

The Hungarian Expressway Act and the Aarhus Convention

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The European Advantage
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The Expressway Act

1 January 2004

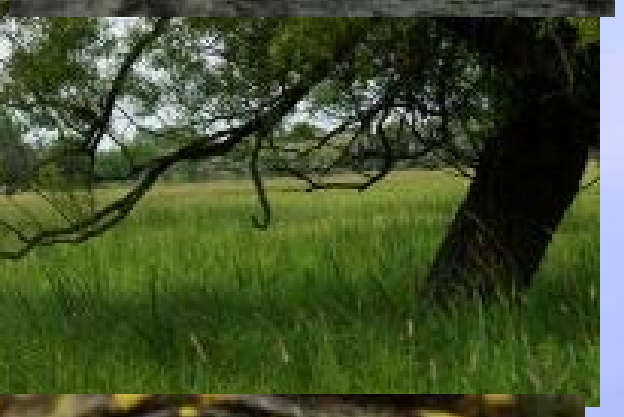
„Act CXXVIII/2003 on Public Interest and Development of the Expressway Network in the Republic of Hungary”

Goals:

Facilitating the process of expressway construction in Hungary (2004-2007)

**Construction of 636 km expressways
Preparation of 16 new sections**

HUF 1089 billion (~ EUR 4 billion)



The Expressway Act

Problems:

Special law – prioritizing one sector's development before all others (health, education, environment, ...)

Public interest?

Special procedures limiting public participation and the possibility of judicial appeals

Compliance with the Hungarian Constitution, EU directives and the Aarhus Convention?

National Remedies

- 2003 **Comments to relevant Ministries and all members of the Parliament**
- 4 Nov. **Revision proposals and comments by the National Environment Council (governmental advisory body)**
- 10 Dec. **Environment Committee of the Parliament**
- 18 Dec. **Letter to the President**
- 22 Dec. **Constitutional and Legal Committee**
- 18 June 04 **Constitutional Court**

Aarhus Convention

7 May 2004

Communication to the Compliance Committee:

Articles 6 and article 9, paragraphs 2-4

- 1) no preliminary environmental assessment for existing roads (no public participation in early phase)
- 2) final decision on road tack taken by ministerial decree (no judicial appeal)
- 3) first instance decision = second instance decision
- 4) Second instance decision is immediately executable (judicial appeal without sense)

Consideration and Evaluation

18 February 2005

- 1) no preliminary environmental assessment for existing roads (no public participation in early phase): impossible to evaluate in absence of practice
- 2) final decision on road tack taken by ministerial decree: not in conflict with article 9, if there are appeal possibilities with regard of the environmental part of the decision
- 3) first instance decision = second instance decision: not in conflict with article 9
- 4) Second instance decision is immediately executable (judicial appeal without sense): not in conflict with article 9

Conclusions

Aarhus Compliance Committee

The Expressway Act doesn't fall below the minimum level of participation and access to justice required by the Convention, but its consequences as regards compliance may also depend on its practical implementation

Against reducing existing rights even if it doesn't involve necessarily non-compliance with the Convention (Almaty Conference)

CAAG

Follow-up of the Expressway Act and in June 2005 new communication to the Compliance Committee in reason of amendments of the Act