, of the rejection of his application and of the reasons therefor".

B.

Practical experiences

In contrary to the substantial legal conditions, the procedural rules do not evolve acknowledgement from the people who deal with environmental cases. They say, the Hungarian environmental and water management law fails to regulate clearly who, when, how and to whom is obliged to give what kinds of information (some of these criticisms refer to the barriers of the access to information - we discuss them later).

The basic problem is that the definitions are not clear enough - or at least practitioners see them not clear enough. Differentiation between personal data and public interest data, clear definition of secrets – these are walls ahead of an effective access to information system.

However, as Gyöngyi Benkő expressed: "I don't see any tools to prevent a reluctant official to hide away environmental information, because it is always easier to say no to the clients", the rules could be highly detailed, once there are no technical and personal conditions of information servicing.

For instance: the differentiation of Atv. Between personal and public data is relatively simple: personal data is any data which is directly connected to a natural (and not legal!) person. All the rests are public data, and has to be open, unless they fall into one of the clearly enlisted categories of Article 19 of Atv. Yet, in the practice there are a lot of problems in interpretation of this regulation, authorities sometimes refuse requests for information because it is a "personal" data of a legal person (which is clearly against the definitions of Atv.) or they interpret the exemptions so broadly that it excludes the effective access. The topic of exemptions we are going to discuss in details later.

As concerns practical experiences in connection with the deadline, the general opinion is that the deadlines of Atv. are realistic and with some sporadic exemptions, the authorities are able to keep them.

6.

Number of request for environmental information

And here is, as we say, the moment of truth. Anyone can speak hours about public participation and access to environmental information once nobody cares with it. On the other hand, whatever faulty, fragmented or sporadic a system, if there are thousands of people, who are able to use it, the system exists and works. In other words: the fact that thousands of people are able to use a system does not necessarily mean that the system is perfect, but it means that there is a well structured need for it, and it could be the necessary condition of further development of the system.

The Office of Public Information of the Ministry of Environment at present handles 650 information requests per months, and within this about 25 directly water protection related ones. The environmental inspectorates receive 15-20 requests a month each, with only a couple of water related ones, that means an average sum of 200 ones on local, regional level.

The number of the requests for environmental information is multiplied if we take into consideration the requests handled by the specialized service NGOs. The 17 members of the KÖT information service network for instance handle minimum 120 requests per months, each.

Finally, let us allow to refer to EMLA: we receive legal environmental information requests, as a minimum 50 /month.

If we count all of this together, we see that the few typical environmental Hungarian information services handle more than 1000 requests a month - that means that the system works.

It would seem to be important to distinguish between information requests to authorities (to which the previously mentioned rules, procedures and rights apply) and those to private (even if public interest) organizations. The totals for requests to authorities should be separately counted (for example, if we add in the requests to specialized NGOs, it is not correct to say that the "system" works based on that number, since these NGOs are not part of the legal/administrative system – in fact, if there were few requests to authorities and overwhelming numbers of requests to NGOs, it would be an indication that the "system" did not work, and that NGOs were taking up the slack).

7-8-10.

Legal and practical barriers to providing access to information. Confidentiality. Concerns of regulated industry, government officials and NGOs. An analysis of the laws/regulations governing confidentiality and their effects. State secret and other ground for refusal of access

A.

Legal background

a.

The possible reasons for rejecting data-supply according to the Hungarian law

As in the Aarhus Convention, there are three main groups of possible reasons for rejecting data-supply in the Hungarian law: the most important national interests (involving the basic interests of the administrative processes), acceptable interests of natural and legal persons other than the requester and reasons of mostly technical nature.

b.

Rejecting data-supply because of national interests

With reference to national interests there are three types of cases when data-supply is rejected. They are as follows: state secret, official secret and data prepared for the own use of the authority and for the purpose of decision making.

According to Act. LXV. of 1995. Art. 3., Par. (1) on the State Secrets and Official Secrets (hereinafter: Ttv.) those data are qualified as state secret which belong to the kinds of data, defines in the Annex of the act, and after a qualifying procedure it is declared that the publicity of these data would contravene and endanger interests relating to the national defense, national security, investigation and prevention of crimes, the national monetary and currency policies, foreign affairs, international relations and the judicial procedure of the Hungarian Republic. As concludes, it takes two steps to declare data state secret. Firstly, it is defined by act in the annex, which data can be qualified as state secret (the range of state secrets), after this an official entitled to qualify (a senior executive, determined specifically by Ttv. Art.6., Par. (1), (2), (5) i.e. a minister, an under-secretary of state deputy under-secretary of state, the head of an organ of national powers, the deputy head of the organ and the heads of certain judicial organs) will declare a definite information, involved by the range of state secrets, to be a state secret.

The definition of official secret is formally very similar to that of state secret as far as the relations between general and special provisions concerned. The difference is that the scope of secrecy is determined by the person entitled to qualify data, and the most general level of legal definition of the secret categories is missing. Therefore the person who has the right to classify data, actually can determine any scope of secrecy, the publication of which, or the acquisition and application without permission or accessibility for an incompetent person would contravene the operation of organs with national and public responsibilities as well as interferes exercising their scope of activity and competence free from undue influences. (Ttv. Article 4, Paragraph [1]).

To balance these rather vague conceptual bounds the scope of official secrecy is restricted by some substantial stipulations and procedural legal institutions. According to Ttv. Article 4, Paragraph (2), those themes cannot be declared official secret, which fall under

the obligation of active supply of information according to Atv. Due to Paragraph (4) of the same Article, when stating official secrecy the opinion of the Data Protection Ombudsman shall be asked. To avoid arbitrary declaration of official secrecy, it can be helpful, that all the such decisions are to be published in Magyar Közlöny (an official gazette of the Hungarian Republic).

c.

Secrets related to decision-making

This kind of state interest type secrets are also regulated by Atv. in its Article 19, Paragraph (5): "Unless otherwise provided by law working documents and other data prepared for the authority's own use, or for the purpose of decision making are not public within 30 years of their creation. Upon request the head of the authority may permit access to these documents or data."

In connection with this regulation the Ombudsman of Data Protection has expressed his scruples about the 30 years, which seems to be far too long and on the other hand he also has expressed a need about a suitable and guaranteed qualifying procedure, which would be sufficient for the two previously mentioned kinds of secrecy (working documents and documents for internal use), but it is missing. Our standpoint is that both kinds of secrecy should be interpreted in narrow sense in the professional practice.

d.

Business secret

Since business secret is a concept basically connected to the pecuniary interest of the citizens and business organizations, only the rules of civil law concern them, administrative law, like Atv. is, remains silent in that respect. According to Civil Code (hereinafter: Ptk.) Article 81: Personal rights are offended if mail secret is offended, moreover if privacy, an industrial or trade secret is acquired and published illegally or misused in other ways.

Ptk. does not contain the definition of business secret itself. According to the latest currently used commentary of Ptk (KjK. 1995.) it is defined as follows: Those data can be qualified as industrial or trade secret which relates to a lawfully operating plant or shop and also to their operation; and if these data are acquired by an unauthorized person the usual safe operation or the financial interests of the shop or the plant could be endangered. A secret is a multilateral relation between the person who knows it and all the others who do not. Therefore the concept of secret gets close to that of legal term of possession and it is in a close relationship with intellectual possession, too.

Due to the conjunctive arrangements of the provisions of Ptk. Art. 81, the mere acquisition - being legal or illegal - of information shall not be deemed as the disclosure of a secret as well as the legal publication of the acquired information because the

acquisition together with publishing in an illegal form is qualified by law as an abuse of personal rights of the owner of the secret. In other words, the rule is that, if you obtain information that is legitimately a business secret through some sort of illegal (or legal) means and then disclose it without authority to do so, the information continues to have protection as business secret despite the disclosure. Acquisition and publication of data can even be made legitimate on the one hand by concrete or general statutory authorization, on the other hand by the subsequent discretion of the court about the lawful interests involved in the certain cases.

As we have mentioned, in the Hungarian legal system Atv. does not mention trade secret at all. It results in the fact that the legislator admitted the interest to acquiring data of public interest superior to the otherwise also admitted and supported interest of trade secrecy. The Data-Protection ombudsman looks at the question in his 1996 annual report, subchapter 'the conflict between data of public interest and trade secret': "It is a public interest to make a well-defined circle of information of economic secrets. On the other hand, if business enterprises breach statutes in force they cannot refer to business secret, because business secret is a legal tool to grant the protection of market competition. Therefore trade secret cannot provide protection for the lawbreaking market participants".

e.

Business secret and personal secret combined

In the Hungarian legislation there are special manifestations of business secret combined with the protection of personal data as follows: securities secret, bank secret, insurance secret, customs secret and different professional secrets

Such kinds of secrets are regulated in the Act. CXI. of 1996. (Étv.) Article 114 on issuing securities, investment facilities and on the stock exchange, in the Act. CXII. of 1996. (Btv.) Articles 49 and 50 on credit institutions and financial undertakings and in the Act. CXIV. of 1996. on the State Monetary and Capital Market Supervisory Authority in Article 11, Paragraph (1). We can also mention here the customs secret regulated in Act. C. of 1995. on customs rights and insurance secret, regulated in Act. XCVI. of 1995. on insurance.

f.

Technical barriers to providing access to information - if the state administrative authority does not hold the information

This is the most obvious and the most frequent case of the technical barriers to providing access to information. This is the case, where the Hungarian law is more supportive of access to information than is the Aarhus Convention itself. Although the Convention in its Preamble puts down the Principle of Responsible State, one of the consequences of which is that the State as a whole is responsible for fulfilling its responsibilities, it fails to

conclude that any administrative body the requester asks for information from is bound to forward the request to the appropriate authority. According to the Convention it is possible to refuse a request in these cases, while in Hungary the authorities are obliged to accept the request and forward it to the proper place - they are supposed to know best the authority which can handle the given case.

Requesting information is a special administrative case, to which Áe. Article 7, Paragraph (1) also refers, which says: "if the state administrative organ recognizes that it does not have authority or competence in a certain case, it shall forward it without delay to another organ with authority and competence, and at the same time inform the client about it as well".

Furthermore, Áe. Article 15, Paragraph (1) stipulates undoubtably that the documents' move inside the administrative system will not affect the starting point of the administrative time-limit. It is count from the submission of the request, and not from the time it is received by the state administrative organ with authority and competence.

It is also possible by the Áe. Art. 16., Par. (4) for the client - for convenience - that she/he does not hand in the request at the administrative organ, which (s/he knows that) has powers and competence, but at the notary competent according to his/her home or workplace. With the use of the word 'submitted' here again it is doubtful (?) by law that the time of administration is running up to the given deadline.

g.

Technical barriers to providing access to information - the client cannot exactly define the information she/he is requiring

There is no concrete statutory obligation to give the exact way of handling these cases, but there are some basic principles of Áe., the proper interpretation of which actually, makes help giving obligatory in practice. They are the Áe. Article 2, Paragraph (2) mentioning Principle of Cooperation and Article 2, Paragraph (6) by which the proceeding authority has to inform the client about his/her rights and duties. I.e. in Hungary there is no provision in law or practice corresponding to Art. 4 par. 3(b) of Aarhus, but "the spirit of the law" could result in a harmonised legal situation.

h.

The silence of the authority

There is a special technical barrier to access to information, when the authority unlawfully - in the majority of the cases, out of administrative faults - simply does not respond to the request of the client. According to Áe. Art. 4., Par. (1) and (3) if an administrative body does not proceed in its competence in a case falling under its authority, a superior authority will order it to fulfill the client's request within 15 days. With reference to the

same Article Par. (5), if there is no superior body, or there is but does not react either, the competent county court will oblige the organ of first instance to take measures.

The Hungarian legal practice is worked out for those cases as well, when instead of passing a decision, the authority simply informs the client verbally or in letter that his/her request cannot be settled. If it happens the governing principles are given by the Supreme Court, that is the way is open for the client to apply for legal remedy as if a formal rejecting decision was made. (See in Standpoints of the Meeting Held in the College of State Administration of the Supreme Court, published in Juridical Decisions 1996/I., Appendix)

B. Practical experiences

The exemptions from the right to environmental access, especially the notion and extent of business secret are highly debated in the Hungarian practice. This debate is shown on the results of our survey, too. Officials say: it is too dangerous to give out any information which relates to any definite enterprise or person, economic role players add: it is illegal, too. naturally, the members of public, professional NGOs and some leading lawyers (like Mr. Majtényi, the data protection ombudsman of Hungary) think otherwise: the business secret should be interpreted narrowly, the right to environmental information prevails. The authors of the recent study share this opinion.

In one thing, however, all the sides of the sharp argument are unified: clarification of the definitions, clarification of the scope of business secret and other types of secrets is badly needed.

Apart from the said main definition elements a serial of other issues wait for clarification: the abuse and the prevention of abuse of the served environmental data. Intellectual property, economic competition, personality rights and similar interests naturally are to be protected. But it is against the interests of the society and against the constitutional rights to information to withhold environmental information because of the vague possibility of economic or other abuses of it. Abuses could be prevented otherwise than with closing away information. Those, who use stolen information, or use information in bad faith are easy to find and than a civil law litigation or a criminal law prosecution can restore the harmed interests and/or prevent others to commit similar abuse.

Even the best representatives of industry declare, that openness is their vested interest. Those, who are in noncompliance with environmental laws and regulations have unfair competition advantages to those who comply. Clarification, openness of data is the only way to have a fair competition then. In addition to that: the significant environmental harms are usually not a result of a regular operation of an enterprise: if there is a large pollution, it is in the majority of the cases a result of misbehavior of some employers, which has to be again open for everybody.

Also industrial source says (Mr. László Dzubay, Hungarian Association of big Enterprises), that the strong correlation of emission data and the chemical processes within the facilities - which is usually an argument against giving out emission data - is mostly an artifact. The larger chemical factories have inside sewage treatment equipment, so the effluent water, emitted air is less then informative to the competitors.

9.

Access to information generated by Danube programs and other programs relevant to information on discharges to Danube

"Never happened so much before in Danube matters as in the nineties." EU Phare projects, GEF and others paid a lot of attention and money on better understanding the environmental, technical, social, economical and other aspects of the Danube River watershed. Even Captain Cустeau has spent two years in the nineties to study the Danube.

The two most important international legal events were forming International Commission for the protection of the Danube River in 1991 by the support of EU and GEF and concluding the Convention on Co-operation for the Protection and Sustainable Use of the Danube River in Sofia, in 1994 (the Sofia Convention).

Some parts of these legal events and their organizational and project level developments resulted in producing more environmental and other water related information and in a better access of the public to this information.

a.

Danube Valley Strategic Program

At the beginning of this decade European Union (in the frames of the first mentioned above international legal event) set up a Program Coordination Unit (PCU), recruiting international experts to host a very ambitious strategic program of systematic surveying the priority issues of the Danube Valley water management. The survey encompassed practically all the concerned countries, the former Yugoslavian countries were also involved. They revealed the most imminent and most threatening dangers to the river and to the Black Sea, and after a lengthy professional debate, PCU determined 16 applied research programs for the Danube River.

One of the research programs was studying the possible regulations of point sources of phosphorous pollution and forming proposals to the government on this matter. The coordinator of the international research group was Professor István Ijjas, head of the Department of Water Management and Water Constructions at Technical University of

Budapest. Other research groups dealt with similarly important concrete problems, like: nutrient balance, non-point pollution sources, sustainable agriculture, heavy metal contaminants, monitoring and early warning systems. All the research groups followed the same procedural patterns, so our insight into Professor Ijjas's group informs us about the other processes and public involvement in them, too.

The research programs were open to the NGOs, first of all for the professional ones. The program leaders did not want to use the public information component of the programs. In this early phase, in contrary, at the phase of putting together the data and scientific assessment they count rather with professional NGOs as source of information and expertise. From Hungary EMLA was invited to the project meetings and received the working materials. Professional NGOs from Romania, Slovakia, Slovenia and Czech Republic were also invited.

As a closing event of the project in 1998 in Sinaia, Romania, there was a three days long conference, where the integrated environmental study of the research group was introduced to the mixed audience of water management, environmental protection and other authorities, scientific researchers of related topics and social organizations interested in water protection and water management. Organizers of the conference left wide possibilities to the participants to share their opinion with the rest of the audience and the authors about the results of the research. All the other 15 research projects were closed in a similar way.

b.

GEF Danube projects

GEF had a different methodology of collecting the basic information about the Danube watershed environmental problems. They started with workshops with the widest possible audience inviting every kinds of water related environmental protection NGOs, other social organizations, concerned municipalities and other social and professional factors. They formed mixed small groups and brainstorming sessions which revealed and prioritized the problems of the Danube Valley.

After this circle the GEF project started its professional, summarizing work which resulted in a thick book of problems and possible solutions.

At present with GEF support there is a large scale discussion process on the introduction of the forthcoming new EU Water protection framework directive in connection with the protection of the Danube. NGOs are also participating in this discussion. The directive will serve in itself with a good occasion of public participation with its bottom-up approach of water management planning systems. It is another question that those local forces, whose activity is expectable at the start of the planning programs when they concern the local water management problems, will probably stay apart from the further discussions, when

the subject is the large regional or the whole watershed related water management. At that stage the big international professional environmental NGOs might have the fora.

The discussion process contains 6 workshops, in which such international environmental NGOs like WWF and REC actively participate.

c.

Summary of the public information effects of the Danube programs

The Sofia Convention on the Danube and its secretariat, the International Commission for Protection of the Danube River (IPCDR) in Vienna are large steps forward in ensuring continuous attention and care with the water management and water protection problems of the Danube Valley and the Black Sea. Apart from these, EU and the World Bank have shown genuine interest in this respect, too.

Yet, public participation in the line of several promising researches and discussion projects seems to be restricted to only a narrow layer of the professional (mainly international) NGOs. For instance, the results of the systematic research of the Danube Valley Strategic Program cannot reach even the professionals and the administrative and political decision makers. There are no intermediary factors communicate these results to the broader public either. Priority problems, possible sets of solutions should be translated to the everyday language of the written and electronic press, they should rest continuously on the desk of the decision-makers. The Danube Watch, the newsletter of the Danube Committee is only one step in the right direction.

11.

Problems and gaps identified with respect to all of Points 1-10

Survey of the regulation and practice of the environmental information and information on water related issues and the interviews revealed many details of problems and gaps on those fields. However, it seems to be possible to group these problems into a few larger, more general problems.

a.

Lack of clarification

Both a clear political commitment, and unambiguous legal rules are missing from our system of public participation and access to environmental information. Clarification is missing on the institutional side, too. There are no identified persons on the local and regional level to serve the public with environmental information, so that kind of work is an extra burden of the otherwise overwhelmed officials.

On legal side, clarification of personal data/public data, business secret and other kinds of secret is formally given, but the practice cannot follow this, because of lack of the detailed procedural rules, lack of clear guidance and partly because of old biases, fears of retreat of the strong industrial groups etc. In other words, there is a lack of clear message from the ministries involved in environmental and water related issues about the practice to be followed with environmental information requests and about active dissemination of such information. We can say that the local and regional level officials suffer lack and shortcoming of environmental and exact technical, procedural and legal information.

b.

Lack of capacities of proper interpretation of the data

Environmental information is not continuously present in our everyday thinking. Newspapers do not deal regularly with this issues, they just bring news about catastrophes. The Danube Dam case, big overflows in the last year (one chemical disaster in Nagytétény, Budapest and one oil spill at the Százhalombatta refinery) the Tisza Cyanid poisoning naturally reached the people, but the everyday killing of our environment and our waters is not an issue yet.

Twenty years ago everyone could bath in our big rivers, now they are hardly more than open sewage channels, it would be very dangerous to swim in them. Untreated sewage water, industrial sludge flows in and no one cry about it.

Lack of reaction and presence of overreaction are both the symptoms of the childhood disease of our society's environmental awareness. Lack of a proper environmental awareness raising starts from the elementary schools and ends at the universities. Environmental scientific community (which is slowly developing in Hungary) fails to evaluate the data and communicate the results to the public, too.

The other side of the coin that there is no strong interest in the public about the environmental data yet. In other words there are no consumers yet on the environmental information market in Hungary.

c.

Lack of harmony between the water protection and water management systems

The administrative branch of water management has several hundreds of years history. Originally the protection of the quantity and of the quality of the waters belonged to each others quite naturally. In the eighties, the new branch of administration, environmental protection evolved, but was not strong enough to create an independent infrastructure, and the legislator decided to amalgamate it with the water management branch as one of the closest related topic.

It turned out soon, however, that this marriage was not a balanced one, the water management interests (large investments, dams etc.) overwhelmed the environmental ones. That's why at the very beginning of the nineties the Government detached the environmental branch of administration and mated it with spatial planning, which is an other, similarly unsuccessful story. The water management this way stayed alone, and felt that it had no environmental traits and responsibilities anymore. This had a bad influence on water protection and the artificial split between water management and water protection keeps causing a lot of harm to the waters and to all who wants to use them.

d.

Existing results to build upon

Piling up the criticism we easily forget about the results, although there are good signs in the public participation and access to environmental system of Hungary. It would be a sin to invent a brand new system and start everything from zero, abandoning all the existing results. Those at least 1000 more or less satisfied requests for environmental information we have every months speaks about an operating system. Public information services of the authorities, especially of the Ministry of Environment, the achievements of the social organizations dealing with public information and sometimes the cooperation of the two sectors are promising starting points for the future developments.

12.

Priority issues to be addressed

It is difficult, and dangerous, too, to set priorities for the environmental and water related information servicing, once the first priority of this field is obviously the systematic and planned development of all factors of this system: data collection, evaluation, aggregation and dissemination - all together with an also planned, regular and systematic capacity building activity.

a.

Systematic approach

Constitutional rights of access to environmental information could be really fulfilled only by a system of information servicing, which handles all the processes and sides of the needs. The system would have to pay equal attention to collecting data from all the important sources (in water relations: not only the two-three biggest rivers), to aggregating, processing and evaluating the data and to servicing the authorities, the scientific bodies and the whole society with the data/information gained.

In the same time, the access to information in itself is just a part of a larger system, public participation. Without mentioning the other parts of this system, right to participate and access to justice, we would like to highlight the definitions and capacity building which represent also important parts of an effective public participation system.

In the previous sub-chapters we saw that the important role-players of our environmental and water related information system themselves consider the definitions one of the key issue of this system. The definitions form the language of a legal regulation, that's why the wrong, vague, inconsequential definitions make the regulations totally ineffective. Our access to environmental information system also needs an urgent clarification of the definitions.

The capacity building is again a decisive factor in a really operating public participation system. There could be well formed environmental information, good possibilities to participate and democratic rules of access to justice - all in vain, if there are no NGOs, local communities and individual persons who could use them. Capacity building itself should be a well designed system, with strong financial and institutional basis and with continuous, planned actions.

One grade further, the environmental information system and the system of public participation in environmental decision-making should form a network with all of the other fields of administration which are at the time being not acknowledged as parts of environmental protection system. Water management administration and water management information activities are one of the most important branches of administration of that sort.

Geographic information systems (GIS) represent a wonderful technical tool for unifying the data of several branches of administration and several kinds of other territories of our social life. The Hungarian Government should pay much more attention to developing and maintaining publicly accessible GIS.

b.

Local initiatives

One of the main reason of quick development of public participation in our countries is lack of trust of the public in the quality of information they could receive from official sources. Local communities might be able to develop their simple information systems, especially in connection with small waterflows - we saw several interesting examples of this. Small waterflows in the same time usually are symbolic for local communities, its ruining represents the deterioration of the quality of life in the community, while amendment and good health of it can symbolize the vitality of the local community.

The Government and the mainstream NGO services should make efforts to enable as many local communities to keep an eye on their immediate environment. Simple equipment, basic training, awareness raising - local communities' case well deserve all.

C.

Realization and strengthening of the positive traits

In the last years, the Social Connections Chief Department of the Ministry of Environment went through a serious crisis, its personnel has diminished to one third and their tasks and responsibilities were trimmed back, too. In the same time, the KÖT network, which was a success story as a civil initiative to inform the public suffered from almost total loss of state subsidies and almost the half of the 17 stations faced to "extinction". By now, the situation is better in both excellent public information facilities, but the Hungarian Government and the environmental community should pay continuous attention to their such values and must not allow the said degradation to happen again. In contrary they and some other similar state and NGO initiatives should receive growing social attention and support.

13.

Limitations of the needs assessment itself - information which was impossible to obtain and reasons

Since handling the environment related information is not an acknowledged part of the responsibilities of the water management authorities and the information dissemination in general is not the strongest part of their activity, we could hardly find information about these issues.

There is also an important shortcoming in our research: the lack of information about the environmental and water related information of the members of the public. It would be a special sociology based research task to map out the knowledge of the members of the public (not belonging to any environmental NGOs, not even especially interested in environmental protection). However, everyday people are the most important targets of our environmental information systems, that's why we think that their opinion should be surveyed sooner or later in the frames of a specifically designed project.

NOTES

Our comparing analysis of standing and public participation rights rest on the Hungaria and some other European legal systems (especially Austrian, Slovakian, Czech and Dutch regulations were taken into consideration). We found that standing is as a rule meant a set of entitlements, while public participation entitlements were legal possibilities, which were much rarely used in the practice. The width of the entitlements themselves are seemingly different: a client, who has standing has the special additional set of procedural rights which we usually call „decisive rights" which means that the client in such cases has strong entitlements to influence the basic outcome of the given administrative procedure.

According to Article 1, Point g of Act XXXII. Of 1989 on the Constitutional Court, the court has the right to interpret the Constitution, and according to Article 27, Par. (2), the decision of the court is obligatory to everybody under the Hungarian jurisdiction. However, Article 20 of the Act stipulates that the court starts its proceedings - as a main rule - upon request of the entitled persons. All of this means that the Hungarian Constitutional Court can have the final say in interpretation of the Constitution, but it does not happen in every case when there is a need for such interpretation. As concerns the actual practice, our Constitutional Court generally has a very cautious approach in the matter of interpretation of right to healthy environment. A Handbook on the Hungarian Environmental Law (under edition), issued by the Ministry of Environment) in its Chapter 1.3 surveys the practice of the Constitutional Court in the last 8 years and finds that the court tries to balance between the economic interests and the environmental interests. However, the decision No. 28/1984. AB declares that the level of protection of the environment, ensured by the law must not diminished by the new legislation. This decision is widely referred to in several law drafting works and in interpretation of the new legislation.

Anyone here really means anyone, the term includes all categories of public, including foreigners, stateless persons and it embraces all natural and legal persons, too.

Article 2 of Atv. gives the definitions of personal and public interest data: personal data are: "data which can be brought into connection with a natural person, and the consequences which can be deduced from those data concerning the given person. Personal data remains as such up until their connection to the natural person can be restored.", while public interest data is: "all the data which is handled by state, municipality or other organization or person fulfilling public tasks, unless they are personal data". We see that there is a presumption that an information is public interest one, unless it is proven that it is personal information. It is important to add, that besides personal data and public interest data there are no other potential categories of data under the Hungarian law on information. It is another question, that there are a taxative (strictly exhaustive) list of exemptions in Atv. from the access of public interest data, but here the burden of proof rests on the state to exclude the presumption of openness.

The usual main argument that the rough data servicing from the state should be free is that the operation of the administration is paid by the tax payers. This argument is

sometimes superficial, because it overlooks that in some cases special groups or individuals of the society should be burdened more than others, and the general taxation is not a proper tool to achieve this idea. An amended reasoning to the free access to the data is that - at least the rough data - they were collected from the individual data keepers (polluters generally) for no money, it is simply fair than to give it for free, too.

According to Article 20, Par. (3) of Atv. the fee could be no more than "the expenses emerged in connection with communicating the data". Reasonableness is an additional principle in the practice of the data protection ombudsman. There is no further regulation in the Hungarian law concerning the case when the data is processed by the authority, especially when the data is processed directly for serving the needs of the requestor. General civil law, contractual law rules could be used to regulate these kinds of relationships.

Kvtv. which is otherwise a good basis of the detailed regulations of our environmental law, fails to give a satisfactory basis of the right to environmental information regulations. A possible amendment of the Environmental Code will have to deal with this issue.

As we see, the data/information differentiation - although it might have serious environmental, political and economic consequences - is not fully and consequentially used in our regulations. Naturally, the practice in Hungary is also quite confused yet in this respect. Article 4, Par. 1 of the Aarhus Convention, however, clearly refers to this dichotomy. Naturally, the information is the broadest term, as we can read in Article 2, Par. 3, rough data is understood within it, but it also definitely contains explanations, analyses, connected and background materials, while the data can be not more than "copies of the actual documentation".

Authenticated copies can be used for official purposes, and in civil law litigation the courts have to accept them as valid unless the contrary is proven (Article 196 of Act III. of 1952 on Civil Procedure).

A free inspection in some cases could mean only a little help to those, who would like to get substantial environmental information. To form meaningful information out of the rough data, however, doesn't always need meticulous work from the authority, sometimes the problem of the requestor could be solved simply by an officer who helps on the scene to interpret the data. Unfortunately, no similar regulation exists at the time being in the Hungarian law. However, general principles of cooperation in Áe (Article 2, Paragraph (4)) and in Kvtv. (Articles 10-11) would dictate such behavior from the side of the authority in order to enable the stipulation of these laws about information rights to reach their goals in the practice. This is just a construction of law we have developed, the general practice has not acknowledged this way of thinking yet.

See the differentiation between the terms of data and information in the previous subchapter.

The consumers driven nature is really far from the Hungarian environmental information system at the time being.

Environmental authorities: there are 12 environmental inspectorates in the country, which are organized not according to the county borders, but according to the respective water sheds. Apart from these, there are 9 national park directorates for fulfilling administrative tasks connected to nature protection. All the other environmental protection administrative tasks belong to the inspectorates. The second instance environmental authority is the Chief Environmental and Nature Protection Inspectorate, located in Budapest. In cases of need for third instance body, Ministry of Environment acts as administrative body, and even in some exceptional cases, the minister himself creates a fourth administrative level (see Governmental Decree No. 211/1997. (XI. 26) on tasks and scope of authority of the environmental inspectorates, national park directorates and the Chief Environmental and Nature Protection Inspectorate and Decree of the Environmental Minister No. 36/1997 (XII. 8.) KTM on the territorial division of authority of the inspectorates and the directorates). E. g. when an inspectorate prepare to issue a new emission permit, it (would) need to know the ambient environmental quality data.

The data collection obligations are regulated on central level, by laws and other regulations, while the needs are sometimes specific to each of the territories of the inspectorates. Since data collection is really expensive activity, however, the inspectorates cannot afford too much separate data collection.

Here we mean the initiators of environmentally significant projects or polluters, but because of the really inclusive definition of client in Article 3. Par. (4) of Áe. any other participants of the administrative processes can be called client, too. Such way those who request environmental information, could be clients, too, which fact has important consequences: all the procedural formalities and guarantees of Áe concerns such clients, too.

Ministry of Environment ordered a study this year about the several legal entitlement and responsibilities of the environmental authorities (EMLA, 2000, under dissemination). The main finding of the study was that hundreds of laws, governmental decrees and decrees of ministers (not only environmental, but the public health, the industrial, agricultural, infrastructural and other ministers, too) contain tasks and responsibilities for the inspectorates and for the Ministry of Environment and a great portion of these regulations is "latent", i. e. no one actually uses them or even no one knows about them.

Several other branches of law use the concept of public authenticity, too, like geographical information services, standardization law and the term is used in the Procedural Fee Act, too, in an indirect way (i. e. the fee is higher if the served information is authenticated). The burden of proof against publicly authentic data is on that party which puts the authenticity in question. Unfortunately, the concept of public authenticity is not in force automatically in connection with all the environmental data the administration produces, it is limited to the data of elevated importance in case the law says that. It is another question that citizens have the right to sue the administrative bodies if the

environmental data they provided were faulty and the citizens suffered harm out of it. This legal possibility is called "damage caused by administrative body" and has its special regulation in the Civil Code, Article 349. This kind of responsibility can concern all kinds of information, not only the authenticated ones. The possibility of civil law liability can cause civil servants to be more cautious about providing information, but in practice there are very few court cases of this kind.

Water management and water protection used to be under the same administrative bodies at the end of the eighties and at the beginning of the nineties, they were called Ministry of Environment and Water Issues and environmental and water inspectorates. After this period the water management side got to the Infrastructural Ministry, while the water protection side stayed at the new Ministry of Environment and Spatial Planning. All the water regulated legislation following the split had to pay attention to the proper division of tasks between the two branches of administration. This, however, sometimes was not too easy to do.

The Decree left it to the discretion of the water management authorities to decide whether a certain accident can be qualified as large or not. This is a typical way of regulation, we can find several other examples for it in the Decrees enlisted here.

The reporting is annual in this case

This is a reference to the text of the Decree, in which the legislator introduces the regulation and gives the main general reasons and aims of the given Decree. In other words, there is no definite and targeted international responsibility behind the Decree, although the several bilateral (e.g. the border river contracts) and multilateral (e.g. the Sofia Convention on the Danube River) international agreements contain general responsibilities to collect, process and exchange information on the water management data. These international agreements are public, the Hungarian Law Register (in paper and CD format) contains them.

According to Article 5, Paragraph (4) of Governmental Decree No. 72/1996. (V. 22.) Korm. on water management permitting and on other kinds of decisions of the water management authorities, the content of water management permit is: data on the permitted installation, data on water consumption or use involving all the water management and water protection data which describe the processes and practice of the facilities; data on the methodology of self monitoring; conditions of the operation, responsibilities of the operators in that respect; name of the operator and the legal titles of operation especially the ownership rights; time of expiration of the permit.

The term can be a little confusing: we mean a water management register, which deal with registering the installations of water users. Any times we use the term "facility" or "water related facility" we mean such installations.

National facilities are all the facilities whose territory of operation expands the territory of authority of one single water management directorates. the problem of the related regulation that we don't see the legal guarantees that the local level authorities are aware of all water management activities which take place (at least partly) on their territory.

Information on the technical solutions used at the facility, the capacity, the input and output data, the time relations of the production processes etc.

See the definitions in the Attachment I. of Act LVII. of 1995 on Water Management.

The great deal of vagueness of the description of right to information in connection with the water management registers raises the question whether the general rules of Áe., Atv. and Kvtv. should prevail or not. The constitutional rule of hierarchy of laws and regulations (as it is defined in Act XI. of 1987 on Legislation) would dictate this solution. However, the "less specialis derogat legem generalem" principle contradicts to this and the practice tends to follow this latter interpretation tool more frequently than the former. Our standpoint is that only a clear and high level legislative direction on public participation and right to information in environmental related matters could solve this vague legal situation. The good news is that Ministry of Environment started already the informal, scientific preparation of this law.

Here again we can use the differentiation between data/information terms. The plain data are free, but any information which requires work from the authority costs proportional money. The information servicing here goes already not on administrative law, but on civil law basis.

This rule refers to the intellectual rights of the administrative body which handles and processes the database.

Enterprises could be obliged to monitor, collect, store, process and further water management information in connection with their activities. This can be a really burdensome responsibility, but we haven't heard about any abuse of this entitlements from the side of central water management authorities. It is not clear what you mean by "abuses" – do you mean excessive (that is, ultra vires) demands? Or do you mean that a "burdensome responsibility" that is nevertheless necessary and justifiable could be considered an abuse if it is imposed on one but not all enterprises (that is, in an arbitrary fashion)?

We see another example of data/information differentiation here: data are free information costs as much as the leader of the authority requests, naturally, in harmony with the respective rules of Atv.

As a condition attached to the permit.

The rest of the persons obliged to report is decided by the inspectorate, which has a discretionary power to decide the content of the term "dangerous to the underground waters".

This contract is rather an administrative agreement between the authority and the polluter, which is defined by the administrative law, rather than the civil law rules. However, the contract is optional to the polluter, if it decides not to conclude it, the authority will measure the necessary data on its own.

The "official" explanation is that in Hungary we have not enough financial resources to turn it to environmental protection purposes, the economic restoration needs to enjoy priority. A deeper sociological analysis might show only the real social interests and value systems, which hinder a quicker and more genuine development of our environmental protection regulations, infrastructure etc.

On water management side the registers contain - depending upon the use of the given water courses - data on small and medium watercourses, too.

The term refers to the discretionary power of the authorities to decide, who has a right or legal interest enough to have standing and/or access to information.

At the bigger junctures, squares (not more than half a dozen places) there are electric

boards showing the daily amounts of the four-five most important air pollutants (COs, NOs, SO₂, dust, sometimes pollens, too). Apart from this some daily newspapers also give regular air pollution reports concerning broader areas.

The primary responsibility of the Office is passive environmental information dissemination, the active side (small leaflets) is exceptional in its activity. The Office can be accessed by remote computer (E-mail), but the home page of the Ministry is not interactive yet.

The Hungarian (and many of the Central and Eastern European) permitting system has the following basically three step structure: spatial (or territorial) planning - environmental permitting - construction permitting. The first element is a decision of the local municipality, whose territory is going to be used by the given planned activity. Although it carries several traits of that (e. g. the participation of the so called helper or co-authorities, public participation etc.) this is not an administrative decision, but has the form of a local legislation. Spatial planning decisions this way are accepted by the municipality councils.

The chapters are: state of the environment in Hungary; Hungarian Biodiversity Monitoring System; case studies; GRID Budapest and GRID network.

This website contains very few directly environmental related issues. The Chapters are: Introduction; organizational structure; Itemized information like: licensing, interconnections, radio communication, fees and charges, appeal, dispute resolution etc.

Naturally there are legal remedies for that, discussed elsewhere, and the possible misbehavior of the officials could be sanctioned on labor law basis. However, we do not think this personal, individual handling effective enough from the viewpoints of developing the system of right to environmental information.

The distinction is between a legal entity (e.g. one that is incorporated or established by law, such as a corporation or a registered foundation) and a person.

The only opinion against this we have heard in the last five years was from Életfa Association from Eger on aq REC Aarhus roundtable meeting in November, 1998. Their point was that the deadline should be longer to make the authorities to be able to respond all the requests. This opinion did not receive support from the other participants of the meeting.

As concerns the issue of access to information about these information services, the picture is not too bad. KÖT - in years it can afford - issues leaflets, which analyze the members' activities in several kinds of numbers. The ministry and EMLA also have book keeping about their information disseminating activities. These special "meta-information" is accessible on leaflets, annual reports in paper and electronic form, too.

These are especially: information concerning the scope and territory of authorities, their organizational structure, the types of information they possess, the processes of their operation and the name and rank of persons representing the authorities in the cases (Article 19, Paragraph (2) of Atv.)

The definition of the terms involved in this paragraph is not given by the law, it depends on the discretion of the leader of the authority. However the strong rights to legal remedies through the expedited court practice and through the revision made by the Data Protection Ombudsman represent limitations to ensure that these determinations are not made arbitrarily.

Misuse is quite a general term of any illegal uses which causes harm to the original owner of the information.

That means that such kind of information is automatically accessible unless it falls under other categories of exemptions. However, in the practice, officials are frequently afraid of the risk of civil liability if they disclose business secret information in response to an information request. Although it is crystal clear that no civil liability could take place in these cases because of lack of illegality, a basic element of civil liability, the floating idea of civil law responsibility is a big hindrance of forming a consequentially lawful practice in the matter of right to information.

Although the Commentary of the Administrative Procedural Code (HVG Orac, edited by Mr. Ferenc Petrik, head of the Administrative Law Chamber of the Hungarian Supreme Court - hereinafter: Commentary) tries to give a certain time limit to the term "without delay" (not later than 8 days) we are convinced that the everyday meaning of the text shall prevail and such way "without delay" means immediately, as soon as possible.

The Commentary, in connection with Article 16 of Áe. on issuing the requests, also underlines that the authority has to give the proper explanation and information about the process to the client.

There is no deadline for this given process of the court, however, in the practice they bring their decision without a trial in an expedited way.

These are words of professor István Ijjas, head of the Department of Water Management and Water Constructions at Technical University of Budapest.