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LITHUANIA HAS FAILED TO COMPLY WITH THE REQUIREMENTS OF THE AARHUS CONVENTION

The European Commission report on Lithuania's compliance with the requirements set forth in the Aarhus Convention is misleading and superfluous. The report has failed to provide an extensive and in-depth analysis of the legal situation in this country in terms of its compliance with the requirements of the Convention.

Lithuania has failed to comply with the requirements of article 6, paragraphs 2 and 3, of the Convention by not informing the public in an adequate, timely and effective manner about the majority of environmental matters and the possibility to participate in the environmental decisions, and by providing too short a time to inspect the documentation and to submit comments in relation to the above decisions regarding the environmental matters in question.

Also, Lithuania has failed to comply with the requirements of article 6, paragraphs 2 and 3, of the Convention by not allowing the public to participate in many matters related to the environment, such as the issuance of construction permits, the scoping of spatial planning requirements and the legislation on environmental matters. The most recent example is the Lithuanian Parliament's approval of the construction of a nuclear power plant in Lithuania without either consulting with the public or allowing the public to participate in making this decision the scale of which may impact many generations to come. No other alternatives were considered as regards to building the nuclear power plant. This environmental decision by law cannot be appealed by the public in a court of law because laws and Government resolutions do not fall within the jurisdiction of the administrative courts of Lithuania. Therefore, the public's access to justice is restricted as regards to environmental matters decided on by means of passing a law or Government resolution.

Moreover, the EC report on Lithuania has failed to analyze the legal practice of Lithuanian courts which is at times in direct breach of the Convention. The courts are following the erroneously translated Lithuanian version of the Convention, wherein "environment" is substituted by "environmental protection". Thus the public's access to justice is limited only to environmental protection matters.

The EC report states that under *Article 22 of the Law on Administrative Proceedings* "persons as well as other entities of public administration, including state and municipality public administration employees, officers and agency heads shall have the right to file a complaint/petition against an administrative act adopted by an entity of public or internal administration or against the act (omission) of the above entities if they believe that their rights or interests protected by law have been breached". This refers only to the rights or protected interests of the plaintiff itself. The report failed to overview cases when the public interest is breached because the majority of environmental matters concern public rather than private interest. In Lithuania only public institutions have *locus standi* to defend the public interest. Other persons, including NGOs, may defend the public interest only in cases provided for by law (Art. 56). The matter of the fact is that no Lithuanian law provides for any such cases. NGO may protect the public interests only on the basis of the Aarhus Convention. Unfortunately, the legal practice formed by the Lithuanian courts has limited the right of private persons and NGOs to protect the public interests only to "environmental protection" matters, excluding cultural landscape and heritage (built structures) whereas the Convention entitles to "environmental" matters, which does include cultural heritage. Thus, Lithuania has also failed to comply with the requirements of article 9 of the Convention.

The following general features of the Lithuanian legal framework are not in compliance with article 6 and Article 9 of the Convention:

- (i) Lack of a clear requirement for the public to be informed in an adequate, timely and effective manner (article 6, para. 2);
- (ii) Setting a fixed period of ten working days for inspecting the documentation and for submitting the

comments (article 6, para. 3);

(iii) Making developers (project proponents) rather than the relevant public authorities responsible for organizing public participation, including for making available the relevant information and for collecting the comments and accepting or rejecting thereof (article 6, para. 2 (d) (iv) and (v), and para. 6);

(iv) Requiring that comments submitted should be “motivated” and restricting those entitled to submit comments to the “public concerned” (article 6, para. 7);

(v) Failing to inform the public and eliminating the public from the participation in any environmental matters other than the final phase of spatial planning and environmental impact assessment. The public is never informed in advance about any other environmental decisions that require permission from the authorities such as construction permits, development programs, environmental regulations, heritage protection regulations, etc.;

(vi) Providing an erroneous official translation of the Convention where the term “environment” substituted with “environmental protection”, “cultural sites” with “objects of culture”, “natural sites” with “objects of nature”, “proposed activities” with “planned activities” and many other mistranslation, omissions, additions and other gross translation mistakes and inconsistencies with the Convention texts in English and French. Thus the public participation was drastically limited to matters of environmental protection rather than the entire environment;

(vii) Eliminating the public from the participation and restricting its right to access justice in environmental matters pertaining to cultural landscape and cultural heritage. Lithuanian courts following the erroneous translation of the Convention ruled that the public does not have *locus standi* to access justice in environmental matters pertaining to cultural landscape and cultural heritage;

(viii) Restricting the public’s right to access justice in environmental matters pertaining to Parliament laws and Government resolutions on environmental matters as they do not fall within the jurisdiction of administrative courts.

The European Commission report on Lithuania’s compliance with the Convention has failed to indicate the major incompliance with Convention as a result of the above mentioned issues. Therefore, the report should be rejected as misleading and incomplete and Lithuania should be given a negative evaluation for failing to comply with the requirements of the Convention as stated above.

The European Commission should take immediate action to ensure that the Government of Lithuania implement the necessary legislative, regulatory, administrative and other measures to ensure that:

(a) There is a clear requirement for the public to be informed of decision-making processes that are subject to article 6 in an adequate, timely and effective manner;

(b) There are reasonable time-frames for different phases of public participation taking into account the stage of decision-making as well as the nature, size and complexity of proposed activities;

(c) There is a clear responsibility on the relevant public authorities to ensure such opportunities for public participation as are required under the Convention, including for making available the relevant information and for collecting the comments;

(d) Provision is clearly made for any comments to be submitted by any member of the public, even if the comments are not “motivated”;

(e) There is a clear correlation between the time period(s) for informing the public about the decision and making available the text of the decision together with the reasons and considerations on which it is based with the time-frame within which review procedures may be initiated under article 9, paragraph 2, of the Convention;

(f) For each decision-making procedure covered by article 6 a public authority from which relevant information can be obtained by the public and to which comments or questions can be submitted is designated;

(g) Not only environmental matters but also all the plans and programs relating to the environment, including those on cultural landscape and heritage as well as construction permits, are subject to appropriate public participation arranged by the public authorities rather than private investors;

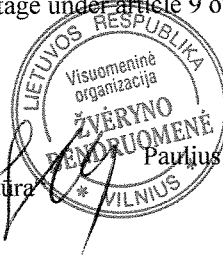
(h) The public should be given access to justice not only in environmental protection matters but also all environmental matters as defined by the Convention, including Parliament laws and Government resolutions on environmental matters as well as cultural landscape and heritage under article 9 of the Convention.

On behalf of

Non-governmental organization „Žvėryno Bendruomenė“

Non-governmental organization „Konstitucinių teisių gynimo agentūra“

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