Government gives unlimited right to Paks Nuclear Power Plant to boil the Danube

NGOs oppose further weakening of the legislation

Budapest, July 28, 2024: The draft legislation, published on 27 July, would significantly change the conditions for operating the Paks nuclear power plant: while previously there were clear limits on the extent to which the plant could heat up the Danube, in future this could be overridden any time by a ministerial decision. According to the Energiaklub Policy Institute, the Association of Hungarian Nature Conservationists and the EMLA Environmental Management and Law Association, arbitrary intervention in the Danube environment is not justified; the only reasoning behind this draft is to ensure easier operation of the plant during critical periods, which could have unforeseeable consequences on water life.

In our view, the draft legislation submitted for public consultation on 27 July 2024, with a one-week deadline, seriously violates the principle of the widest possible public participation as laid down in Act CXXXI of 2010 on public participation in the preparation of legislation. The problem the draft legislation aims to solve has been known for years, there is no concrete reason for amending legislation in the middle of summer with such a short deadline.

The EU Water Framework Directive (WFD) requires Member States to consult widely with the public and stakeholders to identify problems, solutions and their costs. According to the WFD, public support and participation is a prerequisite for water protection, and without public support regulatory measures cannot be effective.

Ecological aspects

Thermal pollution of natural waters has been a long-known ecological problem. A significant and continuous change in water temperature alters the entire ecosystem in a given stretch of river. Aquatic invertebrates are particularly sensitive to temperature, and changes in water temperature reduce their defences against other stress factors. The indirect effects of heat pollution are also severe: warmer water has lower oxygen levels, more algae growth, and this disrupts the whole food chain. The degraded habitat is then easily colonised by invasive species, crowding out the remaining native species.

Studies have shown that since the start of operation of the nuclear power plant, the average maximum temperature of the Danube has risen by almost 3 degrees Celsius. According to the 2006 Environmental Impact Assessment, for the plant's lifetime extension, as early as 2002 many dead snails and mussels were found in the heat plume of the hot water canal, and the sludge had a distinctive smell. Now already an underwater desert developed along the hot water channel. The proposed change in legislation could exacerbate this and lead to a complete disruption of the aquatic ecosystem and further loss of biodiversity.

The Danube is an ecological corridor, not only a chain of habitats but also a place where species can move freely: the entire stretch in Hungary is a Natura 2000 site. Any intervention affecting the

ecology of the Danube must take into account the impact of the intervention on the conservation management of the site. The tool for assessing impacts is the so-called Natura 2000 impact assessment, the implementation of which, applicable to the present case, is the impact assessment prepared during the preparation of the legislation. We consider the Impact Assessment Sheet of the proposed legislative amendment, which states that the proposed measure will not have any environmental or natural impacts that are considered to be significant, to be technically unsound.

Legal aspects

The Treaty on the Functioning of the European Union enshrines the precautionary principle as the basis for environmental policy. In domestic law, the Constitutional Court has on several occasions stated the importance of the precautionary principle and its connection with the level of protection of the environment and nature and the prohibition of reducing the level of protection, for example in the Constitutional Court Finding13/2018 (4 IX): 'the prohibition of retrogression now derives directly from the Constitutional Law [...]. [W]henever the legislation on the protection of the environment is amended, the legislator must also take account of the precautionary and preventive principles, since 'failure to protect nature and the environment may trigger irreversible processes'.

According to AB 27/2017 (X.25.), "the State must ensure that the deterioration of the environment does not occur as a consequence of a measure". In our view, the legislator has failed to provide such a justification in the context of the present legislative amendment, and the short, concise "no" answer of the Impact Assessment Bulletin certainly does not satisfy the constitutionality requirements.

The question is so relevant that the Curia in its judgment No.Kfv.37004/2024/6. stated that "Article P of the Fundamental Law defines the duty of the 'State and everyone' to protect the natural and cultural resources forming part of the common heritage of the nation. It follows that not only the legislature but also everyone, including the legislator, must be committed with maintaining the level of protection already achieved".

The proposed amendment will undoubtedly reduce the level of protection already achieved, without demonstrating that it is justified. It is not a constitutional right which deserves being protected by violating the right to a healthy environment by legislation; thus the proposed legislative amendment is unconstitutional.

Energy aspects

It is also necessary to mention the Paks II project, since the new plant will be cooled by the water of the Danube, as is the case with the existing plant. During the environmental permit procedure, water data for the period 1965-2011 were taken into account, and it was already mentioned in the drafting of the document that the data for 2012 indicate a higher risk of extreme low water levels and water yields than estimated. In August 2022, water yields were nearly 40% lower than in 2012, and extreme weather conditions are becoming more frequent in addition to the declining trend in water yields (see National Adaptation Spatial Information System or Copernicus Land Monitoring Service data sets and model results).

András Kéri, director of the Energy Club, said, "This draft proves that the government has already realised that it is not possible to operate a single nuclear power plant in compliance with the law, and

that in the case of two plants operating in parallel, reducing the plant's output will be necessary more often. The myth of an always-available energy source has thus been debunked, meaning that instead of real energy independence, the government wants to build another weather-dependent power plant at a cost of billions of euros, which poses a serious risk to security of supply."

Ákos Éger, Executive President of the Association of Hungarian Nature Conservationists, said that "The problems related to the cooling water of the Paks nuclear power plant highlight that the interconnected environmental, social, economic and energy challenges of our time cannot be solved by conventional methods. We need systemic, coherent solutions that take into account the well-being of society and natural constraints, and bring them into harmony through long-term programmes."

Now that the government has admitted that the situation has changed significantly since the environmental permit for Paks II has been issued, it is inevitable to revoke the permit and carry out a procedure for a new EIA permit procedure.

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