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Regarding the draft findings of The Committee published on 31.01.2013

Greenpeace CEE Romania is disappointed about the draft findings and does not agree with the core interpretations and assessments of this case. It also seems that we do not agree with major aspects of the factual situation assessed by the Committee.

Regarding the national legislation:

1. **Implementation and transposition of the Aarhus Convention and of the Aarhus Directive in Romania is illegal**. According to art 108 of the Romanian Constitution, Governmental Decisions can only be issued for organizing and applying the laws enacted by the Parliament. According to vast jurisprudence of Romanian Courts the Constitution was adopted in this form in 1991, which states that the Governmental Decisions are not sources of laws by themselves, therefore they can't be added to a law nor modify a law. To pass a special law to FOIA (Law no 544/2001), another normative act should have been issued. A Governmental Decision is an administrative act only, that can be cancelled in court at any time by any interested person, pursuing a legitimate public or private interest, according to Law no 554/2004

regarding the procedure in front of administrative courts. This issue was explained in our response from 06.06.2011 para 9.

2. Regarding the study

In para 88 of the draft findings the Committee (ACCC) concluded that *the main part of the document was released to the public*. We would like to draw the Committees attention to the fact that releasing the list of the locations can't be considered the main part of the document. A lot more important parts are still missing, like **all the conclusions of the study**: the criteria used to analyse if the locations are suitable for a NPP, the nuclear technology that was considered during such analysis – depending on the technology a site might be or not suitable, the two locations that were preferred, the reasons why they were prefered, according to the Party's Concerned written explanations, etc. It is certain that a new NPP was planned to be built in one of the two locations, therefore the public should have the right to know where and why. The public also has the right to participate in the decision making process on the concrete selection of the location for the new NPP (one or two out of the 103 locations studied are preferred). The intervention of the public might have been important by declaring environmental risks and the possible infringement of protected goods and interests (e.g. property, health etc.) by the realization of the NPP in a certain area.

3. In para 38 referring to the Party's concerned allegations, the ACCC accepts that the project of building a new NPP was at a "preparatory stage", according to the information provided by the Party Concerned. Yet, late the Committee decides that there was no evidence that such a project or plan exists, and that the allegation of non compliance will not be examined (para 67). **Choosing the exact location of a NPP should be a decision submitted to public participation**. *The scope of the study is to choose where the new NPP will be built as the title of the study clearly states,* and the details of building project were discussed by the Government representatives with companies with experience in building NPPs (Please see the annex of our letter from 29 October 2010). That means that the Government already decided on at least the location and the technology to be used, otherwise there wouldn't be any ground of discussion with the builder (AREVA).

4. In the current case the public will be consulted regarding the location of the NPP AFTER this decision had been taken inside governmental circles. This was also stated by the Party Concerned in the only answer they provided to our information request, and repeated during the public hearing. This issue could be even substantiated if the study was public, but considering the ACCC findings, it seems the study will remain classified. As The ACCC states in para 67, the only document acknowledged regarding the new NPP is the classified study. Therefore, we are not aware of the aim, objective or conclusions of the study so that we can decide if it was or not a final decision. However, since the Party Concerned discussed the project of building the NPP with AREVA, according to the attached press release (Annex 6 of the letter from 29.10.2010), it seems that a final decision was made, but it was classified.

5. **The injunctive relief** - With reference to para 51 and para 93 of the draft findings, please note that the communicant was referring to the deficient ***translation*** of the Aarhus Convention, and not the transposition of the Convention. The ACCC stated that the allegations regarding the injunctive relief were submitted too late. The communicant submitted these allegations with the letter from 6.06.2011, *before the public hearing took place*. In the same letter the communicant mentioned for the first time the allegations related to the fact that the judges assigned to hear cases are named by the secret services. Yet, you did accept and analyze this point ***(injunctive relief situation was presented at point 11 and the non independent court issue at point 12 of the same document, submitted on 06.06.2011)***.

6. Regarding the communicant's allegation related to the lack of independence of courts (para 49 and 95 of the draft findings). With respect to the judges appointed to hear the case, the ACCC has made a connection between the time needed to end a case and the judges' independence. This point was described at 12 b. The prolonged duration of the law suits was a different issue related to this case, as described at point 12 c. In addition, at point 12 a, the communicant mentioned that he has no access to any information on the reasons, and the motives for which the information was classified. Sometimes access was not even granted to the act that classified the information. That's why it is not possible to built a case against the classification act. The only one who is aware is the judge – who's independence is to be highly doubted because he is appointed by a structure of the secret services (ORNISS). Furthermore, we never mentioned that THE LAW is providing this court system. There is no law **stipulating that some judges can be appointed by the secret services through ORNISS.** This is only a practice of some Romanian courts: Decisions being taken by the administrative bodies, like the decision that we mentioned and submitted to you that resides on an article 95 from the internal regulation of the courts of justice. This regulation is not a law, and secondly art 95 does not refer in any case to classified information or special appointed judges.

If the ACCC's decision is that a court specially appointed and controlled by the secret services in cases involving classified information is legal, and this is the legal interpretation of the Aarhus Convention, then you might be in contradiction with art 6 of the ECHR.

7. **Regarding the duration of judicial procedures**: para 53 and 94 of the ACCC's draft findings, state that a duration of the cases ("deciding a case after 7 or 8 months duration") does not appear to be excessively long. Herewith the communicant wants to highlight again, that none of the cases mentioned in the current procedure was finished in 6 or 7 months time:

- Case no 18773/3/2009 was submitted to court in 05.05.2009. The appeal was final in 20.09.2010. The written decision of the Court of Appeal was available in 2011.
- Case no 49156/3/2009 was submitted to court in 14.12.2009 and the appeal was final in 31.03.2011.

The communicant mentioned in the communication the absolute right of the other party to file an appeal and the existence of a suspensive effect of the appeal so that the ACCC will understand that the case was not final after the first instance court took its decision. If the communicant would have won the appeal, the decision of the first instance court couldn't have been executed. The communicant never complained with respect to the right of appeal or for the suspensive effect.

8. R**egarding the public participation procedure for the adoption of the energy strategy**. Para 59, 62, 99, 100, 102, 105

The project of the strategy was posted on website **for 10 days** not during a period of 30 days as the ACCC mentioned. This was the time provided by art 6 of Law no 53/2003 **at that time – in 2007. We mentioned this in our letter from 06.06.2011.** It is not reasonable that a foreign citizen can translate from Romanian large documents, like the Energy Strategy, AND submit comments. Please remember that the one requesting the documentation in 2007 was Jan Haverkamp from Greenpeace Austria. At that time Greenpeace Romania did not exist. Jan Haverkamp couldn't find a translator being able to finish the translation so quickly that would enable Mr Haverkamp to provide comments and meet the deadline. Maybe art 4 doesn't stipulate that translations must be provided for the foreign public BUT art 6 requires an effective public participation **for the entire public concerned. Given the nature of the strategy and the interest expressed by Greenpeace Austria through Mr Haverkamp,** the Government should have translated the documentation and provide an effective public participation for the public from the neighboring countries. It is true that the consultation procedure for the public from the neighboring countries is regulated by the Espoo Convention. However the communicant is asking the ACCC to remember that the Aarhus Convention is not excluding from the public concerned the individuals or the legal persons NOT SPEAKING the language used by the government that provided the documentation, nor the public leaving and residing in other countries. Therefore, since the effects of this plan are likely to be produced upon this public they are entitled to participate in the procedure. How can they do this, if the Governments can simply *state that they don't have any translations, and ask the foreigners to translate it and provide comments in 10 days??*

9. **Regarding the guidance provided by the Government** – para 70, ACCC is stating in the draft findings that some guidance was provided in the response submitted to us by the Government. In that answer the Government refused to disclose the requested information. Guidance can't be considered as provided by enunciating the legislation involved in a project and refusing any public participation and also by refusing to communicate all relevant information in such a case. Regarding the nature of the decision that ACCC mentioned, please note that stating that the public will be consulted *after a decision will be made* can't fulfill, in our opinion, the requirements of guidance.

We can't prove a negative fact, that the Party Concerned didn't do anything. They should prove that they did guidance related to this project of building a new NPP, and such proves were NOT provided in this case. In a general sense, as it

resulted from the discussions during the public hearing, the Government admitted that no general guidance was provided concerning Aarhus Convention procedures.

10. Regarding legal framework concerning classified information, para 89 and 91, we appreciate that ACCC considers that it is concerning how the legislation appears. However, we are convinced the Committee had all pieces of information at hand and you should make at least a recommendation in this area to ensure that access to information rights as it results from the Aarhus Convention, is protected.

Greenpeace CEE Romania