VIEŠOJO INTERESO GYNIMO FONDAS

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OBJECTION
FOR THE PROGRESS REPORT OF THE MINISTRY OF ENVIRONMENT OF THE REPUBLIC OF LITHUANIA

30 October 2023
Kaunas

1. The Applicant, the Public Interest Defence Foundation, registered in accordance with its statutes, *operates as a non-governmental organisation interested in the decision-making process, actions, or inaction related to the environment, its protection, and the use of natural resources, or in the process of such decisions, and in the process of their implementation, and promotes the protection of the environment, acting as the Public Concerned (Interested Organisation) in accordance with the Republic of Lithuania Law on Environmental Protection and the definition of the "Public Concerned" established in the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Official Gazette, 2001, No. 73-2572) adopted by Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 ('the Aarhus Convention') (*clause 6 of the Statutes of the PIDF), *and, within its registered fields of activity, inter alia, takes care of the environment* (clauses 7.1, 7.2, 7.3 of the Statutes of the PIDF) *and defends the public interest before administrative authorities and courts* (clause 7.4 of the Statutes of the PIDF).
2. The Applicant thus meets the *definition of Public Concerned in the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (*'the **Aarhus Convention'***).*
3. The Applicant often initiates and participates in legal proceedings as a participant and initiator regarding environmental aspects of the EIA as a legal entity actively involved in environmental protection (www.vigfondas.lt), and exercises his right as a member of the public concerned both in procedures and constantly attempting to make use of the right to seek legal remedies.

4. Based on the proposed opportunity, I provide information that I have collected as the head of the Public Interest Defence Foundation and as a lawyer actively practicing in this field.
5. During the relevant period from 2017 to 2023, numerous legal disputes arose in Lithuania related to various activities affecting the environment, thereby falling within the scope of the Aarhus Convention. I have participated and continue to participate in numerous administrative and legal proceedings. I have prepared and submitted comments, complaints, and procedural documents to various levels of state institutions and courts, representing more than five hundred natural persons in individual and Group action or Group complaint cases. I represent or have represented not only individuals but also numerous legal entities (NGOs): associations, community groups, owner communities, municipalities, and environmental state institutions.
6. Therefore, my legal experience in the field of the Defence of Public Interest could be considered comprehensive.
7. Unfortunately, at this time, I can only provide brief comments and conclusions on the issues raised, but a more detailed summary and analysis could be provided over a longer period if such an opportunity were identified. I am also ready to collaborate and engage in discussions on specific problem issues.

8. I disagree with the conclusion of the Ministry of Environment that the recommendations of Decision VII/8l (Lithuania) are currently implemented through legislative measures.
9. The Compliance Committee in the recommendations of VII/8l (Lithuania) stated:
    9.1. Lithuania has violated Article 6 (2) and (3) of the Aarhus Convention by not ensuring adequate, timely and effective public information and involvement in the EIA decision-making process (point 89 of the findings and recommendations).
    In commenting on this note, it is noteworthy that Lithuania currently still does not ensure adequate, timely, and effective public information and involvement in the EIA decision-making process. This is based on the fact that
        1) The means of public information are not universally accessible, therefore, the Public Concerned is often unaware of the EIA decision-making process. Consequently, only a selective part of the public usually engages in such a process, and the information becomes a mere formality;
        2) The law stipulates that the public has the right to access the EIA report and submit proposals to the competent authority and the preparer of environmental impact assessment documents before public disclosure of the report (Article 11 (3) of the Law on Environmental Impact Assessment of Planned Economic Activities). Unfortunately, it is usually only at such a presentation that the Public Concerned learns about the planned environmental changes in detail, and it is only at such a meeting that the problems and risks of the planned economic activity become apparent. Therefore, matching the deadline for submitting comments and proposals for the EIA report with the briefing meeting does not ensure real participation of the Public Concerned in this process since due to the absence of a realistic deadline (after public disclosure) deprives the Public Concerned from having the opportunity to prepare comments and proposals on the EIA report in a legally qualified manner. Subsequent submissions of this kind of comments are no longer considered.

9.2. The legal provisions do not comply with the requirements of the Aarhus Convention (Article 6 (2), (3), (6), (7)) as there are no clearly defined requirements that the public must be informed appropriately, timely, and effectively:

9.2.1. Too short a period (10 working days) for the public to familiarise themselves with the information and submit comments;

Speaking about this comment, it is noteworthy, as mentioned above, that the deadline is too short because, according to the established legal regulations, comments and proposals must be submitted by the end of the public disclosure meeting, and not within a certain reasonable period after it (this procedure applies not only to EIA procedures but also in the fields of construction and spatial planning). Therefore, in ensuring an appropriate period for the public to familiarise themselves with the information and provide an opportunity to submit comments, setting a time limit within which the Public Concerned would have the right to submit their comments and suggestions within a certain period after the meeting at which the EIA report was presented is more important than extending this deadline from the start of the EIA procedures.

9.2.2. The procedure in which public participation is organised, information is provided to the public, and comments are evaluated not by a competent institution but by the project developer (drafter of documents);

As regards this comment, it is notable that the flaw is manifested in the fact that all comments and proposals from the Public Concerned are evaluated (accepted or rejected) not by a competent state or expert institution but by the project developer (drafter of documents) or their hired representative. Such a practice does not ensure an objective environmental impact assessment, as a positive environmental impact assessment becomes a purchasable service.

Meanwhile, in order to ensure an objective assessment, it should be conducted by accredited independent expert institutions whose services would be procured not by the organiser of the planned economic activity but by the state institution executing the EIA procedure, using funds held in deposit by the organiser of the planned economic activity.

9.2.3. The requirement for the public to submit "motivated" comments and the restriction to submit comments only by the "Public Concerned";

It is noteworthy that it is inseparable from the exaggeration of the subjective element not only in the stage of submitting comments but also in the implementation of the right to appeal to the court, which is discussed separately.

Regarding the implementation of the right of access to justice in environmental matters

10. The right of access to justice in environmental matters under the provisions of the Aarhus Convention is not linked to the **subjective rights of the applicants affected by environmental damage – and this is a fundamental provision that follows from the spirit of the Aarhus Convention and the very essence of this international legal regulation.**
11. In this regard, it should be noted that Lithuania applies an inaccurate translation of the text of the Aarhus Convention, which emphasises the subjective element of the violation of law, which may lead to its improper application.

12. According to Article 22 of the Aarhus Convention, texts in English, French, and Russian are recognised as equally authentic. Therefore, the meaning of the text of the Aarhus Convention must be interpreted based on the content of the authentic text.
13. In contrast, the Lithuanian text of the Aarhus Convention's Article 9(2)(b) relevant to its application has been translated inaccurately if comparing that text with the authentic Russian and English texts. The Lithuanian translation of the relevant part of the sentence of this legal provision, which discusses the right of persons to apply to courts, emphasises the subjective element of the violation of the right by stating: *"<...> **who believe that any of their rights have been violated** <...>"*. Meanwhile, in the authentic Russian translation of the text, this part of the sentence does not contain the subjective element of the violation of rights, and the text sounds similarly as follows: "<…> ***who believe that a violation of a certain right has occurred*** <…>". The subjective accent of such an element is not present in the original English version either.
14. This aspect of the interpretation of law is relevant for revealing the meaning of this right correctly when applying the provisions of the Aarhus Convention and the "spirit of the law" revealed in the preamble to the Aarhus Convention by systematic and teleological (purpose of the law) methods of legal interpretation.
15. The preamble to the Aarhus Convention states that States have signed the Convention inter alia:
    - *Recognising that adequate protection of the environment is essential to human well-being and the enjoyment of basic human rights, including the right to life itself;*
    - *Recognising also that every person has the right to live in an environment adequate to his or her health and well-being, and the duty, both individually and in association with others, to protect and improve the environment for the benefit of present and future generations,*
    - *Considering that, to be able to assert this right and observe this duty, citizens must have access to information, be entitled to participate in decision-making and have access to justice in environmental matters, and acknowledging in this regard that citizens may need assistance in order to exercise their rights,*
    - *recognising further the importance of the respective roles that individual citizens, non-governmental organisations and the private sector can play in environmental protection.*
16. Therefore, based on these provisions of the Aarhus Convention, it is evident that interference with environmental protection or impact on the environment is recognised as interference and impact on people's well-being and fundamental human rights, including interference with the *right to life*, and both individual citizens and non-governmental organisations have not only the right but also the duty (because they *must*) to collectively with others *protect the environment and improve its condition for the well-being of present and future generations*.
17. **Thus, a person's right to apply to the court in environmental matters cannot be restricted due to insufficient exposure or disclosure of a violation of subjective right.**
18. Meanwhile, in Lithuania, the courts do not recognise that natural persons who are part of the Public Concerned have the right to appeal to courts on environmental matters solely based on the provisions of the Aarhus Convention. To enforce such a right, the courts demand proof of the subjective interest of the applicants.
19. In the absence of sufficient evidence that such a person may experience direct violations of rights due to planned economic activities, Lithuanian courts refuse to accept complaints from the Public Concerned (and even groups of persons) seeking to protect public interest in the environmental field (or reject such complaints based on the provision that the right to appeal to courts in the field of public interest defence cannot be exercised without proving a violation

of subjective rights). Meanwhile, Lithuanian courts do not recognise the motivation of persons attempting to initiate the process for reasons of shared environmental significance, such as residents of a particular area seeking to defend their right to a healthy and clean environment, aiming to halt potential adverse environmental changes or climate impacts, as sufficient interest.

20. This violates the fundamental doctrine of the Aarhus Convention, which has shaped the meaning of the adoption of this international normative act.
21. There are numerous examples of legal cases in which courts do not recognise the right of applicants (both individual persons and legal entities such as environmental organisations or group action plaintiffs) to bring environmental matters to court due to a lack of specific material interest. Therefore, it can be stated with certainty that a practically uniform legal case law has been formed in Lithuania in the application of the Aarhus Convention, contradicting the fundamental right stipulated in the Convention to access courts on environmental matters.
22. Unjustifiably restricting this right not only violates the provisions of the Aarhus Convention regarding the right to access courts on environmental matters but also limits the right of the Public Concerned to a *fair trial*. The established legal practice in this area not only serves as a real obstacle to implementing the provisions and spirit of the Aarhus Convention in Lithuania but also constitutes a fundamental barrier to the realisation of other rights guaranteed by the Aarhus Convention: both the right to access information and the right to participate in decision-making cannot be effectively defended if there is no fundamental opportunity to appeal to the courts.
23. It is noteworthy that this opportunity is limited not by the provisions of the Republic of Lithuania Law on Environmental Impact Assessment of Planned Economic Activities but by the application of procedural legal norms in the judicial practice, which is used to reject complaints (lawsuits).
24. The case-law of both administrative and general competence courts has developed quite clear provisions on the application of procedural law, according to which both Articles 5(3)(2) and 55(1) of the Republic of Lithuania Law on Administrative Proceedings and Article 5(1) of the Republic of Lithuania Code of Civil Procedure are recognised as denying individuals the right to apply to courts in the public interest.

25. Especially considering the need for protection of public interest and the issues, particularly in the environmental sector, the Public Interest Defence Foundation that I have established, seeks to create an effective mechanism that not only activates the defence of public interest in Lithuania, but also seeks to address the causes that hinder effective defence of public interest. The issue you are examining allows us to hope that doctrinal questions could be raised to the level of political and academic legal discussions and the initiated and achieved changes in the legislative field could provide a basis for progress in the application of the Aarhus Convention in Lithuania.

I would appreciate it if you could inform me about the results of the investigation. I am ready to provide additional information, however, this would require to specify the problem areas and discuss the format of communication or collaboration.

ADVOCATE SAULIUS DAMBRAUSKAS